COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
SPECIAL EDUCATION APPEALS

In Re: Student v.
Brockton Public Schools

BSEA # 13-01082

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.

On August 22, 2012, Parent requested a Hearing in the above-referenced matter. Following a request for postponement by Brockton Public Schools, Hearing dates were established on September 25, 2012, and new Hearing dates were established on November 16, 2012 following another request for postponement initiated by Parent. The Hearing was held on December 10, 2012, January 8 and February 28, 2013 at the Bureau of Special Education Appeals, One Congress St., Boston, Massachusetts before Hearing Officer Rosa I. Figueroa. Those present for all or part of the proceedings[1] were:

Student's mother	
Student	
Student's stepfather	
Student's sister	
Student's friend	
Mary Joanne Reedy, Esq.	Attorney for Brockton Public Schools
Olga Garriga	Out of District Coordinator, Brockton Public Schools
Kay Seale	Brockton Public Schools
Crispin Birnbaum, Esq.	General Counsel, Department of Youth Services
Kristen Sullivan	Department of Youth Services
Sean Beasley	Department of Youth Services
Bruce Bona	Eagleton School
Maureen Pryjma	Clinical Director, Eagleton School
Jay Steinhardt	Clinician, Eagleton School
Leo Rosa	Eagleton School
Edward G. McCormick, Esq.	Attorney for Eagleton School
Paul Gavoni	Assistant Deputy Superintendent at the Plymouth County House of Correction
Amie Rumbo	Catuogno Court Reporting

[1] Some individuals provided testimony via telephone conference call.

Jane M. Williamson, Court Reporter, Doris Wong Associates, Inc.

The official record of the hearing consists of documents submitted by Parent and marked as exhibits PE-3 through PE-7, PE-9, PE-10, PE-12, PE-13, PE-14, PE-16, PE-17, PE-18, PE-19A, PE-21, PE-23 through PE-25A[2], and those submitted by Brockton Public Schools (Brockton) marked as exhibits SE-1 through SE-23; recorded oral testimony and written closing arguments. Brockton's closing argument was received on April 11, 2013, and the record closed on that date. Parent did not submit a closing argument.[3]

HEARING ISSUES:

1. Whether Brockton must reimburse Parent for transportation of Student for home visits in late 2011 and 2012;
2. Whether Brockton violated Student's/ Parent's procedural due process rights by failing to communicate with Parent regarding Student's conduct at Eagleton post-April 2012.
3. Whether Brockton improperly fail to conduct a Functional Behavioral Assessment of Student in 2012, despite Student's continuous program and rules violations at Eagleton School, and despite discipline reports;
4. Whether Brockton violated Student's/ Parent's procedural due process rights in failing to convene Student's Team to discuss behavioral issues following Student's placement at Eagleton School;[4]
5. Whether Brockton violated 34 CFR 300.530, 34 CFR 300.536, 34 CFR 300.101 and 300.504[5] regarding transgressions that may have occurred post-April 2012, and consistent with Parent's explanation of Brockton's transgressions as delineated in her November 19, 2012 letter.

POSITIONS OF THE PARTIES:

Parent's Position:

Parent states that Brockton owes her reimbursement for transporting Student for home visits[6] which responsibility Brockton assumed when it agreed to fund Student's day placement at Eagleton.

She also disputes the "legality" of Student's termination from Eagleton stating that Brockton violated Student's procedural due process rights by failing to convene a manifestation

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[2] Parent's Exhibits not listed here were excluded.

[3] Parent also did not make an opening statement at the beginning of the Hearing.

[4] Mother was reminded that no evidence prior to Student's attendance at Eagleton would be allowed because those facts and issues were already heard and addressed in BSEA #11-3408 and BSEA #12-4761, and Decisions were issued.

[5] The aforementioned regulations are explained in the Conclusions section of this Decision.

[6] Mother's separate claim for reimbursement to participate in family counseling is preserved until the issue becomes ripe consistent with the determination in BSEA #12-4761.

determination meeting, failing to conduct a functional behavioral assessment, failing to convene the Team as it received behavioral incident reports, failing to implement stay-put rights at Eagleton and moving him to home and Southeast Alternative School as opposed to a residential placement similar to Eagleton. She further alleges that her rights were violated when Brockton failed to promptly communicate with her once Brockton learned of the numerous behavioral incidents in which Student was involved, thereby preventing Mother and Student from re-evaluating the appropriateness of Eagleton for Student.

Parent also seeks continuation of family counseling.

Brockton's Position:

Brockton states that it has been responsible for Student's education since 2012. However, because Student has been committed to the Department of Youth Services (DYS) until his twenty-first birthday, compliance with his Grant of Conditional Liberties determines his ability to remain at Eagleton. The DYS commitment and GCL also impact all decision-making with respect to home passes and the delivery of information regarding behavioral incidents at Eagleton. Brockton states that the law is clear in that the Individuals with Disabilities Education Act (IDEA) applies differently to students who are subject to the type of DYS constraints to which Student is subject.

Brockton states that it agreed to cost-share the day portion of Student's residential placement at Eagleton School, after the Department of Youth Services and Parent had already agreed on this placement and had transferred Student to Eagleton School. This combined with the fact that it denied Parent's request for reimbursement, as reflected in the December 2011 IEP Amendment, frees it from any responsibility to reimburse Parent for transportation of Student for home visits. Brockton further asserts that the decision whether or not to grant the home passes was entirely within the purview of DYS and Eagleton, with Mother's consent and without Brockton's participation. As such, it is Brockton's position that transportation was provided by Parent voluntarily. Brockton also asserts that Mother signed a contract agreeing that the responsibility for transportation belonged to the placing agency. Furthermore, Brockton challenges the amount of times Mother claims to have transported Student for home visits, asserting that Student came home on fewer occasions than alleged by Parent.

Brockton disputes Mother's assertion that it had a responsibility to conduct a manifestation determination meeting when Eagleton and DYS decided to terminate Student's placement at Eagleton and further asserts that the aforementioned process was unnecessary. According to Brockton, Student was terminated from Eagleton because he violated the terms and conditions of his placement as agreed with Eagleton and DYS. Brockton was not a part of the decision to place Student at Eagleton School.

Similarly, Brockton also disputes Mother's assertion that it had a responsibility to perform a Functional Behavioral Assessment.

Instead, Brockton asserts that it acted diligently by immediately convening a meeting on June 1, 2012 (upon learning of Student's termination from Eagleton) and drafting an IEP offering Student a separate day placement at the Southeast Alternative School. Brockton asserts that Parent accepted this IEP and placement and that Student completed the 2011-2012 school year at that school.

Furthermore, Brockton offered to provide Student extended school year services during the summer of 2012, but Student declined to attend. He resumed school in August 2012 and soon thereafter, on August 27, 2012, became unavailable to receive his education when he went on the run. Brockton intends to conduct the evaluations it concedes it needs to conduct which it states it has been unable to conduct because of Student's unavailability.

FINDINGS OF FACT:

1. Student is a nineteen-year-old resident of Brockton, Massachusetts, who has been diagnosed with Bipolar Disorder; Post Traumatic Stress Disorder (PTSD); Generalized Anxiety Disorder; Major Depressive Disorder, moderate; R/O Dysthymic Disorder; Attention Deficit Hyperactivity Disorder (ADHD); Learning Disorder, NOS (nonverbal). A psychiatric evaluation conducted by Dr. Turley on or about January 27, 2011made additional diagnoses including Intermittent Explosive Disorder, Conduct Disorder, Rule out ADHD. He has also had a history of severe trauma, academic problems, out of home placements, court involvement and family issues (SE-8). Because of juvenile delinquency, he was committed to DYS custody in July 14, 2010 and will remain in DYS custody through his twenty-first birthday (SE-1; SE-8; SE-8A; Mother, Sullivan).

2. On or about September or October 2011, Student was admitted to Eagleton School (Eagleton), Parent's preferred placement, as a residential student. Following an "RRT" on September 11, 2011, Student was allowed to attend Eagleton by agreement of Parent and the Department of Youth Services (DYS) (SE-1). No representative from Brockton was in attendance at the RRT, nor was their presence required (PE-9; SE-1). Student began attending Eagleton on October 23, 2011 (SE-1; SE-2; SE-3; SE-4). As a condition to leaving his DYS facility in order to attend Eagleton, Student was required to read and sign a Grant of Conditional Liberties (GCL) with DYS. Without signing said GLC, Student would not have been able to leave his DYS facility (SE-6; Student).

3. Student's GLC plan, signed on October 20, 2011, contained the following conditions:

    - I will obey all local, state, and federal laws. I understand that an arrest for a new offense is a presumptive violation of this provision.
    - I will inform my caseworker or other DYS agent immediately if I am contacted, arrested or otherwise detained by a law enforcement officer. I also will inform my caseworker or other DYS agent immediately if I am asked to appear as a witness in a criminal proceeding, ordered to court by subpoena or summons, or if I learn that any law enforcement agency is attempting to serve me with a warrant for any criminal or civil process.

- I will not leave the state of Massachusetts without permission from my caseworker or other DYS agent.
- I will not escape or go whereabouts unknown.
- I will attend school regularly or make earnest efforts to find and maintain legal employment.
- I will notify my caseworker or other DYS agent within 24 hours of any changes in my approved residence, schooling or employment.
- I will not serve as an informant or special agent for any law enforcement agency.
- I will not knowingly engage in gang activities.
- I will not use drugs or alcohol or knowingly frequent places where they are dispensed or used.
- I will not manufacture, carry, possess or use an object or weapon that can be used to inflict bodily harm.
- I will contact my caseworker or other DYS agents as directed and in accordance with my level of supervision.
- I will be returned to custody voluntarily if my personal safety is at risk or if I am deemed a risk to others.

I will comply with all requirements of my relapse prevention plan and treatment plan, including the following:

- Comply with all the rules of the Eagleton School. Comply with all Pass requirements when eligible[, i]ncluding making call in's as directed, staying under mother's supervision during home passes and returning to placement without incident. Will not represent or engage in gang activity in any fashion or by any means of communication including computer sites, cell phones, etc. (SE-5; SE-6).

4. On October 21, 2011, Brockton agreed with DYS to cost-share the day portion of Student's placement at Eagleton, including extended year services with DYS (SE-5; SE-7; SE-8A; Garriga). Brockton later drafted an IEP Amendment reflecting said agreement and specifically excluding transportation (SE-8A; Mother, Student).

5. The Transportation Services section of the IEP states that no transportation is required as a result of Student's disability. The pre-printed language next to the "No" box marked by Brockton notes

> Regular transportation will be provided in the same manner as it would be provided for students without disabilities. If the child is placed away from the local school, transportation will be provided (SE-8A).

6. In pertinent part, the Narrative Description of School District Proposal of the December 12, 2011 amended IEP states

> The 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 for these evaluations [was] once again presented at the Team meeting held on December 12, 2011.
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> …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 is not [its] responsibility.
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> …[Student] has been at Eagleton School since October 2011. A placement page was presented to [Mother] immediately upon DYS notifying Brockton School Department of such a 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 (SE-8A).

7. Following placement of Student at Eagleton, Parent requested convening of Student's Team. Brockton held a three-and-a-half-hour long Team meeting on December 12, 2011 (SE-9). At the end of the Team meeting, Parent requested that transportation reimbursement be provided by Brockton and that this service be added to Student's IEP, but Brockton denied Parent's request (Id.). The Transportation Services portion of the IEP reflects that no transportation would be provided. Following the meeting of December 12, 2011, Parent asked to be reimbursed for transportation several times, but Brockton declined her request (Mother).

8. On or about December 19, 2011, Mother accepted the proposed IEP placement at Eagleton. Mother testified that signing the IEP was a pre-condition for Brockton's funding of the day portion of Student's placement at Eagleton (SE-8; SE-8A; Mother). SE-8 also contains an unsigned, undated, partial rejection of portions of the December 2011 Amended IEP, faxed by Parent to Brockton on January 11, 2012. This document states

> The IEP previously proposed by Brockton was rejected therefore Brockton cannot Amend. Info included is inaccurate. The last accepted IEP was 3/10-3/11. IEP is in violation of 34 CFR 300.320(A)(7) & 34 CFR 300.320(b)(1) & (2). Transportation- IEP does not specify which agency is "cost-sharing". Transition Plan was developed in violation of 34 CFR 300.43 (b) & 34 CFR 300.320(b) *et seq*.. A placement page & transitional goals & [--unreadable--] (SE-8).

9. At Eagleton, students are required to follow rules and maintain their behavior in order to reach and maintain the expected behavioral "level". Students must be "on level" in order to leave campus for off site visits with family members. Once they reach level, they may be eligible for a day pass or for a home visit if recommended by their clinician (Student). Student testified that he initiated the request for passes to go home by asking his clinician, Jay Steinhardt, and if he was on level, DYS would approve the pass for him to go home. The main purpose for approval of the home passes was to help Student transition home when he left Eagleton to reintegrate with his family (Student).

10. Because of Student's DYS involvement, all of Student's off-campus visits with his family had to be approved by DYS prior to the visit (Sullivan). While off-campus, Student had to carry his pass at all times, observe his GCL and stay in contact with his DYS caseworker (Student; Sullivan). Student was however, allowed to leave campus if accompanied by an Eagleton staff for Eagleton sponsored activities (Bona, Beasley).

11. Between November 2011 and May 2012, Parent was allowed to take Student off campus for short visits on three (3) occasions. During one visit they went to the Holyoke Mall, they visited the Great Barrington Outlets on another occasion, and on a third occasion they ate at *Friendly's* (Student). According to Student, Mother also participated in three counseling sessions with him and his clinician and he recalled going home for a weekend visit after one of those (Student).

12. SE-11 contains the passes approving Student's area and home visits as follows:

    A four to five hour pass on November 26, 2011.
    A five hour pass on December 10, 2011.
    A four day home pass from December 23 to December 27, 2011. An Eagleton staff met Mother at Exit 11 A in the Mass Pike and Parent provided the rest of the transportation (SE-11).
    A five hour pass on January 21, 2012.
    A five hour pass for January 28 and January 29, 2012.
        [An email from Jay Steinhardt (LICSW, Student's counselor at Eagleton) to Olga Garriga, Brockton's Out of District Coordinator, dated February 17, 2012, states that Student was on a home visit with Mother (SE-23). The record contains no home visit pass for that date]
    A home pass from February 22 to February 23, 2012. [7]
    A home pass from March 2 to March 5, 2012[8].
    An eight hour pass on March 22, 2012 to attend court and immediately return to Eagleton.
    A home pass from April 6 to April 9, 2012.
    A four hour pass on April 20, 2012.
    A four hour pass April 21, 2012.

[7] As a condition to this visit, Student was banned from using *Facebook* while at Mother's house.
[8] See also email dated March 1, 2012 from Kristen Sullivan of DYS to Jay Steinhardt.

A home pass from April 27 to April 29, 2012.
A home pass May 11 to May 13, 2012.
A home pass May 18 to May 20, 2012 (SE-11).

SE-11 documents seven (7) home passes approved by DYS and six (6) passes for day visits (SE-11). Most of the pass requests were initiated by Student, not Eagleton (Student, Mother). Although no pass was submitted for February 17, 2012, Jay Steinhardt's (Student's clinician at Eagleton) email indicates that Student was on a home visit and that an individual from Eagleton would drive Student to meet Mother at exit 11A on the Mass Pike (SE-23).

13. Student testified that SE-11 was inaccurate. He stated that he had left Eagleton on several occasions and was unsure as to whether DYS had been informed. He testified that he went to Hudson, New York on a "med run" for another student because they needed two students to go and any time students left campus with a staff member they did not require a pass. He testified that while he believed that he required a pass every time he left Eagleton, he routinely left campus with a staff member to go bowling, get Chinese food or walk around town, and he did not need a pass to do any of these. He surmised that if the record did not reflect those outings, similarly it failed to reflect all of the times that he went home with mother (Student).

14. Emails from Ms. Sullivan and Mr. Steinhardt dated January 24, 2012 and January 30, 2012 document denial of passes to go home during the weekend of January 20th and February 3rd, 2012 (SE-23). Mr. Steinhardt's email to Ms. Garriga, dated February 17, 2012, states that Student had been maintaining level three behavioral expectations for most weeks (SE-23).

15. Parent and Student testified that Student had gone on between twenty and twenty-five home visits while attending Eagleton. When asked to break it down during cross-examination Student testified that the first visit had occurred in December 2011 for the Christmas break, and thereafter he had gone home two or three times in January 2012, three or four times in February 2012 for home visits and another couple of times to go to the hospital because of an injury, once or twice in March 2012 (he lost "level" due to a behavioral incident resulting in a denial of home visit that month), four times in April 2012 (one of which was school vacation) and two or three times in May 2012. Student testified that he also went home in the middle of the week, on a Wednesday returning to Eagleton on Friday or Saturday and other times left on Friday returning on Sunday. Student requested to go home every week to be with his family (Student).

16. Mother testified that she transported Student back and forth to Eagleton on twenty-four occasions. According to her, she transported him on the weekends of November 18 and 24, 2011, December 9, 23 and 29, 2011, and on January 13, 20, 27, February 2, 10, 18 (for school vacation returning him on February 24), March 2, 9, 16, 23, 30, April 6, 12 (school vacation), 21, 27, May 3, 11 and 18, 2012, before Student was terminated from Eagleton on May 21, 2012. In addition to the home visits, Mother testified that she visited with Student on other occasions, as for example to participate in counseling sessions, and on two occasions to take Student out in the community (Mother).

17. According to Mother, the distance between her home in Brockton and Eagleton School is 303.55 miles, round trip. She seeks reimbursement for tolls[9] (Some $2.70 and some $2.10) and mileage at 51¢ per mile. Mileage costs for a round trip, according to Parent, is $151.81. She seeks a total reimbursement of $3,870.25 for mileage for the twenty-five visits she alleges, in addition to the tolls (PE-18).

18. Student's friend, testified that she accompanied Mother when she travelled to Eagleton to pick-up Student, which according to her, occurred on thirteen (13) occasions (Friend). She testified that Parent had confided that Student, who engaged in unsafe behaviors when at home, was safe and well served at Eagleton (Friend).

19. Student's Eagleton incident reports were forwarded to DYS but not consistently to Brockton until after February 17, 2012 when Olga Garriga requested via email that the incident reports be sent to her as the incidents occurred (SE-23).

20. The record reflects Student's willingness and unwillingness to comply with Eagleton Rules and follow the GCL policy. An incident on January 27, 2012, involving the use of a CD player (that Student was not supposed to have) at inappropriate times, was described by Kristen Sullivan of DYS in an email in which she wrote,

> … being honest, not manipulating, following rules, etc. [, he] cannot have things his way all the time and being able to accept that seems to be a big challenge for him (SE-23).

Overall, and with the exception of minor infractions, Student behaved well (considering previous placements) between October 2011and February 2012 (SE-12; SE-23; Steinhardt). Eagleton's Incident Reports document 14 significant behavioral incidents spanning through May 21, 2012 (SE-12; SE-15). The two most dangerous incidents involved an assault on a staff member and a separate assault on another student (SE-12; SE-13; SE-15). The remainder of the behavioral incidents involved disruptive behavior, provocation, agitation, threatening statements, swearing, disrespectfulness, argumentative statements, leaving his room or a building without permission and the like (SE-12). According to Parent, given Student's previous behavior, these incidents constitute minor infractions for Student (Mother). An email dated March 13, 2012 from Jay Steinhardt to Kristen Sullivan notes that Student was having a difficult time and Eagleton staff was looking to have an emergency meeting with DYS staff (SE-23). According to Mr. Steinhardt, as Student's court date was approaching on March 18, 2012, Student became more anxious and dysregulated (Steinhardt, Sullivan).

[9] Parent submitted numerous copies of the same toll fare receipts. She submitted a total of 26 toll receipts for the for January 1, February 2 (two receipts, approximately four hours apart), 14, 18 (two receipts, two and a half hours apart) 23, 24 (two receipts, two and a half hours apart), March 25, April 6, 12 (two receipts, two and a half hours apart), 20, 21, 27, 29, 30, May 11 (two receipts, approximately three hours apart), 13, 14, 18 (two receipts, approximately two and a half hours apart), 20 (two receipts, approximately two hours apart), 2012 varying in price, $2.10 or $2.70 (PE-18).

21. On March 29, 2012, Brockton received a copy of all of Student's incident reports since the time of his arrival at Eagleton (PE-23D).

22. On April 4, 2012, Student, his Eagleton clinician and Kristen Sullivan, his DYS caseworker met at Eagleton to discuss Student's education and his behavior, and to help him understand the impact his behavior had on his ability to return home. Student was adamant that he be returned home in June 2012. Additionally, Student's continued issues in the community (related to *Facebook* postings, safety, and ongoing association with known undesirable members in the community) were discussed. Ms. Sullivan's notes reflect Student's agreement that he understood what he needed to do including his GCL policy (SE-9). Ms. Sullivan further notified Student that she would not approve his home passes if he had outstanding behavioral incidents at the time of the request (SE-22). While Student was described as respectful and appropriate during the meeting, Ms. Sullivan raised serious concerns about Student's choices of associates in the community (SE-9).

23. Eagleton held a weekend gathering with workshops called UNIFY on April 21 and 22, 2012 (SE-23). Student, Mother and sister partook of the activities at which Student made a presentation (Mother).

24. During Student's tenure at Eagleton, Mother requested Team meetings to review Student's behavior and participation in his educational program, when she received copies of the clinical updates. The updates provided to her on or about April 2012 reflected Student's refusal to get up in the mornings, his lack of participation in the program, unwillingness to engage in school work and aggression toward staff and or other students (Mother). Academically, the report cards show that he was obtaining A's, B's, and a few C's s in all of his classes (PE-23).

25. At Eagleton, Student's counseling sessions focused on working on strategies that would allow Student to complete the program at Eagleton, and discharge to his home setting without returning to negative endeavors and associating with negative influences in the community. Attempts to get Student to consider taking medication to address his mood instability and chronic reactivity met with adamant opposition on Student's part. Family therapy was described as sporadic but the clinician noted Mother's concerns, engagement and willingness to learn and accept strategies to better handle Student (SE-14; SE-15).

26. Overall, Student's school performance at Eagleton was inconsistent as he became less engaged in the academic process as the year unfolded (SE-14). Maureen Pryjma, Eagleton's Clinical Director's note dated May 9, 2012 notes

> …[Student] said that he is unable and unwilling to do any academic work at this point, as all he wants to do is be discharged from Eagleton to his home and his former alternative school. He is under the impression that as long as he maintains appropriate behavior, DYS will agree to his discharge in June. He sees no relationship between completing his academic work at Eagleton and DYS discharge recommendations or future academic success (SE-14).

27. Student's grades for the third (3rd) quarter of the 2011-2012 school year at Eagleton (his eleventh to twelfth grade) were as follow:

Language Arts	C
Mathematics (Geometry/ Algebra II)	B
Social Studies	C-
Science	C-
Health	B
Arts (Art)	B
Arts (Music)	B
Physical Education	A
Horticulture	A
Culinary Arts	B

Student received incompletes for the fourth (4th) quarter due to early termination from his program at Eagleton (SE-16). The 3rd quarter Narrative of Educational Progress states

> [Student's] attitude greatly interfered with his academic progress. When he had a positive attitude he did well in class and completed his assignments. When he had a negative attitude, he refused to come to class. [Student] missed several classes due to his leg, home visits, and being out of program. [Student] refused to participate in all subject areas consistently (SE-16).

28. On May 10, 2012, Brockton issued an invitation to Student's annual review IEP meeting scheduled for June 12, 2012, at Eagleton (SE-17). According to Ms. Garriga, this meeting changed location when Student's placement at Eagleton was subsequently terminated (Garriga).

29. During the home passes on the weekends of May 11 to May 18, and May 18 to May 20, 2012, Student violated GCL conditions by associating with known gang members. All other conditions of his pass were followed (SE-22). Ms. Sullivan later learned that Student's progress report received on May 15, 2012, contradicted previous reports about Student's positive performance at Eagleton. She raised concern that the contradictory information reinforced the wrong message for Student (*Id.*).

30. The report of Maureen Pryjma, Eagleton's Clinical Director, dated May 9, 2012, forwarded to the Parties on May 15, 2012 noted Student's inconsistent academic performance, major[10] and minor behavioral incidents while at Eagleton, and his improved participation in counseling with the expectation that he could be discharged to the home in June 2012 (PE-23A; PE-23B; PE-23C). His attendance to academics became increasingly irregular over time to the point where he was barely meeting with his tutor from mid-April 2012 forward.

[10] These were: "an assault on a peer in his dorm, and disarming the alarm system in order to climb out his window and 'take space' outside his dorm at 2:00 a.m." (PE-23A).

By May 9th he was reportedly stating that he could not stand the students at Eagleton, was unwilling to do any academic work and all he wanted was to be discharged home and attend his former alternative school (PE-23A). Student was under the impression that if he maintained appropriate behavioral expectations DYS would discharge him home in June 2012 (PE-23A; PE-23B).

31. On May 21, 2012, Student was terminated from Eagleton as a result of assaulting another student multiple times (SE-12; SE-23; Sullivan, Garriga, Steinhardt, Beasley, Leo Rosa). Mr. Steinhardt wrote to DYS asking that Student be violated (referring to the violation of his GCL) and that he be picked up immediately (*Id.*). Ms. Sullivan notified Mother and discussed the incident with Student who provided a different report than the one offered by Eagleton staff (SE-22).

32. Eagleton prepared a Clinical ISP Review, Discharge Summary covering the period from March 29 to May 22, 2012 (PE-23-C). The report states that Student had a difficult time following the structure of the program and had evidenced verbal and physical aggressiveness to students and staff. Specifically it stated

> [Student] has shown a complete disregard to take responsibility for his actions. For so many of these behaviors, he has lied, provided excuses, and intended to manipulate staff into believing that he was not at fault in any way. This occurred up until the last incident where he assaulted another student on 5/21/12. [Student] can be seen on the video charging toward the other student, taking off his backpack, and attacking him. When questioning [Student] he stated "he attacked me". [Student's] overall lack of ownership and adamant denial for his mistakes has made it extremely difficult to treat him. Therefore, little progress was made by [Student] in the last two months. Due to the assault and the described behaviors above, [Student] was "violated" by DYS and prematurely discharged on 5/22/12. [Student] was respectful and thankful for everyone's help as he was leaving Eagleton School.
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> … It is clear that his continued pattern of having increased anxiety leading to aggression has been a difficult cycle for [Student] to recognize and adjust. [Student] will continue to need a counselor who can help him understand this cycle of anxiety and aggression (PE-23-C).

Additional recommendations were made for Student to be assigned a mentor, consider medication, have psychiatric consultation, vocational advisement, and receive academic advise to assist him in pursueing his interest of attending college. Continued family counseling was also recommended to help empower Mother and help her learn strategies on how to manage Student (PE-23D).

33. On May 22, 2012, DYS held an "RRT" to discuss Student's violation of his GCL. Mother attended this meeting along with Sean Beasley, Kristen Sullivan and five other individuals from DYS (PE-9A). Up to that point Ms. Sullivan and Mother had been discussing Student's

transition home at the end of the school year, assuming that he followed Mother's rules and his GCL (SE-22). During the RRT, Mother stated her disagreement with Eagleton's termination of Student and Eagleton's failure to afford Student the procedural rights afforded to children with disabilities such as Eagleton's refusal to grant Student IDEA stay-put rights (SE-22).

34. Ms. Sullivan requested that Student be "revocated" for DYS purposes and that he be granted a 15 to 30 day disposition to allow Brockton to locate a school placement for Student. Student would be allowed to transition home with Mother if he followed her rules, and attended school. Brockton was notified of Student's termination from Eagleton. In her report, Ms. Sullivan mentions the possibility for Student to attend Southeast Alternative School and partake in an extended school year program. Said plan would allow time for clinical services to be put in place for Student and his family, as well as other requested or mandated services. All of the aforementioned was premised on Student's compliance with his GCL and understanding that any violation would result in appropriate sanctions including the possibility of having him returned to DYS custody (SE-22). When presented with the option of leaving her son at DYS or taking him home, Mother chose to bring Student home (Beasley, Mother). Ms. Sullivan further noted

> …I have concerns for his safety and his family's safety should he continue to choose to be actively gang involved. These concerns have been discussed openly with [Student and Mother]. Unfortunately, it does not appear that attempts at the treatment approach to having [Student] commit to leaving this lifestyle behind, have been successful.
>
> [Mother] has made it clear that she will not tolerate this in her home and that she will not put her family in any further jeopardy should [Student] decide to continue down this road. If he is placed back in his home and realizes that he risks having this as his placement perhaps this will be a successful approach to having him make the changes he needs to make (SE-22).

35. Despite the difficulties at Eagleton, Student's sister and Mother testified to the positive changes they had noticed in Student while he attended Eagleton, the most noticeable of which was his ability to be more patient with others and to have less frequent outbursts of anger (Sister, Mother). These positive changes would again disappear as the summer progressed and Student decompensated behaviorally (Friend, Mother, Stepfather).

36. On May 23, 2012, Mother requested that Brockton convene an emergency Team meeting to discuss Student's change in placement [without convening the Team.] She also requested to discuss services in Student's IEP including the addition of family counseling and again also requested reimbursement for transportation of Student from Eagleton for home visits. She later renewed her request for reimbursement of transportation via letter dated June 19, 2012 (PE-18).

37. Olga Garriga of Brockton emailed Mother on May 23, 2012, notifying her that Brockton was prepared to send out referral packets to approved day schools so that an appropriate placement could be identified promptly. She further requested that Mother sign a release of records and asked that Mother and Student visit the viable programs and complete the admission process. The email stated that Southeast Alternative had been identified as one of the possible placements and proposed that the parties meet on June 1, 2012 to discuss placement options for Student. As previously proposed by Brockton, the Team would reconvene on June 12, 2012 for the annual review (PE-18).

38. Mother signed the release of information form on May 25, 2012 and the packets were forwarded expeditiously (PE-25).

39. According to Bruce Bona, Executive Director of Eagleton, Student was not entitled to the same protections as other IDEA eligible students without DYS involvement. He testified that a violation of probation supersedes the IDEA stay-put rights for purposes of Student's termination at Eagleton (Bona).

40. In an email addressed to Mother, dated May 25, 2012, Brockton's attorney noted Brockton's position regarding its denial of reimbursement for transportation stating

> I have again been asked to respond to your communications. The Brockton Public Schools continues to refuse to reimburse you for transportation to and from Eagleton, as family counseling and related transportation is not included in any IEP ever offered to [Student] and his team has never considered including it in his IEP. We will not respond to any further communications regarding this claim, or the baseless claim that student is entitled to "stay put" status and return to Eagleton School. As outlined in Ms. Garriga's e-mail of May 23, 2012, the school district will make referrals to day placements as authorized by your signed consent, and will convene a placement meeting to be followed by an IEP review meeting (SE-19).

41. On May 29, 2012, Brockton forwarded a Team meeting invitation to Mother and Student proposing to meet on June 1, 2012 to discuss a day placement for Student consistent with his then current, accepted IEP (PE-6; SE-20). Mother, Ms. Garriga, Brockton's attorney and Marsha Eidling, of Brockton, met and agreed to Student's placement at the Southeast Alternative School (Southeast) from June 4 to June 12, 2012 for completion of the school year. Student was invited but he did not attend the meeting. Parent accepted the proposed placement on June 1, 2012 and Student began attending Southeast, albeit with much difficulty and resistance as he stayed-up at night playing video games and then wanted to sleep during the day (PE-6; SE-20; Friend, Mother, Stepfather).

42. Student's Team convened for his annual IEP review meeting at Southeast Alternative. During the meeting, Student became angry due to Eagleton's staff participation and statements, and he left the meeting becoming disruptive to the process by honking the horn in Mother's car in an attempt to end the meeting. Southeast Alternative staff assisted him to

calm down while the meeting continued. Student refused to participate in extended school year services during the summer, so extended school year services were not offered. According to Mr. Sean Beasley of DYS, Student again made statements that he would rather be in DYS lock-up than in a residential placement, a comment he had previously made when he became frustrated at Eagleton (Beasley, Garriga, Mother, Student).

43. Following Student's annual Team meeting on June 12, 2012, Brockton forwarded an IEP to Student and Mother, offering Student a day placement at Southeast for the 2012-2013 school year. Brockton also continued to propose a vocational and academic achievement evaluation for Student. Mother requested that family counseling be provided, but Brockton rejected her request and Student refused to participate if it were offered. The IEP however, offered individual counseling and therapeutic support for Student (SE-21).

44. On June 25, 2012, Brockton's attorney emailed Parent offering to reimburse her for three round trips relating to home visits for school vacations in December 2011, February and April 2012 pending further confirmation from DYS as to whether Student or Parent initiated the rest of the visits or whether they occurred at the request of DYS (PE-18).

45. Student's friend, Mother, Sister and Stepfather noted Student's issues with irritability and his reluctance to comply with Parent's requests. Student lashed-out at them and was involved in physical altercations with mother and with Stepfather when at home (Friend). While at home, Student only slept one hour at night as he spent most of the night playing computer games. As a result, he slept during the day as he was too tired to wake-up and go to school (Friend, Mother, Stepfather). Parent described Student's sleeplessness as a sleep disorder which should also be addressed as part of his educational needs (Mother).

46. Mother and Friend testified that Student would have been available to be evaluated by Brockton from the time he came home in May 2012 through the summer, prior to August 2013 when he went "on the run" (Friend, Mother).

47. Student attended school for a couple of days during the 2012-2013 school year and then went on the run. At present he is committed to the Plymouth House of Correction (Beasley, Mother).

CONCLUSIONS OF LAW:

The Parties do not dispute that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act[11] (IDEA) and the state special education statute[12], or that he is entitled to a free, appropriate public education (FAPE)[13]. However, Student is committed to DYS until his twenty-first birthday and is subject to the terms delineated in his GCL.

[11] 20 USC 1400 *et seq*.
[12] MGL c. 71B.
[13] MGL c. 71B, §§1 (definition of FAPE), 2, 3.

Parent claims a right to reimbursement for Student's transportation and asserts that Brockton violated Student's and Parent's procedural due process rights as explained below. In rendering my decision, I rely on the facts recited in the Facts section of this decision and incorporate them by reference to avoid restating them except where necessary.

The IDEA and the Massachusetts special education law, as well as the regulations promulgated under those laws, mandate that school districts offer eligible students a FAPE. A FAPE requires that a student's individualized education program (IEP) be tailored to address the student's unique needs[14] in a way "reasonably calculated to confer a meaningful educational benefit"[15] to the student.[16] Additionally, said program and services must be delivered in the least restrictive environment appropriate to meet the student's needs.[17] Under the aforementioned standards, public schools must offer eligible students a special education program and services specifically designed for each student so as to develop that particular individual's educational potential.[18] Educational progress is then measured in

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

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

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

[17] 20 USC 1412 (a)(5)(A).

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

relation to the potential of the particular student.[19] At the same time, the IDEA does not require the school district to provide what is best for the student.[20]

In this matter, Parent/ Student carry the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005), and must prove their case by a preponderance of the evidence. Also, pursuant to *Shaffer*, if the evidence is closely balanced, the moving party, that is Parent, will lose.[21]

Upon consideration of the evidence, the applicable legal standards and the arguments offered by the Parties in the instant case, I conclude that Parent/ Student have not met their burden of persuasion pursuant to *Shaffer* and therefore, are not entitled to all of the relief sought.

I note that Parent has filed numerous cases with the BSEA and has had at least three other Decisions issued by the BSEA (regarding her son and involving Brockton) between 2010 and the summer of 2012. (See BSEA #11-3408, BSEA #12-4761 involving Student and Brockton. See also BSEA# 09-5294, BSEA #10-8142, BSEA #11-0520 and BSEA #11-1630 involving Student and other parties). To the extent that Parent attempted to re-litigate issues and claims already heard and addressed by the BSEA in the previous cases, these were disallowed under principles of *Res Judicata* and *Collateral Estoppel* and are not being discussed in this Decision.[22] I further note that this Decision solely addresses Brockton's responsibility toward Student and not any responsibility that DYS or Eagleton may or may not have toward him. Parent's rights in this respect were preserved in the Ruling denying joinder of DYS and Eagleton issued on November 29, 2012 in the instant case. My analysis of the evidence and reasoning follows.

Student, who is nineteen years old, has been remanded to the custody of the Department of Youth Services through his twenty-first birthday. Throughout the relevant periods in this Decision, the decision-making authority regarding where Student may reside and therefore, the location for provision of services has been with DYS (in consultation with Parent) leaving Brockton with little discretion as to the location where it must deliver Student's IEP services. As such, Student's DYS commitment has impacted Brockton's ability to enforce or comply with procedural provisions otherwise afforded IDEA eligible students without DYS involvement. I note that the appropriateness of Eagleton as a placement for Student is not at

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[19] *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 199, 202 (court declined to set out a bright-line rule for what satisfies a FAPE, noting that children have different abilities and are therefore capable of different achievements; court adopted an approach that takes into account the potential of the disabled student). See also *Lessard v. Wilton Lyndeborough Cooperative School Dist*., 518 F3d. 18, 29 (1st Cir. 2008), and *D.B. v. Esposito*, 675 F.3d at 36 ("In most cases, an assessment of a child's potential will be a useful tool for evaluating the adequacy of his or her IEP.").

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

[21] *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

[22] See Rulings in the instant case limiting the scope of the Hearing as well as the Rulings and Decisions issued in the previous BSEA cases involving the same Parties mentioned earlier in this Decision.

issue. Rather, the case centers on whether Brockton followed certain procedural due process rights afforded students with disabilities and their parents, and whether Brockton violated a parental right to reimbursement for transportation.

Student's residential placement at Eagleton was determined by DYS in agreement with Mother and initiated in late October 2011. Thereafter, Brockton agreed to cost-share the day portion of said placement as reflected in the IEP issued by Brockton in December 2012, and accepted by Mother on December 19, 2011, for the period through June 12, 2012 (SE-8A). By all accounts, and while not devoid of challenges, Student's placement at Eagleton had been one of his most successful placements during the past several years (Mother, Sister, Garriga). The record shows that Student's more serious behavioral issues occurred starting in March of 2012. Thereafter, Student became more unwilling to follow the rules culminating with the incident which caused his termination at Eagleton on or about May 21, 2012. Parent is correct that throughout this period and until the present time, Student's behavior and choices demonstrate that he requires more structure than Parent is able to provide him at home. However, when presented with the option of leaving her son at DYS or taking him home, as occurred in May 2012, Parent chose to bring him home, a less structured environment in which he has been unable to manage his behavior and make positive choices. The record shows that DYS and Parent made this choice without Brockton's input (Beasley, Sullivan, Garriga). At home, he did not follow rules, refused to do chores, stayed up all night playing games, refused to attend school, was aggressive to Mother, Stepfather, and Friend, and chose to keep bad company eventually, allegedly, re-engaging in criminal activity (Mother, Stepfather, Friend, Sullivan). With this background, I turn to Parent's specific claims.

1. **Whether Brockton must reimburse Parent for transportation of Student for home visits in late 2011 and 2012**:

Parent seeks reimbursement from Brockton for transportation of Student for approximately twenty-five home visits while he was at Eagleton. She claimed that although Student required residential placement, since Brockton agreed to fund a day-placement for Student at Eagleton, Brockton was automatically responsible to cover transportation expenses.

In addition to the twenty-five occasions in which she transported Student for home visits, Parent testified that she visited Student on at least three other occasions, when he obtained off-grounds, day passes (Student, Mother). On the three off-grounds visits, they visited the Holyoke Mall once, the Great Barrington Outlets once and Friendly's once.

Brockton argued that Student's placement at Eagleton in October 2011 was determined by DYS and Parent, without Brockton's input. As such, the tenure of Student's placement at Eagleton was governed by the terms of his GLC (which Student willingly signed in order to leave DYS lock-up and attend Eagleton) pursuant to his DYS placement (SE-4; SE-5; SE-6). Brockton argues that the change in the legal nature of Student's placement process, alters the rights and responsibilities between the Parties as the DYS process trumps the special

education placement process, relieving Brockton of certain responsibilities which it would otherwise have under special education law.

The N1 accompanying Brockton's December 2011 IEP, notes Brockton's agreement to fund the day portion of Student's placement at Eagleton, and specifically notes Brockton's refusal to fund transportation (SE-8A). Eagleton, DYS, Parent and Student controlled when Student visited the home in accordance with DYS protocols, again without Brockton's input. Therefore, Brockton denies any responsibility to fund transportation for home visits except for the three visits occurring in December 2011, February and April 2012 associated with Eagleton school vacation.

The record supports Brockton's arguments. Regarding the granting of permission for home visits, according to Student, once he reached "level", he was allowed to go home, and indeed went home any time he could. He usually left Eagleton on a Wednesday or Friday, and returned to Eagleton anytime between Friday and Sunday. He explained that there were four behavioral levels at Eagleton and they all came with a probation period during which the "level" would be dropped if there were behavioral incidents (Student).

Permission for the visits was within the sole discretion of DYS with Eagleton's clinician's recommendation. Once Student was "on level", he could request of his clinician, Jay Steinhardt, permission to go home. Mr. Steinhardt then forwarded the request to DYS for approval. Once the request was approved, a pass was issued (Bona, Steinhardt, Sullivan, Beasley). According to Kristen Sullivan, nine passes were issued, according to Bruce Bona and Sean Beasley, ten passes were issued and according to Student, approximately thirteen to about twenty or twenty-five (SE-11; Sullivan, Student, Beasley). According to Mr. Bona, Student went home some weekends following his first visit during the holiday break in December 2011 and Mother came to visit him at Eagleton many other weekends. He explained that many of the off-ground visits with the family did not require a DYS pass (Bona). Student's friend testified that she had accompanied Mother to pick-up Student thirteen times, and Mother testified that she had transported him for twenty to twenty-five home visits (Friend, Mother). While at home, Student had to carry the pass with him at all times and check-in with Kristen Sullivan. The passes were approved for a specific purpose: reunification with the family (SE-11).

Regarding the conditions for granting of passes, Student testified that if he lost "level" on a Monday he would not be able to be back "on level" by Friday. According to him, his "level" only dropped in March 2012 as a result of which he was unable to go home that week (Student). He testified that he came home starting in December 2011, mostly on requests initiated by him (SE-11; Student). He recalled participating in family counseling with Parent on three occasions and going home with Parent after one of those sessions (Student). According to Student, family counseling had been recommended by Maureen Pryma.

Student testified that SE-11 was inaccurate explaining that he had left Eagleton on several occasions and was unsure as to whether DYS had been informed. According to him, he went to Hudson, New York on a "med run" for another student because they needed two students

to go and any time students left campus with a staff member, they did not require a pass. He testified that while he had been under the impression that he required a pass every time he left Eagleton, he routinely left campus with a staff member to go bowling, get Chinese food or walk around town, and he did not need a pass to do any of these. He surmised that if the record did not reflect those outings, similarly it failed to reflect all of the times that he went home with Mother (Student).

The record contains insufficient reliable information to support Mother's claim that Student visited the home on twenty-five occasions and more importantly that she was legally entitled to the reimbursement for transportation she claims. While I do not discredit Parent's testimony in that she went to Eagleton at least 25 times, she did not produce reliable supporting evidence that she had done so. The testimony offered at Hearing varied from nine to twenty-five visits, PE-18 contained triplicates of the same toll receipts amounting to approximately 13 trips and SE-11 did not support DYS granting twenty-five passes. More importantly, the N1 attached to the December 12, 2011 IEP specifically noted Brockton's denial of Mother's request for transportation reimbursement

> …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 is not [its] responsibility (SE-8A).

Brockton's position was again stated in the email sent by Brockton's attorney to Parent on May 25, 2012 (SE-19). Assuming *arguendo* that Mother had been able to prove the number of visits (which she did not), she would have had to prove that the home visits were connected to Student's education and that Brockton had been involved in the decision to grant the home passes, none of which she did. The visits occurred because Student wished to go home and the requests were mostly initiated by him (Student). More importantly, transportation was not part of the accepted IEP nor was it a necessary "related service" for Student. Since the visits occurred at the request of Student and Brockton never agreed to reimburse Parent for transportation, Brockton was not responsible to reimburse Parent for all of the visits. Mother did not meet her burden of proof that she had transported Student twenty-five times back and forth to Brockton. More importantly, Brockton is correct that it was not legally responsible to reimburse Parent because it did not place Student at Eagleton, it only agreed to cost-share the day portion subsequently to DYS placement, transportation was not part of the accepted IEP as noted in the N1, Brockton had no control whatsoever of the granting and frequency of Student's visits to his home, and the home visits were not connected to Student's education.

Brockton is however, responsible to reimburse Parent for the visits occurring during school vacation times, as Brockton had agreed to do in its email to Mother in late May 2012 (SE-19). Eagleton's school vacations/breaks occurred in December 2011, February and April

2012. Therefore, Brockton shall reimburse Parent for transportation, inclusive of tolls, for the three aforementioned breaks.

I note that this Decision addresses solely Brockton's responsibility to reimburse Mother for transporting Student for home visits. It does not address Mother's right to reimbursement for participation in counseling at Eagleton[23] or DYS' possible responsibility for reimbursement of transportation. In this regard, Mother's right to file a Hearing request is preserved subject to the applicable statute of limitations.

2. **Whether Brockton violated Student's/ Parent's procedural due process rights by failing to communicate with Parent regarding Student's conduct at Eagleton post April 2012:**

Parent argued that Brockton had failed to communicate with her regarding problem behaviors displayed by Student. She claims she might have asked Eagleton and Brockton to address the behaviors or in some other way intervened on behalf of Student if she had known about them earlier. In making this argument, Mother asserts that Brockton's responsibility to support and maintain Student's placement at Eagleton, pursuant to special education law, supersedes DYS protocols and policy.

In order to attend Eagleton, Student signed a GCL which he testified to have read and understood at the time he signed it (SE-6). However, at Eagleton, Student engaged in behaviors that were in direct violation of these conditions and the cause of his termination from the program. He had no knowledge as to whether Eagleton staff communicated to Parent the behavioral incidents in which he was involved.

Parent contended that Brockton had failed to provide her with the incident reports which documented Student's difficulties at Eagleton until after Student had been terminated (SE-12). She claimed that Brockton's actions violated her procedural rights and caused harm to Student. Ms. Garriga testified and the record reflects that Brockton did not receive all of the incident reports as they occurred and that it wasn't until February 2012 that the communication between Brockton and Eagleton improved in this regard. Eagleton and DYS were in communication regarding the incidents. The record shows that Parent remained involved in Student's education and that she was in constant communication with Eagleton. She was aware of many of the incidents, including the major incidents in March and May 2012, contemporaneously with their occurrence, and in many respects even before Brockton became aware of them (Parent, Steinhardt). More importantly, when Parent requested the reports from Brockton, Brockton provided them to her promptly (Garriga). (Student's incident reports were forwarded to DYS consistently and to Brockton as they occurred, after February 17, 2012 (SE-23). When Mother requested them from Brockton, Olga Garriga forwarded them to Parent in April 2012.) (PE-23; Mother, Garriga).

[23] My previous Decision in BSEA #12-4761 issued in late June, 2012, already preserved Mother's right to seek reimbursement for participation in the counseling sessions when the issue is ripe. Further guidance was provided in that Decision as to what needs to happen in order for the issue to be ripe.

Brockton argued that it was not responsible for creating or disseminating the written reports and that it had responded to Parent's request in a timely manner. It further argued that lack of receipt of the written incident reports had no impact on the ultimate result, which was Student's termination and that the behavior causing his termination (assault) was one already targeted and was being addressed at Eagleton.

Parent did not present evidence to support a finding that receiving written documentation of the incident reports from Brockton would have altered the ultimate outcome (Student's termination) and given her involvement /open communication with Eagleton staff, she was aware of Student's progress at Eagleton. More importantly there was no showing that lack of receipt of the written incident reports caused harm to Student. I note that Student was attending Eagleton to address the behaviors for which he was already in DYS custody and the final incident resulting in his termination was due to a violation of his GCL.

3. **Whether Brockton failed to conduct a Functional Behavioral Assessment or a manifestation determination meeting in 2012, given Student's continuous program and rules violations at Eagleton School and discipline reports**:

According to Parent, neither Brockton nor Eagleton conducted a Functional Behavioral Assessment (FBA) of Student while he was at Eagleton. Brockton disputed its legal responsibility to do one because Student had not been placed at Eagleton by Brockton and more importantly, Student had not been removed from Eagleton by school personnel consistent with 20 USC 1415 (k), 34 CFR 300.530; or 34 CFR 300.536, thereby triggering the need for an FBA. Furthermore, an FBA would not have produced new or different information than that DYS, Eagleton and Brockton already had, given that Eagleton (a therapeutic program, where a behavioral level system was implemented by a variety of clinical staff, and where Student received individual and family counseling) was already addressing the behaviors for which Student was terminated (Pryjma, Student, Steinhardt).

The FBA is designed to identify and address the types and levels of non-compliant behaviors that a student presents in order to properly address them. Here, the types of behaviors displayed by Student, which had already being targeted, involved verbal outbursts, non-compliance, lashing out at objects and other aggressive behaviors (SE-12; Parent, Garriga). Student's clinicians at Eagleton understood these behaviors and what precipitated them, rendering a new FBA unnecessary. Moreover, Brockton is correct that an FBA was not required as a matter of law. Nothing in the record supports Parent's contention that development of an FBA was required or necessary. Parent's claim in this regard is DENIED.

4. **Whether Brockton violated Student's/ Parent's procedural due process rights in failing to convene Student's Team to discuss behavioral issues following Student's placement at Eagleton School**:

Parent states that Brockton did not convene the Team to discuss Student's behavioral incidents while he was at Eagleton and argued that in some way this resulted in his

termination. Brockton disputed this assertion stating (and the record so reflects) that once it agreed to fund the day portion of Student's placement in December 2011, and Parent accepted the IEP, it responded promptly to Parent's requests to convene Team meetings (Garriga).

Specifically, in May 2012, Brockton had scheduled a Team meeting for June 12, 2012 to discuss Student's possible exit from Eagleton at the conclusion of the school year. Upon learning that Student had been terminated early, Ms. Garriga acted promptly and diligently seeking Parental consent to forward packets to prospective placements and by meeting with Parent and offering Student another day placement at the Southeast Alternative School. This placement was motivated in part by Parent and Student's desire to reside in Parent's home which was approved by DYS (SE-17; SE-18; SE-20; Beasley, Mother, Garriga).

The Team was convened as scheduled on June 12, 2012 to continue Student's placement at Southeast Alternative School for the following school year (SE-21). Brockton is correct that at the time, there was no new information regarding Student. Student's lack of cooperation and resistance to follow rules at home was also not new. In light of the accepted IEP, Brockton was responsible to continue to offer Student a day-placement, which it did. Also, Student who was over eighteen years of age at the time had made clear his refusal to participate in summer programming and his reluctance to attend Eagleton or any other residential placement (Beasley, Mother).

Moreover, the ultimate decision regarding Student's placement and termination fell solely within the purview of DYS in consultation with Eagleton, not Brockton. Facts # 28, 36, 41 and 42 show that Brockton was diligent in meeting its responsibility to convene the Team.

5. Whether Brockton violated 34 CFR 300.530, 34 CFR 300.536, 34 CFR 300.101 and 300.504 regarding transgressions that may have occurred post April 2012, and consistent with Parent's explanation of transgressions as delineated in her November 19, 2012 letter:

Before discussing Brockton's responsibilities with respect to the aforementioned Federal Regulations, it is important to outline what these regulations involve.

34 CFR 300.530 addresses the school personnel's ability to remove a child with a disability who has violated a code of student conduct to an interim alternative educational setting or other appropriate setting for a maximum of ten consecutive days. For removals exceeding ten days (in that same school year) that constitute a change in placement, the Team must convene to determine the appropriate services to be offered. Subsection (e) of the same regulation calls for a student's Team to convene within ten days of the school personnel's removal of the eligible student to ascertain if the behavioral violation was: a) caused by the student's disability, or b) was directly and substantially related to the student's disability. If it is determined that the behavior was a manifestation of the student's disability, then a functional behavioral assessment must be conducted (unless one was previously done) and a behavioral intervention plan must be implemented to address the problem behavior.

Special circumstances (e.g., possession of a weapon or of illegal drugs or sales on school premises or at a school function, infliction of serious bodily injury upon another person in school or at a school function) grant school personnel the right to remove eligible students to an interim alternative setting for up to 45 days, without regard to whether the behavior was a manifestation of the student's disability. 34 CFR 300.530(g) et seq.

34 CFR 300.536 addresses changes in placement within the context of disciplining eligible students.[24]

Brockton correctly argued that neither 34 CFR 300.530, nor 34 CFR 300.536 is applicable in this matter because these regulations apply only to removal of students from an educational placement over which the Local Education Agency (Brockton) has control. In the case at bar, as discussed *supra*, Student's removal from Eagleton resulted from his violation of his GCL and the removal was solely within the discretion of DYS in conjunction with Eagleton, without consultation with Brockton. Brockton school personnel did not remove Student pursuant to school rules and as such, Brockton was not responsible to convene a manifestation determination meeting or conduct an FBA to create a behavior plan. Similarly, Brockton had no input regarding Student's (greater than 10 day) removal. The determination to remove Student resulted from his GCL violation and was solely within DYS' purview.

Within the particular circumstances in this case, a manifestation determination meeting was not legally required as Brockton correctly argued, and even if such a meeting had resulted in a finding that the behaviors were a manifestation of Student's disability, Brockton lacked the power to override Student's DYS revocation. The consequences of Student's behavior were entirely dictated by DYS (SE-6; Bona, Beasley, Student). See MGL c.120, §§6, 6A and 7; see also, 20 U.S.C. §1415(k)(6); 34 CFR 300.535.

IDEA's general requirements regarding provision of FAPE are outlined in 34 CFR 300.101[25]. For the reasons explained in the conclusions parts 1, 2, 3 and 4 *infra*, Brockton

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[24] 34 CFR 300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if--

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern--

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings. See also 20 U.S.C. 1415(k)).

fulfilled its responsibilities toward Student each step of the way, to the extent that the DYS process did not trump the IDEA process. Therefore, Mother did not show that Brockton failed to offer Student FAPE from the time it offered Student a day placement IEP in December 2011 through August 2012 when Student went on the run. Brockton's responsibility was to follow procedure and offer Student a FAPE, which it did. After that, it was up to Student to choose to participate and avail himself of the educational opportunities offered him. Student chose otherwise.

The record shows that Student had many behavioral incidents while at Eagleton, some more serious than others and he was aware of his behavior. He testified that he had been sent to the Administrator on Duty's office a few times during his eight months at Eagleton. Two of the most serious incidents occurred in March 2012 involving getting into a fight with a peer, and getting into a physical altercation with a staff member who had awakened him (Student). He knew that this behavior was inappropriate because his behavioral expectation level had dropped (Student). He conceded that after the incidents in March 2012, DYS personnel had come to Eagleton to speak with him and to remind him that he needed to comply with school rules as a condition of liberty if he was to remain at Eagleton (SE-10; Student). The record shows that when Student was motivated to obtain a pass and/or in the hopes that he would return home in June 2012, he was able to reach and maintain the level necessary to attain his wish. According to Mr. Bona, academically, the reports through April 2012 indicated that Student was doing well, even when some of his classes involved independent studies (PE-23C; Bona)

Faced with Student's termination, Brockton offered an alternative day placement which Parent and Student accepted. Parent testified that she had no other choice in accepting the day placement and allowing Student to live at home because the alternative would have meant leaving Student at a DYS facility (Parent). Student completed the 2011-2012 school year at Southeast Alternative but then refused to attend the summer program. He started the 2012-2013 school year at Southeast Alternative and after a couple of days, ran away from

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[25] §300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).

(b) FAPE for children beginning at age 3. (1) Each State must ensure that--

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade. (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. See also 20 U.S.C. 1412(a)(1)(A).

home and did not return to school (Garriga, Mother). At the time of the Hearing, Student was committed to the Plymouth County House of Correction (Student).

Lastly, 34 CFR 300.504 involves the procedural safeguard notice requirements.[26] In short, there is no showing that Brockton violated this part of the IDEA requirements within the timeframe covered in this decision.

Mother did not meet her burden of persuasion pursuant to *Shaffer* regarding her claims in Parts 1, 2, 3, 4 and 5 of the conclusion section in this decision.

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[26] §300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;

(3) In accordance with the discipline procedures in §300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536 and §§300.610 through 300.625 relating to--

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including--

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in the State);

(12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). See also 20 U.S.C. 1415(d).

ORDER:

1. Brockton shall reimburse Parent for the cost of transporting Student for the December 2011, February and April 2012 vacation inclusive of mileage at the prevailing rate per mile for state employees consistent with 603 CMR 28.07(6) and tolls.

By the Hearing Officer,

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Rosa I. Figueroa
Dated: May 6, 2013

May 6, 2013

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

BUREAU OF SPECIAL EDUCATION APPEALS

BROCKTON PUBLIC SCHOOLS

BSEA # 1301082

BEFORE

ROSA I. FIGUEROA
HEARING OFFICER

PARENT PRO-SE
MARY JOANN REEDY, ESQ., ATTORNEY FOR BROCKTON PUBLIC SCHOOLS