

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

In re: Steve¹

BSEA #1808823

DECISION

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

A hearing was held on May 21 and 22, 2018, before Hearing Officer Amy Reichbach. Those present for all or part of the proceedings were:

Student's Father	
Student's Mother	
Michael Kelly	Program Director, Central Massachusetts Collaborative (CMC)
Katherine Koki-Mayo	Education Team Chair (ETC), Worcester Public Schools (WPS)
Dr. Jeffrey LaCure	Student's Private Therapist
Dr. Jean Lindquist Grady	Clinical Director, CMC
Emily Lizano	Department Head for ETCs, WPS
Eileen Quinn	Assistant Director of Special Education and Intervention Services, WPS
Kay Seale	Manager of Special Education and Intervention Services, WPS
Michael Tempesta	Executive Director, CMC
Jamie Walsh	Clinician, Robert Goddard Academy
Alisia St. Florian, Esq.	Attorney for Central Massachusetts Collaborative (CMC)
Wendy Quinn, Esq.	Attorney for Worcester Public Schools (WPS)
Jocelyn Simpson	Intern, BSEA
Brenda Ginisi	Court Reporter

The official record of the hearing consists of documents submitted by Parents and marked as Exhibits P-1 to P-18; documents submitted by the Worcester Public Schools and marked as Exhibits W-1 to W-18; documents submitted by the Central Massachusetts Collaborative and marked as exhibits C-1 through C-17; and a two volume transcript produced by a court reporter following approximately one and one half days of testimony and oral argument. As requested by the parties the record was held open until July 30, 2018 for submission of closing arguments. Closing arguments were received and the record closed on that date.

INTRODUCTION

¹"Steve" is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public.

Parents filed a *Hearing Request* against Worcester Public Schools (“WPS” or “Worcester”) on April 19, 2018, then amended it on April 30, 2018 to join Central Massachusetts Collaborative (“CMC” or “the Collaborative”) as a party. The issue for hearing was whether Steve’s emergency termination from Robert Goddard Academy (“RGA”), a therapeutic day school operated by the Collaborative, constituted a violation by Worcester or the Collaborative of Steve’s right to a free appropriate public education (FAPE) or his substantive or procedural due process rights.

For the reasons below, I conclude that although Worcester complied with its legal obligations to Steve, the Collaborative’s termination of his enrollment in February 2018 was both substantively and procedurally improper.

PROCEDURAL HISTORY

Steve’s parents filed a *Hearing Request* against Worcester on April 6, 2018, alleging that Worcester, through the actions of RGA, had violated Steve’s rights in connection with his termination from RGA in February 2018. Specifically, Parents alleged that RGA lacked cause to terminate Steve’s enrollment on an emergency basis; the language of RGA’s termination letter mischaracterized Steve’s behavior; Worcester, through RGA, failed to comply with Steve’s Individualized Education Program (IEP); and Steve’s RGA attendance record inaccurately reflected an out-of-school suspension. Parents requested that the BSEA issue an order directing RGA to rescind Steve’s emergency termination, including the termination letter, and remove the out-of-school suspension from Steve’s attendance record. Parents also requested that the BSEA direct Worcester to comply with Steve’s IEP and ensure that its vendors do the same, and, with its vendors, Parents, and Steve’s therapist, prepare and develop meaningful behavior intervention and safety plans. The hearing was scheduled for May 11, 2018.

On April 17, 2018, Worcester Public Schools requested an extension of the deadline for filing its Response, and a postponement of the hearing date, in order to explore a potential conflict of interest. On April 30, 2018, following a Conference Call, Steve’s parents filed a *Motion to Join Another Respondent* and an *Amended Hearing Request*, seeking to join the Central Massachusetts Collaborative. The undersigned Hearing Officer allowed the *Motion*, and ordered Worcester and CMC to file their *Responses to the Amended Hearing Request* by May 10, 2018.

On May 1, 2018, Worcester filed its *Response to Parents’ Hearing Request*. Worcester did not challenge Parents’ characterization of the IEP, the conditions that led to its development, or the general timeline of events. WPS explicitly took no position regarding the actions of RGA, asserted that Worcester had complied with all applicable statutes, standards, and regulations with respect to Steve, and indicated that it had agreed, with Parents’ consent, to maintain Steve’s placement at St. Casimir – Safety Center Interim Alternative Educational Setting (“Safety Center”) through the end of the school year, or until an appropriate placement could be found.²

²On May 9, 2018 Worcester indicated that the Response it had filed to the initial *Hearing Request* on May 1, 2018 applied to the *Amended Hearing Request* as well.

On May 10, 2018, CMC filed requests to extend the deadline for its *Response to Hearing* and to postpone the hearing scheduled for June 5, 2018, due to the unavailability of counsel. The Hearing Officer allowed the first request and scheduled a Conference Call to discuss the second. On May 15, 2018, CMC filed a *Response to Parents' Hearing Request*, arguing that RGA had terminated Steve properly and as such, Worcester's programmatic and financial responsibility for his education was triggered.

Following a Conference Call on May 21, 2018, the Hearing scheduled for June 8, 2018, was converted to a Pre-Hearing Conference and the Hearing was postponed to June 21 and 22, 2018 with the assent of all parties. On June 14, 2018, Worcester filed a *Motion to Continue Hearing*, in order to obtain alternate counsel. Given the need to determine extended school year services, the unavailability of the other parties and witnesses throughout the summer, and the untimeliness of the request, the undersigned Hearing Officer denied the motion.

FINDINGS OF FACT

1. Steve is a sixteen (16) year-old resident of Worcester, MA, who is currently attending the Safety Center. School officials who have worked with Steve describe him as engaging, polite, respectful, friendly, hardworking, and intelligent. (W-1; W-14; Kelly, I: 172; Lindquist-Grady, II: 22; Walsh, II: 169; Koki-Mayo, II: 252) Steve considers himself a conservative. His interests outside of school include gaming, going to the gym, working for his uncle, and seeing friends, family, and his girlfriend. In addition, he is passionate about the military and weaponry. Steve has expressed interest in joining the Reserve Officer Training Corps (ROTC) and the Marines. He has attended a Young Marine meeting, often stands "at attention" when speaking with teachers or administration, and at times wears military or cowboy outfits to school. (Father, I: 131-34; Kelly, I: 171-172; Lindquist-Grady, II: 22-23; Walsh, II: 172)
2. Steve was adopted as an infant. His parents told school officials that the birth mother used alcohol, tobacco, and methamphetamines while pregnant with Steve. Steve was found ineligible for special education in the fourth grade, as he was making effective academic progress, but was placed on a 504 Plan for Attention Deficit Hyperactivity Disorder (ADHD). (W-1)
3. In 2014 or 2015, Steve began experiencing night terrors, which impacted his daily functioning. Steve began seeing a therapist and taking medications, each of which worked for a while before it became ineffective or caused adverse reactions. Steve struggles in his interactions with peers and family members, and he has a history of making aggressive or threatening statements. He is currently on Tenex to help treat his impulsivity. (W-1)
4. Steve has an emotional disability, which, according to his team, "impacts his pattern of thinking, which in turn, influences how he is able to access and participate in school. [He] has made provocative statements that have caused concern in previous school settings."

(W-1) He has been in therapy for approximately two years “to help him understand how to handle his emotions and behavior.” (Father, I: 157-58)

5. Steve has attended several different schools over the past few years, including Holy Name, Doherty Memorial High School, and St. Mary’s. He received home tutoring through WPS at the end of the 2016-2017 school year. (W-2)
6. Steve was asked to withdraw from Holy Name in the spring of 2017, during his ninth grade year, or face expulsion in connection with two incidents that required intervention by the school’s administration. The first incident involved a verbal argument between Steve and his girlfriend, and the second was a confrontation during which Steve slapped a friend “on the side of the head in ‘a joking manner,’” leading the administration to suspend him indefinitely. (W-2; P-3; Father, I: 128-129; LaCure, II: 71-72)
7. As he continued to experience difficulty in school, Steve’s family was working with his doctors to find effective treatment. In March 2017, around the time he left Holy Name, Steve was prescribed a medication that “caused a psychotic period in which he had auditory command hallucinations.” His behavior became aggressive and erratic, resulting in an emergency mental health hospitalization. He was then referred for outpatient therapy for support and to clarify his diagnoses. (W-1; LaCure, II: 58)
8. Steve has seen Dr. LaCure for outpatient therapy approximately one (1) to two (2) times per week since March 2017.³ Dr. LaCure is a licensed clinical social worker with a master’s degree in clinical social work and a doctorate in psychology. Dr. LaCure is an adjunct professor in a counseling psychology program. He also maintains a generalized private practice, with particular interests in adoptees and adoptive families and working with people around trauma, Post-Traumatic Stress Disorder (PTSD), anxiety and depression. He has never conducted formal testing of Steve, nor has he observed Steve in a school setting.⁴ (W-12; Mother, I: 89; Father, I: 153-154; LaCure, II: 48-50, 58, 70-71, 73) Dr. LaCure believes Steve has anxiety, depression, and PTSD. At hearing, Dr. LaCure referred to Steve as being “on the spectrum, to some degree,” and “entry level into that spectrum,” referring to Asperger’s Syndrome as distinguished from autism, although there is no other evidence that Steve has ever been diagnosed with Autism Spectrum Disorder. (LaCure, II: 57, 80)
9. According to Dr. LaCure, Steve is patriotic and has a strong sense of right and wrong. He is also vulnerable to rejection or perceived rejection, lacks a filter, particularly when he feels cornered, and needs to feel heard by others. Further, Dr. LaCure believes Steve has a substantial history of bullying by his peers, which has contributed to Steve’s fear of

³According to Steve’s IEP, he began seeing Dr. LaCure sometime after his hospitalization in March 2017. (W-1) Dr. LaCure, however, wrote a letter to Ms. Seale (Manager of Special Education and Intervention Services, WPS) dated April 19, 2018 stating that he had been providing outpatient psychotherapy for Steve for “almost eighteen months,” (W-12) and testified at hearing that he had been seeing Steve since the fall of 2016. (LaCure, II: 49-50) Steve’s parents testified on June 21, 2018 that Steve had been in therapy with Dr. LaCure for fifteen to sixteen months. (Mother, I: 89; Father, I: 153)

⁴Dr. LaCure did see Steve at St. Casimir – Safety Center Interim Alternative Educational Setting (“Safety Center”) when he attended an Individualized Education Program (IEP) meeting there in June 2018. (LaCure, II: 73-74)

rejection and his tendency to become anxious and “say some things that aren’t in his best interest, but he doesn’t mean them.” (LaCure: II, 57, 59, 65, 75) At hearing, Dr. LaCure testified that despite Steve’s interest in weaponry, possession of knives, and stated intent to hurt someone during the summer of 2017, he poses no safety concern to a school he attends. (LaCure, II: 77-78)

10. Steve’s parents obtained a neuropsychological evaluation of Steve in or about June 2017 by licensed psychologist Dr. Norma Medway, Psy.D. Her assessment of Steve, as summarized in the IEP proposed by Worcester in the fall of 2017, included the Rey Figure Test, the Behavior Rating Inventory of Executive Function, the Rorschach, and the Minnesota Multiphasic Personality Inventory-Adolescent.⁵ Dr. Medway observed that Steve has difficulty transitioning or shifting gears, attempts to avoid or intellectualizes feelings, and takes a “cold, impersonal stance in most situations.” According to Dr. Medway, Steve’s testing “suggests psychotic and bizarre thinking with misperceptions about people and situations,” and “little ability to tolerate ambiguity.” Her diagnostic impressions included ADHD mixed type, with poor executive regulation, and Psychotic Disorder NOS. (W-1) Neither of Steve’s parents nor Dr. LaCure believes Steve has a psychosis disorder. (Mother, I: 25, 57, 90; Father, I: 149-50; LaCure, II: 75; Seale, II: 302)
11. During the summer of 2017, Steve was involved in an incident with his then-girlfriend and her father. Steve reportedly received a traumatic text message from his girlfriend to the effect that her father was physically abusing her. He went to her house, where he heard his girlfriend’s father beating her. Although he reported to Dr. Lindquist-Grady (Clinical Director, CMC) in December 2017 that he had gone to the house with a knife with the intent to kill his girlfriend’s father, instead Steve called the police, which resulted in the father being arrested and Steve being commended. Steve received a summons to testify for the prosecution against his former girlfriend’s father. The incident also led to the filing of a restraining order against Steve by the girlfriend’s family, which was reportedly still in effect at the time of the hearing. (W-2; W-6; C-6; Mother, I: 62, 92-94; Lindquist-Grady, II: 32-33, 141-43)
12. Steve began the 2017-2018 school year at St. Mary’s. During the fall, Parents referred him to WPS for an initial evaluation to determine his eligibility for special education. (P-1; Mother, I: 21-22; Lizano, II: 211-213) In October, WPS conducted a home assessment and cognitive testing, as well as a review of Dr. Medway’s assessment. (W-1; Seale, II: 302-03)
13. Steve was asked to withdraw⁶ from St. Mary’s within the first few months of the school year following a report that he had sent a picture of himself holding an airsoft gun to a female peer.⁷ Upon his withdrawal from St. Mary’s, Steve was placed temporarily at the

⁵Dr. Medway deemed her own cognitive testing of Steve “non valid (*sic*) in light of [his] emotional presentation at the time of testing.” (W-1)

⁶The administration at St. Mary’s reportedly communicated to Steve’s family that if he were not withdrawn, he would be expelled. (W-2)

⁷Steve’s mother testified that he had posted a picture of himself on social media holding a BB gun, which was not his and which he used with a group of friends in the woods when they shot at trees. She also testified that he sent

Safety Center while his Team attempted to locate an appropriate placement. (W-2; Lizano, II: 213)

14. Steve's full scale IQ is in the average range. His strengths are his language skills, as on the Wechsler Intelligence Scale for Children (WISC-IV) he achieved age appropriate scores on verbal comprehension tasks, which were "particularly strong compared to his performance on visual-spatial and fluid reasoning tasks." Overall Steve "showed weak performance" on working memory tasks. (W-1)
15. On the Woodcock Johnson-IV, Steve achieved average to high average scores in Reading, average to low average (overall average range) in Written Language, and average to low average in Math. (W-1)
16. As part of Steve's eligibility determination process, the school psychologist reviewed his outside evaluation, specifically his results on the Behavior Assessment System for Children (BASC-3) and the Millon Adolescent Clinical Inventory (MACI), and concluded that Steve's results indicated that he was "exhibiting significant behavioral difficulties that are adversely impacting his daily functioning." Moreover, Steve's self-reporting "indicated that he is prone to unpredictable and pessimistic moods, angry outbursts, and feeling of being misunderstood. He may express momentary thoughts and feelings impulsively and can be readily provoked by normal day to day dealings into sudden and unpredictable reactions." (W-1)
17. These assessments were presented at a Team meeting on or about November 13, 2017, and Steve was found eligible for special education. At this time the District believed it needed more information about Steve's presentation and behavioral history in order to determine placement. WPS proposed, and Parents accepted, a risk assessment in the form of an extended evaluation at the Safety Center. (W-1; Mother, I: 27-28; Lizano, II: 213-14)
18. Worcester contracted Dr. Jean Lindquist-Grady, the Director of Clinical Services at CMC, to conduct Steve's risk assessment. Dr. Lindquist-Grady has a doctoral degree in clinical psychology, a master's degree in counseling psychology, and a bachelor's degree in psychology and rehabilitative services. Dr. Lindquist-Grady trained in forensic psychology, spending significant time in both courts and state hospitals focusing on issues of dangerousness and competency. She has spent two and a half years as Director of Clinical Services at the Collaborative. Prior to this position, she was a school psychologist at WPS, where she focused on psychological testing. At the same time, she worked for a private agency performing risk assessments and evaluations for youth who engaged in sexually harmful and dangerous behavior. While at the Collaborative, she continues to work as a consultant for other districts. Dr. Lindquist-Grady became involved with Steve in late November 2017, when WPS asked her to conduct a risk assessment due to the District's concerns about Steve's safety and to assist Worcester in

this picture via the Snapchat application to a female student who shared his interest in shooting and hunting. Although Steve did not mean this communication to be menacing, the student's family was concerned and shared their concern with the principal of St. Mary's. (Mother, I: 58, 90-92)

determining the most appropriate school placement for him. WPS periodically utilizes Dr. Lindquist-Grady to conduct risk assessments in cases where there are significant safety concerns requiring expertise beyond that of a school psychologist. (C-6; Lindquist-Grady: II, 15-19; Lizano, II: 216, 226-28; Seale, II: 267)

19. In preparation for the assessment, WPS personnel explained to Dr. Lindquist-Grady that they had safety concerns about Steve's thought process and "affiliations around his political views." (Lindquist-Grady, II: 19-20)
20. For a total of five hours, on December 1, 2017, and December 6, 2017, Dr. Lindquist-Grady performed the risk assessment. Despite it not being Dr. Lindquist-Grady's typical practice for a parent to attend a risk assessment, Steve's mother was present for the entire evaluation. As part of the assessment, Dr. Lindquist-Grady reached out to Steve's prior therapist, Dr. Jim Barker, Dr. LaCure, Steve's prior schools, his parents, and his teachers at the Safety Center. Dr. Barker reported that he had concerns about Steve's thought process, which was not always based in reality, his political and religious views, and his obsession with weaponry and the military. Dr. LaCure told Dr. Lindquist-Grady that Steve was not always grounded in reality, but that he did not pose a safety concern to others, and that in his opinion Steve should not be in a mainstream school. Dr. LaCure believed that the Collaborative was an appropriate setting for Steve. Steve's teachers at the Safety Center expressed concern for their own safety, based on Steve's educational history and Dr. Medway's report. (W-2; Parent, I: 29; Lindquist-Grady: II, 20-23, 27-28; LaCure, II: 63) Parents provided Dr. Lindquist-Grady with Steve's educational history and copies of the evaluations that had been conducted by Dr. Medway and WPS staff. (Mother, I: 28-29, 75-76)
21. During the assessment, Steve was polite and calm. At times, his speech was pressured, but he never became erratic or out of control. Steve became visibly upset only once, when Dr. Lindquist-Grady talked to him about his ex-girlfriend. Dr. Lindquist-Grady and Steve discussed some events described in Steve's records, ranging from a troubling poem he wrote to a girl in elementary school to reports that he had carried knives out of concern for his own safety. Steve clarified some of these events and was able to see why St. Mary's administrators would have been concerned by his actions. He also made grandiose, provocative comments, including that he could snap someone's neck with his bare hands and would do whatever it takes to protect someone he cares about (though he said he would not hurt someone); that he respected women but they should not have cars or jobs because they should be taken care of; that Caucasians are superior; and that he possessed superior cognitive abilities. (Lindquist-Grady: II, 23-26, 30-32, 36)
22. Based on her conversations with Steve and others, Dr. Lindquist-Grady made a number of observations: Steve's speech was pressured; he spoke of his conservative political views and quoted history and the Bible; he discussed military strategy and appeared to be borderline obsessed with the military and weaponry, including hidden "go bags;"⁸ he feels that the world has failed him; he possesses a strong desire to keep those individuals

⁸ Steve reported to Dr. Lindquist-Grady that he hid "go-bags" containing clothing, blankets, nonperishables, matches, and tools throughout Worcester as a survival tactic. (Lindquist-Grady, II: 38-39)

close to him safe; and he wants to create his own family because he does not accept his adoptive family. Dr. Lindquist-Grady identified Steve's "risk factors" as: violent talk, hallucinations and delusions, impaired reality testing, decline in academic performance, threats towards others, irritable, agitated, or paranoid presentation, social misperceptions, sending photos of weaponry, restraining order against him, history of impulsivity, difficulty with executive functioning, unwillingness to take medication for psychosis, and his lack of concern for consequences of his violent talk and potential actions. She attempted to assess Steve's plans, needs, and intent, "both to keep him safe and to keep the school community safe." (W-2; Lindquist-Grady: II, 28, 35-37, 39-41)

23. Dr. Lindquist-Grady's impressions were incorporated into the IEP proposed for Steve for the period from November 13, 2017 to November 12, 2018. The IEP lists Steve's diagnoses as ADHD, psychosis, and anxiety and contains a single goal, which is social/emotional and focuses on the development of self-advocacy and coping skills. The IEP also provides significant background information, including Steve's history of aggressive statements, homicidal and other threats; his difficulty following rules and getting along with family members; his challenges with social cues; his angry outbursts and unpredictable, pessimistic moods; his strong reaction to feeling misunderstood and easy provocation in day-to-day situation; his low tolerance for frustration and tendency to feel unappreciated; and his distorted perception of reality. The IEP notes, specifically, that Steve "does not understand the significance of the statements he makes, then becomes angry/upset at the consequences they bring." It provides for one thirty (30) minute counseling session per week, accompanied by one fifteen (15) minute consultation per week between clinician and teacher, emotional support delivered by the special education teacher (5x15), and extended school year services. Accommodations include clinical support available daily, a behavioral intervention plan (BIP), separate space, adult contact person to go to when necessary, small school setting, limited exposure to unfamiliar staff, clear expectations, monitoring of all peer interactions, and close supervision at all times. Steve's Team proposed a therapeutic day setting to address Steve's social/emotional needs and an extended year program to prevent regression. Parents accepted the IEP on December 22, 2017, though they objected to the inclusion of the psychosis diagnosis. (W-1; Mother, I: 27; Father, I: 131; Kelly, I, 200-02)
24. Aware that WPS was considering placement of Steve at the CMC, Dr. Lindquist-Grady met with Michael Kelly, the Director of Robert Goddard Academy (RGA) when she completed Steve's risk assessment. (Lindquist-Grady, II: 39, 42-43) Mr. Kelly has a master's degree and a certificate of advanced graduate study in special education. He began working at the Collaborative in 1997 and became the director of RGA approximately two years ago. (Kelly, I: 161-62)
25. Dr. Lindquist-Grady discussed her findings with Mr. Kelly, including her concerns about Steve and CMC's ability to keep both Steve and the community at large safe. She concluded that Steve posed a safety risk to CMC. Although Mr. Kelly understood Dr. Lindquist's concerns, he believed that with behavior intervention and safety plans, the Collaborative could meet Steve's needs. Dr. Lindquist-Grady also shared her findings and concerns with Kay Seale, WPS Assistant Director of Special Education, and Emily

Lizano, WPS Education Team Chair (ETL) Department Head.⁹ (Kelly, I: 166-68; Lindquist-Grady: II, 43-45, 124-25). Asked whether WPS should refer Steve to a private day placement, Dr. Lindquist-Grady told the District that she felt CMC could support Steve adequately. The Team, including Parents, then recommended placement at RGA, a program within the Collaborative. (W-1; Mother, I: 27; Lizano, II: 216-17; Seale, II: 303)

26. The Central Massachusetts Collaborative provides educational, clinical, and therapeutic services to children from kindergarten to the age of twenty-two (22), who reside in Worcester or Webster or attend on a tuition basis from other districts. (W-4; Lindquist-Grady: II, 43-45; Kelly: I, 169) RGA is a therapeutic day school serving approximately eighty (80) to one hundred twenty (120) students in the ninth grade through twenty-two (22) years of age, mostly sensitive students with social-emotional issues. RGA consists of academic, clinical, and vocational components and provides academic instruction, counseling services, emotional and behavioral support, pre-vocational skills training, social skills training, and crisis intervention. RGA employs four (4) masters-level clinicians and one (1) doctorate-level lead clinician. The majority of students at RGA are WPS students. (W-10; Kelly, I: 163-65, 199; Lindquist-Grady: II, 43-45; Walsh, II: 165-66; Lizano, II: 230-31; Koki-Mayo: II, 254-55; Seale, II: 299)
27. Steve and his mother visited RGA on or about December 20, 2017 to discuss Steve's potential enrollment. Parent was told by RGA staff that Steve would meet with his clinician regularly and that the school "would monitor his behavior, his attitude, his verbal, provocative statements." (Mother, I: 31-32)
28. Steve was accepted by RGA and began attending on January 2, 2018. (Kelly, I: 168)
29. RGA personnel develop School Safety Support Plans ("safety plans") for students about whom staff members have concerns. RGA clinical coordinator Mike Moore worked with Dr. Lindquist-Grady to create a safety plan for Steve, based on his school records. Concerned about Steve's history of carrying knives and apparent fascination with weapons, they included searches upon entrance to the school. RGA employs daily searches for approximately four current students in cases where there is a "true concern around safety and a concern around weapons." Although Dr. Lindquist-Grady believes the first draft of Steve's safety plan, dated December 22, 2017, would have been shared with, or at least discussed with, Parents at their intake meeting, Parents did not see a safety plan for Steve until they requested his school records after termination.¹⁰ Moreover neither draft of the safety plan submitted into evidence contains a parent signature. (C-4; C-16; Kelly: I, 169-170; Lindquist-Grady, II: 44-45, 97-98, 196-101, 146-49)
30. A Behavior Intervention Plan (BIP) was drafted for Steve on January 8, 2018, by Jamie Walsh and revised on March 1, 2018, after his termination. Ms. Walsh has been working

⁹Ms. Lizano served as Evaluation Team Leader (ETL) for Steve from his initial referral for a special education evaluation to his placement at RGA, at which point his case was transferred to Katherine Koki-Mayo. (Lizano, II: 210, 212, 217)

¹⁰Parents did not receive the December 2017 draft of Steve's School Safety Support Plan ("safety plan") with school records in March 2018 and were not aware of it until it was offered into evidence by the Central Massachusetts Collaborative during the hearing.

as a clinician at the Collaborative for eight years and is currently supervised by Dr. Lindquist-Grady. She has a master's degree and an advanced degree in rehabilitation counseling, and is licensed as a mental health counselor and a school adjustment counselor. Ms. Walsh's responsibilities include meeting with the approximately twenty-five to thirty (25-30) students on her caseload, as specified in their IEPs, to help them transition to CMC and succeed in the classroom. Ms. Walsh develops BIPs for all students on her caseload, focusing on behaviors a student engaged in prior to his or her arrival at RGA and interventions to address them. The initial draft of a BIP, developed upon a student's enrollment, is based on documentation provided by a sending school, and the document is revised as needed. Steve's BIP addresses three (3) targeted behaviors: inappropriate or threatening language or conversation; bringing weapons to school; and reality testing. According to Ms. Walsh, parents generally do not participate in the development of a BIP, but when it is completed, it is presented to them. She also testified that a BIP is a "working document" that is continually updated. Parents were never presented with a BIP for Steve, nor did they receive one before engaging in discovery in connection with their *Hearing Request*. Although Ms. Walsh testified that RGA maintains data to track students' progress toward their behavioral goals, Steve's file contained none. According to Ms. Walsh, Parent did not receive Steve's BIP because although it had been drafted on January 8, 2018, it was not completed during his time at RGA. Instead, Steve's BIP was updated after his termination in preparation for his next placement. (C-5; Lindquist-Grady, I: 101-04; Kelly, I: 243 Walsh, II: 164-67; 184-87)

31. Ms. Walsh met with Steve approximately six times while he attended RGA and often checked in on him in class. Steve shared with her his military interests, and they worked on his ability to control the things he said and avoid reacting right away when provoked. Ms. Walsh found Steve to be respectful and likeable, showing no resistance to working with her and at times requesting extra check-ins. He made friends quickly and had developed some relationships with staff. (Walsh, II: 168-74)
32. It is not clear when, or how often, contact occurred between Ms. Walsh and Dr. LaCure before February 26, 2018. Dr. LaCure testified that although RGA had a release for staff to speak with him, no one reached out to him following Dr. Lindquist-Grady's risk assessment, until shortly before Steve's termination from RGA. Ms. Walsh, on the other hand, testified that she had called Dr. LaCure once before then to discuss some concerns. (LaCure, II: 51-52; Walsh, II: 178-79)
33. While Steve attended RGA, Parents were in regular email contact with his homeroom teacher, Paul Morse. At no time between Steve's enrollment and his return from February vacation on February 26, 2018 did Mr. Morse raise any concerns about his behavior. (P-3; Mother, I: 32-33)
34. At no time between Steve's enrollment at RGA and his return from February vacation on February 26, 2018 did any RGA clinician, or any other RGA staff member, contact Parents with concerns or request a meeting to discuss his behavior, progress, or placement at RGA. (Mother, I: 36) No red flags were raised with respect to Steve during his time at RGA. (Lindquist-Grady, II: 107)

35. At no time between Steve’s enrollment at RGA and February 28, 2018 did RGA contact WPS with concerns about Steve’s placement. (W-3; Walsh, II: 196; Koki-Mayo, II: 241-44)
36. Between January and February 2018, RGA had no issue implementing Steve’s IEP, as it was similar to that of many of the other students attending the school. (Lindquist-Grady: II, 126-27) The only documented disciplinary measures taken against Steve occurred on on January 2, 2018, when Steve brought a tactical pen to CMC on his first day because, as he explained, he did not know he was not allowed to bring it, and on January 30, 2018, when he refused to move his seat in response to a teacher’s request. (Mother: I, 34; Father: I, 116, 143-44; Kelly: I, 171, 173-74)
37. Over the 2018 February vacation week, on February 23, 2018, the Worcester Police Department (WPD) visited Steve’s home regarding an anonymous tip that the FBI had received.¹¹ Officer Luong asked Steve’s father whether Steve had access to guns or knives and whether he had contact on Facebook with people from the Middle East. Parent explained that Steve did not have access to guns, but he did have a buck knife, which he had carried occasionally.¹² During his visit, Officer Luong asked to search Steve’s room, but his father declined. Steve’s father shared information regarding Steve’s schooling, including his attendance at RGA, where he was searched regularly, and his participation in ongoing therapy. Steve joined the conversation, explaining that he would never be involved with terrorist activities because he is pro-American and anti-ISIS. Officer Luong asked Steve about his use of Facebook, whether he had ever made threats to cause violence in the school, and whether he had ever posted anything threatening on social media. Steve stated that he no longer uses Facebook, admitted to posting the picture of himself holding a BB gun while at St. Mary’s, and adamantly denied that he had ever made any threats to school safety or any school setting. (P-5; Father: I, 96-100)
38. The WPD notified WPS School Safety Director Robert Pezzella, who notified Dr. Lindquist, about the anonymous tip to the FBI. WPD communicated to RGA that there had been an online threat made by Steve regarding his intent to “conspire with people from the Middle East . . . bring a knife and . . . attack some people at school.” On or about February 27, 2018, Mr. Kelly spoke with Officer Luongo, who summarized his interview of Steve and his father. Officer Luongo told Mr. Kelly that Steve “seems like a nice kid, [but] at the end of the day, if he’s going to do something, he’s going to do it and we can’t really do anything about it.”¹³ (Kelly, I: 236) However, WPD made it clear that the WPD

¹¹The anonymous tip was made close in time to the Parkland School shooting, which occurred February 14, 2018. (LaCure, II: 64; Lindquist-Grady, II: 156-67) Dr. Lindquist-Grady testified that at one point, presumably before February 26, 2018, WPS School Safety Director Rob Pezzella reached out to her because “there was a significant amount of discussion by . . . some faculty that . . . [Steve] was the next school shooter and people were incredibly worried about him.” (Lindquist-Grady, II: 109)

¹²Parents testified that they had seen Steve carry a buck knife to work on occasion because he “felt unsafe,” but he had never threatened to hurt them, nor did they believe he had ever tried to bring a knife to school. They did not know how he obtained the knife. (Mother, I: 60-62; Father, I: 126-27)

¹³Dr. Lindquist-Grady testified that Officer Luongo went to RGA right after February break to explain what had happened when he went to the family’s house. He told RGA staff, including Dr. Lindquist-Grady and Mr. Kelly, that “...in this day and age, if anybody was going to bring a gun to school, there was nothing we could really do about it,

did not identify Steve as an imminent safety concern, nor did the police department feel he had a plan to engage in school violence. Moreover RGA never received a written report from the FBI or police regarding Steve. (Kelly: I, 205, 232). No further law enforcement follow-up occurred. (Father, I: 143)

39. Upon returning to RGA on February 26, 2018, Steve was asked to meet with Mr. Kelly and RGA Assistant Director Rich Cameron at approximately 9:30 AM to discuss the report RGA had received regarding the events that occurred over February vacation. Steve explained that an anonymous tip had resulted in the police meeting with him and his father. He made conflicting statements, saying at one point that the tip was a ridiculous allegation that he thought was made by a former classmate, and in the next moment suggesting that the government was finally catching up to him. Steve also mentioned that his phone was encrypted and that he was familiar with the dark web. Furthermore, Steve stated that he hated people from the Middle East, so the allegation that he was trying to contact Middle Eastern terrorist groups could not be true. The meeting ended after approximately twenty (20) minutes, when Steve said something about how the threat was that he would have a knife, but he would not do anything like that, he would do it with a gun. (C-3; Kelly, I: 176-78)
40. After the meeting, Mr. Kelly told Steve to see his clinician, Ms. Walsh, and then return to class. Mr. Kelly did not send Steve home because he appeared to be sufficiently stable and he had already been searched that day. (C-3; Mother, I: 36-37; Kelly: I, 178, 182, 259)
41. When Steve entered Ms. Walsh's office, he told her that something "really cool" had happened over break. He seemed entertained that the FBI would be interested in him, but he also made comments about how they were finally catching up to him. When Ms. Walsh asked specifically about the alleged threat that he would come to school with a knife and assault staff, he told her the whole thing was ridiculous, and that he would never do that. He added that if he were going to attack the school he would use a gun. (Walsh, II: 174-77, 194-95; Kelly, I: 181)
42. When her meeting with Steve ended, Ms. Walsh contacted Mr. Kelly to share her safety concerns regarding Steve. They consulted Dr. Lindquist-Grady and determined that Steve should be evaluated by the Emergency Mental Health (EMH) team at the UMass Memorial Medical Center. (Walsh: II, 177-78)
43. Mr. Kelly called Steve's mother at approximately 2:00 PM on February 26, 2018, to discuss what he characterized as a situation involving school safety. He explained that WPD had reported an FBI tip alleging that Steve was threatening school safety. Steve's mother told Mr. Kelly that the family had met with WPD, but had not been contacted by the FBI, and that she did not believe Steve posed a threat to school safety. Mr. Kelly told her that he would verify his information. He then called her back and explained that RGA stood by his statement that WPD had informed the school that Steve had made a threat

that we should probably just duck." (Lindquist-Grady, II: 111)

toward the school community. Either he or Ms. Walsh asked Parent to take Steve to the UMass emergency room for a psychiatric evaluation. (Mother, I: 37-41; Walsh, II: 178)

44. Parent explained that she did not feel comfortable bringing Steve to the emergency room, but would ask whether his therapist could move his regular appointment up one day to see him. Mr. Kelly agreed that Steve's mother could keep him out of school the following day to meet with his outside clinician. (Mother, I: 41-42; Kelly, I: 183; Walsh, II: 178) Steve completed the school day and his mother picked him up at dismissal. (Mother, I: 40)
45. On the following day, February 27, 2018, Steve met with Dr. LaCure at approximately 12:30 p.m. (Mother: I, 42; Kelly: I, 184)
46. After his appointment with Steve, Dr. LaCure told Steve's mother that he would initiate a conversation with RGA to express his belief that Steve did not pose safety threat to the school. (Mother, I: 42-43)
47. Dr. LaCure testified that it was around this time that Ms. Walsh first called him to discuss RGA's concerns about comments Steve had made, particularly his fascination with weaponry. Dr. LaCure told her that he had no concerns for Steve's safety and that Steve would sometimes "say things he didn't mean, and that [she] shouldn't be concerned that he would follow through."¹⁴ Dr. LaCure communicated that Steve was not a threat and could return to school. (Kelly, I: 184; LaCure, II: 52-56, 78-79; Walsh, II: 178-79)
48. When Steve's mother called RGA that afternoon, she was told to bring Steve into school the next day for a "re-entry meeting." (Mother: I, 43-45) RGA personnel testified that Steve had not been suspended on February 26, 2018 or afterward, and that the "re-entry meeting" was not connected with any school discipline measures. However, Steve's absence on February 27, 2018 was initially recorded as a suspension, though the record was later amended, at the request of Steve's father, to reflect an absence. (Kelly, I: 265) According to Mr. Kelly, a re-entry meeting is an "unofficial" information-sharing that occurs any time a student is out of school for disciplinary reasons or because he experienced some trauma or for some other reason that might have an effect on the school. The purpose of a re-entry meeting is to discuss what happened and "what precipitated, you know, whether it was a behavioral thing or whether it was something along the social-emotional lines." (W-4; Kelly: I, 185, 265-66) RGA staff viewed the meeting as an opportunity to for Steve to take back his comment about using a gun, or agree that it was a mistake to say something of that nature. Nonetheless, Ms. Walsh described the meeting as one that would follow "any kind of concerning incident," for the purpose of having "the student take responsibility for what occurred, and then to really develop a plan for how you'd come back after that." (Kelly: I, 187; Walsh: II, 180-81)

¹⁴ Steve's counselor at RGA, Jamie Walsh, testified that she had a conversation with Dr. LaCure to convey RGA's concerns about comments Steve had made prior to February 26, 2018 and that Dr. LaCure had responded similarly. The record reflects, however, the absence of concerns on the part of RGA regarding Steve until after February vacation. (Walsh, II: 178-79)

49. According to Mr. Kelly, at this point in time RGA had no intention of terminating Steve. (Kelly: I, 182-83, 186) However, he did contact Katherine Koki-Mayo (ETC, WPS) by email at approximately 9:00 PM on February 27, 2018 to request that she call him the next day regarding Steve. (W-10; Kelly, I: 217)
50. Ms. Koki-Mayo has been an ETC with Worcester for five years and has worked in special education at WPS for approximately thirty-five (35) years. She has a bachelor's degree in special education and regular education and a master's degree in rehabilitation counseling. Although she is the WPS ETC responsible for maintaining IEPs, attending and facilitating Team meetings, and managing paperwork for all Worcester students attending RGA, including Steve since his assignment to her caseload on or about January 2, 2018, Ms. Koki-Mayo had not been informed of any safety concerns regarding Steve prior to February 27, 2018. (W-3; Lizano, II: 229; Koki-Mayo, II: 240-44)
51. When Ms. Koki-Mayo called Mr. Kelly on the morning of February 28, 2018, he told her about the FBI tip, the police visit to Steve's home over February break, and his conversation with Steve on February 26, 2018. Ms. Koki-Mayo told Kay Seale what had happened. Ms. Seale is the Manager of Special Education and Intervention Services for WPS. In this position, Ms. Seale is responsible for all special education services and compliance throughout the District, including ensuring that students with disabilities receive a FAPE in the least-restrictive environment. She works closely with students and families and supervises staff. Ms. Seale has a master's degree in education in postgraduate studies and an additional graduate course. She has worked for WPS for over five years, and previously held administrative positions in two different school districts for approximately twenty-six (26) years. (W-8; Koki-Mayo, II: 240-43; Seale, II: 264-67)
52. In the meantime, also on February 28, 2018, Steve, his mother, Mr. Kelly, Ms. Walsh, and Instructional Aide Mercury Fiske attended Steve's "re-entry meeting" at RGA. The meeting began with a discussion of how well Steve was doing at RGA in terms of grades and behavior. Mr. Kelly then raised his concerns about the FBI report and Steve's meetings with RGA staff on February 26, 2018. Steve responded that any threat was not related to him, as he did not have the social media that the threat was allegedly posted on, nor did he have any intention to cause harm. (W-4; Mother, I: 44, 46-47; Kelly, I: 186; W-4) However, he repeated the provocative statements he had made the previous day, to the effect that he would not have made a threat to slit someone's throat, as reported by the FBI, because he would never get that close to someone. Instead, if he wanted to hurt someone, he would shoot them. He said that he would never do that either, though Ms. Walsh did not feel she was able to obtain a definitive assurance from Steve that he would not "come in with any intent to harm." (Mother, I: 48; Kelly, I: 187-88; Walsh, II: 180-82) The meeting then turned to Steve's concerns about the lack of respect that he felt RGA displayed by going behind his back to request an evaluation. Steve used the RGA Handbook, pointing to sections he had highlighted, to make his case in a passionate, animated, agitated tone. (W-11; Mother: I, 49-50; Kelly, I: 188-89; Walsh, II: 181-82)
53. Mr. Kelly testified that one of the major turning points for him during this meeting was the lack of control he thought Steve's mother had over Steve, stating, "As Steve became

bigger, Mom became smaller.” Her response to being asked about Steve’s possession of weapons was not reassuring to Mr. Kelly, as she could only state that she does not believe he has weapons and she does not think he would do something like this. (Kelly: I, 189, 211-212; Seale, II: 282-83)

54. Steve’s behavior during this meeting was consistent with reports regarding Steve provided to RGA upon enrollment that described him as using pressured speech when agitated, overreacting when he feels misunderstood, being provoked by normal situations into sudden and unpredictable reactions, intellectualizing his feelings in order to maintain control, and using provocative language. (W-1; Mother, I: 76-77; Seale, II: 275) At hearing, Mr. Kelly admitted that Steve’s statements about using a gun rather than a knife and his other behavior at the February 28, 2018 meeting may have be manifestations of his disability. (Kelly: I, 207-09, 212-13, 251-52)
55. After the meeting, Mr. Kelly asked Steve’s mother to take him home due to his escalated behavior and likely inability to have a productive day at school. He also directed Steve’s mother to set up an IEP review meeting with Steve’s ETC. (W-4; Mother, I: 51; Kelly: I, 190)
56. Steve’s mother called WPS that afternoon to request an IEP review meeting, as she had been instructed to do. She was told that she would receive a letter scheduling an IEP review meeting in two or three weeks. (Mother, I: 52-53)
57. Steve’s mother also left messages for both Mr. Kelly and Ms. Walsh that afternoon, asking whether she should bring Steve to school the following day, and when she did not hear back she emailed them at about 4:00 PM. (Mother, I: 51-52)
58. After their meeting with Steve and his mother on February 28, 2018, while Steve’s mother was waiting for a call back from RGA, Mr. Kelly, Dr. Lindquist-Grady, and Ms. Walsh discussed their concerns about Steve. Ms. Walsh conveyed her opinion that Steve could not be safe. She has had no further involvement with Steve or his family since this time. (Walsh, II: 183-84) Ms. Seale happened to be at RGA shortly after the meeting. Mr. Kelly communicated to her that he had some concerns about Steve. At this point, Ms. Seale had heard nothing about what had transpired over February vacation or at RGA. (Seale, II: 268-69)
59. Without reviewing Steve’s IEP, Mr. Kelly and Dr. Lindquist-Grady then contacted WPS for a telephonic meeting with Ms. Koki-Mayo and Ms. Seale. The meeting included CMC’s attorney, who at the time represented both the Central Massachusetts Collaborative and Worcester Public Schools. (Kelly, I: 190-92; Koki-Mayo, II: 144-45)
60. During this meeting, CMC personnel expressed their concerns for Steve including “overall safety” and Mr. Kelly’s belief that RGA was unable to meet Steve’s needs. Dr. Lindquist-Grady expressed her concern for the safety of other students in the building, and she and Mr. Kelly communicated to Worcester that the decision had been made to terminate Steve’s enrollment. Ms. Koki-Mayo suggested that RGA follow the typical

disciplinary process with Steve, but RGA maintained that this was a safety issue, not a discipline issue. During the phone call, the parties discussed allowing Steve to remain at RGA while Worcester tried to find another placement for him, but Dr. Lindquist-Grady warned that it “would be particularly dangerous to have him come back for the remaining two weeks or . . . until another placement is found,” due to his sensitivity to rejection. Ultimately, Mr. Kelly made the determination to terminate Steve from RGA on an emergency basis and everyone accepted Dr. Lindquist-Grady’s recommendation that the Collaborative not extend Steve’s stay because doing so would be unsafe. At this point, WPS supported CMC’s decision to terminate Steve’s enrollment. (Kelly, I: 190-92, 248; Lindquist-Grady, II: 115-118, 121; Koki-Mayo, II: 244-45, 61-62; Seale, II: 272-74, 304)

61. At hearing, Mr. Kelly testified that to his knowledge, Steve is one of only two students who have been terminated from the Collaborative in the twenty years he has been there. (Kelly, I: 195-96) He explained that the “deciding factor” was RGA’s ability to meet Steve’s needs and his responsibility “to keep the entire school community safe.” (Kelly, I: 198)
62. Worcester has a long-standing relationship with CMC and has sent many students there. Moreover WPS has confidence in the opinion of Dr. Lindquist-Grady, who worked for WPS prior to her employment with the Collaborative. (Koki-Mayo, , 254-56, 259; Seale, II: 298-99) In the past, when the Collaborative has brought concerns to Worcester about its ability to support students, WPS has reconvened a Team meeting where representatives of the two entities review data, discuss student progress, and identify other placement options. The student is generally able to stay at CMC for up to thirty (30) days while WPS searches for another placement, permitting the District to engage in the process described above. (Lizano, II: 232-34, 238; Seale, II: 273-74) In Steve’s case, Worcester understood that he had been terminated from RGA and although the District hoped CMC would reconsider its decision, WPS did not want Steve to be out of school in the meantime. Moreover, Worcester trusted the judgment of Dr. Lindquist-Grady, including her concern that Steve might present significant safety concerns were he permitted to return to the program, then leave. (Koki-Mayo, II: 258-59; Seale, II: 304)
63. CMC’s Student Policies Handbook provides for the procedures to be followed by staff in the case of a planned termination and an emergency termination. In the case of a planned termination, the handbook states requires that the Collaborative first request an IEP review and termination planning meeting with the sending school district. At the meeting, parents must be informed of the details of the termination procedure. In the case of an emergency termination, which is limited to circumstances where a student “presents a clear and present threat to the health and safety of him/herself or others. . . .” the Collaborative must notify the sending school district and Department of Elementary and Secondary Education (DESE) regarding the reasons for termination on an emergency basis. In addition, prior to termination, the sending school district must take responsibility for the student and immediately hold an emergency team meeting to address a new placement. (W-11; Seale, II: 307-08)

64. At hearing, Mr. Kelly reiterated that Steve's termination from RGA had been an emergency termination. He acknowledged that such termination requires that a student present a clear and present threat to the health and safety of himself or others, and he stated that Steve's "continued statements" that he would not bring a knife to school, but would use a gun, met that standard. (Kelly, I: 223-24, 262-63)
65. Sometime after 4:00 PM on February 28, 2018, following the phone call between WPS, CMC, and the attorney who represented both entities, Mr. Kelly called Parents. He explained to Steve's mother that RGA had "reviewed the situation and had terminated [Steve] from the program." Parent asked whether she could appeal the decision and was told she could not. (Mother, I: 51-52; Kelly: I, 193; Lindquist-Grady: II, 129) Although Dr. Lindquist-Grady believed Steve should have been evaluated to determine his mental health status at the time, Parents were not told of this recommendation or given any alternative to termination. (Lindquist-Grady, II: 163; Seale, II: 311) The parties agreed that their attorney would draft a termination letter for Mr. Kelly to sign. After this point, Mr. Kelly had no further communication with Parents or with Worcester regarding Steve's termination. Steve did not return to RGA. (Kelly: I, 194-95; Lindquist-Grady, II: 119-20)
66. Immediately after she spoke with Mr. Kelly, Parent called WPS. (Mother, I: 53-54) Ms. Koki-Mayo returned her call and they arranged to meet the next morning to discuss the situation. On March 1, 2018, Steve's mother met with Ms. Koki-Mayo and Ms. Seale. Other than Ms. Koki-Mayo, no members of Steve's Team were present. No Team meeting invitation was sent, and no representatives from RGA attended. (Mother, I: 52-55; Koki-Mayo, II: 245; Seale, II: 274-76, 313-14) At this point, WPS had received no documentation from CMC regarding any incidents, meetings, or safety plans involving Steve. (Koki-Mayo, II: 247)
67. At the meeting, Steve's mother expressed her disagreement with RGA's decision and asked what she could do about it. Worcester told her that the District had no control over, and could not intervene in, RGA's termination decisions. Neither Ms. Koki-Mayo nor Ms. Seale told Parents that WPS had asked the Collaborative to extend Steve's time at RGA, but Ms. Seale said she would reach out to the Collaborative to request that RGA take Steve back.¹⁵ Worcester offered temporary emergency placement at the Safety Center or home tutoring, pending placement. The District also asked Parent to sign releases for packets to be sent to potential placements and a consent form for a new psychological assessment. Parent signed the requested documents. Parents initially rejected, but later that day accepted, the emergency placement at the Safety Center. (Mother, I: 52-54, 71-72, 80-81; Father, I: 139-141; Koki-Mayo, II: 245-47; Seale, II: 275-76)

¹⁵Although Ms. Seale testified that she made a phone call at some point between March 9 and March 11, 2018, and sent "a couple of emails" to Mike Kelly, and sent an email to Mr. Tempesta, asking that the Collaborative reconsider allowing Steve to return to RGA "until [WPS could] complete the process," CMC witnesses did not recall this outreach. The emails entered into evidence demonstrate that Ms. Seale requested documentation numerous times but do not reflect a request that the Collaborative reconsider its emergency termination of Steve. (W-8; Seale, II: 277)

68. Also on March 1, 2018, Steve's father sent an email to Dr. Lindquist-Grady, with copies by U.S. mail to Mr. Kelly and Michael Tempesta, Executive Director of CMC, requesting reconsideration of RGA's termination decision. He received an email acknowledgement of the letter from Dr. Lindquist-Grady, but received no response from Mr. Kelly or Mr. Tempesta. (W-7; Father, I: 104-106)
69. On March 2, 2018, Steve's father contacted Officer Luong in an effort to find out what the police department had told RGA about the anonymous FBI tip and WPD's investigation. Officer Luong advised Steve's father to contact Mr. Pezzella. Parents also requested a summary of the FBI report, which they were able to obtain with the help of the WPD on or about March 30, 2018. According to this report, the anonymous tip to the FBI Public Access Line was made on February 16, 2018 (two days after the Parkland shooting), described Steve as having been "expelled for threatening to shoot up the school," "known as a dangerous student" at RGA, having a Facebook account with "some concerning friends; Middleeast/India/Arabic language (*sic*)," having an "ongoing classification as being monitored as a dangerous student/placed at a facility for kids with serious emotional concerns," having "said things along the lines of visioning cutting peoples (*sic*) throats in school," and having "a collection of knives." (P-5; P-9; Father: I, 108-112, 118- 119, 143) To the extent this information described Steve's presentation at RGA as dangerous, it conflicted with RGA's own experience of him.
70. According to the WPD Incident Narrative Report, WPD advised Mr. Pezzella of the anonymous tip, though "[a]t the moment of notification, the tip provided did not identify an imminent fear of safety or a preplanned event." (P-9)
71. On March 8, 2018, Steve's father sent a second letter to Mr. Tempesta, requesting all documentation related to Steve and a written explanation as to how Steve posed clear and present threat to the health of himself and others, as required by the CMC Student Policies Handbook for an emergency termination. Steve's father also indicated that although they had not been informed of a suspension or other disciplinary action,¹⁶ Parents had been told verbally that Steve would not be permitted to return to RGA. Moreover Parents had received no written termination letter, no process to appeal RGA's decision, and no response to their written request for reconsideration of RGA's emergency termination. (P-7; Father, I: 114)
72. On March 16, 2018, having received no response to his written inquiries, Steve's father called Mr. Tempesta to ask whether there had been a decision regarding Parents' request for reconsideration. Mr. Tempesta responded that the Collaborative would not reconsider its decision. (Father, I: 115)
73. When Parents received Steve's records from RGA on or about March 19, 2018, they noted that he had received a single discipline referral during his time at RGA for refusing to move his seat on January 30, 2018. (Father, I: 116) They were concerned that his

¹⁶ Steve's attendance record reflected an out of school suspension for February 28, 2018. Parents requested that this entry be corrected, as they had never been informed of a suspension. (P-10) It appears that this issue had been resolved prior to the hearing.

school file contained documents, including a BIP, that Parents had never received, discussed, or participated in developing. (P-11; Father, I: 117)

74. In the meantime, WPS was attempting to obtain information from the Collaborative regarding Steve's termination as well. On March 5, 2018, CMC sent to WPS Steve's safety plan, dated March 2, 2018, and notes regarding the re-entry meeting that had occurred on February 28, 2018. (W-4; Kelly, I: 219-20)
75. On March 9, 2018, Ms. Seale emailed Mr. Kelly to request all documentation regarding Steve's termination, as Worcester had not received a termination letter (W-8; Kelly: I, 220-21)
76. On March 12, 2018, Ms. Seale emailed RGA again, because she still had not received a copy of the official termination letter. (W-8; Kelly: I, 220-24)
77. For three weeks after the phone call on February 28, 2018, verbally informing them that Steve had been terminated from RGA, Parents received no written documentation of RGA's decision. (C-2; W-9).
78. On March 21, 2018, Steve's parents received a letter dated March 14, 2018, signed by Mr. Kelly, referencing 603 CMR 28.09 (12). According to this letter, CMC

has decided to terminate the enrollment of [Steve] on an emergency basis. This emergency termination is due to the serious concerns stemming from [Steve]'s online threatening statements to the staff and school community, concerns raised by the recent risk assessment, [Steve]'s subsequent discussions with RGA staff members and his overall dangerousness to the school community. We no longer believe that CMC can properly provide [Steve] with the supports and services that he requires. (P-8; Father, I: 121)

Worcester did not receive the termination letter until March 23, 2018, two days later, when it was sent electronically. (W-9; Koki-Mayo, II: 248, 253; Seale, II: 279-80)

79. At hearing, Mr. Kelly acknowledged that the termination letter sent to Parents did not indicate that Steve posed a clear and present threat to the health and safety of himself or others, and instead focused on CMC's inability to provide the supports and services that Steve requires. When asked about the contradiction, he explained that the letter had been drafted by the Collaborative's attorney. He stated, further, that during the Conference Call that took place between CMC, WPS, and their shared attorney, the parties discussed whether this would be an emergency termination or a planned termination and "it was decided that an emergency termination was the correct course of action, due to a concern that [Steve] would react negatively to finding out about the termination, and then being allowed to come back to the collaborative for two weeks." (C-2; Kelly, I: 223-30)

80. To date, CMC has not informed DESE of Steve's emergency termination. (Kelly, I: 230, 283-84)
81. In the meantime, Parents continued to work with Worcester, both to obtain information regarding Steve's termination and to find a placement for him going forward. (Lizano, II: 217-18)
82. Ms. Emily Lizano is the WPS Department Head for ETLs. She has been employed at Worcester, in some capacity, for thirteen (13) years, having spent nine (9) as an ETC before assuming her current position last year. Ms. Lizano has a bachelor's degree in early childhood development and a master's degree in education, severe special needs, special education. As an ETC, she oversees the special education referral process, communicates with families and evaluators, and ensures that regulations are followed. As ETC Department Head, Ms. Lizano supervises the twenty-two (22) ETCs in Worcester and, in complicated cases, she may assist an ETC. Ms. Lizano became involved with Steve when he was referred for an initial evaluation while attending St. Mary's, and she acted as his ETC until he was placed at the Collaborative, at which time he was assigned to Ms. Koki-Mayo. (Lizano: II, 208-12)
83. Ms. Lizano has been involved in searching for new placements for Steve, a process that began immediately after his termination from RGA. The District began sending out referrals as early as March 2, 2018 to several schools, including Wayside Academy, the Gifford School, FARR Academy, Bay Cove Academy, Doctor Franklin Perkins School (Perkins), and Southern Worcester County Educational Collaborative (SWEC). (W-2; W-18; Father, I: 139; Lizano, II: 217-20)
84. On March 9, 2018, the Gifford School rejected Steve. On March 15, 2018, FARR rejected Steve. On March 16, 2018, Bay Cove Academy rejected Steve. On April 11, 2018, SWEC rejected Steve. On May 21, 2018, Perkins rejected Steve. (W-18)
85. To date, Steve has only been accepted for the 2018-2019 school year to Wayside Academy, a staff secure private therapeutic day school for students with social-emotional needs. Steve's parents rejected this placement. (W-15; W-16; W-17; Mother: I, 73; Father: I, 151; Lizano: II, 217-18, 221-23)
86. On March 29, 2018, Parents met with Ms. Seale and Ms. Koki-Mayo again to discuss their frustration with RGA's termination of Steve, including the lack of documentation and improper process, and expressed their continuing desire to have the termination rescinded. Ms. Seale told them that she would follow up with RGA about the termination. Parents asked whether Steve could complete his education through a virtual school program. At this time Parents also rescinded their consent for a proposed reevaluation and requested that Steve finish the school year at the Safety Center. This request was allowed. (W-13; Mother, I: 85-86; Father, I: 146-147, 150; Koki-Mayo: II, 247, 249, 251, 253-54; Seale, II: 281)

87. On April 5, 2018, Parents wrote to Mr. Kelly to express their concern with the content and language of the termination letter they had received. They disputed the existence of “online threatening statements” made by Steve and asserted that referring to Steve’s “overall dangerousness to the school community” mischaracterized his behavior at RGA. Parents explained that they understood from WPS that RGA and CMC retained “absolute discretion” over placement decisions and they had “no choice but to accept [the] emergency termination.” As such, Parents were not seeking Steve’s return to RGA. (P-10; Father, I: 122-123) By the time the hearing commenced, Parents requested that Steve be permitted to return to RGA if no other appropriate placement could be found. (Father, I: 124)
88. Parents filed a hearing request at the BSEA on April 6, 2018. (P-17)
89. When Parents received Steve’s school file during discovery, it contained documents that not been provided to them by CMC as part of Steve’s school record, including a safety plan that appeared to have been developed after Steve’s termination. (C-4; Father, I: 117; Kelly, 243). Mr. Kelly testified that the safety plan had been updated “after the fact to send to Worcester,” to give the District the most recent picture of what had happened. Most of the information it contained, however, concerned the period of time before Steve enrolled at RGA and the document made no mention of the meeting that had occurred on February 28, 2018. (P-12; Kelly, 215-216, 242-42)
90. At hearing, Mr. Kelly testified that any documents missing from the file provided to Parents on or about March 19, 2018 were the result of inadvertent clerical error, for which he assumed responsibility. (Kelly: I, 180-81, 242).
91. On April 19, 2018, Dr. LaCure wrote a letter to Ms. Seale, at the request of Steve’s family, asserting that Steve does not, and did not at the time of termination, pose a safety threat to himself or others. (W-12; LaCure: II, 50-51; Father: I: 124, 148; P-18)
92. At Parents’ request, on or about May 10, 2018, Worcester updated its referral packets to exclude documentation regarding dismissal from RGA and include positive comments from school personnel who worked with Steve at the Safety Center. WPS then sent updated referral packets to the Lighthouse School, Corwin-Russell School, and Willow Hill School, followed by a referral to Summit Academy on or about May 22, 2018. (W-18; Mother, I: 88; Lizano, II: 223-24)
93. On May 29, 2018, Summit Academy rejected Steve. On or about June 14, 2018, Worcester sent additional updated packets to FLLAC Collaborative and Assabet Valley Collaborative. (W-18; Lizano, II: 224)
94. SWEC subsequently agreed to reconsider Steve’s referral, and agreed to have Steve attend its extended school year program before making a final determination as to the fall. However, Steve’s parents rejected the summer programming due to Steve’s summer job. (Lizano, II: 225; Seale, II: 283)

95. At the time of hearing, Dr. LaCure no longer believed RGA would an appropriate placement for Steve, given his strong reactions to rejection. Furthermore, he testified that any safety plan for Steve should entail Steve being surrounded by trusted adults and having a “point person” to meet with when he wants to, rather than undergoing searches. (LaCure: II, 83-85, 91, 94).
96. At the time of the hearing, Steve no longer wished to return to RGA. (LaCure, II: 92-94)
97. At the time of the hearing, Dr. Lindquist-Grady maintained her position that Steve needs a very small setting with additional staff, including a consulting psychiatrist, but that Steve should not return to RGA. (Lindquist-Grady, II: 122-23) She believes he would benefit from a mental health hospitalization for purposes of evaluation “to determine ongoing issues with his thought process, as well as to take a look at mental status and the possibility of medications to help him to be successful.” (Lindquist-Grady, II: 158-59)
98. Steve is currently at the Safety Center in Worcester, where his IEP is being implemented while Worcester continues to search for a placement. He has been polite and respectful, and he encountered some success in his science and math MCAS prep classes. (W-14; Koki Mayo, II: 251-52; W-14).
99. No party believes the Safety Center, an interim emergency placement, is an appropriate placement for Steve. He has been there for four months. (Father: I, 123)

DISCUSSION

Parents allege that WPS and/or CMC violated federal and state laws by wrongfully terminating Steve from RGA because he did not meet the criteria for emergency termination and because he was denied due process in connection with his termination. Thus they assert both substantive and procedural violations of Steve’s right to a free appropriate public education (FAPE). CMC contends that it had grounds to terminate Steve’s enrollment on an emergency basis and did so properly. According to WPS, Worcester complied with state and federal law in connection with Steve’s termination from RGA and continues to work diligently with Parents to ensure that he receives a FAPE. As such, to the extent Steve was denied a FAPE, such denial is the result of RGA’s errors and the responsibility of the Collaborative. As the moving party, Parents bear the burden of proof.¹⁷ In order to prevail, they must establish that at least one of the public school entities committed errors that resulted in the denial of a FAPE.

I. Violations of Substantive Law or Procedural Protections May Constitute a Deprivation of FAPE

The Individuals with Disabilities Education Act (IDEA) was enacted “to ensure that all children with disabilities have available to them a free appropriate public education”¹⁸ FAPE entitles a student to programs and services tailored to his individual needs that enable him to

¹⁷ See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008).
¹⁸ 20 U.S.C. § 1400 (d)(1)(A).

make “progress appropriate in light of the child’s circumstances.”¹⁹ The IDEA requires local educational agencies to establish procedures that ensure FAPE, including an opportunity for parents to participate in meetings, view all documentation related to their child’s special education, and receive written notice prior to any proposal or change in educational placement.²⁰ These procedures are integral to the IDEA, such that in certain circumstances procedural errors alone may amount to a deprivation of FAPE: “In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”²¹

II. Termination From an Educational Collaborative is Governed by Established Guidelines

Educational collaboratives allow for “two or more school committees of cities, towns and regional school districts... [to] enter into a written agreement to provide shared programs and services... to complement the educational programs of member school district.”²² The primary purpose of an educational collaborative is to provide public school students with an additional option for cost-effective services.²³ Each collaborative operates through a Board of Directors, which is comprised of school committee members from the member public school districts.²⁴ Every collaborative must submit an agreement signed by all member districts to the Department of Elementary and Secondary Education (DESE) for approval that establishes the governing terms of the collaborative.²⁵

A. Educational Collaboratives are Approved Public Special Education Schools

Although collaboratives differ in some ways from public and private schools, Massachusetts regulations classify educational collaboratives serving primarily students with disabilities as approved public special education schools.²⁶ The educational collaborative is considered a public entity and has standing to sue and be sued to the same extent as a city, town or regional school district.²⁷ Further, DESE views educational collaboratives as “extension[s] of the programs and services of the member districts,” and conducts audits of collaboratives in order to ensure that, as public entities, they are following all state and federal laws.²⁸ In addition, collaboratives are considered state agencies for the purposes of Massachusetts laws regarding conflict of interest

19 See *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

20 See 20 U.S.C. § 1415 (a); *id.* at § 1415 (b)(1).

21 20 U.S.C. § 1415(f)(3)(E)(ii).

22 G.L. c. 40 § 4E 603 C.M.R. 50.03(1).

23 See *Guidance: Responsibilities of School Committees and Charter School Boards as Member Districts of an Educational Collaborative*, MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION 1.1 [hereinafter *Guidance*] (August 2015); *Background*, THE MASSACHUSETTS ORGANIZATION OF EDUCATIONAL COLLABORATIVES (2018) (available at <http://moecnet.org/policy/background>) (explaining the history of educational collaboratives in Massachusetts).

24 603 C.M.R. 50.04(1).

25 603 C.M.R. 50.03(1); 603 C.M.R. 50.03(5).

26 See 603 C.M.R. 18.02(2).

27 G.L. c. 40 § 4E(h).

and bullying, and collaborative employees are public employees for the purposes of contracts and the Tort Liabilities Claims Act.²⁹

B. Termination of a Publicly-Funded Student from an Educational Collaborative

Massachusetts law governs the termination of a publicly-funded student from a private or public special education school. To terminate a student, a special education school, including a collaborative, must adhere to specific guidelines pertaining to either a “planned termination” or an “emergency termination.”³⁰ In either case, the special education school is required to “try every available means to maintain the student’s placement until the local Administrator of Special Education . . . [has] had sufficient time to search for an alternative placement.”³¹

To initiate a planned termination, the special education school must notify the sending school district of the need to conduct an “IEP review meeting” for the student.³² The school district must provide all relevant parties with ten (10) days notice of the intended date of the meeting. At the meeting, a written termination plan is developed to reflect the “student’s specific program needs, the short and long term educational goals of the program, and recommendations for follow-up and/or transitional services.”³³ Unless the parties agree to an earlier termination date, the written termination plan must be implemented in no less than thirty (30) days.³⁴ Furthermore, the special education school is required to explain its termination procedures to the student and parent.³⁵

Public and private special education schools also have the option to terminate a student on an emergency basis when the student “presents a clear and present threat to the health and safety of him/herself or others.”³⁶ Where this standard is met:

The special education school shall not terminate the enrollment of any student, even in emergency circumstances, until the enrolling public school district is informed and assumes responsibility for the student. At the request of the public school district, the special education school shall delay termination of the student for up to two calendar weeks to allow the public school the opportunity to convene an emergency Team meeting or to conduct other appropriate planning discussions prior to the student’s termination from the special education program.³⁷

²⁸ *Guidance, Responsibilities of School Committees and Charter School Boards as Member Districts of an Educational Collaborative*, MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION (August 2015); *Collaborative Issues*, THE MASSACHUSETTS ORGANIZATION OF EDUCATIONAL COLLABORATIVES 1, 4 (2018).

²⁹ See G.L. c. 258 § 1; G.L. c. 71 §370(d)(1); 603 C.M.R. 50.12(2).

³⁰ See 603 C.M.R. 18.05(7) (distinguishing between planned and emergency terminations).

³¹ 603 C.M.R. 18.05(7)(b) (“The school shall, at the time of admission, make a commitment to the public school district or appropriate human service agency that it will try every available means to maintain the student’s placement until the local Administrator of Special Education or officials of the appropriate human service agency have had sufficient time to search for an alternative placement.”)

³² 603 C.M.R. 18.05 (7)(c)(1).

³³ 603 C.M.R. 18.05 (7)(c)(1)-(2).

³⁴ 603 C.M.R. 18.05 (7)(c)(4).

³⁵ 603 C.M.R. 18.05 (7)(c)(3).

³⁶ 603 C.M.R. 18.05 (7)(d).

³⁷ 603 C.M.R. 18.05(7); 603 C.M.R. 28.09 (12)(b).

1. *Substantive Criteria for an Emergency Termination*

To decide whether a special education school properly terminated a student on an emergency basis, a hearing officer must review the school's determination that the student's behavior presented a "clear and present threat to the health and safety of him/herself or others."³⁸ Although the regulations do not specify what constitutes a clear and present threat, "when the text of a statute [or regulation] is clear and unambiguous, we construe the language in accordance with its plain and ordinary meaning."³⁹ The Merriam-Webster Dictionary defines "clear," in its relevant usage, as "free from obscurity or ambiguity; easily understood." The same source defines "threat" as "an expression of intention to inflict evil, injury, or damage." In accordance with the "plain and ordinary meaning" of its language, the applicable regulation requires that a student must unambiguously express an intention to inflict injury or damage in order to be terminated on an emergency basis from an approved public special education school.

In addition, in reviewing an emergency termination, a hearing officer will typically look at whether there is evidence that the special education school could no longer provide a safe environment for the student, whether the special education school attempted modifications to make the school safe for the student, whether the student's behaviors are within the purview of the special education school's expertise, and whether the student's behavior is consistent with, or different from, descriptions available to the special education school prior to his acceptance.⁴⁰

Applying this analysis, in a case involving a student with severe cardiac malformation and associated complications, non-verbal learning disabilities, anxiety, and impulse and anger issues, a hearing officer determined that an emergency termination was invalid due to the Cotting School's failure to provide student with modifications that would enable the school to be a safe setting for her.⁴¹ The hearing officer concluded that the special education school's failure to "try every available means to maintain student's placement," led it to the potentially false conclusion that the school was not safe for the student. On the other hand, an emergency termination was deemed proper by a hearing officer where a special education school had attempted numerous modifications, unsuccessfully, to address a student's behavior, and that behavior had escalated significantly (i.e. from property destruction and occasional biting to assault of a peer) since his enrollment in the special education school.⁴²

³⁸ See *In Re Mercy Centre and Brockton Public Schools*, 19 MSER 142 (Putney-Yaceshyn 2013) (analyzing emergency termination by first determining whether student presented with behaviors that were a "clear and present threat to the health and safety to peers and staff").

³⁹ *Foss v. Commonwealth*, 437 Mass. 584, 586 (2002).

⁴⁰ See *In Re: Falmouth Public Schools and the Cotting School*, 10 MSER 496 (Sherwood 2004); see also *Framingham Public Schools and Student v. Guild for Human Services, Inc. and the Department of Developmental Services*, BSEA #1808824 (Putney-Yaceshyn 2018) (concluding that even where special education school had attempted numerous modifications to attempt to keep student safe and ultimately followed both state law and its own policies in terminating his enrollment, including maintaining enrollment even beyond the two calendar weeks required by the regulation, because he had been accepted to no other placement and could not safely return home, student was entitled to stay-put at that school); *In Re Dracut Public Schools and Melmark New England* (Crane 2008) (determining special education school that sought to terminate student's enrollment was not his stay-put placement).

⁴¹ See *Falmouth Public Schools* (because school could be safe for student with certain modifications, including a full time psychiatric nurse, emergency termination was not warranted).

⁴² See *Framingham Public Schools* (noting that special education school "could not be faulted for any of their actions" where the Guild had initially agreed to delay termination, placed extra staff with Student, attempted to

2. *Proper Procedure for an Emergency Termination*

Pursuant to Massachusetts law, a valid emergency termination requires that the special education school promptly notify the sending school district of its intent to terminate the student and continue to provide the student with FAPE until the sending school district assumes full responsibility for the student.⁴³ Although the regulations do not define what it means for the enrolling public school district to assume full responsibility, the BSEA has addressed this issue in several cases.⁴⁴

Earlier this year, in a case involving escalation of a student's behavior beyond the control of the staff members of a special education school, Hearing Officer Putney-Yaceshyn deemed an emergency termination valid because the special education school provided written notice to the sending public school district of the intent to terminate the student on an emergency basis, explaining why the termination occurred; participated in a Team meeting; and delayed the termination while the public school district looked for a new placement for the student.⁴⁵ In contrast, in reviewing a non-emergency termination, Hearing Officer Sherwood held that a special education school cannot lawfully terminate a student's placement until the public school district takes responsibility for the student's education "by locating or creating an alternate placement." Absent evidence of "insurmountable safety concerns" that cannot be overcome through modifications, a special education school cannot terminate a student until a new placement is located.⁴⁶

III. RGA's Emergency Termination of Steve's Enrollment Was Neither Substantively Nor Procedurally Sound

In the instant dispute, there is no question that Steve is an individual with a disability under the IDEA and state law.⁴⁷ The issue before me is whether WPS and/or CMC deprived Steve of a FAPE in connection with his termination from RGA in February 2018. As explained below, I find that RGA's termination of Steve, enacted by the Collaborative, was improper, and that CMC's procedural errors deprived Steve of a FAPE.

prevent contact between Student and targeted peer and to assist them in mending their relationship, and considered placing Student at a hotel and hiring security service or assigning additional trained staff to him).

⁴³ 603 C.M.R. 28.09 (12) (b); see 603 C.M.R. 18.05(7).

⁴⁴ 603 C.M.R. 18.05(7); 603 C.M.R. 28.09 (12).

⁴⁵ See BSEA #1808824 (acknowledging proper process followed by special education school under relevant regulations and school handbook, but ruling that student must remain at special education school for stay-put reasons). In 2013, in *Mercy Centre and Brockton Public Schools*, Hearing Officer Putney-Yaceshyn found, similarly, that where evidence demonstrated that the special education school had addressed Student's behavior multiple times before terminating his enrollment and had communicated with the sending district about these challenges, that Student's continued attendance at the special education school presented a "clear and present threat to the threat of him/herself or others," that the special education school had immediately notified the enrolling public school of its intent to terminate, and that the public school district attempted to contact Parent by phone calls and letters to schedule an emergency Team meeting, the school district had assumed responsibility for Student.

⁴⁶ See *Falmouth Public Schools*.

⁴⁷ 20 U.S.C. 1400 *et. seq*; G.L. c. 71B.

A. RGA did not have sufficient grounds to terminate Steve's enrollment on an emergency basis.

Substantively, the emergency termination of a student's enrollment by a collaborative requires that the collaborative determine that the student "presents a clear and present threat to the health and safety of him/herself or others." To determine whether CMC properly concluded that Steve met the standard, I consider the knowledge that the Collaborative had regarding Steve's behaviors at the time it made its decision to accept Steve, whether it attempted to modify procedures in order to make RGA safe for Steve, and whether Steve posed a clear and imminent threat to the health and safety of himself or others on February 28, 2018.

Despite Ms. Walsh's statements to the contrary, the testimony of other witnesses, including Steve's parents, Worcester staff, and other RGA staff, demonstrates that Steve's behavior during the February 28, 2018 meeting, cited by CMC as the basis for Steve's termination, was within the scope of what was to be expected from him. Steve's BIP listed "inappropriate or threatening language" as one of his targeted behaviors, and his IEP stated that Steve "may express momentary thoughts and feelings impulsively and can be readily provoked by normal day to day dealings into sudden and unpredictable reactions." At hearing, Mr. Kelly admitted that the statement made by Steve about using a gun rather than a knife to hurt someone, and his tone throughout the meeting on February 26, 2018, could be manifestations of his disability. In addition, Ms. Walsh, Ms. Kelly, and Dr. Lindquist-Grady testified about Steve making similar comments in the past, such as his statement about killing his ex-girlfriend's father. Sufficient evidence demonstrates that provocative statements about weapons and violence would not be unexpected and in fact, are among the behaviors that RGA, as Steve's placement, was to address with him.

Although Massachusetts regulations and the CMC Student Policies Handbook are silent on this particular point, BSEA hearing officers have considered the modification efforts made by a special education school in order to determine whether an emergency termination was warranted. RGA holds itself out as a school that provides therapeutic and academic services to students with a variety of challenges, including social-emotional disabilities. Steve fits the profile of students served by RGA and his behaviors related to his social-emotional disability are clearly described in his IEP. At hearing, RGA witnesses testified that Steve's IEP was similar to that of his peers and that RGA had no trouble implementing it before February 26, 2018. However, from February 26 through February 28, 2018, as RGA staff discussed their concerns about Steve, the Collaborative made no effort to enact modifications that might allow Steve to remain in the program. Furthermore, on February 26, 2018, the day that Steve originally made the comment about using a gun rather than a knife, Mr. Kelly permitted him to return to class rather than sending him home, demonstrating that he felt comfortable allowing Steve remain in the building after a search, despite the inappropriate comments he had made. RGA could have modified Steve's IEP, BIP, and/or safety plan, for example to include daily – or twice daily - searches in order to ensure that Steve did not bring weapons into school.

For the reasons above, Parents have established that RGA terminated Steve for behaviors consistent with those of which the Collaborative was aware, and prior to attempting sufficient modifications to allow him to remain in the program safely.

B. Even if Steve's behavior had met the substantive standard for emergency termination, RGA failed to follow the proper procedure.

Massachusetts law requires that special education schools seeking to terminate a student must first inform the sending public school district.⁴⁸ In addition, CMC's Student Policies Handbook reflects the Massachusetts regulation, and requires the Collaborative to immediately notify the sending school district and the Department of Elementary and Secondary Education of its intent to terminate and the circumstances that require such action. As evidenced by testimony of multiple witnesses, a phone call took place between Mr. Kelly, Ms. Walsh, Dr. Lindquist-Grady, Ms. Seale, Ms. Koki-Mayo, and WPS's and CMC's shared attorney. During this call, the Collaborative informed Worcester that it had terminated Steve's enrollment. RGA did not, and had not by the time of the hearing, contacted the DESE to disclose its termination of Steve's enrollment.

Moreover, RGA failed to maintain its enrollment of Steve until Worcester had the opportunity to develop a new plan and placement for Steve. Massachusetts regulations prohibit a collaborative from terminating a student's enrollment until the sending school district has taken responsibility for the student.⁴⁹ The BSEA has previously held that taking responsibility should be interpreted to mean that the sending district has found a subsequent placement for the terminated student, or at least that the sending district has had the opportunity to work with the special education school to attempt to address ongoing challenges and to convene an emergency Team meeting to initiate the process of locating a new placement.⁵⁰ In Steve's case, RGA never took time to consider the modifications that could be made to behavioral plans, staffing, the environment, or Steve's IEP prior to terminating his enrollment, nor did it provide Worcester with any notice of safety concerns. Instead, CMC contacted Worcester after it had already made the decision to terminate Steve's enrollment.

C. CMC's errors deprived Steve of a FAPE.

CMC lacked sufficient cause to determine that Steve posed a "clear and present threat" to himself or others. Moreover, the Collaborative's failure to follow relevant regulations, and even its own handbook, meant that Parents (and Worcester) were deprived of the opportunity to work with CMC to explore potential modifications that might enable Steve to continue to attend RGA safely. As a result, his right to a FAPE was impeded and he was deprived of the educational benefits of the therapeutic placement called for in his IEP.

IV. Parent Has Not Established That Worcester Violated Steve's Substantive or Procedural Rights

⁴⁸ 603 C.M.R. 28.09(12).

⁴⁹ See *id.*

⁵⁰ See *Falmouth Public Schools; Framingham Public Schools; Mercy Centre and Brockton Public Schools.*

A. CMC is independent of Worcester and as such, WPS does not control the Collaborative's actions.

CMC is an entity separate from Worcester, as it has its own board of directors, staff, and school handbook. As Ms. Seale testified, Worcester has no control over a special education school's decision to terminate a student, and may only ask for reconsideration. Parent provided no evidence to establish otherwise.

B. WPS followed proper procedures.

It remains unclear whether Worcester formally requested that CMC extend Steve's enrollment or reconsider its termination decision, however, this may be due to the confusion regarding shared counsel. Nonetheless, based upon the exhibits and testimony before me, I conclude that once CMC terminated Steve's enrollment and refused to participate in further conversations regarding his placement, Worcester convened an emergency meeting with Parents and provided an emergency interim placement for him. WPS has worked with Parents since that time to obtain documents from RGA, including the delayed termination letter from CMC, and to explore potential placements.

CONCLUSION

After reviewing the testimony and documents in the record, I conclude that Parents have met their burden to prove that the Central Massachusetts Collaborative did not have grounds to terminate Steve on an emergency basis, and that CMC failed to follow the procedures required for an emergency termination. As a result, Steve was deprived of a FAPE.

Although a return to RGA may not be in Steve's best interest at this time, by the close of the hearing, Worcester had yet to locate and secure a new placement for him that Parents would accept.⁵¹ Remaining at the Safety Center is not a viable option. Steve is entitled to return to Robert Goddard Academy for the 2018-2019 school year, unless and until Parents accept a new placement or a hearing officer determines that Wayside Academy and/or SWEC (should SWEC accept Steve for the 2018-2019 school year) is appropriate for him. RGA must make all attainable modifications to ensure Steve can safely attend school. If CMC finds that even with modifications, RGA cannot meet Steve's needs, the Collaborative may pursue a planned termination in accordance with state law.

ORDER

1. CMC is hereby directed to rescind Steve's emergency termination and remove all references to the termination from his school record. Documentation regarding the meetings that led up to the termination may remain in the record.

⁵¹Although Steve has been accepted by Wayside Academy, Parents refused that placement. His acceptance at SWEC was contingent on a summer trial period, which Parents also refused.

2. CMC is hereby directed to permit Steve to return to RGA immediately. CMC is directed to develop a plan to mitigate any potential negative effects on Steve and the school community arising from its improper termination.

3. Steve's Team is hereby directed to convene to determine what, if any, compensatory services are owed Steve by CMC as a result of his absence from RGA for the last four months of the 2017-2018 year, taking into account his attendance at the Safety Center during this time.

By the Hearing Officer:⁵²

Amy M. Reichbach
Dated: August 30, 2018

⁵²The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Jocelyn Simpson in the preparation of this Decision.