

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

In Re: Bedford Public Schools v.
Student

BSEA# 2006076

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

The BSEA received Bedford Public Schools' Hearing Request in the instant matter on January 8, 2020, and the matter was assigned to Hearing Officer Raymond Oliver. Thereafter, the Hearing was continued to February 12, 2020 at Bedford Public Schools' request, received on January 17, 2020. On February 11, 2020, Parent filed an emergency request for postponement, which was granted, and the Hearing was continued to February 24, 2020. Parent did not appear on the first day of Hearing, and when called by the Hearing Officer, she stated that she had not received the new Notice of Hearing. The Parties agreed to continue the case with a start date of March 16, 2020. Owing to the COVID-19 health emergency school closures, the Hearing Officer canceled the Hearing. No new Hearing date was scheduled. Massachusetts schools reopened sometime on or about May of 2020. On June 17, 2020, Bedford Public Schools requested that Hearing dates be scheduled in July 2020.

The matter was administratively reassigned to this Hearing Officer on June 29, 2020. During a telephone conference call on July 2, 2020, the Parties were ordered to submit their earliest available dates for Hearing by July 7, 2020.

On July 7, 2020, Bedford Public Schools submitted its availability to proceed in August 2020, but Parent informed the Hearing Officer that she was out of state and would not be available for Hearing until September 2020. Via Order issued on July 10, 2020, the Hearing was scheduled to proceed in early September 2020.

The Hearing was held remotely via Zoom on September 9, 10 and 11, 2020, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Mother
Father
Student

Colby Brunt, Esq.
Marianne Vines
Cheryl Pespisa

Attorney for Bedford Public Schools
Director of Special Education, Bedford Public Schools
Team Chairperson, Bedford Public Schools

Akil Mondesir	Director of the METCO Program, Bedford Public Schools
Michaela Blanchard	School Adjustment Counselor, Bedford Public Schools
Meghan Asp	Special Education Teacher, Bedford Public Schools
Nick Gacigalipi	Assistant Principal, John Glenn Middle School, Bedford Public Schools
Laura Rice	Dearborn School, STEP Program Director
Catherine Morrissey-Bickerton	Boston Public Schools
Ann H. Bohan	Stenographer, Doris O. Wong Associates

The official record of the hearing consists of documents submitted by Parents marked as exhibits PE-1 to PE-8, and Bedford Public Schools (Bedford) documents marked as exhibits SE-1 through SE-31, recorded oral testimony, and written closing arguments. At the closure of the taking of the testimony on September 11, 2020, Bedford orally requested that the matter be continued until October 2, 2020, for submission of written closing arguments¹. This request was verbally granted. Thus, the record closed on October 2, 2020 upon receipt of Bedford’s written closing argument. Parent did not submit a closing argument.

ISSUE FOR HEARING:

1. Whether the proposed placement, a substantially separate, therapeutic program in the Boston Public Schools offers Student a free, appropriate public education in the least restrictive setting.

POSITIONS OF THE PARTIES:

Bedford’s Position:

Bedford asserts that it has educated Student since Kindergarten to the best of its abilities. Student was found eligible to receive special education in third grade owing to a social/emotional disability, and has been offered special education services consistently since that time. Over the past several years, Student’s emotional needs have increased and he has become increasingly dysregulated, displaying behaviors that place him and others at risk of harm. Following a 45 day assessment at Dearborn’s STEP program, all service providers recommended Student’s participation in a small-group, substantially-separate, therapeutic program. Bedford asserts that it can no longer serve him in-district because it does not have an appropriate program or peers for Student. The Bridge program, where Student has been served to date, does not meet the recommended criteria and is no longer appropriate.

As a METCO Student, Bedford argues that Student must return to Boston, which district can offer a number of possible small-group, substantially-separate, therapeutic programs. Boston is ready, willing and able to educate Student.

Bedford seeks an order that Student be placed in a small-group, substantially-separate, therapeutic program in Boston.

Parent’s Position:

¹ One week following the estimated date for receipt of the Hearing transcripts.

Parent disagrees with Bedford, asserting that Bedford has misunderstood and mistreated Student, whose issues are a result of the post-traumatic stress suffered in the home and because of the dangers in his community. Parent asserts that Bedford has discriminated against Student on account of his race and that instead of offering him the supports he actually needs in-district, it has done what it can to rid itself of Student. Parent objects to the manner in which Bedford has addressed Student's challenges while in school and opines that if Bedford provides Student with a one-to-one aide throughout the day, does not restrain him when his behavior escalates, and offers him more supports, Student can remain in his partial inclusion program in Bedford.

Parent is adamant that no program in Boston will meet Student's needs and adds that taking Student to be educated in Boston, where he does not want to be, will be his demise.

FINDINGS OF FACT:

1. Student is a thirteen-year-old resident of Boston, Massachusetts. Student resides with Mother (who has sole legal custody of Student) in Boston, Massachusetts and attends Bedford as a METCO student. (*Id.*). METCO is a program that aims to desegregate schools by allowing students from inner cities to attend school in the suburbs (Mondesir). Through METCO, Student has attended Bedford since the 2012-2013 school year, his Kindergarten year (SE-13).
2. Student's eligibility is not in dispute and his social, behavioral and emotional challenges continue to date.
3. Student received early intervention services due to speech and language delays and the family has received therapeutic services since early on (SE-1; Mother).
4. Student was referred for a special education evaluation in third grade due to suspected emotional and learning disabilities and was found eligible to receive special education services. At the time, Student was displaying an array of inappropriate behaviors such as "throwing furniture, swearing, hitting, and bolting..." (SE-1).
5. Cognitive testing performed in 2015-16 (Student's third grade) found his cognitive abilities to fall within the low average range. Verbal, fluid reasoning, comprehension, processing speed and working memory abilities were all within the average range, however visual spatial abilities fell in the low average range. Academically, deficits were noted in Student's reading abilities, comprehension was variable and overall writing abilities fell in the below average range (SE-30). Student's writing skills were remarkable for challenges when Student was asked to combine information to create a well-developed sentence and he was unable to create a solid paragraph. Strengths were noted in single sentence writing and spelling (SE-30).
6. Assessments involving teacher report were notable for several areas falling in the significant risk category, namely: externalizing problems, internalizing problems, school problems, behavioral symptoms, hyperactivity, impulsivity, defiance/aggression, inattention, emotional control, ability to inhibit, shift, task initiation, plan, organize, and

monitor. Adaptive skills fell in the at risk category as did peer relations, learning problems and executive functioning, and working memory abilities fell in the average range (SE-30).

7. Student was found eligible for special education services under a social/emotional category due to Post-Traumatic Stress Disorder (PTSD) resulting from exposure to violence in the home since he was ten days old (SE-1; Mother).
8. On or about April 10, 2018, Michael S. Carter, LICSW, conducted an Ecological Evaluation and Consultation, reporting that Student was struggling with cultural and racial issues that impacted his ability to focus on his academics and education in a general education classroom (SE-1).
9. Two MGL c51A (c51A) reports have been filed by Bedford and Parent over issues involving medication handling procedures and allegations of abuse by school staff. DCF was involved after the first c51A and helpful supports were offered to the family. The record lacks information regarding DCF substantiation or involvement after the second c51A report (SE-1; Mother).
10. At times, Student has received after-school, therapeutic mentorship through Parent's medical insurance, which services have been helpful (Mother, Student).
11. Student is currently in eighth grade at the John Glenn Middle School in Bedford (Asp, Mother).
12. During the sixth and seventh grades Student received special education services at the Bridge program and participated in a full inclusion program pursuant to his IEPs (SE-30; Asp).
13. Student's IEP, covering the period from April 11, 2018 to April 10, 2019 contained social-emotional, written expression, reading skills, organization/academics, and social skills goals to address his deficits in these areas (SE-30). The Service Delivery Grid contained the following services:

A. Consultation (Indirect Services):²

<u>Type of Service</u> <u>Duration/</u>	<u>Personnel</u>	<u>Frequency and</u> <u>Per Cycle</u>
Social/Emotional/Academic	Gen Ed/ Special Ed	1 x 15 min/6 days
Occupational Therapy	OT/COTA	1 x 20 min/month

² Additional services for the period from April 2018 through June 2018 appear in Grid A, those are: 15 minutes per five day cycle Social/Emotional/Academic consultation; 20 minutes per month Behavior consultation; 5 x 120 minutes per five day cycle Social/Emotional/Academic consultation; Grid B: 3 x 45 minutes per five day cycle written expression and 5 x 45 minutes per five day cycle reading skills as direct services in the general education classroom; and Grid C: 3 x 25 minutes per five day cycle support & strategies, and 2 x 30 minutes per five day cycle counseling as direct services in other settings (SE-30).

B. Special Education and Related Services in General Education Classroom (Direct Services):

<u>Type of Service</u> <u>Duration/</u>	<u>Personnel</u>	<u>Frequency and</u> <u>Per Cycle</u>
Social/Emotional/Academic	Gen Ed/ Special Ed	18 x 54 min/6 days
English Language Arts	Gen Ed/ Special Ed	5 x 54 min/6 days

C. Special Education and Related Services in Other Settings (Direct Services):

<u>Type of Service</u> <u>Duration/</u>	<u>Personnel</u>	<u>Frequency and</u> <u>Per Cycle</u>
Support & Strategies	Special Ed Staff	4 x 54 min/6 days
Support & Strategies	Special Ed Staff	2 x 24 min/6 days
Counseling	Counselor	2 x 30 min/6 days (SE-30).

14. The Team proposed Bedford’s Bridge Program (Bridge), which offers therapeutic social/emotional supports, in both the Bridge and the general education classrooms (including academic, counseling and social skills), to full inclusion students. The IEP notes that if Student needed “extra academic support or needs to leave the general education classroom due to behavior/social/emotional issues, he is able to access the Bridge Program classroom and the supports” provided therein, including access to de-escalation and processing techniques (SE-30).
15. The Bridge Program (Bridge) is a full inclusion program for students who primarily present with an emotional disability. Students at Bridge attend general education classes with a teaching assistant or the special education teacher (Asp).
16. On December 19, 2018, Bedford developed a Student Support and Safety Plan for Student for members of Bedford’s Team to better and more consistently address Student’s behavioral and emotional needs across school settings (SE-16). A Behavioral Plan to target frustration/off task behaviors and avoidance stemming from tasks that Student perceived as challenging, was also developed the same date (SE-17).
17. Ms. Megan Asp, the Bridge special education teacher, holds Massachusetts Department of Elementary and Secondary Education (DESE) certification in special education-moderate special needs (grades 5-8), middle school math (grades 5-8), and elementary education (grades 1-6) (Asp).

18. Ms. Asp, who has provided Student services over the past three years, testified that there were 12 students in Bridge for sixth grade and 10 students for seventh grade (Asp).
19. Ms. Asp testified that during sixth and seventh grades, Student made minimal progress on his academic and social/emotional IEP goals. (Asp). According to this witness, Student produced minimal academic work when absolutely necessary and he mostly chose to scribe, trying to finish his work as quickly as possible. In the general education setting he was assigned a seat in the back of the class because he did not want other students to see that he was working on something different. When he did not know the answer to a question, he would put his head down and it took approximately ten to fifteen minutes to re-engage him. Student moved around a lot and when in “shut down mode” his behavior deteriorated and it was difficult to help him process the cause of his frustration (Asp). Ms. Asp testified that she

...was concerned about [Student’s] ability to retrieve those coping strategies especially in the moment and his ability to kind of look and take the future lens of how my current actions will affect me, will affect others. I think he’s still very much in a phase where he needs an adult to tell him those things in the moment and help work through them, and I think that is beyond what a [Teaching Assistant] can do.

He needs kind of that access to a counselor at all times to be in those classes with him, to be in those social situations to kind of hit that pause button and say “let’s work through this”.

20. Ms. Asp opined that Student was afraid to take academic risks because he was concerned about how others perceived him and he had not yet mastered the skills he needed in order to be successful academically, socially or emotionally (Asp).
21. Mikaela Blanchard is the full-time, school adjustment counselor at Bridge. She has worked with Student since January 2019 when the previous adjustment counselor left (Blanchard).
22. Ms. Blanchard holds DESE licenses in: guidance (all levels); school adjustment counselor (all levels); assistant principal/principal (all levels) (Blanchard).
23. Ms. Blanchard testified that she had good rapport with Student. She noted that he struggled throughout the day and required lots of support from her beyond the two, thirty minute scheduled appointments per week, and also required support from the special educators to process with him around the incidents that came up often between him, staff and peers; that is, he required some level of support throughout the day (Blanchard).
24. Ms. Blanchard explained that Student struggles with re-direction, noting that when in an escalated state it was very easy for him to misperceive a direction, especially if the person delivering the direction is a non-preferred individual, as, for example, when he is engaging in inappropriate behaviors and a teacher tells him to calm down for a few minutes (Blanchard).

25. Ms. Blanchard opined that Student struggled with generalization of his coping skills in lesser restrictive settings. She testified that

...it is very difficult for [Student] to do in the classroom setting and its even difficult for him to do with me. I just think that because I have the rapport with him and have been able to build that where he's able to –I feel like he feels safe in my room, so even if he's dysregulated in there, he can take space there. But within the regular ed[ucation] classroom setting, it is difficult for him, especially being in a larger classroom (Blanchard).

26. Ms. Blanchard testified that over time Student has become more aware of his emotions, noting that his emotions are getting in the way of his being able to access his academics and maintain composure in the classroom setting (Blanchard).
27. Over the past few years, Student's behavior has become increasingly harder to manage. In 2019 an increase in incidents of aggression were noted both in school (beginning in January) and at home (during February 2019) (SE-1; SE-18).
28. Mother reported incidents in the home during which Student was aggressive toward a sibling and Mother. Limits were set, but they were not always effective and during one such incident Student became extremely agitated, he left the home and "began cutting the snow outside with a knife" (SE-1). Mother reported that during this period Student was "moody, impulsive, distractible... agitated, aggressive and he expressed suicidal ideation when he did not get his way" (SE-29).
29. On February 25, 2019 Student was admitted for a psychiatric hospitalization³ through March 7, 2019, because of incidents in the home. The Travista Behavioral Health Center Discharge Psychiatric Summary states the reasons for admission to be "agitation and suicidal ideation with a plan to stab [him]self with a knife" (SE-29). The History of Present Illness included "DSM-V criteria, psychosocial stressor(s) and pre-morbid personality features" (SE-29). The report notes Student's history of physical abuse by Student's father up to the age of 11 months⁴ (SE-29).
30. During the hospitalization Student was diagnosed with: Disruptive Mood Dysregulation Disorder, Attention-Deficit Hyperactivity Disorder, PTSD, Depressive Disorder and Anxiety Disorder. Upon discharge he was placed on Clonidine and Risperidone, and he was provided with a "Coping and Crisis Plan". It was recommended that Student be placed in Partial Hospitalization, but at the time there were no beds available (SE-1; SE-29).
31. Beginning in March 2019, Student's medication was managed by Dr. Ebele Okpokwasili-Johnson, MPH (SE-1). Later, Jessica Lebow, LICSW, recommended that medication be reconsidered when Student's activity levels were observed to decrease (SE-1). By Mother's and Student's report, administration of medication has not always

³ Bedford did not learn about the hospitalization until Student returned to school (SE-1).

⁴ Father was incarcerated over the allegations of abuse (SE-29; Mother).

been consistent due to medication running out or Student forgetting to take it in the mornings (*Id.*).

32. On March 12, 2019, Parent emailed several individuals in Bedford noting medical reasons for Student's inability to return to school until March 20, 2019 (PE-4).⁵
33. Since December 2018, Student has received numerous suspensions for inappropriate behaviors in school and on the bus (SE-18; SE-20; SE-21; SE-22; SE-23; SE-24; SE-25; SE-26; SE-27; SE-28). On December 14, 2018 Student received a three day suspension for verbally insulting a student in the cafeteria and pouring a cleaning solution onto the tray of the other student and then becoming loud and defiant toward a staff member calling her a "b----". Later that day, Student slammed the door of the office putting a hole in the wall and when he returned to the Bridge classroom he broke a desk phone. He confronted the school principal threatening to "punch his f----- face" and while attempting to get to the teacher's desk, he pushed the Assistant Principal by "grabbing him by the waist and attempting to lift him out of the way" (SE-28; Asp; Bacigalupi).
34. Incidents resulting in suspensions during 2019 include:
 - a) a one-day suspension from school on January 7, 2019, for not listening to multiple requests by his social studies teacher to refrain from inappropriate conduct (i.e., refusing to participate in class, using the computer without permission, telling the teacher to "shut up", writing on the whiteboard without permission, and refusing to sit) (SE-26; SE-27);
 - b) a two-day suspension from the bus on February 4 and 5, 2019, for being out of his seat, using profanity and failing to comply with directives from the bus driver and the monitor (SE-25);
 - c) a three-day suspension from riding the bus on February 12, 13 and 14, 2019, for being out of his seat, using profanity and failing to comply with directives from the bus driver and monitor (SE-24);
 - d) a ten-day suspension from school on Mach 12, 2019 for possession of a knife on school grounds (SE-23). Mr. Bacigalupi testified that while no knife was ever retrieved from Student in school, Student conceded having brought a knife to school which Mother had taken away the night before (Bacigalupi);
 - e) a one-day suspension from the bus on April 25, 2019, for arguing and wrestling with another student on the bus and arguing with the bus driver (SE-22);
 - f) a ten-day suspension from school for an incident on the bus on June 7, 2019. On that day Student was re-directed several times to sit in his seat and he refused. The bus driver had to pull the bus over and call the METCO director to inform of the situation. Student then took an empty bottle from another student and proceeded to semi-expose himself to students around him, and urinated in the bottle. Student then threatened to throw the bottle of urine at two other students. Student also made verbal threats to the bus monitor and hit him in the chest with a closed fist (SE-21);
 - g) On June 7, 2019, the same date as the bus incident, Student was asked to go to the mindfulness room to process the bus incident with the Bridge program

⁵ Parent included State Senator Shea Nathaniel in this email in which she also sought information on who had filed a MGL c.51A complaint against her (PE-4).

staff. Student asked to go to the Bridge room for the remainder of the day, but they refused to go. The Assistant Principal went out into the hall to remind Student to go to the Bridge room and Student shoved the Assistant Principal. Another staff member came to assist and Student stated that he was going to “f--- him over” and continued to refuse to comply. Eventually, Student grabbed hold of a lamp and hit the staff member with the lamp. Student was then restrained pursuant to 603 CMR 46.00 and the police were called as a safety measure due to Student’s heightened state, inability to regulate and continued threats to kill a staff member. When the police arrived, Student calmed briefly and then resumed threatening staff and charged the school Principal. The police restrained Student and Mother was called to inform her of the situation (SE-20; SE-28; Bacigalupi, Mondesir). After the restraint, Student was evaluated by the school nurse who did not note any contusions or problems with Student as a result of the restraint (Bacigalupi).

35. Student’s behaviors were found to be a manifestation of his disability (SE-1).
36. In April 2019, Parent called the police when Student became aggressive in the home toward various family members (SE-1). Following the incident, a plan was developed, together with Ms. Lebow, to access the Boston Emergency Services Team (BEST) to address future incidents of aggression in the home so as to prevent traumatic association with the police on Student’s part (*Id.*). Student stopped seeing Ms. Lebow in May of 2019 without a termination plan in place. Ms. Lebow recommended that the meetings commence again (SE-1).
37. Bedford conducted Student’s three year evaluations between February and April 2019.
38. Kelly McNamara, CAGS, NSCP, conducted Student’s psychological assessment. Her report dated April 5, 2019 notes that cognitive assessments suggest a concrete problem solving style and that he is better able to perform socially and academically in a structured educational setting with “imbedded supports and external monitoring” to promote initiation, organization and understanding of information and help regulate his behavior (SE-14). Ms. McNamara noted that

...due to his emotional and executive vulnerabilities, [Student] can become easily overwhelmed by even minimal task/social/behavioral demands and inflexible in his problem solving approach. [Student] required increased cognitive and behavioral structuring in order to sustain his attention and focus when presented with more complex learning tasks requiring multi-steps or components. [Student] was also observed by [the] examiner to be rather egocentric in terms of his concern for others, their feelings, needs and/or ideas as he preferred that experiences be interpreted in very concrete black and white terms and based on his needs and preferences. These expectations are often at odds with the complexity of most social and academic demands of a middle school setting (SE-14).

39. The results of the social and emotional assessments, as well as the Psychosocial Risk Assessment (PETRA), were reflective of

...a child whose social and emotional functioning appears to be fueled by his experiences of anger and cognitive constructs that maintain these feelings. Anger is a normal emotion that has considerable adaptive value for coping with life's adversities, and can be considered a "survival mechanism" that can provide, for some, personal resilience. While it could be suggested that [Student] may use anger (explosive behaviors, yelling, aggressive responses) to protect his more vulnerable self-esteem, his poor regulation and trauma history may make it more difficult for him to apply his anger in an adaptive manner. [Student's] anger appears to be evoked by many stress-inducing circumstances, including his continued academic and social and behavioral difficulties. Of particular concern is that [Student] reports that he experiences these feelings while simultaneously endorsing that he thinks about hurting people-which increases his level of risk/threat to safety within the school setting. It is also important to note that [Student] often feels justified in his angry and aggressive responses to perceived disrespectful, unfair, or annoying behaviors from others. This "felt" justification may lead to a tendency to shift blame for adverse events on others and may make it harder for him to take responsibility for his contributing behaviors. This excessive sensitivity coupled with his poor behavioral regulation can often lead to very negative outcomes and has historically hampered his effective academic and social functioning in school (SE-14).

40. Ms. McNamara noted numerous academic and social deficits exacerbated when he was called to act independently without the necessary supports. She recommended direct anger management instruction and noted that his "emotional dysregulation required intensive support and should be the primary focus" of Student's programming moving forward (SE-14).
41. On February 12 and April 11, 2019, Jodi DeCleene, MS OTR/L, performed Student's occupational therapy evaluation (SE-15). This evaluation included an observation of Student during testing and in the classroom. (SE-15).
42. Ms. DeCleene noted progress with Student's overall visual perceptual and visual motor skills, which she found to be age appropriate. Similarly, motor skills endurance and strength appeared well developed. Student also displayed appropriate self-help skills for eating, dressing and hygiene. Also, improvement in sensory processing skills was noted. Regarding Student's performance in hearing, balance and motion she found these to continue to be impaired. Ms. DeCleene remarked that while Student did not indicate having issues with sensory processing, his behavior in school suggested that he

“struggles to regulate his attention and has a need to move”; he had a very difficult time staying on task, following directions, regulating his emotions and sustaining a safe body (SE-15; SE-30). Ms. DeCleene opined that a medical/neurological consultation may be warranted because sensory processing did not appear to be the root of Student’s issues.

43. Ms. DeCleene noted that

[Student] has not yet taken ownership of his actions and appears to give up easily when presented with any challenges. As a result he leaves the classroom often missing a great deal of instruction...

[Student] is not able to sustain his focus to take in directions, apply directions to organize his school materials or assignments. He chooses to flee situations where he perceives demands as being beyond his ability (SE-15).

44. Student’s Team convened on or about May 15, 2019. The Extended Evaluation Form notes the difficulties faced by the District in completing the OT and psychoeducational evaluations because of Student’s attendance and presentation during the evaluation period, raising concerns as to whether Bedford had sufficient information to make instructional, programmatic and related services determinations for Student. As such, the Team proposed that Student participate in an extended evaluation at Dearborn STEP program in Arlington, Massachusetts, to gather additional information in light of Student’s difficulties in school and at home, and a recent hospitalization (SE-11). The Team proposed that the evaluation take place between September and November of 2019 (SE-11).

45. In an email to Parent dated June 12, 2019, Ms. Pespisa described in detail the multiple efforts and flexible offers to schedule an IEP review meeting, many of which yielded no response. (SE-19). Finally on June 12, 2019, Ms. Pespisa informed Parent of the need to convene to discuss Student’s IEP, the results of the three-year reevaluation and the recommendations, proposing a meeting date of June 14, 2019. The email notes that if Parent is not able to attend she may be included via telephone conference, noting that the Team would have to proceed with the meeting on that date (SE-19). Ms. Pespisa also forwarded her the results of Bedford’s reevaluation (*Id.*).

46. Student’s Team convened again on June 14, 2019, without Parent, to discuss the results of the three year re-evaluation and the impact that Student’s emotional dysregulation was having on his ability to access any educational aspect of his programming (SE-12). The first paragraph of the Narrative Description of School District Proposal explains that

...the Team convened on June 14, 2019 after several attempts to schedule a time to meet that was amenable to [Mother]. [Mother] did not respond to the meeting notices, phone calls, or emails requesting her participation in this meeting to review the assessments that were completed with [Student] as part of his 3-year re-evaluation. The re-evaluation meeting was held without her participation, but the Team would welcome [Mother’s] parent concerns and vision for Student to be

included in those sections of the IEP, and consider her suggestions for IEP development (SE-12).

47. Ms. Pespisa testified that at the June 14, 2019 meeting the Team opined that Student would require a therapeutic setting where a more thorough evaluation could be performed while he was more balanced because of the therapeutic supports he would receive during the evaluation in that setting (Pespisa).
48. The Team drafted a partial IEP and recommended that Student participate in an out-of-district extended evaluation (SE-11; SE-12). The Service Delivery Grid in the incomplete IEP resulting from the June 14, 2019 meeting, offers: a thirty-minutes per six day cycle behavior consultation by the Behaviorist; a thirty-minutes per six day cycle consultation among the Occupational Therapist, General Educators and the Special Educator and daily thirty-minutes individual counseling services with the counselor or Bridge staff (SE-12). Parent, did not initially respond to the proposed extended evaluation (Pespisa).
49. In the summer of 2019, Student attended a local summer camp from where he was partially suspended for bringing a lighter. While he was allowed to attend regular activities at the camp, he was excluded from off-campus field trips (SE-1).
50. Parent reported that while Student was riding a bike during the summer of 2019, a young man in the community “pulled a knife” on him. Mother also related that an incident of aggression and suicidal ideation in the home triggered Parent contacting the BEST Team (SE-1)
51. On July 12, 2019, Bedford filed a Hearing Request with the BSEA seeking substituted consent to proceed with the extended evaluation at Dearborn Academy’s (Dearborn) STEP program. Parent consented to the evaluation and the BSEA closed the case on August 28, 2019 (SE-31; Administrative Notice of BSEA #2000341).
52. On or about September 13, 2019, Student’s family moved to a different location in Boston (SE-1).
53. From September through December 2019, Student participated in an extended evaluation at STEP (SE-1; SE-10; Rice).
54. Ms. Laura Rice, LICSW, is Dearborn’s STEP program Director (Rice). Dearborn’s 45-day assessment program, STEP, is designed to offer “stabilization and intensive academic, behavioral and therapeutic assessment and intervention to students”, who have been temporarily separated from their educational placement. STEP services students at the elementary, middle and high school levels. At STEP the goal is to assist students to address the issues that caused their referral, and prepare them to transition to the appropriate educational setting. The program “emphasizes respect, community, personal responsibility and decision-making”. It incorporates a “relationally-based” approach and it “incorporates a student’s need for positive connections with others” (SE-1).

55. Students at STEP participate individual/ group counseling every week, and the staff has regular telephone conferences and meetings with parents (SE-1; Rice)
56. Classrooms at STEP are small and highly structured, with an average staff to student ratio of one to two. While at STEP, Student was placed in one such small, therapeutic classroom, initially with two, and later three, other students, a special education teacher, a bachelor level support staff who specialized in social work, a full time Licensed Social Worker and clinical interns that were in the classroom three days per week (Rice). Each student's program at STEP is highly individualized, with academics tailored to the particular student's pace and ability (SE-1; Rice). STEP does not use hands-on restraints on students (Rice).
57. Ms. Rice testified that she was very involved with Student while he attended the program. Things started well for him, but within two weeks of his placement he began to demonstrate a significant increase in behaviors; he had ups and downs, and he struggled in his interactions with peers and with following directions. He displayed disruptive behaviors, yelled/talked loudly, was unable to control his impulses, wandering the classroom, entered offices without permission, and used his cell phone at inappropriate times. (SE-1; Rice). He also locked himself in a room with a clinician and refused to let the clinician go (Rice). Ms. Rice testified that
- ...the environment needed to really kind of be there all the time to support him. So, more support was always beneficial to him. And I don't mean like someone following him around. I mean in the classroom where if he had a difficult time with one person that you could quickly shift to another. When he was able to kind of step back and have a space that was really helpful for him (Rice).
58. Ms. Rice testified that there were times when the staff at STEP faced challenges with Student, for example, his telling a staff person that he was going to beat them up. According to Ms. Rice, there was a concerning incident on October 10, 2019 when Student threatened physical harm on a peer and postured towards him. October 10, 2019 was described as particularly difficult for Student, involving additional incidents as a result of which Student was suspended for one day (SE-1). Ms. Rice noted that STEP increased the clinical support to Student by adding more time with his clinician and additional check-ins (Rice).
59. Ms. Rice described Student as a kind, thoughtful individual who wants to do well academically, but who required clinical support to address his increasing anxiety about wanting to do well. He possesses grade-level ability in math, though not in English and writing, and is motivated to do well academically and benefitted from accommodations (such as having a reader, academic skill modeling, frequent staff support, breaks and the like). Ms. Rice noted that he had very limited independent coping strategies and that he did not have any when he needed them in the moment, and often felt that he was always in trouble (Rice). Ms. Rice noted that Student benefitted from movement breaks such as playing basketball, jumping or walking, and that he often requested to spend time with the program dog (SE-1; Rice).

60. Ms. Rice also testified that Student responded well to counseling and only became obstinate once when there was a change of plans. He participated in group counseling three times per week, but was often a passive participant (SE-1).
61. When processing incidents with Student he often began the interaction in a combative and defensive manner, at which time it was beneficial for the staff to explain that he was not in trouble and allow him to state his perspective. He often misperceived directions and social situations, which led to frustration and dysregulation. It was helpful to give him time to decompress and process the incident with a preferred individual, as well as to have a plan or activity he could complete before rejoining the STEP community (SE-1).
62. The STEP report notes that Student's behaviors often followed the occurrence of difficult or unusual incidents in the home (SE-1).
63. On or about September 23, 2019, Parent again had to contact the BEST team when Student became behaviorally dysregulated in the home. The incident involved Student pulling his hair and swearing at Mother (SE-1).
64. Ms. Rice testified that STEP recommended that Student be placed in

...a small therapeutic setting with a high staff to student ratio, with the opportunity to kind of make sure that there is clarity with expectations, that there is pacing, that he would get a lot of individual support both academically and socially-emotionally [and that Bedford should look] for a place that could provide him similar things to what we did at STEP to be able to kind of get him grounded and then hopefully start to give him the opportunities to integrate some of the independent skills that we wanted him to have because right now, we really felt like environmentally he was still in the beginning of wanting to do well, but really didn't have the tools necessary to implement that himself (Rice).

65. STEP's extended evaluation report, dated November 5, 2019, notes that academically, Student's performance fell in the average range for the most part. He however, appeared to lack confidence and would be less likely to engage in more challenging academic tasks. He was observed to use avoidance (due to his lack of confidence), and as a tool to "guard himself from intolerable feelings". Student fears rejection and is skeptical about his needs being met. While he demonstrated ability to make positive choices and make progress by utilizing available therapeutic interventions, at times he also engaged in disruptive behaviors (e.g., singing, talking, speaking loudly, making noises) as a way of avoiding academic tasks (SE-1). As such, a predictable environment with clearly defined expectations and boundaries, minimal distractions, academic support and accommodations was found to be best (SE-1; Rice). STEP's November 5, 2019 report notes that

It appears that the smaller, less stimulating therapeutic environment has provided a sense of increased containment for

[Student]. Simultaneously, it is likely that [Student] has experienced decreased anxiety in regard to academic performance, as he is afforded the opportunity to work at his own pace and engage in activities that promote success. [Student] will benefit from long-term support both home-based, as well as in a school setting, in order to continue making progress towards developing emotional identification and internalizing coping skills (SE-1).

66. While at STEP, Sarah MacDonald, Student's counseling clinician for individual and group therapy, completed weekly program reports from September to the end of October 2019, describing Student's work, behaviors and progress in counseling, academics⁶ and milieu⁷ in school and during activities in the community. These reports were forwarded to Parent and also made available to Bedford (SE-5).
67. At the conclusion of the evaluation period, Ms. Rice met with Mother to discuss the results of the extended evaluation and STEP's recommendations for Student. Ms. Rice testified that STEP recommended Student's participation in a highly structured, small group, therapeutic setting where he could receive the level of in the moment therapeutic interventions he required, in addition to counseling. The setting also needed to provide him with modified academic instruction to meet his needs (SE-1; Rice). During that meeting, Parent appeared to agree with STEP's findings and recommendations (Rice). Ms. Rice testified that Parent never requested that Student be present at the Team meeting (Rice).
68. Ms. Pespisa testified that it was very difficult to get Parent to attend the Team meeting at Dearborn to review the findings of the extended evaluation. The meeting was initially scheduled for Friday November 8, 2019 as reflected in an email communication from Ms. Pespisa to Mother dated November 5, 2019, noting the review meeting date. On November 6, Parent emailed Ms. Pespisa notifying her that she had been in the hospital, but was now home and feeling better. On November 6, 2019, Ms. Rice responded to Mother's email noting that "we have met most of your requests for changes in timeline" and noting that STEP staff was looking forward to the meeting on November 8th (PE-2).
69. On November 8, 2019 at 7:00 a.m. Parent notified Ms. Rice (not Bedford) that she would not be able to attend due to a serious, acute medical issue and requesting to move the meeting to the following Tuesday or other day the following week (PE-1; Rice).
70. Student's Team convened on November 8, 2019 to discuss the results of the extended evaluation. When Parent did not appear, Ms. Pespisa attempted to reach her over the telephone, but she did not answer (in a later email, Parent explained that she was very ill and in need of hospital attention, see PE-1). The Team convened without Parent. The findings of the extended evaluation were discussed as well as STEP's recommendations for placement of Student in a highly structured, small group, therapeutic setting that

⁶ The academic information was supplied by Jordain Cedrone, M.Ed., Student's homeroom teacher at STEP (SE-5, SE-6; SE-7; SE-8; SE-9; SE-10).

⁷ Information on Student's performance in the milieu was provided by Kate Richardson, Behavioral Specialist at STEP (SE-5, SE-6; SE-7; SE-8; SE-9; SE-10).

offered counseling, therapeutic interventions and access to modified academic instruction (Pespisa). Since Bedford did not have that type of placement or appropriate peers to provide this type of placement, Bedford agreed to re-convene the Team with a Boston Public Schools representative, as the LEA of residence, and Parent present (Pespisa).

71. Following the meeting, Ms. Pespisa emailed Mother requesting that she forward Parent's concerns so that the IEP could accurately reflect Mother's position (PE-3). Ms. Pespisa also forwarded to Parent the school's narrative regarding the Team's Vision⁸ (PE-3).
72. Email communications between Ms. Pespisa and Mother between November 13 and November 14, 2019, note Bedford's inability to accommodate Parent's last minute request for postponement of the earlier meeting, given that Student would have to leave STEP soon since the evaluation had been completed, and requesting that Parent provide her availability for a meeting to be held no later than November 26, the date on which Student's extended evaluation would come to an end (PE-1).
73. The meeting would not take place until December 13, 2019. STEP agreed to retain Student in its program until the placement meeting was held, but no later than December 13, 2019 (SE-2; Rice).
74. Student's Team reconvened on December 13, 2019 with Mother and Catherine Morrissey-Bickerton, Boston's representative, present (Morrissey-Bickerton). Based on STEP's findings and recommendations, prior formal and informal assessments, progress reports, manifestation determination meeting notes, the discharge summary of Student's hospitalization in early 2019 and medical notes, the Team recommended Student's participation in a substantially separate, therapeutic program in Boston, where Student would receive all of his academics, counseling, and social skills in the small group setting with a high teacher to student ratio (SE-2).
75. At the Team meeting, Ms. Morrissey-Bickerton discussed the available therapeutic placements within Boston. She explained that Boston had several substantially-separate, therapeutic programs in different schools that could be appropriate for Student. Some of these programs were offered at the Edwards, Edison, Greenwood, Murphy, Ohrenbeger and three other locations which names she could not remember (SE-2; Morrissey-Bickerton). The substantially separate therapeutic placements in Boston could focus on self-regulation, development of skills that could help Student navigate relationships with other students and teachers and learn self-advocacy skills. The programs are highly individualized to each student's needs and implement data driven behavioral interventions based on positive reinforcement (Morrissey-Bickerton).
76. During the meeting Parent stated several times that she did not wish for Student to attend school in Boston (SE-2). Mother, who works for Boston Public Schools, also stated at the meeting that she was well acquainted with many of the therapeutic placements in

⁸ "We all want to see [Student] receive the specialized instruction and therapeutic support he requires in order to access and negotiate the academic and social/emotional expectations and demands of school. We would like to see [Student] make continued progress toward making positive choices, developing a positive sense of self, and increased trust in others who want to support him. The team wants [Student] to make progress in his self-awareness of feelings and emotions, and his ability to learn, internalize and use coping skills to manage his emotions in the moment, so he can pursue and manage his educational and vocational dreams." (PE-3).

Boston and did not wish to tour any of the proposed programs (Morrisey-Bickerton). Mother requested that Student attend the Camden School because of its mentorship program but did not support any therapeutic programs in Boston and especially not the McKinley School (which was not recommended for Student) (Morrisey-Bickerton).

77. Since Student was only allowed to stay at STEP until December 13, 2019, Bedford offered Student either tutoring services through Ann's Christian Learning Center or to return to Bedford under stay-put until placement in Boston was finalized (SE-2; PE-5).
78. Ms. Pespisa forwarded the proposed IEP to Parent on December 16, 2019, reflecting STEP's and the Bedford Team members' recommendation for the substantially separate therapeutic placement of Student in Boston (SE-3). The IEP covering the period from November 8, 2019 to June 13, 2020 provided half-hour occupational therapy consultation each month and weekly, half-hour behavioral consultation in addition to direct services in other settings for counseling (1 x 30 min.), social skills (3 x 30 min.), reading skills (4 x 45 min.) and academics (1 x 300 min.) per five day cycle, as well as extended school year services (SE-2).
79. On or about January 13, 2020, Parent accepted the proposed program, noting her request that provision of a one-to-one staff be added to the Service Delivery Grid and noting that additional information/ requests would follow. Parent, however, refused the proposed placement in Boston⁹ and as such, Student returned to his Bridge program in Bedford in January of 2020 (SE-4).
80. According to Ms. Asp, at first, Student was happy to be back in Bedford and wanted to be back in his classes. When working on implementation of his accommodations, he was against taking breaks stating that he did not need them; he was trying very hard to do well. After a few weeks, he was showing up more tired and started to complain that the math work was too hard. His behaviors began to deteriorate. He was running down the hallways and could not maintain academic or social expectations even with the assistance of a one-to-one aide (Asp). Despite the added support, Student was not accessing the curriculum between January and March of 2020 (Asp). Mother attributed Student's exhaustion between January and March of 2020 to the medications he was taking (Mother).
81. Mother asserted that Student was being bullied and that this, coupled with his perception that the staff saw him as some kind of monster, caused Student's behavioral issues. Student did not report bullying incidents to the Bedford staff and the alleged bullying incidents to which Parent referred had apparently occurred during the Youth Center After School Program Student attended, which was not part of Bedford Public Schools (Bacigalupi).
82. In January of 2020 Bedford filed the instant Hearing Request. According to Marianne Vines, Bedford's Director of Special Education, Bedford maintained that it had done everything within its power to better understand Student's needs. Bedford also knew that it lacked an appropriate therapeutic program and peers for Student. Realizing that it would not be able to meet Student's needs in-district, and in light of the impasse with

⁹ This IEP does not identify a specific location within Boston (SE-2).

Parent, Bedford's staff felt compelled to advocate for Student and move forward with the instant case to ensure that Student received the services he requires (Vines).¹⁰

83. On February 27, 2020, Mother emailed Mr. Bacigalupi noting her permission for Student to attend a field trip to the Museum of Fine Arts the following date, a trip from which he was ultimately excluded due to safety and disciplinary concerns in light of a recent suspension. Instead, alternative assignments in school would be created for him (PE-7).
84. When Bedford changed to remote learning in March of 2020 due to the COVID-19 health emergency, Student accessed approximately 31 hours of special education assistance and was able to complete more than half of his assignments generally and up to 75% of the math assignments, although he did not always log on to work (Asp).
85. Ms. Asp opined that Student could not receive a FAPE in Bedford even if he continued to be assigned a one-to-one aide as Parent requested, because even when Bedford has provided Student with a one-to-one teacher assistant (between January and March of 2020) he still had difficulty accessing positive coping skills and maintaining attention in the classroom for sustained periods. He also continued to have difficulty interacting with peers and choosing the right and the wrong things to do "in the moment" even when the teacher assistant (TA) was there to provide him with verbal reminders and/or tried to remove him from challenging situations (Asp). Student's greatest success was achieved in the substantially separate setting with one-to-one attention.
86. Ms. Blanchard testified that Student was more emotionally withdrawn when he returned in January of 2020. He was making comments about wanting to hurt himself, and became more dysregulated between February and March of 2020; Student was quick to anger and was becoming more aggressive to other students (Blanchard). He harassed other students (especially two females), was involved in a fist-fight with another student during physical education, and he also punched a window shattering the glass (Bacigalupi). Removal to a different setting did not always help him calm down, especially if he did not have access to a preferred person (Blanchard).
87. According to Mother, Student struggled because he had not been accepted due to his race, and his exposure to domestic violence had caused him severe PTSD.
88. Mr. Mondesir raised concerns that Student was getting bigger and stronger, posing greater concerns over incidents involving aggression on the school bus and in the school community (Mondesir). He testified that Student is triggered when he is being held accountable. This witness further testified that despite incidents of aggressions, he never changed positive-toned interactions with Student, regardless whether Student was having a good or bad day (*Id*).
89. Mother testified that she works for Boston as a family engagement staff person. She is certified in mild to moderate special needs in Massachusetts, but has never taught in a

¹⁰ "I felt at that time that we were on a standstill as far as making progress moving forward with what the team felt was in [Student's] best interest. I think that the Team had become increasingly concerned about [Student] and his well-being over the last few years. I have seen the Team really try to work hard and collaboratively with [Mother] to try and provide Student with the services that they really believe that he requires. It's just been very difficult to get responses and collaboration. And we felt at that particular time that we did all the steps necessary. We obtained information that we needed to really understand [Student]." (Vines).

school. She testified that based on her experience in Boston, and knowledge of the programs therein, Student would not receive a FAPE in any of the therapeutic programs available (Mother). Like Father, Mother especially dislikes the McKinley School because in her view the bad behaviors of other students could have a negative impact on Student. Mother and Father agree that Student does not like to be touched, hence his reactions when anyone tries to restrain him (Mother, Father).

90. Student had his first job during the COVID-19 school closure, which was a positive and successful experience for him (Mother).
91. Student testified that he felt watched all the time by Mr. Bacigalupi and other staff, noting that he did not feel supported in Bedford (Student). Student liked aspects of going to school, and liked the teacher assistant assigned to him because he helped Student with his work and always had pencils available when Student forgot them. Student did not like when the TA followed him to the bathroom, lunch room or to recess. Student agreed that he felt like an outcast and that he was aware of his disabilities (Student).
92. Over the years Student has received mentorship and therapeutic counseling supports through community service agencies separate from Bedford (Mother).
93. Student continues to attend Bedford P.S. for eighth grade, receiving special education services at the Bridge Program, his stay-put placement (Asp).
94. On September 4, 2020, Holly R. Vestal, M.Ed, special education teacher in another district, wrote a character letter on behalf of Mother noting her good intentions and advocacy efforts on behalf of her children (PE-8).

CONCLUSIONS OF LAW:

In the instant matter the Parties agree that Student is entitled to special education services consistent with the Individuals with Disabilities Education Act¹¹ (IDEA) and the state special education statute¹², due to an emotional disability.

Pursuant to the IDEA and the Massachusetts special education statute and regulations school districts must offer eligible students a FAPE. A FAPE requires that a student's individualized education program (IEP) be tailored to address the student's unique needs¹³ in a way "reasonably calculated to confer a meaningful educational benefit"¹⁴ to the student.¹⁵ Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.¹⁶

The standard *supra*, is aligned with the Supreme Court's decision in *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017), adopted in Massachusetts, which requires that a student's program and placement be "reasonably calculated to enable [the student] to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017); *D.B. ex rel. Elizabeth B.*, 675 F.3d at 34. In *Endrew F.*, the Court rejected the "merely more than *de minimus*" standard adopted by the Tenth Circuit, a standard that afforded students significantly less than the standard utilized in Massachusetts.

Pursuant to *Endrew F.*, *supra*, and the standards applied in Massachusetts, public schools must offer eligible students a special education program and services specifically designed for the particular individual so as to enable the student to develop his/her educational

¹¹ 20 USC 1400 *et seq.*

¹² MGL c. 71B.

¹³ E.g., 20 USC 1400(d)(1)(A) (purpose of the federal law is to ensure that children with disabilities have FAPE that "emphasizes special education and related services designed to meet their unique needs . . ."); 20 USC 1401(29) ("special education" defined to mean "specially designed instruction . . . to meet the unique needs of a child with a disability . . ."); *Honig v. DOE*, 484 U.S. 305, 311 (1988) (FAPE must be tailored "to each child's unique needs").

¹⁴ See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard.

¹⁵ *Sebastian M. v. King Philip Regional School Dist.*, 685 F.3d 79, 84 (1st Cir. 2012) ("the IEP must be custom-tailored to suit a particular child"); *Mr. I. ex rel L.I. v. Maine School Admin. Dist. No. 55*, 480 F.3d 1, 4-5, 20 (1st Cir. 2007) (stating that FAPE must include "specially designed instruction . . . [t]o address the unique needs of he child that result from the child's disability") (quoting 34 C.F.R. 300.39(b)(3)). See also *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir. 1993) (program must be "reasonably calculated to provide 'effective results' and 'demonstrable improvement' in the various 'educational and personal skills identified as special needs'"); *Roland v. Concord School Committee*, 910 F.2d 983 (1st Cir. 1990) ("Congress indubitably desired 'effective results' and 'demonstrable improvement' for the Act's beneficiaries"); *Burlington v. Department of Education*, 736 F.2d 773, 788 (1st Cir. 1984) ("objective of the federal floor, then, is the achievement of effective results--demonstrable improvement in the educational and personal skills identified as special needs--as a consequence of implementing the proposed IEP"); 603 CMR 28.05(4)(b) (Student's IEP must be "designed to enable the student to progress effectively in the content areas of the general curriculum"); 603 CMR 28.02(18) ("*Progress effectively in the general education program* shall mean to make documented growth in the acquisition of knowledge and skills, including social/emotional development, within the general education program, with or without accommodations, according to chronological age and developmental expectations, the individual educational potential of the child, and the learning standards set forth in the Massachusetts Curriculum Frameworks and the curriculum of the district.").

¹⁶ 20 USC 1412 (a)(5)(A).

potential.¹⁷ Educational progress is thus measured in relation to the potential of the particular student.¹⁸ The IDEA does not however, require that school districts provide the best possible program for the student.¹⁹

The program and services designed for each student must be delineated in the student's IEP.²⁰

Consistent with federal law, Massachusetts requires that the Team consider the requirements of the general education curriculum, the need for specifically designed instruction and/ or related services to allow the student to progress effectively in the content areas of the general education curriculum. Drafting of an IEP therefore, depends on the information available to the Team at the time the IEP is drafted.

The Team also bears responsibility for determining the student's placement for delivery of the IEP. In general, when considering placement, the Massachusetts special education regulations require that the student be "educated in the school that he or she would attend if the student did not require special education" unless some other arrangement is dictated by the IEP. 603 CMR 28.05(6). As noted *supra*, to the maximum extent appropriate the student must be educated with non-disabled peers and only removed from the general education setting when "the severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily" in the general education setting. 603 CMR 28.06(2)(C).²¹ In *C.D. v. Natick Public School Dist.*, 924 F. 3d 621, 631 (1st Cir. 1919) (internal citations omitted), citing

¹⁷ MGL c. 69, s. 1 ("paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential..."); MGL c. 71B, s. 1 ("special education" defined to mean "...educational programs and assignments . . . designed to develop the educational potential of children with disabilities . . ."); 603 CMR 28.01(3) (identifying the purpose of the state special education regulations as "to ensure that eligible Massachusetts students receive special education services designed to develop the student's individual educational potential..."). See also Mass. Department of Education's Administrative Advisory SPED 2002-1: [Guidance on the change in special education standard of service] from "maximum possible development" to "free appropriate public education" ("FAPE"), effective January 1, 2002, 7 MSER Quarterly Reports 1 (2001) (appearing at www.doe.mass.edu/sped) (Massachusetts Education Reform Act "underscores the Commonwealth's commitment to assist all students to reach their full educational potential").

¹⁸ *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist.*, 518 F.3d 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 ("In most cases, an assessment of a child's potential will be a useful tool for evaluating the adequacy of his or her IEP.").

¹⁹ E.g. *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com.*, 361 F. 3d 80, 83 (1st Cir. 2004) ("IDEA does not require a public school to provide what is best for a special needs child, only that it provide an IEP that is 'reasonably calculated' to provide an 'appropriate' education as defined in federal and state law.")

²⁰ The IEP is the vehicle by which the school district proposes to educate the student and its adequacy depends on the circumstances of the individual for whom it is created. *Andrew F.*, at 1001. Development of the IEP requires consideration of the student's: strengths, parental concerns, recent evaluations, and the academic, developmental and functional needs of the child. 34 CFR 300.324(a)(i-v). Each IEP must be reviewed no less than once a year, the annual review. At that meeting the Team must consider the information available on the child including progress, lack of expected progress toward goals and the general curriculum, any reevaluation information, information provided by the parents on the child and the anticipated needs of said child. 34 CFR 300.24(b)(ii)(A-E). Consistent with federal law, parental participation is paramount to the Team's determination of the special education to be accorded the disabled child, and hence the parent's input must be considered in the decision-making as part of the totality of the information available to the Team.

²¹ See also 20 USC §1412(a)(5).

Roland M. v. Concord School Committee, 910 F.2d 983, 992-993 (1st Cir. 1990), the First Circuit noted that in consideration of the least restrictive environment requirement involves weighing the preference for mainstreaming together with assessing the

...potential placements ‘marginal benefits’ and costs and choosing a placement that strikes an appropriate balance between the restrictiveness of the placement and educational progress.

The educational authorities carry the “primary responsibility for formulating the education” to be provided to the disabled student and for selecting the educational method most appropriate to meet the student’s needs. *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.* (Lessard II), 592 F.3d 267, 270 (1st Cir. 2010)(citations omitted), quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982).

The instant case presents an additional consideration unique to Massachusetts. That is, Student participates in the METCO Program consistent with M.G.L. c 76, § 12A, a program designed to increase diversity in suburban schools (Mondesir). As a participant in the METCO Program, Student has received all of his education in Bedford since Kindergarten.

The Massachusetts Department of Elementary and Secondary Education (DESE), has developed regulations delineating school district responsibility based on the student’s residence. 603 CMR 28.10 *et seq.* In general, the school district where a student resides bears programmatic and financial responsibility for the student. 603 CMR 28.10(2). The regulations further provide specific guidance for situations involving program schools such as those involving METCO students.

Addressing the responsibilities of program schools, 603 CMR 28.10(6) provides in relevant part that

Program schools. A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law relating to the program school. Specific provisions for program schools are as follows:

(a) For charter schools, vocational schools, or schools attended under M.G.L. c 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a) above, the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to

participate as a member of the placement team pursuant to 603 CMR 28.06(e)(1).

2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.

All METCO students are considered “program” students consistent with 603 CMR 28.10(6)(a). Pursuant to this regulation, once a program school (such as Bedford in the instant case) determines during an IEP meeting that the program student requires an out-of-district placement, it must end the meeting and reconvene with a representative of the district where the student resides (who has knowledge of the placements available in the district), to ascertain whether the student’s IEP can be delivered in-district, or determine whether the program school can develop a program for the student in question within the program school.

Once a placement determination (other than an initial placement) is made by the Team, the Massachusetts Special Education Regulations grant school districts access to the BSEA if the district is unable to secure parental consent for placement and such failure is likely to result in a denial of FAPE to the student. 603 CMR 28.07(1)(b) mandates that

If, after consideration, the school district determines that the parent’s failure or refusal to consent will result in a denial of a free appropriate public education to the student, it shall seek resolution of the dispute through the procedures provided in 603 CMR 28.08.

Thus, as in the instant case, pursuant to Bedford’s hearing request, the BSEA must now determine the appropriateness of the proposed placement.

Consistent with *Shaffer v. Weast*, 126 S.Ct. 528 (2005), in special education matters involving provision of a free, appropriate special education, the party challenging the IEP bears the burden of persuasion and must prove the case by a preponderance of the evidence. While Bedford is the moving Party, Parent, as the Party challenging the IEP, carries the burden of persuasion.

I note that in rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties, I find that in order for Student to receive his FAPE entitlement, his placement in a substantially separate, therapeutic program with like peers, is required. I further find that as a METCO Student, given the unavailability of said programming in Bedford, Student

must forthwith transfer to Boston Public Schools, where substantially separate, therapeutic programming with similar peers is available. My reasoning follows.

The overwhelming weight of the evidence in this matter supports Bedford's contention that Student requires substantially separate, therapeutic placement in order to receive a FAPE. Bedford is equally correct that Parent has put forth no evidence to refute this contention or to support her position that he should remain in Bedford with a one-to-one aide, or that Boston's potential therapeutic placements (including McKinley School) would be inappropriate for Student.

Student has a long history of displaying behavioral issues in school, which Bedford addressed for several years. Student's issues increased significantly during the 2018-2019 school year, during which his three-year reevaluation was due. Given the difficulties in conducting the reevaluation, and in light of the escalation in frequency and severity of the behavioral incidents in school and at home, leading to Student's hospitalization in February 2019, Bedford's Team correctly recommended that Student participate in an extended evaluation pursuant to 603 CMR 28.05(2). Parent eventually consented to the evaluation and Student attended Dearborn's STEP Program between September and December of 2019. Student's experience and performance at STEP cemented Bedford's suspicions that Student required a level of therapeutic interventions and milieu beyond what Bedford could offer. STEP's findings and recommendations, together with the information amassed by Bedford, resulted in the recommendation for placement which is the subject of this Hearing. I note that Parent accepted the proposed program, but favored Student's continued participation in Bedford with a one-to-one aide throughout the day, as opposed to Student's participation in any therapeutic program in Boston.

Parent's request that Student stay in Bedford with a one-to-one paraprofessional was neither supported by Ms. Asp nor Ms. Rice. Ms. Rice testified that Student did not need someone following him around, but rather required placement in a small classroom where he had access to staff that could help him process incidents in the moment (Rice). In fact, Student was assigned a one-to-one aide when he returned to Bedford in January of 2020 and it did not help Student regulate his behaviors or participate in academics. Instead, there was noticeable decline in Student's behavior between January and March of 2020 (Asp, Blanchard, Bacigalupi). The record further shows that Student does not want to be noticed as different, often choosing to sit in the back of the classroom because he did not want his peers to notice that he was working on something different. Furthermore, he testified that while having an aide was helpful, he did not like someone following him everywhere (Student).

The evidence is un rebutted that Student requires a substantially separate, small, placement with embedded therapeutic supports that will allow him to process in the moment (Rice, Asp, Blanchard). He needs such small therapeutic setting because at present, he is unable to generalize his coping skills in a larger environment which, as Bedford persuasively argues, is negatively impacting his self-regulation, relationship with peers and academic achievement (Asp, Blanchard, Bacigalupi, Vines). Student needs a therapeutic placement to learn how to self-regulate, become available to receive his education and learn to generalize his coping skills in larger less restrictive settings.

Student's behavioral dysregulation at this juncture is alarming, especially since he is approaching high school age. Without much needed social/emotional instruction and added supports, it is unlikely that he will be able to internalize the strategies that will help him become a productive, independent and fulfilled adult, consistent with the purpose of the IDEA. It is clear that he desperately needs the type of structure described by the providers in the STEP Program. Moreover, he has a right to receive the free, appropriate public education to which he is legally entitled and this he cannot receive in Bedford. At this point, it is imperative that Student accesses the type of program and milieu that can help him acquire and practice the skills needed to ensure his success.

Bedford's IEP vision statement summarizes the expectations for Student best,

We all want to see [Student] receive the specialized instruction and therapeutic support he requires in order to access and negotiate the academic and social/emotional expectations and demands of school. We would like to see [Student] make continued progress toward making positive choices, developing a positive sense of self, and increases trust in others who want to support him. The team wants [Student] to make progress in his self-awareness of feelings and emotions, and his ability to learn, internalize and use coping skills to manage his emotions in the moment, so he can pursue and manage his educational and vocational dreams." (PE-3)

The evidence is convincing that this vision can only be achieved through Bedford's proposed placement in a substantially separate, therapeutic program, which does not exist in Bedford. Boston, the LEA of Student's residence, offers substantially separate, small group, therapeutic programs at several locations, which programs meet the criteria recommended for Student (Morrisey-Bickerton). As a METCO student, consistent with DESE regulations, Student must return to Boston to continue his education.

Parent, who works in Boston, testified that based on her experience in-district as a family engagement staff person, and knowledge of the programs available in Boston, Student would not receive a FAPE in any of them, and especially not at the McKinley School. Her fear that Student would be placed in a school located in a dangerous area of Boston and that placement in an inappropriate program could exacerbate Student's behaviors drives her objection to having Student educated in Boston.

According to Ms. Morrisey-Bickerton, Parent has not visited all of the possible programs available to Student and the McKinley School was not being proposed. Boston awaits Parent's input after visiting the possible programs/placements in Boston as to date, no specific program has been identified. Thus, the record lacks sufficient information to enter a determination as to the appropriateness of a specific program in Boston, and furthermore, said determination is outside the scope of this Hearing.

The evidence is persuasive that Boston Public Schools offers programs that meet the recommendations of all experts for Student, and that Bedford does not. An in-district placement in Boston would also constitute the least restrictive setting in which Student may

receive a FAPE. As such, Bedford shall immediately arrange to have Student transferred to Boston Public Schools for implementation of Student's program and placement.

ORDER:

1. Bedford's proposed placement, a substantially separate, therapeutic program in the Boston Public Schools, offers Student a free, appropriate public education in the least restrictive setting and said program must be implemented forthwith.

By the Hearing Officer,

Rosa I. Figueroa
Dated: October 26, 2020

