**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**SPECIAL EDUCATION APPEALS**

**In Re:** Student v. **BSEA #**12-4761

 Brockton 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.

Parent requested a Hearing in the above-referenced matter on January 19, 2012. In February 2012, both Brockton Public Schools and Parent requested postponements of the case. The issues for Hearing were clarified and narrowed following a Brockton Public School’s Motion for Clarification and two Rulings; a Ruling on Brockton’s Motion to Dismiss Premature Claims issued on March 20, 1012, and a Ruling on Parent’s Motion to Amend the Hearing Request issued on May 11, 2012. The Hearing was held on May 15, 2012, before Hearing Officer Rosa I. Figueroa, at the Bureau of Special Education Appeals, 75 Pleasant St., Malden, Massachusetts. Those present for all or part of the proceedings were:

Student’s mother

Tami Joia Parent’s Advocate

Marsha Eidlin Assistant Director of Special Education, Brockton Public Schools

Olga Garriga Out of District Coordinator, Brockton Public Schools

Mary Joann Reedy, Esq. Attorney for Brockton Public Schools

The official record of the hearing consists of documents submitted by Parent and marked as exhibits PE-1 through PE-11, and those submitted by Brockton Public Schools (Brockton) marked as exhibits SE-1 through SE-20, recorded oral testimony and oral closing arguments. The Parties’ Oral Closing Arguments were heard on May 22, 2012 and the record closed on that date.

**HEARING ISSUES[[1]](#footnote-1):**

1. Whether Brockton has conducted the transition assessment necessary to initiate Student’s transition services;
2. Whether Brockton is responsible to fund an independent transition services evaluation comprising an independent living skills/ functional living skills evaluation, an academic evaluation, and forensic evaluation of Student;
3. Whether Brockton violated Student’s procedural due process rights by failing to conduct its evaluations and failing to respond to Parent’s request for independent evaluations in a timely manner.

**POSITIONS OF THE PARTIES:**

**Parent’s Position:**

Parent asserts that Student presents with social–emotional and behavioral issues, among other disabilities, all of which entitle Student to receive a free and appropriate public education (FAPE). Given his age, federal and state law makes Brockton responsible for Student’s evaluations and services inclusive of the obligation to conduct transition services assessment. Parent is also requesting academic evaluations and a forensic evaluation of Student.

Parent states that she made her request for a transition services assessment at an IEP Team meeting held on February 17, 2011, and asserts that she showed a Brockton staff member the proper form stating her request. Parent contends that she did not receive any response regarding said request until May 2011, which she asserts violated Student’s rights.

Parent also asserts that Brockton’s decision to defer the transition evaluation (inclusive of observations in school and in the community) until Student’s release from a DYS secure facility was inappropriate and in effect delayed the evaluation process. According to Parent, Brockton could have asked for and obtained permission from DYS to conduct the observations sought by Parent.

Parent further requested that Brockton conduct a life-skills/ independent functional living skills evaluation of Student which Brockton declined to conduct.

Parent states that contrary to Brockton’s assertions, the issue at hand is not one of consent, but one of notice. Parent asserts that Brockton was placed on notice of Parent’s desire for the evaluations to be completed and that Brockton failed to conduct the evaluations as it is required to do by law.

**Brockton’s Position:**

Brockton agrees that it has been responsible for Student’s special education services since October 2010, at which time Student was at a DYS secure facility. Furthermore, it does not dispute Student’s right to the transition services assessment, a neuro-psychological evaluation and the academic evaluations, but disputes the need for a forensic evaluation. Brockton contends that it has been unable to complete the process due to Parent’s failure to provide the proper consent.

According to Brockton, it did not receive Parent’s request for evaluations until May 2011, and asserts that it has responded appropriately to all of Parent’s requests.

Regarding the transition services assessment, Brockton states that it was unable to fully comply with Parent’s evaluation request, which included observations of Student in school and in the community, because of the limitations imposed by the DYS secure facility. Brockton explained that in order to obtain relevant information to address Student’s transition, it would be important for Student to be in a more natural environment. In an effort to address Parent’s concerns, in May of 2011, Brockton suggested postponing the transition services assessment until Student was released from the DYS locked facility.

Brockton disputes the need for a life-skills type of evaluation and the forensic evaluation asserting that Parent has presented no evidence supporting the need for a forensic evaluation for educational purposes.

Brockton states that it has attempted to secure Parent’s consent repeatedly and that Parent’s unwillingness and inaction in providing signed consent has unnecessarily hindered the Student’s evaluation process. As such, it asserts that it has met its legal obligation until such time as Parent provides written consent.

Regarding the transition services assessment, Brockton states that said assessment was conducted by Eagleton School. Thereafter Brockton has attempted to reconvene the Team to discuss the results but has not met with Parent’s cooperation regarding participation in a Team meeting.

**FINDINGS OF FACT**

1. Student is an eighteen-year-old student who is eligible for special education services based on his emotional disabilities. He has been diagnosed with bipolar disorder, PTSD, ADHD, Generalized Anxiety Disorder (primary), major depressive disorder, (moderate) R/O Dysthymic Disorder, Learning Disorder, NOS (nonverbal); severe trauma history, academic problems, out of home placements, court involvement, and family issues. (Administrative Notice of BSEA #11-3408). Student was committed to the Department of Youth Services (DYS) on July 14, 2010 (Administrative Notice of BSEA #11-3408), and will remain in DYS custody until his twenty-first birthday (Mother).
2. Student was committed to Westboro Secure Treatment Facility (Westboro), a DYS secure facility, on or about July 15, 2010 (SE-2). In October 2011, DYS placed Student at the Eagleton School (Eagleton), a special education residential therapeutic program in Great Barrington, Massachusetts (SE-10, 11; PE-5).
3. Brockton became programmatically and fiscally responsible for Student’s special education services on October 20, 2010. Brockton convened a team meeting on November 17, 2010 and issued an IEP. This IEP was intended to address Student’s educational needs while at the DYS facility. Since Student was due for his three year re-evaluation, Brockton proposed to conduct an occupational therapy, a psychological/educational and psychiatric evaluation as well as a functional behavioral assessment of Student. Parent consented to these evaluations. Brockton forwarded the IEP to Parent on November 23, 2010, and Parent rejected this IEP in full on November 23, 2010, because of Brockton’s failure to include clinical services appearing in Student’s previous IEP and for failing to place Student (who was in a secure DYS facility) in a therapeutic residential placement. Parent also did not accept the portion of the IEP that provided MCAS accommodations (Administrative Notice of BSEA #11-3408).
4. Student’s occupational therapy evaluation was performed by Marc Abbott, OTRL, on January 7, 2011; John Shaw, School psychologist performed the psychological/ educational evaluation and the functional behavioral assessment on December 28, 2010[[2]](#footnote-2), at Westboro. Jeff Turley, M.D., conducted the psychiatric evaluation on January 27, 2011 based on a records review given the limited access to Student at the DYS facility (Parent; Administrative Notice of BSEA #11-3408).
5. On February 17, 2011, Brockton convened Student’s Team to review the result of Student’s three-year re-evaluations and develop Student’s IEP. At this meeting, Parent requested independent evaluations because she did not agree with the results of the evaluations presented (i.e., occupational therapy evaluation, psychological assessment, functional behavioral assessment, psychiatric evaluation, and educational assessment). Brockton agreed to Parent’s request and made her aware that she would need to provide the school with a list of the providers she selected to conduct the independent evaluations.[[3]](#footnote-3) The Team thus agreed to postpone the development of the IEP until the independent evaluation reports were available (SE-1; SE-19).[[4]](#footnote-4) Following the meeting, the Brockton gave Parent a letter dated February 17, 2011, which again explained that Parent needed to select qualified persons or facilities for the independent evaluations and inform the Brockton of these selected entities as well as their willingness to accept state rates (SE-1). The record lacks evidence that Parent provided the name of the individual she selected to conduct the occupational therapy evaluation (Administrative Notice of BSEA #11-3408).
6. A letter from Geraldine Cassens, Ph.D., dated April 3, 2011, addressed to Parent’s advocate, reflects Parent’s request that Dr. Cassens conduct an independent neurophyschological evaluation of Student (PE-10). In the letter, Dr. Cassens states

…I would be pleased to [complete the neuropsychological evaluation] but I cannot complete the evaluation thoroughly at the State-approved rate for the following reasons:

* + 1. I typically request all school and medical records from kindergarten to the present to review;
		2. I will interview parent(s) as well as [Student];
		3. Due to the legal ramifications of this case, I have to treat it as a forensic evaluation which requires significantly more verification of facts than a clinical case referral.
		4. Given his history, he may or may not comply with testing. Once I have set a full day aside for evaluation (he will be brought escorted to my office) if he is not compliant there is significant loss of my time and revenue. My usual fee is $ 300 per hour for legal cases that require out-of-office attendance at hearings or court. If you are able to obtain my legal fee/hour for this case, I will be pleased to see him (PE-10).
1. On May 25, 2011, the Team met to discuss Student’s IEP development and placement. The Narrative Description of School District Proposal in the IEP resulting from this Team meeting reflects that Student and Parent requested standardized mathematic assessments and Brockton agreed to generate a consent form so as to proceed with academic achievement evaluation in the areas of mathematics and writing skills (SE-2).
2. At the May 2011 Team meeting, Parent verbally requested that Student’s independent neuropsychological evaluation and the functional behavioral assessment be allowed to proceed and agreed to inform Brockton of the individual selected by her to conduct the neuropsychological evaluation (SE-2; PE-3). She also requested that Brockton proceed with the transition services assessment. Brockton explained in its IEP proposal that it would “complete a Transition Assessment once [Student] is placed in a new educational setting outside the DYS facility”[[5]](#footnote-5) (SE-2; Parent). Brockton rejected Parent’s request for an independent living skills evaluation explaining that this type of assessment was neither necessary nor relevant to Student’s “educational program or related to his educational needs” (SE-2).
3. The Vision Statement in the IEP provides

[Student] has expressed his interest in earning a high school diploma and going on to college. He would like to attend the University of Miami and study Marine Biology. [Student] would like to play football while in college. If this is not possible [Student] is interested in opening his own business –a combination barbershop and tattoo parlor (SE-2).

1. The Transition Planning Action Plan describes Brockton’s proposal to have Student meet with the school counselor to identify possible colleges that offer a degree in Marine Biology, ascertain what the admission requirements are and assist with the admission process. Additionally, Student will explore program options that offered training and certifications required to become a barber and a tattoo artist. [Student] would be engaged in activities that promoted developing interview skills and resume writing and was expected to participate in money management skills development, understanding his overall needs, and learning appropriate advocacy skills and effective communication skills. It was anticipated that when Student was placed in a different setting his ability to obtain a part–time job in the community would be explored (SE-2).
2. Since the independent evaluations had not yet been performed and since Student’s IEP expired in March 2011, the Team developed an IEP to be implemented upon Student’s release from DYS. Student’s anticipated date of release was July 15, 2011 (Id.).
3. Parent rejected the proposed IEP on June 7, 2011 (SE-2).
4. Anticipating Student’s release from DYS in July 2011, Brockton convened Student’s Team again on June 7, 2011 to discuss Student’s IEP program and placement. Parent did not attend this meeting (SE-3).
5. The Team met again on June 16, 2011, to discuss the unresolved IEP placement issue. Parent and her advocate attended this meeting (SE-4). At the meeting, Brockton presented Parent with a Consent Form to proceed with the academic evaluations (mathematics and writing skills), and the transition services assessment. Brockton again stated that the best way to gather a “comprehensive assessment of [Student’s] skills” would be to wait to complete the transition services assessment upon Student’s release from DYS (SE-5; PE-2). Brockton agreed to complete the evaluations within thirty school days of the date in which it received Parent’s/Student’s written consent. Notwithstanding the assessments, the Team recommended placement at a private, day school which conformed with Brockton’s evaluators recommendations for participation in a “small, structured, therapeutic environment with access to therapeutic supports throughout the day” (SE-5). Student’s last agreed upon IEP called for residential placement, an option that Student rejected at the meeting in June 2011. Brockton subsequently forwarded the IEP with the proposed program and placement to Parent and Student (SE-5; PE-2). This IEP reflects Student’s decision to share educational decision–making with Parent, which was followed by a signed power of attorney granting Mother authority to pursue all legal matters on Student’s behalf [[6]](#footnote-6)(Id.).
6. By June 2011, Student had earned enough credits to be considered a twelfth grader (Mother).
7. On July 15, 2011, Parent rejected the IEP drafted following the June 2011 Team meeting and requested a meeting to discuss the rejected portions (SE-7).
8. Student was scheduled to be released from DYS on July 15, 2011 (SE-2). His release was however, delayed until August 2011 when he was transferred to the Phaneuf program (Phaneuf), a step down DYS facility located in Brockton, Massachusetts. While at Phaneuf, he attended the Southeast Alternative School consistent with the partially accepted June 2011 IEP (later rejected by Parent in July 2011). Following an assault on another student, Student was returned to a DYS secure facility, Brockton Y, in late September 2011 (SE-5; Administrative Record BSEA #12-4227).
9. On August 23, 2012, Olga Garriga, Brockton’s Out of District Coordinator, wrote to Parent and Student seeking their response to Brockton’s proposed placement of Student at the Southeast Alternative School in Middleboro and stating that Student’s placement would not be initiated until Parent’s or Student’s response accepting placement was received. At this time, Student was at the Phaneuf Center in Brockton (SE-6).
10. On August 24, 2011, Parent and Student consented to placement in the private, day school (SE-7; PE-2)[[7]](#footnote-7). Parent again requested a meeting to discuss the rejected portions of Student’s IEP (SE-7; PE-3). By this time, Brockton had already generated a consent for evaluation form to which Parent had not responded (Garriga). Brockton scheduled a meeting for September 7, 2011, to address Parent’s concerns and intended to further discuss the consent forms at that time (SE-8; SE-9).
11. On August 29, 2011, Brockton received a letter from Parent with an enclosed copy of a signed “Parents’ Request for Transition Assessment” form. This form was dated February 17, 2011. Below the signature it stated, “gave copy to Brockton Public Schools at Westboro evaluation meeting. School agreed to Parent Independent Evaluation”. The form sought that a functional community living skills assessment, a daily living skills assessment, a functional vocational assessment and other assessments necessary to allow Student to pursue post-secondary goals be performed (SE-8; Mother). Ms. Garriga testified that she did not receive the Transitional Assessment request form during the February 2011 or May 2011 Team meetings (Garriga). According to Ms. Garriga, the first time she saw SE-14 (dated February 15, 2011) was in August 2011 (SE-8). She testified that had she received the request for assessments from Parent earlier, this would have been reflected in the IEPs promulgated following the meetings (SE-1; Garriga).
12. Parent refused to attend the Team meeting on September 7, 2011. Following the meeting, Brockton sent Parent a summary of the meeting which stated in pertinent part

As of today, we have not received your signature on the proposed consent for academic achievement and transition assessments. This consent was presented to you at the June 16, 2011 Team meeting …. Please note these evaluations will not be completed without your and[Student]’s signature document approval of the evaluations proposed. Another copy of this consent is sent with this communication for your response (SE-9).

1. On September 20 and 21, 2011, Parent requested a Team meeting to discuss residential placement options for Student. Parent also rescinded her acceptance of the previous IEP (PE-4).
2. On or about September 26, 2011, Student was accepted to Eagleton as a residential student (PE-5; Parent, Garriga). In October 2011, DYS placed him at Eagleton (SE-13; PE-5; PE-6).
3. Brockton forwarded a Team meeting invitation to Parent and Student on November 18, 2011 to discuss his programming at Eagleton. The meeting was scheduled for December 12, 2011 at Eagleton (SE-10). On the afternoon of December 12, 2011, Parent forwarded her consent to Student’s placement at Eagleton (her consent is dated December 11, 2011).
4. The Team meeting summary for the December 2011 meeting reflects that Student was found eligible to receive special education services based on an emotional disability. The Team proposed that Student receive 5.5 hours per week of services to address academic and social issues and twice per week, forty–five minute counseling services. Goals addressing his math, written language, behavior/ emotional and transition services would be drafted and a great deal of discussion took place regarding the goals (SE-12; SE-20). The notes state that ESY and transition services were discussed during the meeting. The document states that Parent refused to sign the Team Meeting Summary (SE-12; SE-20).
5. During the Team meeting Student requested maintaining the vision statement and expressed a desire to have more mathematics. The Team did not have a clear sense of what Student’s gaps were in math and recommended that an assessment be conducted to ascertain Student’s math levels. The Team also discussed driver’s education and Parent again expressed a desire for the transitional assessment to be performed. Brockton reiterated the need to receive Parental consent to proceed with the math assessment and the transitional evaluations (SE-20).
6. At the meeting, Parent’s/ Student’s advocate informed Brockton that Parent would be contacting Brockton regarding the testing as she did not wish for Brockton to get “a bite at the apple” as Parent wished to proceed with independent evaluations. Parent’s/ Student’s advocate stated Parent’s request for a transitional assessment and coordinated set of activities, to which Brockton responded that the goals and objectives in the IEP needed to be related to specialized instruction and without updated assessments Brockton could not do them (SE-20).
7. The Team discussed transitional goals including Student’s interest in attending college[[8]](#footnote-8) or community college, and his wish to receive vocational training[[9]](#footnote-9). Options such as attending Massasoit, which had a Gateway to College program especially helpful to students who did not pass the MCAS, were discussed (SE-20).
8. During the December 2011 meeting Brockton attempted without success to obtain Student’s signature consenting to the desired assessments (SE-20).
9. Following the Team meeting, on December 12, 2011, Olga Garriga forwarded an IEP Amendment and a Chapter 688 Student Referral Form to Parent and Student (SE-13). The Narrative Description in this IEP stated:
10. *What action is the school district proposing to take?* Brockton School Department is proposing an amendment to the IEP dated 6/13/11-6/12/12. This amendment includes edited goals and objectives as well as an update to reflect [Student]’s current placement at Eagleton School. This placement was determined by DYS. The Brockton School Department is proposing a cost share to address [Student]’s educational needs. In addition, the Brockton School Department continues to propose a vocational and academic achievement evaluation. Consent [forms] for these evaluations were once again presented at the Team meeting held on December 12, 2011.
11. *Why is the school proposing to act?* The Team has determined that [Student] requires specialized instruction in order to access the general education curriculum. A day school placement has been identified as the least restrictive placement in order to address [Student’s] educational needs. The Department of Youth Services placed [Student] at Eagleton School in October 2011.
12. *What rejected [options] were considered and why was each option rejected?*  [Parent] rejected Brockton School Department’s position that [Student]’s “stay-put” IEP is the 6/13/11-6/12/12 IEP which was accepted on July 15, 2011 with the exception of the service delivery page and counseling goal. [Parent] contends that since she rejected this IEP in October 2011, the last accepted IEP (Longview Farms dated 3/15/10-3/14/11) is the stay put document. Brockton believes [Parent]’s position in this matter is incorrect.

The Brockton School Department again presented [Parent] with a consent for evaluation including a transition assessment and academic achievement evaluations. [Parent] refused to sign this consent and in turn presented a document signed and dated February 17, 2011 which she contends she presented to school department personnel requesting a transitional assessment. This document was not received by the Brockton School Department. The Brockton School Department amended the language on their consent to state “Transition Assessment, see attached document” in order to ensure all aspects of the evaluation as requested by the parent were addressed. [Parent] refused to sign Brockton’s School Department’s consent. The Eagleton School Director stated he would be able to complete a transition assessment as delineated in [Parent]’s request. This evaluation will be completed by Eagleton School staff. In addition [Parent] has stated she would be seeking an independent evaluation in order to gain a better understanding o [Student]’s needs. She will follow up with Brockton Public Schools in providing the name and resume of the provider identified. [Parent] and [Student] have agreed to informal assessments in order to gain a better understanding of his current skills in the area of mathematics.

The parent requested [Student] be provided with driver’s ed as part of the transition goal in [Student]’s IEP. The Brockton School District rejected this option as [student] does not need specialized instruction in this area. The Eagleton School Director agreed to coordinate this service for [] if he attains a level 3 behavioral level.

After the meeting adjourned, the parent requested Brockton Public Schools provide transportation to Student from Eagleton School to home as determined by home visit passes. [Student]’s residential placement is determined and funded by DYS. Since the Brockton School Department does not determine or control the conditions for home visits, Brockton believes transportation in not our responsibility.[[10]](#footnote-10)

1. *What evaluation procedure, test, record or report was used as basis for the proposed action?* Progress updates were presented by Eagleton School staff. [Student]’s and parent’s concerns were discussed by the Team.
2. *What other factors were relevant to the school district’s decision?*  [Student] has been at Eagleton School since October 2011. A placement page was presented to [Parent] immediately upon DYS notifying the Brockton School Department of such decision. Consent for placement was received by the Brockton School Department on December 13, 2011. Brockton will fund [Student]’s educational placement at Eagleton School as of this date.
3. *What next steps, if any, are recommended?* This amendment will be implemented as delineated by your response (SE-13).
4. On December 19, 2011, Brockton received another “Parents Request for Transition Assessment” form dated February 17, 2011. Though similar to the previous form dated February 17, 2011, the December 2011 version was different than the copy Parent forwarded with her letter of August 29, 2011, as evidenced by the transposed signature and date (Compare SE-8 and SE-14/ PE-8). By December 19, 2011, neither Parent nor Student had signed an evaluation consent form (Garriga).
5. On January 12, 2012, Parent faxed her response to the proposed January 11, 2012, IEP to Brockton accepting the proposed placement and some services, and requesting a hearing “regarding ongoing safeguards violations, violation of transitional assessment timeline, refusal to act,” and challenging the appropriateness of the IEP (SE-15).
6. Brockton forwarded a Team meeting invitation on January 30, 2012 to discuss Student’s transition assessment (SE-16).
7. On March 8, 2012, Brockton’s counsel sent a letter to Parent’s advocate urging Parent to sign the necessary consent forms for transition assessments, Chapter 688 Student Referral to the Massachusetts Rehabilitation Commission (Mass Rehab), and academic testing (SE-17). Specifically, Brockton sought consent for the following assessments:

**Assessments:**

Transition Assessment –including: comprehensive computer based interest inventory and aptitude assessment (Career Scope).

Review of Casey Life Skills Inventory, review of recently completed cognitive evaluation.

Academic Achievement including areas of ELA and Mathematics.

**Educational Assessment:** Includes the history of the student’s educational progress in the general curriculum and includes current information of the student’s performance (SE-17).

1. Emails between Parent’s advocate and Brockton’s attorney for the period from March 8 through March 16, 2012 reflect the parties’ positions regarding where to make the Chapter 688 Referral for Student. While Parent wished for this referral to be made to the Department of Mental Health (DMH), Brockton opined that Student would not meet the criteria and instead that the referral should be made to MassRehab (SE-18). A blank Chapter 688 Referral form, a Evaluation Consent form and a copy of Eagleton’s Transition Assessment was attached to Brockton’s attorney’s email of March 8, 2012 (SE-18).
2. At the Hearing, Parent signed the Chapter 688 Form. The Consent Form regarding transition assessments and academic testing have not been signed by Parent (SE-17; Garriga).
3. Vickie Shufton, Ed.S., NCSP, School Psychologist at Eagleton, conducted the Transition Assessment (SE-18). On January 23, 2012 she administered the Keirsey Temperament Sorter which is intended to determine possible career paths based on the student’s individual personality traits. Student presented with marked preference for occupations related to real estate such as property manager, property owner and realtor (SE-18). During her discussion with Student, he indicated that he knew the requirements to obtain a realtor license and could enroll in community college to prepare for the realtor exam. He understood the expense associated with obtaining the license, could identify funding sources and has access to individuals who can provide guidance and support in these areas. Eagleton arranged for Student to participate in a driver’s education course (SE-18).
4. Ms. Shufton also administered the Casey Life Skills Assessment on January 26, 2012. This inventory assesses the student’s independent living skills regarding Career Planning (in which he scored 46%), Daily Living (obtaining 27% mastery), Self–Care (in which obtained 80% mastery), Social Relationships (67% mastery), Work Life (50% mastery), and Housing and Money Management (where he obtained 45% mastery) (SE-18). The assessment results demonstrated Student’s needs for further skills development in daily living skills such as including “eating a balanced diet, using a shopping list, and doing one’s laundry” which Ms. Shufton noted were deficits typically found in male adults indicative of lack of interest as opposed to lack of skills. She viewed Student as a bright, personable, capable young man “well on his way” to acquiring the skills he needed to transition into adult life (SE-18).
5. At present, Student continues to attend Eagleton, a placement supported by Brockton, Parent and DYS (SE-10, 11; PE-5). He is committed to DYS until his twenty-first birthday (Parent).

**CONCLUSIONS OF LAW:**

This matter involves requests for evaluation going back to 2011. Specifically, Parent/ Student assert that they requested Brockton to conduct its own evaluations of Student and to fund independent evaluations which Brockton failed to conduct and provide, and that Brockton failed to do so in a timely manner which delay resulted in educational harm to Student. Brockton asserts that any delay in conducting the evaluations is the result of Parent’s failure to consent to the evaluations. It is clear that the Parties have been at an impasse for some time now. This decision seeks to provide guidance to the Parties so that they may move forward with obtaining the information they require to serve Student at this crucial time in his life.

The issues are therefore, 1) whether Brockton has conducted the transition assessment necessary to initiate Student’s transition services; 2) whether Student is entitled to independent academic and forensic neuropsychological evaluations, and also a transition services evaluation inclusive of a independent living skills/ functional living skills evaluation; and 3) whether Brockton violated Parent’s/ Student’s procedural rights by failing to respond to the requests for evaluation in a timely manner consistent with federal and state law. Parent/ Student are the moving party seeking relief in the instant matter, and as such, consistent with *Schaffer v. Weast*, 546 US 49, 62 (2005), carry the burden of persuasion regarding the aforementioned issues.

Regarding the procedural claims, Parent must show that: a) a procedural violation occurred, and b) that that the procedural inadequacies resulted in a deprivation of educational benefit to Student, or compromised his right to a free, appropriate, public education consistent with the IDEA. *Roland M. v. Concord Public Schools*, 910 F.2d at 994 (1st Cir. 1990); see also: *Murphy v. Timberland Regional Sch. Dis*., 22 F.3d 1186, 1196 (1st Cir. 1994).[[11]](#footnote-11) I now turn to the evidence in the case at bar, and rely on the facts delineated in the Fact section of this decision and incorporate them by reference but avoid restating them except where necessary.

The Parties do not dispute that Student presents with disabilities that render him eligible for special education with the meaning of the IDEA and Massachusetts Special Education Law.[[12]](#footnote-12) Student is therefore entitled to a free appropriate public education (FAPE) in the least restrictive environment (LRE) appropriate to meet his needs.[[13]](#footnote-13)

Also, there is no dispute between the Parties that on October 20, 2010, Brockton became responsible for Student’s education (Stipulation of the Parties). They also agree that since October of 2010, Student has been in DYS custody and will remain committed to DYS until he turns 21 years of age. At the time that Brockton became responsible for Student, he was in a DYS secured treatment facility and was placed at Eagleton School in Great Barrington, Massachusetts on or about October of 2011 (Parent, SE-13).

Having been found eligible to receive special education services, in November 2010, Brockton forwarded an IEP to Parent covering the period November 17, 2010 through November 17, 2011. Parent rejected this IEP on November 23, 2010 and raised concern as to the appropriateness of the services offered to Student therein (SE-1). Brockton explained that its evaluations were limited due to the fact that Student was in Westborough secured facility pursuant to a DYS commitment (Parent, Garriga). At the time, Student’s educational services were being delivered through Special Education in Institutional Settings (SEIS) (SE-1). Brockton’s goal was to implement Student’s IEP upon his discharge from DYS custody which was initially projected for July 15, 2011(SE-2).

Parent states and the record reflects that she disagreed with the result of the evaluations conducted by Brockton and made oral requests for independent evaluations at the Team meetings on February 17, 2011 and on December 12, 2011 (SE-1; SE-19; SE-20). Parent testified that she followed up her request in writing on at least two occasions, although in cross examination she testified that she had kept SE-8 for herself and that SE-14 was the one she forwarded to Brockton (SE-8; SE-14; Parent).

Once Parent requested evaluations, thus putting Brockton on notice of her position (a matter that Brockton does not dispute), the case turns on the responsibility such notice triggers. At this juncture the issue of consent arises and the interplay between the request to conduct evaluations and the consent to proceed with the evaluations, must be examined.

Pursuant to 34 CFR 300.9(b) consent is defined as

The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.

The federal special education law[[14]](#footnote-14) and regulations[[15]](#footnote-15), and Massachusetts special education regulations[[16]](#footnote-16), hold “consent” as an essential element in proceeding with requested and/ or suggested evaluations. By using the word “shall” in its language, 603 CMR 28.04 (2) and (3) leave school districts no option but to conduct the evaluations once the parent has consented to the initial evaluation or any re-evaluation of the student.[[17]](#footnote-17) Thus, under federal and state law Brockton is required to obtain consent before proceeding with any evaluation, re-evaluation or placing or changing the placement for Student and proceeding with the evaluations or placement once the consent has been received. With this guidance, I turn to the facts of this case.

The February 17, 2011 Team meeting convened to discuss Student’s three year re-evaluations, including the educational assessment, occupational therapy evaluation (which raised concerns with Student’s handwriting as a result of hand tremors), the psychological assessment, a functional behavioral assessment and a psychiatric evaluation (SE-1). When Parent disagreed with the results of those evaluations, Brockton agreed to fund an independent neuropsychological evaluation and an occupational therapy evaluation, further suggesting that Parent consult with Student’s physician regarding his hand tremors. Additionally, Parent disputed the results of the psychiatric evaluation and requested independent evaluations to clarify Student’s mental health issues, to which Brockton also acquiesced (Garriga).

The Narrative Description of School District Proposal in the IEP specifically provides that Parent

…will follow up with the Team Chairperson and provide the Brockton School Department with a list of providers she would like to consider for these evaluations. The Team agreed to postpone determination of eligibility and the development of an IEP until the independent evaluations are available for review (SE-1).

Under a separate section in the same IEP, Brockton acknowledged Parent’s request for an independent evaluation and delineated the steps to take, agreeing to reconvene the Team when the results were available (Id.).

Parent contacted Dr. Geraldine Cassens, a neuropsychologist, who stated via letter of April 3, 2011, that because of the legal ramifications of the case she would have to treat the evaluation as a forensic evaluation and therefore, could not conduct it at Rate Setting rates (PE-10). The letter further explained that she would have to look at Student’s record starting in Kindergarten and evaluate Student and Parent. Without knowing Student, Dr. Cassens anticipated that Student would be reluctant to participate in the evaluation and therefore, she could potentially have to set aside more than one full day to conduct his evaluation and testing (PE-10).

 The record contains no further information as to what exactly Dr. Cassens meant by a “forensic evaluation” and how it differs from any other neuropsychological evaluation. Also, at the time, there was no litigation pending between Brockton and Parent with respect to the substance of Student’s IEP services[[18]](#footnote-18). Brockton declined to fund a “forensic evaluation” and the neuropsychological evaluation never took place (Parent, Garriga). Thereafter, Parent contacted two other individuals but they were not available to do the evaluation. No other individual was contacted and Parent did not follow up with Brockton regarding individuals that accepted Massachusetts Rate Setting rates (Parent).

Student’s Team met again on May 27, 2011 to discuss placement options in anticipation of Student’s release from the DYS secured facility in the summer of 2011 (SE-2). Parent again made oral requests for evaluations and raised concerns that proper transitional services would require an evaluation that included: academic/educational assessments, daily living skills, vocational assessments and observations of Student in school and in the community (Parent). Parent testified that these evaluations were suggested to her by Student’s former *Guardian Ad Litem*, sometime in 2008.

Parent’s specific concerns regarding the evaluations were as follows: she believed that an independent living skills evaluation would be needed because while at DYS Student did not brush his teeth or shower daily, he also did not know how to cook for himself, and did not clean his room or properly maintain his living environment. She testified that in order to do these things in an independent living situation, Student would require adult supervision (Parent). Brockton rejected Parent’s request in this area stating that it was not related to Student’s disability and was irrelevant to his educational programming (SE-2). Brockton opined that Student did not present with a developmental disability that rendered him incapable of performing these tasks without specific instruction (Garriga).

Academically, Parent wished to better understand what Student’s needs are in order to be prepared for graduation and be able to pursue his post graduation studies in a college.[[19]](#footnote-19) Regarding Student’s interest in vocational training (to open a combination barbershop and tattoo parlor) Parent was concerned that in the past Student had not done well in vocational settings [[20]](#footnote-20)(Parent).

Regarding the transition assessments, Parent’s concern was that Student was failing in his ability to become a productive member of society and that without a proper plan he would continue to fail in the community. She took issue with the inventories administered by Brockton/ Eagleton’s personnel stating that they were not scientifically, technically sound instruments and that Student was not a reliable reporter in assessments that required him to “hit a button” to select a choice because when he got tired he would press the same button over and over again (Parent).

Brockton does not dispute that Parent verbally requested the aforementioned evaluations at different times since February 2011. It however, asserts that the written request was first received in August 2011 (Garriga). More importantly, it asserts that it agreed to fund some of the evaluations requested by Parent, refused some because they were not relevant to Student, and asserts that any failure on its part to pursue evaluations desired by Parent/ Student was the result of Parent’s refusal to consent to the evaluations.

On cross-examination, Parent conceded having been presented with the consent forms by Brockton multiple times in 2011, and stated that following her consent for initial evaluation, she had never again signed a consent form. The record reflects that since at least June 2011, Brocton attempted to obtain Parental consent to proceed with evaluations (SE-9; Garriga). Parent explained that since she did not agree with what was reflected in them, or what she was being asked to sign, so she did not sign the consent forms. Specifically, Parent did not think that the consent forms presented by Brockton offered to evaluate Student in all areas of suspected disabilities, and therefore refused to sign them. She testified that she thought if she signed the consent forms she would be unable to get the independent evaluations she would later want (Parent).

Parent further testified that following the Team meeting in December 2011, she received a call from Eagleton regarding the transition assessments they had initiated and Parent called Ms. Garriga objecting to these assessments being conducted because she had never agreed to them (Parent, Garriga).

Ms Garriga testified that Brockton had rejected Parent’s request for an independent living skills assessment, as part of the transition assessment (SE-5; SE-8; SE-14; Garriga). At the time, Student was still in a DYS facility and Brockton had not completed its evaluations. The IEP promulgated in mid-June 2011 describes Brockton’s proposal to further evaluate Student and how its efforts were being thwarted by Parent’s refusal to provide written consent.

Brockton argued that it did not receive consent from Parent/ Student regarding the areas Brockton agreed to evaluate as described in SE-2. However in the handwritten letter forwarded by Parent to Brockton in late August 2011, Parent stated:

I already gave written consent for transitional assessment coordinated set of events in which you are in violation of not completing…(PE-3).

The record shows that Parent indeed agreed to the transitional assessments which the Team agreed to postpone until Student was out of DYS, an event which occurred in October 2011, and until such time as Brockton conducted its own evaluations, the right to Parent’s desired independent evaluations did not arise.

The record however, shows that Brockton rejected Parent’s request for the daily living skills portion of the transition assessment and there is not indication in the record that, as to this one point, Brockton proceeded to request a Hearing before the BSEA within five school days[[21]](#footnote-21) (SE-5).

Given Brockton’s failure to proceed to the BSEA within five school days of the day in which it informed Parent of its refusal to conduct/fund a functional living skills independent evaluation for Student, Parent is entitled to an independent evaluation in this area which includes observations in the home and school at the rates set by the Massachusetts Division of Health Care Finance and Policy Ambulatory Care (Massachusetts Rate Setting) (114.3 CMR 29.00.)

Ultimately, Ms. Shufton administered a life skills assessment in late January 2012, and made some specific recommendations for Student regarding daily living skills, consistent with areas of Parental consent (SE-18). It is noteworthy that Parent disagreed with Eagleton having conducted the evaluation because, according to Parent, she had not consented to it (Parent, Garriga). Interestingly, however, she used the same argument (albeit in reverse) to demand that evaluations be conducted and/ or funded by Brockton based solely upon her “request” as opposed to her “consent”. The fact is that Parent had consented to all aspects of a transition evaluation and reiterated her consent in her facsimile of August 24, 2011 (PE-3). This demonstrates that she understands the difference between “requesting something” and “consenting to something” so that it can be performed.

I note that the consent form submitted by Brockton to Parent (which is a form prescribed by the Department of Elementary and Secondary Education (DESE)), provides a box under the statement “*I additionally request the following assessments*” which can be checked allowing parents to list any assessment they desire.

Regarding the content of the transition services evaluations/ assessments proposed by Brockton, PE-2, SE-5 delineate the specific formal and informal assessments proposed which are within the realm of assessments typically used in transition services assessments, and as such, are found to be appropriate (SE-18; SE-5). Furthermore, Parent’s request for evaluations included observations of Student in school and in the community. There is insufficient evidence in the record to ascertain whether Ms. Shufton’s evaluation included observations of Student in either. Ms. Garriga testified that the Team has not reviewed this assessment despite Brockton’s attempts to convene the Team on or about March 2011 (SE-18; Garriga).

Additionally, Brockton shall reconvene Student’s Team to discuss the results of the evaluations/ assessments conducted at Eagleton in 2012. Parent continues to be entitled to an independent neuropsychological evaluation, an academic evaluation, and an occupational therapy evaluation, at Rate Setting rates as previously agreed by Brockton. Regarding the forensic evaluation, Parent did not meet her burden of persuasion in this area. Furthermore, since Student is in residential placement and not in a DYS secure facility, and given the lack of information regarding the forensic evaluation, there is no support for provision of a forensic evaluation. Lastly, it is unclear what the evaluator meant by “concerns regarding legal ramifications in the case” back in 2011.

The evidence is persuasive that Brockton has met its legal obligation regarding conducting its evaluations of Student including the transition services assessment with the exception of the observations in the home and the community. At this point, further assessment of Student’s math level is also appropriate. Brockton may dispense with the requirement of written Parental consent to complete these evaluations. If Parent disagrees with the result of this evaluation, she may request an independent evaluation in this area. Parent is further entitled to an independent life–skills/ functional living skills evaluation of Student.

Lastly, Parent’s closing argument, she contends the issue of this case is “notice” rather than “consent”. Parent referred to 34 CFR § 300.503[[22]](#footnote-22) arguing that the school did not properly give notice to her after they received the “Parent’s Request For Transitional Assessment” form. However, 34 CFR § 300.503, which addresses when a school district is required to provide notice, only requires Brockton to give written notice if it proposes or refuses to “initiate or change the identification, evaluation, or educational placement of the child.” 34 CFR § 300.503(a)(1)-(2). Brockton neither proposed to initiate or change Student’s evaluations, and with the exception of the functional daily living skills evaluation, it did not refuse to initiate or change Student’s evaluation.

Moreover, Brockton could not have proposed changing an evaluation because in the end, it never received the consent forms allowing it to proceed with the evaluations. Similarly, with the one exception, Brockton did not refuse to initiate the evaluation remaining transition services assessment. Rather, taking into account Student’s best interest, it recommended holding off on the transition services assessment until Student was released from DYS and placed in a more natural setting. This deferral does not constitute a refusal to evaluate within the meaning of the federal regulations, as it falls outside the gambit of the notice requirements of 34 CFR § 300.503(a).

**ORDERS:**

1. Brockton shall conduct observations of Student in the home/ community as part of its transition assessment.
2. Brockton shall conduct any necessary assessment to ascertain Student’s levels in mathematics.
3. Parent’s right to an independent neuropsychological evaluation, an academic and an occupational therapy evaluation as agreed by Brockton is reserved.
4. Brockton shall convene Student’s Team to discuss the result of the transition services evaluation conducted by Eagleton.
5. If Parent and Student desire, Brockton shall fund an independent life–skills/ functional living skills evaluation of Student that is appropriate for his aptitude level.

By the Hearing Officer,

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Rosa I. Figueroa

Dated: June 27, 2012

**June 27, 2012**

# COMMONWEALTH OF MASSACHUSETTS

# DIVISION OF ADMINISTRATIVE LAW APPEALS

# BUREAU OF SPECIAL EDUCATION APPEALS

#####  BROCKTON PUBLIC SCHOOLS

**BSEA #12-4761**

### BEFORE

**ROSA I. FIGUEROA**

**HEARING OFFICER**

**TAMI JOIA, ADVOCATE FOR PARENT/STUDENT**

**MARY JOANN REEDY, ESQ., ATTORNEY FOR BROCKTON PUBLIC SCHOOLS**

1. The issues to be decided through this Decision were determined via a Ruling on Brockton’s Motion to Dismiss Premature Claims issued on March 20, 2012, as amended through a second Ruling issued on May 11, 2012. The second Ruling responded to Parent’s Motion to Amend the Hearing Request received on May 8, 2012. Together these Rulings narrowed the scope of the Hearing, dismissing without prejudice the remainder of the claims and reasoning that

Until such time as the evaluations which are agreed to by the Parties or ordered by the `Hearing Officer at Hearing, are completed, and the Team has had an opportunity to discuss the results and modify the IEPA accordingly, Brockton is correct that all substantive claims regarding the IEP (including whether the goals and objectives in the IEP are appropriate) should be dismissed because these claims are not yet ripe.

The second ruling further clarified that the sole issue to be decided herein were claims relative to Parent’s requests for evaluations of Student, including transitional assessments and the forensic evaluation. The remainder of Parent’s claims were preserved consistent with the aforementioned Rulings. [↑](#footnote-ref-1)
2. Mr. Shaw did not perform observations of Student during class or in the clinical setting and did not ask for permission to conduct said observations at a different time (Administrative Notice of BSEA #11-3408). [↑](#footnote-ref-2)
3. Student’s last accepted IEP was due to expire on March 11, 2011 (Administrative Notice of BSEA #11-3408). [↑](#footnote-ref-3)
4. Portions of the Team meeting audio corroborates what transpired during the IEP meeting on February 17, 2011. Relevant sections are hence quoted herein:

Brockton’s staff sates: “We will be reconvening this Team. There’s, there’s two things that need to

happen. First, going through the independent evaluations. We can go through the process of you completing the independent evaluations, and reconvene the team and write an IEP at that point, um, based on those evaluations…” – Twice or more times during this statement, Parent responds “mm-hmm”.

Brockton’s staff states: “…there are a couple of things that we can do right now. We’ve done

some evaluations, we’ve heard the different evaluations. At this point because you’re not agreeing with the evaluations, which is your right, we can adjourn the team basically, wait for your independent evaluations, the team will reconvene upon the completion of your independent evaluations, and consider those independent evaluations when writing the, the new IEP.” (Brockton’s staff then goes on to say all of that aside, the Team will reconvene to write an IEP that will provide services when Student is discharged; Student will not be discharged with no plan)

 Brockton’s staff states: “So the question that is to you right now: do you want this team to

develop an IEP based on the evaluations that we have right now or are you going to exercise your right for the independent evaluations?”

Parent responds: “I already put it in writing”

Brockton’s staff : “Okay so you want to wait until those independent evaluations are done for us

to convene the team and consider them to write a new IEP?”

Parent replies that she wants the independents done but wants to reconvene the team to talk about what to do with Student while he’s in DYS and states that this wasn’t the time to talk. Parent was concerned that DYS was not providing adequate services and wanted Brockton to step in.

 Brockton’s staff: “…so you are choosing not to have us develop an IEP at this point”

Parent responds: “I’m choosing to have an independent evaluation done.”

Brockton’s staff: “…and then you’ll be in touch with me, [Parent], regarding the independent evaluators that you’d like to pursue?”

Parent responds: “Mmm-hmm … I’ll fax it over to you” (SE-19). [↑](#footnote-ref-4)
5. “A transition/Vocational assessment was requested by [Student and Parent] as well. The Brockton School Department recognizes that per special education requirements, all students with disabilities ages 14 and above in Massachusetts participate in ongoing, age-appropriate transition assessment. Assessments take place in many forms, and can be formal or informal. The Brockton School Department will complete a Transition Assessment once [Student] is placed in a new educational setting outside the DYS facility. Data as to his currently performance while at Westboro Secure will be requested from staff in this facility and incorporated into the assessment” (SE-2). [↑](#footnote-ref-5)
6. The IEP further reflects that Brockton

… attempted to clarify [Student]’s decision regarding this matter by presenting him with another Age of Majority form and asking him to sign indicating his decision. [Parent] objected to [Student] signing this form at the meeting. Under applicable regulations, the Brockton School Department will require joint decision making or honor [Student]’s decision in educational matters” (SE-5). [↑](#footnote-ref-6)
7. Another IEP response sheet dated July 15, 2011, and signed by Parent, partially accepts the June 2011 IEP (SE-7). [↑](#footnote-ref-7)
8. Student is interested in attending the University of Miami to study marine biology, and playing football. As such, Student wishes to be presented with a challenging academic curriculum that allows him to meet his academic goals (SE-13). [↑](#footnote-ref-8)
9. In the event that he is not able to attend college, Student would like to open his own business which combines a tattoo parlor and barbershop (SE-13). [↑](#footnote-ref-9)
10. Transportation issues were raised by Parent in her original Hearing Request although relating transportation for Parent not Student. Parent’s right to raise this issue at a later time was reserved pending the result of evaluations and reconvening of the Team. Furthermore, the record lacks any information regarding the arrangements between Brockton and DYS relative to Student’s placement. As such, any issues regarding Brockton’s responsibility to provide transportation to Student and or to Parent relative to services required for the benefit of Student are not being considered in this Decision and are preserved for a later time. [↑](#footnote-ref-10)
11. See *In Re Nelson & Taunton Public Schools*, 17 MSER 286, 295 (9/8/2011), further stating

It is also important to note that accepted, expired IEPs are not typically subject to administrative challenge using special education appeals procedures, especially where parents have not rejected the IEP during the term of the IEP. *Chris A. v. Stow Public Schools*, 16 EHLR 1304 (MA1990), affirmed on appeal, *Amann v. Stow School System*, 982 F.2d. 644 at 651 (1992). Similarly, a parent is not entitled to relief for procedural errors when the parent has fully accepted an IEP even if procedural errors were committed in its development…” [↑](#footnote-ref-11)
12. 20 USC. 1400 *et seq*.; M.G.L. 71B. See also the regulations promulgated under those statutes: 34 CFR 300.00 *et seq*. and 603 CMR 28.00 *et seq*. [↑](#footnote-ref-12)
13. 20 USC 1400(d)(1)(A), 20 USC 1401(29), M.G.L. 69 §1, M.G.L. 71B §1 . See *In Re: Brookline Public Schools*, BSEA # 12-4227 (March 30, 2012) for a discussion of FAPE and LRE including a collection of cases and other authorities. [↑](#footnote-ref-13)
14. 20 USC § 1414(c)(3) Parental consent. Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child’s parent has failed to respond. [↑](#footnote-ref-14)
15. 34 CFR 300.300 (c): Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, each public agency--

(i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability. [↑](#footnote-ref-15)
16. 603 CMR 28.07(1)

(1) Parental Consent. In accordance with state and federal law, each school district **shall** obtain informed parental consent as follows:

(a) The school district **shall** obtain written parental consent before conducting an initial evaluation or making an initial placement of a student in a special education program under 603 CMR 28.00. Written parental consent **shall** be obtained before conducting a reevaluation and before placing a student in a special education placement subsequent to the initial placement in special education.

1. The school district **shall** obtain consent before initiating extended evaluation services as described in 603 CMR 28.05(2)(b).…

(b) If subsequent to initial evaluation and initial placement and after following the procedures required by 603 CMR 28.00, the school district is unable to obtain parental consent to a reevaluation or to placement in a special education program subsequent to the initial placement, or the parent revokes consent to such reevaluation or placement, the school district shall consider with the parent whether such action will result in the denial of a free appropriate public education to the student. 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. Participation by the parent in such consideration shall be voluntary and the failure or refusal of the parent to participate shall not preclude the school district from taking appropriate action pursuant to 603 CMR 28.08 to resolve the dispute. This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)(4).

(c) When the participation or consent of the parent is required and the parent fails or refuses to participate, the school district **shall** make and document multiple efforts to contact the parent. Such efforts may include letters, written notices sent by certified mail, electronic mail (e-mail), telephone call, or, if appropriate, TTY communications to the home, and home visits at such time as the parent is likely to be home. Efforts may include seeking assistance from a community service agency to secure parental participation. The school district shall ensure that its efforts to involve the parent and gain parental consent meet a reasonable measure standard as articulated in federal law at 34 CFR §§ 300.300(c)(2) and 300.322(d). If the efforts listed in 603 CMR 28.07(1)(a) and (b) are attempted and documented and the district is unable to secure parental consent to a reevaluation or placement subsequent to the initial placement in a special education program, the school district shall proceed in accordance with 603 CMR 28.07(1)(b). This provision shall not apply if the parent has revoked consent to all special education and related services as provided in 603 CMR 28.07(1)(a)4. (Emphasis supplied). [↑](#footnote-ref-16)
17. 603 CMR 28.04 (3) provides

 (3) Annual reviews and three-year reevaluations. The school district shall review the IEPs and the progress of each eligible student at least annually. Additionally, every three years, or sooner if necessary, the school district shall, with parental consent, conduct a full three-year reevaluation consistent with the requirements of federal law. [↑](#footnote-ref-17)
18. The Parties were involved in a BSEA Hearing regarding alleged procedural violations but not whether the IEP was reasonably calculated to offer Student a FAPE. [↑](#footnote-ref-18)
19. While Student aspires to attend a university in Miami, he has not passed the MCAS. [↑](#footnote-ref-19)
20. Student had problems working with others and was involved in incidents including assault and batteries, and was involved in accidents (Parent) [↑](#footnote-ref-20)
21. “If the parent is requesting an independent education evaluation in an area not assessed by the school district, the student does not meet income eligibility standards, or the family chooses not to provide financial documentation to the district establishing family income level, the school district shall respond in accordance with the requirements of federal law. Within five school days, the district shall either agree to pay for the independent education evaluation or proceed to the Bureau of Special Education Appeals to show that its evaluation was comprehensive and appropriate. If the Bureau of Special Education Appeals finds that the school district’s evaluation was comprehensive and appropriate, then the school district shall not be obligated to pay for the independent education evaluation requested by the parent. ” 603 CMR 28.04 (5)(d). [↑](#footnote-ref-21)
22. 34 C.F.R. § 300.503: (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. [↑](#footnote-ref-22)