**COMMONWEALTH OF MASSACHUSETTS**

**Division of Administrative Law Appeals**

**Bureau of Special Education Appeals**

**In Re: DESE[[1]](#footnote-1) and DYS[[2]](#footnote-2) BSEA #10-0669**

**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 c. 71B), the state Administrative Procedure Act (MGL c. 30A) and the regulations promulgated under these statutes.

A Hearing was held on April 10, 11, 24, 25 and May 7, 2012 in Malden, MA before Ann F. Scannell, Hearing Officer. Those present for all or part of the Hearing were:

John[[3]](#footnote-3) Student

John’s Mother

Jan Avallone Director, SEIS[[4]](#footnote-4)

Marcia Mittnacht Director of Special Education, State of Massachusetts

Cheryl Nicholson Assistant Director, SEIS

Susan Miles Evaluation Team Liason, SEIS

Patricia Timmons Special Education Teacher, SEIS

Fred Hurley Program Director, DYS

Mark Daley Teacher, DYS

Dave Ryder Clinician, DYS

Sarah Fenton Clinical Director, DYS

Christine Kenney Director of Educational Services, DYS

Linda Watt Southeast Regional Clinical Coordinator, DYS

Tami Joia John’s Educational Advocate

Josh Varon Legal Counsel, DESE

Dianne Curran Legal Counsel, DESE

Elizabeth Keliher Legal Counsel, DESE

Stacey Bloom Assistant General Counsel, DYS

Crispin Birnbaum General Counsel, DYS

Darlene Coppola Court Reporter

The official record of the Hearing consists of documents submitted by the parent and marked as Exhibits P-1 through 20, 23 through 63, 69, 74, 82 through 84, 94 through 104, 106, 107 and 112; documents submitted by DESE and marked as Exhibits DESE-1 through 12, documents submitted by DYS and marked as DYS-1 through 5 and 7 through 14, and approximately five days of oral testimony. Written closing arguments were submitted on June 29, 2012 and the record closed on that date.

**INTRODUCTION**

John is a 19 year old young man who is attending a residential program. During the relevant time period, June of 2008 to October of 2009, John was periodically detained in various DYS facilities and also resided at home. John was initially deemed eligible for special education and related services in March 2008 due to his emotional disabilities. In September 2008, John’s mother accepted the services on the initial IEP.

On July 23, 2009, the parent filed a Hearing request with the Bureau of Special Education Appeals (“BSEA”) alleging that John was denied a free, appropriate public education (“FAPE”) and was entitled to compensatory services and damages. The matter was originally scheduled for Hearing on August 27, 2009 but was postponed by agreement of the parties. The matter was subsequently scheduled for Hearing on December 14, 15 and 17, 2009. Following a conference call on December 11, 2009, the matter was postponed until February 23 and 24, 2010.

On February 16, 2010, the parent filed a Motion to Join DYS and Taunton Public Schools. Shortly thereafter, the parent filed a Motion to Amend the Hearing Request. In November of 2010, the Hearing Officer denied the parent’s Motion to Join Taunton Public Schools and granted the Motion to Join DYS. On November 15, 2010, this matter was reassigned to Hearing Officer Ann F. Scannell.

This Hearing Officer granted the parent time to file an amended Hearing Request which was subsequently filed on December 7, 2010. DESE and DYS filed respective oppositions to the amended Hearing Request. After requesting clarification of the parent’s amended Hearing request and receiving supplemental oppositions, parent’s request to amend her Hearing Request was denied on February 11, 2011.

The parent filed a second Motion to Join Taunton Public Schools (“Taunton”). (The first motion had been denied by the previous Hearing Officer.) Taunton again opposed the motion and the motion was denied on April 4, 2011. The matter was scheduled for Hearing on May 9, 2011. DESE and DYS filed Motions to Continue the Hearing which were allowed. The BSEA received the advocate’s motion to withdraw her representation on May 23, 2011.[[5]](#footnote-5)

On June 7, 2011, DYS filed a Motion to Reconsider the Scope of the Hearing. This motion was opposed by the parent. The motion was denied on July 12, 2011. DYS’ subsequent Motion to Reconsider was also denied. On July 29, 2011, after receiving available dates for Hearing from the parties, the matter was scheduled for Hearing on October 31 and November 2 and 3, 2011.

DESE and DYS subsequently filed Motions to Continue the Hearing. These motions were not opposed by the parent. The Hearing was rescheduled to February 13, 14, 15, 27 and 28, 2012.

On January 30, 2012, the BSEA sent the parties a notice of reassignment. The parent responded with a Motion to Postpone the Hearing and allow the matter to remain with Hearing Officer Ann F. Scannell. The parent’s motion was allowed and the Hearing was scheduled for April 9, 10, 11, 24 and 25, 2012. The matter proceeded to Hearing on April 10, 11, 24, 25 and May 7, 2012.

**ISSUES**

The issues to be decided in this matter are:

1. Whether SEIS[[6]](#footnote-6) and/or DYS denied John a FAPE from June 3, 2008 to October 15, 2009 by failing to implement or unlawfully interfering with the implementation of John’s individualized education program (“IEP”);
2. Whether SEIS and/or DYS committed procedural violations from June 3, 2008 to October 15, 2009 that resulted in a denial of a FAPE to John; and,
3. If so, is John entitled to compensatory services.

**FACTS**

John is a 19 year old young man who was either detained in various DYS facilities or residing with his mother during the relevant time period of June 2008 to October 2009. Specifically, John was detained in the Howland facility (“Howland”) from June 4, 2008 to June 20, 2008. He returned to Howland on July 7 and remained there until August 13, 2008. On September 8, 2008 John was detained at the Brockton Boys detention facility and remained there until September 19, 2008. On October 31, 2008 John was detained at Howland until November 3, 2008 when he returned home for four days. He returned to Howland on November 7, 2008 and remained there until November 17, 2008. (Exhibits DYS-1 and DESE-2))

John lived at home from November 17, 2008 until February 27, 2009 when he returned to Howland. John spent the next 234 days detained at various DYS facilities including Howland, Brewster, Leahy and NFI detention.[[7]](#footnote-7) On October 19, 2009 John returned home. (Exhibits DYS-1 and DESE-2)

John was found eligible for special education services on March 27, 2008. The TEAM determined that John had an emotional impairment that was negatively affecting his ability to access the curriculum. The TEAM reconvened on June 19, 2008. An IEP was developed with effective dates from September 2, 2008 to March 31, 2009. The parent accepted the services on September 16, 2008 and rejected the placement. (Exhibits P-1 and 2)

The IEP contained two goals: a school behavior goal and a social goal to assist John by providing him with counseling. Pursuant to this IEP, the only service to be provided was indirect counseling. No other services would be provided. (Exhibit P-2)

The parent did not provide a copy of John’s IEP to Howland or Brockton Boys detention center during this time period. The parent also did not inform DYS or SEIS personnel that John qualified for special education services, nor did she provide a copy of the IEP to DYS or SEIS personnel. (Exhibit DYS-5 and testimony of Avallone, Fenton and Nicholson)

In July of 2009, DYS implemented a state wide Data Match system to identify those detained students who receive special education services. Prior to the implementation of the Data Match system, DYS relied on parents, school districts or other persons to advise them that a detained student was serviced with an IEP and to provide a copy of the IEP. (Testimony of Avallone, Nicholson, Miles and Watt)

On February 27, 2009 John was again detained by DYS. John was initially detained at Howland but also spent time at Brewster detention, the Leahy Detention Center and the NFI Detention Center. John was consistently detained from February 27, 2009 through October 19, 2009. (Exhibit DYS-1)

A new IEP was developed with effective dates of February 11, 2009 to February 10, 2010. This IEP called for John to receive direct special education services for math and English language arts. John was also to receive counseling. The parent first notified DYS that John was being serviced by an IEP in March of 2009. (Exhibits DYS-5 and testimony of Fenton)

Shortly thereafter, SEIS attempted to provide special education services to John but he refused. Both SEIS and DYS staff encouraged John to accept these services but he continued to refuse them. When John was removed from the classroom for behavioral reasons, SEIS staff continued to offer these special education services to John but he refused. (Testimony of John, Timmons)

A TEAM meeting was held on May 8, 2009. The TEAM agreed to provide John’s special education services within the classroom, instead of using the pullout model. Counseling services were also increased by one session per week. The parent did not accept this amendment until September 29, 2009. Nonetheless, SEIS immediately attempted to and continued to attempt to provide these services within the classroom, but John refused the services. (Exhibit P-5 and testimony of Timmons, John and Daley)

Pursuant to statute and interagency agreement, detained students receive regular education from DYS teachers. The students are required to attend school all year round. The curriculum provided aligns with the Massachusetts Curriculum Frameworks. If necessary, students undergo MCAS testing while in detention. (Testimony of Hurley, Kenney, Watt, Fenton, Ryder, Daley and Miles)

DYS staff also provide clinical services to all detained youth. Each detainee receives at least two counseling sessions and one group session per week. The goal of counseling is to help the youth detainees navigate the process and assist with issues that arise as a result of being detained. (Testimony of Hurley, Kenney, Watt, Fenton, Ryder, Daley and Miles)

SEIS provides the special education services for students detained and committed to DYS. SEIS contracts with an outside vendor to provide these services. The applicable vendor during the relevant time period was the Hampshire Educational Collaborative, subsequently renamed Collaborative of Educational Services (“CES”). SEIS collaborates and coordinates with DYS personnel to ensure eligible students receive services pursuant to their IEP. If a student requires related services pursuant to his IEP that SEIS cannot provide, SEIS notifies the student’s school district. (Testimony of Avallone, Nicholson, Miles and Timmons)

**DISCUSSION**

It is not disputed that John is an individual with a disability falling within the purview of the federal Individuals with Disabilities Act (“IDEA”), 20 USC 1400 *et seq*. and the Massachusetts special education statute, MGL c. 71B. As such, he is entitled to a free, appropriate public education (“FAPE”).

This case is atypical, in that, during the time in question, John was detained in various DYS youth facilities, having been placed there by order of the juvenile court. In addition, the issues in this case do not involve a local education agency (“LEA”) but rather other state agencies, namely DYS and SEIS. The parent alleges that DYS and SEIS interfered with the implementation of John’s IEP, thereby denying John a FAPE. There is no issue, therefore, as to whether John’s IEP as developed by the LEA denied John a FAPE. Rather, the sole issue is whether DYS and/or SEIS interfered with the implementation of the developed IEP.

Typically, a student’s special education services are provided to him or her within an LEA or an out of district placement. In this case, however, John’s special education services were provided to him by SEIS, in various juvenile justice facilities controlled by DYS. Federal law addresses the shared responsibility of the LEA and other agencies to provide special education services to a student who is detained or committed to DYS. Specifically, the IDEA requires that states receiving federal funds implement “an interagency agreement or other mechanism to ensure that an eligible student continues to receive special education services while committed to institutions, including DYS facilities pursuant to court order.” 20 USC 1412(a)(12); 34 CFR 300.154.

Massachusetts statutes and regulations provide a framework for the provision of services to students detained or committed to DYS, and assign responsibility for providing these services. MGL c. 71B section 12 states in relevant part:

 “The department shall establish and maintain a school department for

 school-age children in each institution under the control of [DYS] which

provides support and care for resident children with a disability, acting

jointly with the department which has control over the particular

institution…Nothing contained herein shall affect the continued authority

of departments operating such institutions over all non-educational

programs and all treatment for residents or patients in institutions under

their control.”

Additionally, DESE regulations address these shared responsibilities. Code of Massachusetts regulations, 603 CMR 28.06(9), provides:

(9) Educational Services in Institutional Settings. The Department shall provide certain special education services to eligible students in certain facilities operated by or under contract with the Department of Mental Health, the Department of Youth Services, County Houses of Corrections or the Department of Public Health. The Department shall retain the discretion to determine based upon resources, the type and amount of special education and related services that it provides in such facilities.

1. Decisions about admission to and discharge from institutional facilities are

within the authority of institution administrators, not the school district. However,

school districts are not relieved of their obligations to students in such settings.

School districts are responsible for students in institutional settings in accordance

with 603 CMR 28.10

1. Non-educational services such as residential, medical and clinical services shall be

provided by the state agency that controls the facility. The provision of such services shall be governed by the state agency in accordance with applicable laws, interagency

agreements, or agency policies.

1. Where a student’s IEP requires a type or amount of service that the facility does

not provide, it shall remain the responsibility of the school district where the father, mother or legal guardian resides, except as provided in 603 CMR 28.10(3)I 1 and 2,

to implement the student’s IEP by arranging and paying for the provision of such services.

1. The responsible school district [shall] coordinate with the Department and ensure

that the student receives an evaluation, an annual review, and special education services as identified by the TEAM at a TEAM meeting convened by the responsible

school district. The Department shall participate in TEAM meetings for any student

receiving special education services in an institutional setting. To the extent that the

special education services are provided by the Department in such facilities, the

Department will make every effort to provide services consistent with the student’s IEP and available resources.

The burden of persuasion in an administrative hearing is placed upon the party seeking relief.[[8]](#footnote-8) Since the parent is seeking relief in this matter she bears the burden of persuasion to show that DYS and/or SEIS failed to implement or unlawfully interfered with the implementation of John’s IEP, which resulted in a denial of FAPE, or committed procedural violations that resulted in denial of a FAPE. After a careful review of the testimony and documentary evidence, I find that the parent has not met her burden to show any such unlawful interference with the implementation of John’s IEP or any procedural violations that resulted in any denial of a FAPE to John.

**Implementation of John’s IEP(s) from June 2008 to October 2009**

June 3, 2008 to September 16, 2008

During this time period, John was detained in DYS facilities and also resided at home. He spent 63 days detained in the Brockton Boys Detention Center and the Howland facility and 43 days at home. I will only consider the time period that John was detained since there was absolutely no evidence presented or argument made by the parent that DYS and/or SEIS unlawfully interfered with the implementation of John’s IEP while he resided at home.

Although John was found eligible for special education services in March of 2008, and an IEP was proposed, the parent did not accept the services until September 16, 2008. Pursuant to special education law, the obligation to provide special education services does not arise until the parent accepts the services. Further, if a parent refuses to consent to services, the IDEA is not violated if the LEA does not provide services. [[9]](#footnote-9) Additionally, I find, based upon the credible evidence from the DYS staff and the SEIS staff, that the parent did not inform either DYS or SEIS during this time period that an IEP had been developed for John.[[10]](#footnote-10) Thus, there was no credible evidence that a valid IEP existed during this time period upon which SEIS could have provided services.

Having received no evidence that DYS and/or SEIS failed to implement or unlawfully interfered with the implementation of John’s IEP, the parent has failed to meet her burden of proof that DYS and/or SEIS unlawfully interfered with the implementation of John’s IEP from June 3, 2008 to September 16, 2008.

September 17, 2008 to March 19, 2009

Even after accepting services on September 16, 2008, DYS and SEIS were not notified by the parent or anyone else that John had an IEP until March 19, 2009. During this time period, John was detained at Brockton Boys detention center, the Howland facility and the Brewster facility. In total, John was detained in these DYS facilities for only 32 days. The remainder of the time (150 days) John resided at home. He was at home and not detained in DYS from November 17, 2008 to February 27, 2009. Although the parent testified that she notified DYS prior to March 2009 that John was on an IEP, I did not find her testimony credible. The credible testimony reveals that the parent first notified DYS that John was on an IEP, during a telephone conversation with DYS Howland facility’s Clinical Director, Sarah Fenton on March 19, 2009. Ms. Fenton testified she contacted John’s mother by telephone as part of her intake on John and to discuss another matter. During that conversation, John’s mother stated that John had an IEP and she demanded that services be provided immediately.

Ms. Fenton, as well as the other DYS staff testified that, prior to July 2009 when the Data Match system was implemented, DYS relied on a parent, guardian or someone else to inform them that their child was on an IEP. Due to their obligation to maintain the confidentiality of detainees, DYS did not contact the student’s school district to gather this information. Unless DYS was informed by the parent, student or other persons, or DYS was aware because they had been informed that the student was on an IEP during a student’s prior detention, DYS would not know that the student was on an IEP.[[11]](#footnote-11)

During their March 19, 2009 telephone conversation, Ms. Fenton advised John’s mother to provide a copy of John’s IEP to the staff at Howland. A few days later John’s mother provided it to John’s DYS clinician and, per DYS procedures, the clinician passed it on to the educational department at Howland. The staff attempted to provide the special education services to John, pursuant to the IEP, but John refused the services. The testimony was consistent from the DYS staff, the SEIS staff and John that John refused the special education services offered pursuant to his IEP. DYS staff and SEIS staff consistently encouraged John to partake of these services. Nonetheless, John continued to refuse. In fact John himself testified that he was belligerent to the teachers and staff, caused trouble and consistently refused special education services.[[12]](#footnote-12)

The testimony was persuasive that once DYS and SEIS became aware that John had an IEP, they continuously attempted to provide John with special education services, and that neither DYS nor SEIS failed to provide John with a FAPE by unlawfully interfering with the implementation of his IEP. By John’s own admission, he consistently refused the special education services offered.

The parent has failed to meet her burden of proof that DYS and/or SEIS unlawfully interfered with the implementation of John’s IEP from September 17, 2008 to March 19, 2009.

March 20, 2009 to June 19, 2009

As set forth above, once DYS and SEIS became aware of John’s IEP, they consistently offered these special education services to John but he refused. John continued his detainment at Howland during this time. After the May 8, 2009, TEAM meeting, SEIS offered these special education services in the general education classroom, instead of a pull-out mode. John continued to refuse the services even when offered through an inclusion model. No testimony was provided to the contrary. The parent has not met her burden of proof for this time period.

June 19, 2009 to October 19, 2009

On June 19, 2009, John was transferred from the Howland facility to the Leahy Detention Center. He remained at the Leahy facility until September 2, 2009 when he was transferred to the NFI facility. John was consistently detained in DYS during this time. He returned home on October 19, 2009.

The only testimony provided about John’s detainment at the Leahy Detention Center was provided by the Program Director, Fred Hurley, John’s mother and John. Mr. Hurley testified that John refused special education services while detained at Leahy. John’s mother testified that she believed that his IEP was being implemented at Leahy. John testified that he could not recall whether special education services were offered to him while he was detained at Leahy. As to John’s detainment at Leahy, there was no credible evidence that DYS and/or SEIS unlawfully interfered with the implementation of John’s IEP. John’s mother failed to meet her burden in this regard.

Regarding John’s detainment at NFI from September 2, 2009 to October 19, 2009, the only testimony presented was from John and his mother. No DYS or SEIS staff from NFI testified. John could not remember whether “there was inclusion or he was pulled out for special education.” He only recalled two separate classrooms and from what he remembered he didn’t receive special education services. John’s mother provided no specific testimony about John’s detainment at NFI. The parent failed to meet her burden of proof to show that DYS and/or SEIS unlawfully interfered with the implementation of John’s IEP during this period of time when he was detained at Leahy and NFI.

During these detentions, the documentary evidence revealed that John engaged in fewer negative behavior incidents. John also exhibited gradual improvements with his academics.

From the time that DYS and SEIS became aware that John was on an IEP, special education services were offered to John pursuant to his IEP. John consistently refused these services. A student’s refusal to accept services and complete school work is the responsibility of the student. *Cf. S. v. Wissahickon School Dist.,* CIV.A. 05-1284, 2008 WL 2876567, \*10 (E.D. Pa. July 24, 2008) *aff’d sub nom. Richard S. v. Wissahickon Sch. Dist*., 334 App. Ct. 508 (3d Cir. 2009)

There was significant testimony about whether DYS and/or SEIS was required to provide counseling services that were identified in John’s IEP from March 2009 to October 2009.[[13]](#footnote-13) The parent argues that these counseling services should have been provided by DYS and were not provided. DYS argues that it is not required to provide counseling services pursuant to an IEP. DYS is required to provide supportive clinical services to all detained youth at least one time per week individually and two times per week in a group. DYS provides these services regardless of whether a student is on an IEP or not. These supportive clinical services are provided to all detained youth to help them deal with their anxiety over their detainment.

DYS personnel credibly testified that it would be unethical to provide therapy to a detained youth because of the constitutional right not to incriminate himself and because of the transitory nature of the detainment. DYS personnel testified that the average length of stay for a detained youth was no more than two weeks. It would therefore be harmful to the youth and perhaps others if the DYS clinician conducted therapy for any personal emotional issues.

Furthermore, counseling services pursuant to an IEP are considered related services. Pursuant to statute, it is the school district’s obligation to provide counseling services.[[14]](#footnote-14) The consistent and uncontradicted testimony from DYS personnel was that DYS does not provide counseling services to a student pursuant to that student’s IEP. Rather, DYS provides supportive clinical services to all detained youth to ensure a safe and secure environment within the DYS facilities.

DYS personnel further testified that at no time did it refuse to allow the school district to deliver counseling services pursuant to the IEP during the relevant time frame. The parent presented no evidence to the contrary.

Having found that the parent has failed to meet her burden to show that the special education services that DYS and SEIS were required to provide to John pursuant to his IEP were not offered during his DYS detainment, and that the parent failed to meet her burden to show that DYS and SEIS otherwise unlawfully interfered with the implementation of John’s IEP, the parent is not entitled to relief.

**Alleged Procedural Violations**

I turn now to the issue of whether DYS and/or SEIS committed procedural violations that resulted in a denial of a FAPE to John. A violation of a student’s procedural rights under federal or state law may be found where “procedural inadequacies [have] compromised the pupil’s right to an appropriate education…or caused a deprivation of educational benefits.”[[15]](#footnote-15) A Hearing Officer may also find that a denial of a FAPE occurred if the violation has significantly impeded the parent(s) opportunity to participate in the decision making process regarding the provision of a FAPE to the parent(s)’ child.[[16]](#footnote-16) In viewing the evidence in this matter, I find that any procedural violations committed by DYS and/or SEIS were *de minimus*, and did not result in a denial of a FAPE to John.

The parent argues that she was denied access to John’s educational records which constituted a procedural violation which resulted in a denial of a FAPE to John. I find no merit to this argument. The parent has failed to present evidence that DYS and or/SEIS denied her access to John’s records. DYS provided transcripts and SEIS provided progress reports to John’s school district. There was no credible evidence that the parent requested educational records from DYS and or/SEIS and was denied access. Even if I were to find that DYS and/or SEIS denied the parent access to John’s educational records, the parent presented no evidence that such a denial deprived John educational benefits. The credible evidence clearly established that DYS and SEIS consistently offered educational services to John and he simply refused to participate.

The parent further alleges that DYS and/or SEIS violated the child find requirements pursuant to the IDEA, by not providing special education services to John when he was initially detained in DYS. Again, I find no merit to the parent’s argument. DYS and or SEIS had no reason to suspect that John had a disability and that special education services may have been necessary. The credible evidence from DYS staff and SEIS staff established that John did not present any differently than any of the other detainees, and John was able to access the curriculum when he decided to do the work. Further, I find that John’s mother’s testimony about informing staff at the DYS facilities that John had special needs was not credible. When DYS was informed, in March of 2009, that John had special needs, DYS and SEIS immediately took steps to provide John with special education services pursuant to his IEP. They continued these attempts throughout the period of time John was detained in DYS. It was not until June of 2009 when John was detained at the Leahy facility that John began to accept these services.

As to the parent’s allegation that DYS and/or SEIS failed to participate in TEAM meetings and/or request a TEAM meeting for John, I find that in April of 2009, by letter from SEIS’ acting principal, Cheryl Nicholson, to the school district’s special education director, SEIS requested that the school district schedule a TEAM meeting. This TEAM meeting was held on May 9, 2009 and SEIS and DYS attended the meeting. I further find that DYS and SEIS were not made aware of the June 2008 meeting and therefore did not attend. Based on the overall credible evidence in this matter, DYS and SEIS committed no procedural violations that resulted in any denial of a FAPE to John and therefore no basis for an award of compensatory services has been established.

**ORDER**

I find that parent failed to meet her burden of proof to show that DYS and/or SEIS unlawfully interfered with the implementation of John’s IEP from June 3, 2008 to October 19, 2009. I further find that the parent failed to meet her burden of proof that DYS and/or SEIS committed procedural violations from June 3, 2008 to October 19, 2009 that resulted in a denial of a FAPE to John. The parent therefore, is not entitled to any relief.

So Ordered by the Hearing Officer,

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Ann F. Scannell

Dated: July 24, 2012

1. DESE is the abbreviation for the Department of Elementary and Secondary Education. [↑](#footnote-ref-1)
2. DYS is the abbreviation for the Department of Youth Services. [↑](#footnote-ref-2)
3. John is a pseudonym used for confidentiality and classification purposes in publicly available documents. [↑](#footnote-ref-3)
4. SEIS is the abbreviation for Special Education in Institutional Settings. [↑](#footnote-ref-4)
5. A few weeks later, the advocate returned to representing the parent. [↑](#footnote-ref-5)
6. SEIS is the arm of DESE that provides special education in institutionalized settings. [↑](#footnote-ref-6)
7. John escaped from Howland on March 18, 2009 but was returned the following day. [↑](#footnote-ref-7)
8. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005) [↑](#footnote-ref-8)
9. 20 USC 1414(a)(1)(D); 34 CFR 300.300(b)(1-3) [↑](#footnote-ref-9)
10. Prior to the state-wide implementation of the Data Match system in July 2009, direct notification by a parent or other sources was the only mechanism available to DYS to identify special education students and ensure that an eligible student continues to receive special education services while detained by DYS. [↑](#footnote-ref-10)
11. DYS currently uses a data match system to obtain this information. This system was implemented state-wide until July of 2009. John was not detained in any of the DYS facilities that were piloting this program prior to the state-wide implementation. [↑](#footnote-ref-11)
12. Although John refused special education services, he attended school and received general education in the classroom. [↑](#footnote-ref-12)
13. Prior to March 19, 2009, DYS and/or SEIS had no obligation to provide these services to John because John’s mother did not accept services until September 16, 2008 and once accepted, the credible testimony showed that John’s mother did not notify DYS or SEIS that John was on an IEP until March 19, 2009. [↑](#footnote-ref-13)
14. Marcia Mittnacht, Special Education Director for the state of Massachusetts, corroborated DYS’ position through her testimony at Hearing. See also 603 CMR 28.06(9)(c) [↑](#footnote-ref-14)
15. *Roland M. v. Concord Public Schools*, 910 F.2d at 994 (1st Cir. 1990) [↑](#footnote-ref-15)
16. 20 USC 1415(f)€(ii)(II) [↑](#footnote-ref-16)