**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re**: City on a Hill Charter Public School v. **BSEA No.**  2400764

Student &

Boston Public Schools

**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.

City on a Hill Charter Public School (School or City on a Hill), filed a Hearing Request in the instant matter on July 25, 2023. Two requests for postponements (filed by City on a Hill and by Parent) were allowed for good cause. During a telephone conference call on August 14, 2023, Parent stated that she was only available for hearing on Thursdays due to her work and school schedules. In deference to her, all scheduled hearing dates were on Thursdays. The first scheduling Order, issued on August 14, 2023, scheduled the Hearing for October 5 and October 19, 2023, and also scheduled a Pre-hearing Conference for September 19, 2023. Parent ended her participation within a few minutes of the start of the Pre-hearing Conference over a disagreement with City on a Hill during the presentation of its case. The second scheduling Order, issued on September 21, 2023, changed the first day of hearing to October 12 and maintained the second day of October 19, 2023.

At the request of the Parties, the Hearing was held remotely on October 12 and October 19, 2023, before Hearing Officer Rosa Figueroa. Those present for all or part of the proceedings were:

Alisia St. Florian, Esq. Attorney for City on a Hill Charter Public School

Colleen Shea, Esq. Attorney for Boston Public Schools

Laura Edouard School Principal, City on a Hill Charter Public School

Sonia Pratt Executive Director at City on a Hill Charter Public School

Christine Smith Boston Public Schools

Carol Kusintz Stenographer, Veritext

Parent did not participate in the Hearing. This is not the first time Student in the instant matter is the subject of a case at the BSEA, and in both matters Parent displayed very similar avoidance behaviors and participation.[[1]](#footnote-1) Despite having agree to the proposed hearing dates having received the Order of August 14, 2023, and having received the Order of September 21, 2023, changing only the first day of Hearing to a Thursday a week later, Parent waited until an hour and a half after commencement of the first day of Hearing to send an email, stating *verbatim*,

Good morning. How can you start a meeting or do a meeting without the parent of the student. This Disney make since. [sic] I did not confirm this date or time. Let’s just be clear.

Parent had received the link to the remote Hearing the previous day as well as an email the morning of the Hearing informing her that those present had been waiting for her since 8:00 A.M. and that if she did not join the session by 8:45 A.M., the Hearing would commence without her. The Hearing started almost one hour after the scheduled time and Parent did not attend or communicate further with the BSEA on that date.

I further note that the September 21, 2023 Order provided procedural guidance to the parties regarding how the Hearing would proceed and specifically placed Parent on notice that if she opted not to participate in the Hearing or disconnected from the remote session before it was over (as she had done during previous scheduled events), the Hearing would proceed without her and a decision would be entered within 25 days of the close of the record. The September 21st Order strongly encouraged Parent to participate so that her position could be considered in rendering the Decision.

On October 18, 2023, City on a Hill sought to add an additional exhibit detailing a serious disciplinary incident involving Student which had occurred on Monday October 16, 2023. On October 19. 2023, one hour before the start of the second day of Hearing for the taking of the testimony of the last witness, Parent forwarded an email explaining that she would not be able to attend because she had been hospitalized on an emergency basis the night before. Given the seriousness of the incident earlier that week, which placed Student and others at serious risk of harm, the fact that the testimony of only one witness remained, and City on a Hill’s desire to complete the Hearing, the Hearing was completed. Nevertheless, the record was kept open for Parent to submit a closing argument stating her position after receipt of the transcripts. Said transcripts were sent to her via email and US Postal Service on October 20, 2023. City on a Hill also forwarded to Parent the exhibits it had submitted shortly before the first and second days of Hearing, addressing disciplinary incidents and City on a Hill’s and Boston’s responses.

The official record of the hearing consists of documents submitted by City on a Hill Charter Public School marked as exhibits SE-1 to SE-20, Boston Public Schools’ (Boston) documents marked as exhibits BE-1 through BE-3 and recorded oral testimony. Parent did not submit any documents.

The record closed on October 19, 2023, when both schools rested after making oral closing arguments. Parent was allowed to submit a written closing argument by the close of business on October 31, 2023, approximately one week after the Hearing transcripts were forwarded to her. Parent did not submit a closing argument or otherwise communicate with the BSE

**ISSUE FOR HEARING:**

1. Whether the most recent IEP and placement at Excel High School proposed on October 6, 2023, offers Student a free and appropriate public education (FAPE) in the least restrictive environment. **[[2]](#footnote-2)**

**PARTIES’ POSITIONS:**

**City on a Hill’s Position:**

City on a Hill asserts that Student requires a small, substantially-separate program with a therapeutic milieu to address her significant social-emotional-behavioral dysregulation. Moreover, given the results of the most recent educational evaluation, the program must offer instruction specially designed for students with low cognitive functioning skills and special education interventions that can help Student access the curriculum. Because City on a Hill does not offer the type of program and interventions Student needs in order to access a FAPE, City on a Hill has attempted to convene Student’s Team since February of 2023 to discuss placement options within Student’s district of residence.

City on a Hill asserts that the IEP and placement proposed on October 6, 2023, calling for Student’s placement in the type of program described above at Excel in Boston, is appropriate. More recently, Boston has offered another therapeutic placement at the McCormack School if Parent does not wish to proceed with Excel, but Parent has not responded to the IEP or either placement offer.

**Boston’s Position**

Boston asserted that its representatives participated in multiple IEP meetings for Student and the District has a number of substantially-separate, therapeutic placements in-district that would be appropriate for her. Specifically, Boston proposed Excel High School, noting that if Student attended the program with fidelity, this program would be appropriate. Additionally, Boston made the McCormack School program available to Student, which is similar to Excel. Boston states that either option offers Student the type of therapeutic interventions that City on a Hill described in its IEP.

Boston asserts that Parent rejected both options, noting that she preferred to home-school Student.

**Parent’s Position:**

Parent did not participate in the Hearing and she did not submit a response to the Hearing Request stating her position regarding the case, and did not submit documents or a witness list.

**FINDINGS OF FACT**

1. Student is a sixteen-year-old resident of Boston, Massachusetts, who has been enrolled at City on a Hill since on or about September 2021.
2. Student presents with social-emotional and health (ADHD) disabilities. Her cognitive abilities fall in the low-average range. Student’s entitlement to special education is not disputed.
3. Student demonstrated average academic performance until the spring of 2019 when she began to exhibit increased emotional dysregulation (Administrative notice, BSEA# 20-09046).
4. From first (1st) to third (3rd) grade, Student attended the Dudley Street Charter School, then Perkins School in Boston for fourth (4th) grade. In September of 2017 she entered Boston Collegiate Charter School for 5th grade, and she remained there through part of 7th grade, when her behavior deteriorated. Said behaviors included “daily instances of screaming in class and hallways; daily disrespectful, disparaging and threatening remarks to adults and peers; refusal to follow directions/schedules; throwing objects in class, hallways and cafeteria; skipping/ leaving class; ripping up assignments, tests, texts; defacing property and aggression toward school staff resulting in injury”, as well as impulsivity and lack of cooperation in all settings (Administrative notice, BSEA# 20-09046). Student’s behavior caused her to miss a great amount of classroom instructional time despite the increase of services and individualization to her IEP (Administrative notice, BSEA# 20-09046).
5. While attending Boston Collegiate Charter School, Student, then twelve years old, underwent a social-emotional-behavioral evaluation with Sarah Daigle, Ed.M., on October 2, 2019[[3]](#footnote-3) (BE-1). As part of the evaluation Ms. Daigle observed Student in class, noting that she was frequently distracted, off-task, engaged in arguments with other students, yelled, used profanities, refused to work with her group, disrupted class, was very impulsive, appeared to be anxious and wanted to leave class/ school. One of her teachers shared his opinion that Student’s behaviors in class resulted from “avoidance of disliked and/ or difficult academic tasks” (BE-1). Student’s testing corroborated significant levels of distractibility, impulsivity and difficulty regulating her energy and behavior. Ms. Daigle noted the possibility that Student’s low average cognitive skills contributed to her academic difficulties and the stress of academic difficulties, combined with her poor self-regulation abilities, caused further behavioral deterioration. Ms. Daigle recommended classroom accommodations, academic and counseling supports, and a behavioral intervention plan (BE-1).[[4]](#footnote-4)
6. Student’s Boston Team reconvened on December 4, 2019, and recommended that Student participate in a substantially separate classroom which could provide intensive and continuous instruction, and support Student’s social-emotional needs through therapeutic interventions. The Team drafted a Behavioral Intervention Plan (BIP). The type of classroom recommended did not exist at Boston Collegiate Charter School. After several unsuccessful attempts to engage Parent in the placement meeting, the placement Team convened without her (Administrative notice, BSEA# 20-09046).
7. At the January 2020 placement meeting Boston identified several potential classrooms/ schools within Boston Public Schools, and ultimately offered placement at the Edison School, but by July of 2020, Parent had not yet toured the proposed placement or signed the IEP (Administrative notice, BSEA# 20-09046).
8. On April 22, 2020, Boston Collegiate Charter School requested a Hearing. By agreement of the Parties, the matter proceeded to Hearing on July 17, 2020, and the September 2, 2020 Decision issued by Hearing Officer Byrne found that the 2019-2020 IEP developed by Boston Collegiate Charter School on January 30, 2020, calling for substantially separate instruction in a therapeutic classroom within Boston Public Schools offered Student a free and appropriate public education in the least restrictive setting (Administrative notice, BSEA# 20-09046).
9. By report, during the 2020-2021 and 2021-2022 school years Student attended Boston Public Schools and also received services in the home[[5]](#footnote-5) (SE-5; SE-7).
10. A Team meeting was held on September 9, 2021. The resulting IEP states in the Present Levels of Educational Performance Section, that Student’s

…Health/Emotional Impairment affects her ability to make progress [in] the curriculum areas evidenced by difficulty in: concentration and focus, social skills, answering questions, impulsive, oppositional/ defiant, verbally abusive, provokes and instigates, making poor choices, low frustration tolerance, does not take responsibility for actions, distrust [sic] staff/ adults, and inconsistent attendance (SE-12).

This IEP, which covered the period from September 9, 2021 to September 8, 2022, offered Student substantially separate programing at the Excel High School Emotional Impairment- Externalizing program. Parent accepted the IEP on November 30, 2021, but the placement page was not signed (SE-12).

1. Student transferred to City on a Hill in September of 2022, for tenth grade (SE-10).
2. Parent did not initially provide City on a Hill with Student’s IEP. ~~to City on a Hill.~~ When, after a behavioral incident, the school inquired if Student had an IEP, Student’s grandmother confirmed that she did, noting that if counseling was offered, Student would not participate (SE-7; Pratt). In a conversation between Laura Pratt, City on a Hill’s Executive Director, and Parent, Parent indicated that she did not know why she had been accepted to this school because it was not the right place for Student as she needed more supports than they could offer (Pratt).
3. During the 2022-2023 school year, Student attended school for somewhere between two and nine days.[[6]](#footnote-6) On one of those days, September 13, 2022, she was involved in a physical altercation with another student (SE-5; SE-13; SE-14; Eduard). Parent was called and she stated that she would transfer Student to another school as City on a Hill was not the right school for Student (SE-13). After that, Student was out of school for most of the school year (SE-5; SE-14). Her report card reflects that she was in attendance four days in the first quarter, once during the second quarter, and twice, each, during the third and fourth quarters. She was absent a total of 161 days and tardy seven days (SE-14).
4. Student received instruction through a home-hospital program for the majority of the 2022-2023 school year (SE-3; SE-11). The physician’s diagnosis and reason for the home and hospital instruction was: anxiety disorder, major depressive disorder, PTSD, ADHD hyperactive/ impulsive type (SE-11). Student’s report card for that school year reflects a GPA of 1.6824 (SE-14).
5. A Team meeting was held on February 1, 2023. A meeting note states that Student was doing well with the Home and Hospital program provided her by JRI, as it allowed “time to complete her assignments without being triggered by peers”. Student would work with an outside therapist to address triggers, coping skills and trauma (SE-8). Following a discussion of Student’s needs, the City on a Hill Team determined that it could not offer Student the services she needed (SE-8).
6. The IEP resulting from the February 1, 2023 Team meeting, covering the period from February 1, 2023, through January 31, 2024, offered Student substantially separate, small group programming for all content areas, transitioning skills, and academic/ organizational support (SE-10). An IEP Amendment issued on February 3, 2023, further

notes the School’s addition of thirty minutes of individual counseling daily, and sixty minutes weekly of ABA[[7]](#footnote-7) therapy. The School also proposed to reconvene the Team soon thereafter to discuss placement and to discuss Student’s status in the home and hospital program during the 2022-2023 school year (SE-9).

1. Parent accepted the IEP on March 2, 2023, but not placement as a determination of placement had not yet been discussed (BE-2).
2. City on a Hill attempted to re-convene the Team multiple times after a meeting on February 1, 2023, to discuss Student’s continued and increasing mental health needs and appropriate placement. Team meetings were attempted on March 15, 29, April 13, 24, May 1, 9, and June 20, 2023. The Team was only able to convene on a handful of occasions owing to Parent cancelling, being unavailable or leaving the meeting early and before a placement could be proposed (SE-4; SE-6; SE-7).
3. During a Team meeting on May 16, 2023, City on a Hill recommended that Student participate in an extended evaluation to better understand her needs, but Parent agreed to having Student participate in only a one-day re-evaluation. (SE-3).
4. Student participated in an educational and a psychological evaluation on June 6, 2023 (SE-5). The evaluator noted Student’s struggles with attentional, emotional, behavioral and self-regulation control. Parent reported Student having difficulty understanding basic life skills. Cheryl Baressi, MA, CAGS, Licensed Educational Psychologist found that Student was cooperative, put forth good effort and worked hard during the two hour evaluation (SE-5). Student’s cognitive abilities fell in the extremely low range with performance across subtests of the Weschler Intelligence Scale for Children, Fifth Edition (WISC-5) ranging from the low average to extremely low ranges. Visual/ spatial organization, processing speed, and fluid reasoning fell in the extremely low range. Relative strengths were noted in verbal reasoning and working memory. (SE-5).
5. Student’s academic skills were evaluated using the Weschler Individual Achievement Test-4th Edition (WIAT-4), including selected measures of writing, reading and math. Her reading skills fell in the average range for Word Reading, Pseudoword Decoding and Oral Reading Fluency, while Reading Comprehension fell in the low average range (SE-5). Writing skills for Sentence Building and Essay fell in the low average and average ranges respectively. Math problem solving and fluency-subtraction fell in the low range, numerical operations and fluency-addition in the below average range, and Math fluency-multiplication in the low average range. (SE-5).
6. Ms. Baressi also had Parent complete the Behavior Assessment for Children, Third Edition, resulting in clinically significant ratings in hyperactivity, aggression, conduct problems, externalizing problems and depression; at risk ratings for anxiety, internalizing problems, adaptability, leadership, ADL’s (activities of daily living) and adaptive scales (BASC-3).
7. Ms. Baressi concluded that,

Given [Student’s] ability to demonstrate many age-appropriate academic skills, her performance on the WISC-V is likely an underestimate of her true cognitive skills. Anxiety, inattention, and motivation issues may have negatively impacted [Student’s] performance on unfamiliar cognitive measures. In addition, on previous testing, according to [Student’s] IEP, the Full-Scale Cognitive Index was assessed overall in the Low Average range (SE-5).

1. Ms. Baressi made numerous recommendations, including, but not limited to the need for small group instruction, visual cues, frequent breaks, extra time to complete assignments, cues for attention and check-ins for understanding, private redirection, and counseling (SE-5).

1. On July 25, 2023, City on a Hill requested the instant Hearing before the BSEA to address Student’s placement.
2. During the 2023-2024 school year, Student started attending school more regularly, but she again displayed challenging behaviors on August 29, and September 5, 6, 7, 12, 13, 18, 25, and 27, 2023, some days, several times per day, which behaviors escalated on or about October 11 and 16, 2023 (SE-1; SE-18; SE-19). These behaviors included leaving the school building without permission (Parent, however, stated to School personnel that Student did not leave without permission because Parent had dismissed her), using her cellular phone against school policy, using profanities, at times directed to school staff, swearing loudly, agitation, yelling at staff and students, aggression toward staff and peers, carrying marijuana to school and smoking it in school on at least one occasion, and hitting staff and another student (SE-1; Edouard; Pratt). She was easily triggered by minor demands and quick to escalate and unable to self-regulate. The most recent behavioral incident resulted in harm to a peer and injury to staff (SE-19).
3. Student was suspended on two occasions, once for one day and again for approximately six days for a marijuana related incident and for leaving the building without permission (Edouard).
4. Student is attending City on a Hill’s substantially-separate classroom designed for students with low cognitive abilities. The class consists of fewer than ten students and six teachers who rotate through the classroom, one of them a special education teacher, and a paraprofessional (Edouard). This program does not offer a therapeutic milieu with therapeutic and BCBA interventions. Ms. Edouard testified that Student’s behaviors were impacting her ability to access a FAPE.
5. On September 20, 2023, the School issued an invitation for a meeting to be held on September 26, 2023 to discuss Student’s placement (SE-2). The Team, however, convened on October 6, 2023, with Boston representatives in attendance (SE-15). The Team considered the June 2023 evaluation results, Student’s increasing and escalating mental health issues and behaviors, and took into account family input in reaching a determination.
6. The IEP resulting from the October 6, 2023, Team meeting covering the period from October 6, 2023, to January 31, 2024, offered Student a small group, therapeutic, substantially-separate program inclusive of weekly ABA services, and daily counseling, reading and writing, math, academic and organizational support, transition skills and content instruction. It also reflected Student’s need to repeat tenth grade~~.~~ (SE-15; BE-3).
7. The Transition Planning Form in the October 6, 2023 IEP reflects that Student has not decided her preferences and interests for post-secondary education or training and employment and she is also unclear as to her adult living objectives. This form further states that Student

…can present as friendly and thoughtful student when she feels she has solid adult/peer relations; however, can become unpredictably aggressive and rude when she feels anxious or disconnected. Given specific intervention through school-based counseling, [Student] will develop emotional and self-regulation skills as well as coping skills and academic skills that are necessary for her to achieve a successful post-secondary transition (SE-15).

1. Unable to implement the IEP developed by the Team, City on a Hill proposed a change of placement, supporting Boston’s offer of placement at Excel High School (Excel). Parent rejected Boston’s proposal for Excel noting that Student had attended that program in the past (SE-16).
2. At the meeting, Boston also mentioned Compass (a therapeutic program with significantly fewer students and lower student/ teacher ratios than Excel). Parent requested additional information on Compass, and even though Excel remained the proposed program, the Team agreed to remain open to exploring other options in Boston after Parent had an opportunity to learn more about the programs (Smith)
3. Christine Smith, Boston’s Assistant Director for Special Education Students in out-of- district placements and METCO, testified that Excel and McCormack are high schools (although McCormack starts in seventh grade) where Boston offers a strand of programs for students with emotional and behavioral needs.
4. The substantially-separate, therapeutic program at Excel has 27 students in grades nine to twelve (no more than twelve students in each grade), four special education teachers, three paraprofessionals, a clinical coordinator and a strand specialist. The program offers access to all related service~~s~~ providers in the high school, including BCBAs, speech therapists, occupational therapists, physical therapists and counselors. The program is therapeutic in nature, with a clinical coordinator who coordinates the therapeutic services and acts as case manager for the individual students. This clinical coordinator also works as a therapist and is responsible to ensure maintenance of a milieu with ongoing interventions sensitive to trauma, understanding that “behaviors are an expression of a student’s need to communicate” (Smith). The program follows the Massachusetts Standard Curriculum while providing accommodations. Students at Excel are on track to receive a diploma. According to Ms. Smith, the program at McCormack is substantially similar to Excel (Smith).
5. Ms. Smith testified that she attended Student’s October 6, 2023 IEP meeting and expressed the opinion that the IEP discussed at that meeting could be fully implemented in-district at either Excel or McCormack. She opined that either program would be appropriate for Student. (Smith).
6. Via email on October 11, 2023, Ms. Smith, offered Parent/ Student an opportunity to tour and consider the program at McCormack, and Parent responded that she would prefer to home school Student (SE-17; Smith).
7. An October 11, 2023, incident report details a conflict between Student, a teacher and Laura Tobias Edouard, School Principal, after Student and a peer had been given multiple warnings that their behavior was disruptive and would impact their grade. Student’s behavior escalated and she told Ms. Edouard to “shut the FU- up”, called her a “bitch”, grabbed the classroom telephone to try calling Parent and threw it on the ground as she exited the classroom (SE-18).
8. On Monday, October 16, 2023, Katie Breen, School Vice Principal, heard loud arguing and yelling of profanity coming from the girls’ bathroomShe saw Student standing outside the bathroom with another student inside the bathroom and a staff member standing in the doorway between them. Student was asked to go to the counseling office with a counselor while Ms. Breen was trying to de-escalate the other student. Student then ran out the front door and started hitting the second student while yelling “I am going to FU up”, the “DOSEL” and Ms. Breen tried to intervene as three other staff members ran out to help separate the students. The staff members and Ms. Breen were hit in the head multiple times while trying to separate the students, resulting in injury severe enough to cause Ms. Breen to be unable to work the following day (SE-19).
9. A manifestation determination meeting was convened on October 18, 2023, which found that the incident was a manifestation of Student’s disability. This triggered a recommendation for proceeding with a Functional Behavior Assessment (FBA) in response to Student’s increasing behaviors and inability to self-regulate (SE-20). Parent did not accept the proposed FBA.
10. Boston can conduct the proposed FBA at any of its therapeutic programs including McCormack and Excel (Smith).

**CONCLUSIONS OF LAW**:

The Parties agree that Student is an eligible student pursuant to the Individuals with Disabilities Education Act[[8]](#footnote-8) (IDEA) and Massachusetts special education law[[9]](#footnote-9). Similarly, Student’s diagnoses are not in dispute.

The IDEA and the Massachusetts special education law, and accompanying regulations require that school districts offer eligible students a FAPE, through an individualized education program (IEP) tailored to address the student’s unique needs[[10]](#footnote-10) in a manner “reasonably calculated to confer a meaningful educational benefit”[[11]](#footnote-11) to the student.[[12]](#footnote-12) Additionally, the program and services offered to the student must be delivered in the least restrictive environment appropriate to meet the student’s needs.[[13]](#footnote-13)

The federal standard described above is aligned with the Supreme Court’s decision in *Endrew F. v. Douglas County Sch. Distr.*, 137 S. Ct. 988 (March 22, 2017) requiring 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. This is the applicable standard in Massachusetts.

Pursuant to *Endrew F*., eligible students are entitled to a special education program and services specifically designed to develop the student’s individual educational potential.[[14]](#footnote-14) Educational progress is thus measured in relation to the particular student’s potential.[[15]](#footnote-15)

In the case at bar, pursuant to *Schaffer v. Wea*st, 126 S.Ct. 528 (2005)*,* City on a Hill carries the burden of persuasion and must prove, by a preponderance of the evidence, that the proposed program and placement in Boston offer~~s~~ Student a FAPE .

Upon consideration of the evidence, the applicable legal standards and the arguments offered by City on a Hill and Boston, I find that City on a Hill has met its burden of persuasion regarding Student’s need for a therapeutic program and placement that can address Student’s social-emotional-behavioral and academic needs. My reasoning follows.

The 2019 social-emotional evaluations and FBA, and the educational and psychological evaluation of June 6, 2023 (SE-5; BE-1) highlighted Student’s difficulties with attentional, emotional, behavioral and self-regulation controls. Student’s cognitive scores have fallen in the past four years placing her abilities in the low average to extremely low ranges across subtests of the WISC-5 (SE-5). According to Ms. Baressi, in 2023, BASC-3 results yielded clinically significant ratings in hyperactivity, aggression, conduct problems, externalizing problems and depression; and at-risk ratings for anxiety, internalizing problems, adaptability, leadership, ADL’s and adaptive scales (SE-5).

Ms. Baressi recommended Student’s participation in a program that offered small group instruction, visual cues, frequent breaks, extra time to complete assignments, cues for attention and check-ins for understanding, private redirection, and interventions to address Student’s social-emotional needs, such as counseling (SE-5).

Student’s attendance in 2022-2023 was dismal, with 161 absences, and her behavioral dysregulation was significant enough to trigger the need for home-hospital instruction. Her GPA was so low that she needed to repeat tenth grade in 2023-2024.

Student’s attendance increased significantly during the 2023-2024 school year, but so also did her challenging behaviors on 11 or more occasions, culminating in an incident on October 16, 2023, which resulted in injuries to several staff and another student (SE-1; SE-18, SE-19, SE-20).

Since February of 2023, City on a Hill has recommended Student’s participation in a substantially-separate therapeutic program, capable of addressing Student’s myriad needs, especially her social-emotional and behavioral dysregulation. City on a Hill does not offer the type of therapeutic program Student needs (SE-1; Edouard). While Parent accepted the IEP in March of 2023, difficulties in convening the Team to discuss placement with Boston delayed proposal of a specific placement.

Student’s Team, inclusive of Boston representatives, convened on October 6, 2023 (SE-15). The resulting IEP covered the period from October 6, 2023, to January 31, 2024, and offered Student participation in a small group, therapeutic, substantially-separate program inclusive of weekly ABA services, and daily counseling, reading and writing, math, academic and organizational support, transition skills and content instruction (SE-15; BE-3).

In collaboration with Boston, City on a Hill proposed a change of placement to Excel High School (Excel). Other therapeutic programs in Boston, either discussed or later made available to Parent, were Compass and McCormack. Ms. Smith testified that the program at McCormack, also made available to Student, is substantially similar to Excel, opining that either program would be appropriate for Student if she attended with fidelity (Smith).

Parent has refused Student’s participation in an extended evaluation, and as of the conclusion of the Hearing had not accepted the FBA recommended by City on a Hill(which FBA can be conducted at either of the placements considered for Student in Boston) (Smith). Parent also rejected Boston’s proposal for Excel noting that Student had attended that program in the past and declined an invitation to tour the program at McCormack, stating her preference for educating Student in the home (SE-16; Smith).

The IDEA requires the District to provide an IEP and services which are reasonably calculated to provide an appropriate education consistent with federal and Massachusetts law.[[16]](#footnote-16) The uncontroverted evidence in this case supports a finding that the IEP and placement developed by City on a Hill and Boston on October 6, 2023, offering placement at Excel, is appropriate for Student and fully meets the requirements of federal and Massachusetts law, offering Student a FAPE.

Lastly, it is clear that Parent recognizes that Student is out of control, can engage in aggressive behaviors and has trouble comprehending basic life skills. She noted that in the past, when calm, Student was able to use coping skills effectively and talk things through (SE-5; BE-1). It is evident that at present, Student’s behavior has escalated significantly and that Parent is at a loss as to how to help Student. A reasonable inference from the record is that Parent’s acquiescing to Student’s wishes to run home (perhaps in the hopes of avoiding a worse escalation), have proven effective in rewarding and reinforcing Student’s misbehavior (e.g., Parent’s statement that Student did not leave the school building without permission, but rather, that Parent dismissed her from school).

The evidence further shows that when things get bad, Parent either withdraws Student from school (she has attended five different programs in 11 years), or, as during the 2022-2023 school year, removes Student from the program and requests that Student’s instruction be provided through a home-hospital program for the entire school year.

Student is now sixteen years old, and in the tenth grade. Time is running out for her to learn effective and appropriate coping skills, including managing her emotional dysregulation, so that she may have a chance at a healthy and productive life. An integral part of this will be learning how to socialize appropriately, something that is not going to happen as long as she continues to be removed from programs and placements designed to provide instruction and offer the opportunity to practice learned skills. Student displays a high level of distrust of the educational system and of others, which distrust interferes with her ability to access and accept help.

**ORDER:**

1. Boston shall implement the IEP developed by City on a Hill on October 6, 2023, offering Student placement at Excel in Boston.

By the Hearing Officer,

**\_Rosa I. Figueroa\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Rosa I. Figueroa

Dated: November 13, 2023

**November 13, 2023**

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**CITY ON A HILL CHARTER PUBLIC SCHOOLS**

**BSEA #2400764**

**BEFORE**

**ROSA I. FIGUEROA**

**HEARING OFFICER**

**ALISIA ST. FLORIAN, ESQ., ATTORNEY FOR CITY ON A HILL CHARTER PUBLIC SCHOOLS**

**COLLEEN, SHEA, ESQ., ATTORNEY FOR BOSTON PUBLIC SCHOOLS**

**PARENT, PRO-SE**

1. I take administrative notice of *In Re: Boston Collegiate Charter School v. Urmila*, BSEA 2009046, (Byrne, 9/2/2020), in which Hearing Officer Byrne noted in the procedural history that Parent had participated in the initial call (as she did in the instant matter) but thereafter, did not respond to scheduling notices, participate in calls, communicate with the Hearing Officer in any meaningful way nor did she submit exhibits, witness lists or arguments in support of her position. Further, Parent did not participate in the hearing. [↑](#footnote-ref-1)
2. By the time the Hearing convened, City on a Hill and Boston had reached agreement on some of the issues pertaining to the dispute between them, leaving only the one issue reflected here to be decided. Parent provided no input. [↑](#footnote-ref-2)
3. This evaluation mentions a previous evaluation conducted by Naomy Schwartz, Psy.D., on May 20, 2019, finding Student’s cognitive skills to fall in the low average range and noting social-emotional issues involving feelings of anger in school. [↑](#footnote-ref-3)
4. Home-based recommendations were also made. [↑](#footnote-ref-4)
5. Despite requests for a complete Student transcript and clarification in this regard, neither Boston nor City on a Hill was able to provide anything beyond the IEPs in the record. For purposes of Student’s academic/ educational trajectory I rely on the information contained in the exhibits here admitted in evidence and the information contained in the Decision in BSEA# 2009046. [↑](#footnote-ref-5)
6. The record is unclear on this issue. [↑](#footnote-ref-6)
7. Applied Behavior Analysis. [↑](#footnote-ref-7)
8. 20 USC 1400 *et seq*. [↑](#footnote-ref-8)
9. MGL c. 71B. [↑](#footnote-ref-9)
10. *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”). [↑](#footnote-ref-10)
11. See *D.B. v. Esposito*, 675 F.3d 26, 34 (1st Cir. 2012) where the court explicitly adopted the meaningful benefit standard. [↑](#footnote-ref-11)
12. *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 Dir. 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.”). [↑](#footnote-ref-12)
13. 20 USC 1412 (a)(5)(A). [↑](#footnote-ref-13)
14. 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](http://www.doe.mass.edu/sped)) (Massachusetts Education Reform Act “underscores the Commonwealth’s commitment to assist all students to reach their full educational potential”). [↑](#footnote-ref-14)
15. *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 F3d. 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.”). [↑](#footnote-ref-15)
16. See *Lt. T.B. ex rel. N.B. v. Warwick Sch. Com*., 361 F. 3d 80, 83 (1st Cir. 2004). [↑](#footnote-ref-16)