



Massachusetts Department of Elementary and Secondary Education

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July 31, 2020

██████████, Superintendent
██████████
██████████
██████████

Re: Intake PRS 3870
Student/Group Names: ██████████ &
Suspended Students in Pre-K to Grade 3
Letter of Finding

Dear Superintendent ██████████:

On May 4, 2020, the Massachusetts Department of Elementary and Secondary Education (“Department”) received a written statement of concern from Attorney Ashley Francisque (“Complainant”) of the Justice Center of Southeast MA involving ██████████ (“District”). As the Problem Resolution System (“PRS”) Specialist inquiring into this matter, I have taken the following steps:

- Reviewed the statement of concern and supporting documentation
- Spoke with the Complainant regarding the statement of concern
- Requested a Local Report from the District
- Communicated with the Director of Student Services regarding the concerns
- Reviewed the District’s Local Report and supporting documentation submitted to the Department on June 19, 2020
- Issued a letter of extension on July 2, 2020 for review and response to the Local Report
- Discussed the District’s Local Report and the concerns with the Complainant
- Received and reviewed the Complainant’s response to the District’s Local Report
- Reviewed relevant state and federal special education laws and regulations
- Consulted with other Problem Resolution System Office staff

The Department's inquiries indicate, and the District has acknowledged, that noncompliance has been determined, and we are advising the District now of this finding, as well as of the required corrective action which must be implemented. The concerns included in the signed statement, and subsequently provided over the phone, our findings, and required corrective actions are as follows:

CONCERNS AND FINDINGS

1. The Complainant alleged the District has consistently suspended the student named in this complaint, in May of 2019, when he was in grade ■, and other students in grades pre-k to grade 3 without providing prior notice to the superintendent, as required by *603 CMR 53.08 (2)(d) and 603 CMR 53.08 (3)(e)*:

If the student is in a public preschool program or in grades K through 3, the principal shall send a copy of the written determination to the superintendent and explain the reasons for imposing an out-of-school suspension, whether short-term or long-term, before the suspension takes effect.

The District's Local Report (Report) indicates that the student was suspended two times in May, 2019. The Report asserts that the principal notified the *superintendent's designee* verbally before suspending this student, and as done for all other pre-k through grade 3 students. The District acknowledged that written notice was not provided before suspensions began. **The regulation clearly requires written notice to the superintendent, and not a designee.** The District Report also indicates there is more than one administrator identified as the superintendent's designee.

The Report notes that the District investigated the situation of six other pre-k to grade 3 students from the District's elementary schools and found that the superintendent, or his designee, was notified verbally each time. However, the Report acknowledged that the District did not, in each case, and did not in this case, provide notice of the written determination, as the regulation requires, **to the superintendent before the suspension began.** The Department, therefore, finds **the District was out of compliance with 603 CMR 53.08 (2)(d).**

The Department notes that multiple persons receiving the suspension information may not know the frequency of suspensions used in each school and realize the need to encourage alternatives to suspension for preschoolers to grade 3 students. The Complainant suggests that the District may also be in violation of the Family Education and Privacy Rights (FERPA) for sharing this personal information. The special education director, as the designee for eligible students, certainly has a need to supervise the overall support requirements of eligible students and to ensure regulations are followed. However, there is no evidence that notifying the special education director led to an increase in the use of alternative sanctions, as the Report claims. Only one of the students identified in the additional submission received an alternative to an out-of-school suspension.

The District Disciplinary Process Flowchart indicates that administrators should consider alternatives to suspension **before** the suspension hearing. **According to the regulation, however, the principal must consider alternatives to suspension after the hearing and before a decision is made to suspend.**

Documentation submitted with the Report indicates on several occasions that a discussion of suspension alternatives was held before the hearing and no such discussion after the hearing. In fact, **a decision to suspend was often made before the hearing.**

The District also failed to consider special education supports and services instead of suspension for eligible students. **The District was out of compliance with 603 CMR 53.05 and with 603 CMR 28.03 (3)(a):**

The principal may consult with the Administrator of Special Education regarding accommodations and interventions for students.

2. The Complainant alleged the District scheduled and held the Suspension Hearing before providing a written notice to the parent(s), as required by 603 CMR 53.06 *Notice of Suspension and Hearing under M.G.L. c. 71, § 37H³/₄:*

(1) Except as provided in 603 CMR 53.07 and 603 CMR 53.10, a principal may not impose a suspension as a consequence for a disciplinary offense without first providing the student and the parent oral and written notice, and providing the student an opportunity for a hearing on the charge and the parent an opportunity to participate in such hearing.

(2) The principal shall provide oral and written notice to the student and the parent in English and in the primary language of the home if other than English, or other means of communication where appropriate. The notice shall set forth in plain language:

(a) the disciplinary offense;

(b) the basis for the charge;

(c) the potential consequences, including the potential length of the student's suspension;

(d) the opportunity for the student to have a hearing with the principal concerning the proposed suspension, including the opportunity to dispute the charges and to present the student's explanation of the alleged incident, and for the parent to attend the hearing;

(e) the date, time, and location of the hearing;

(f) the right of the student and the student's parent to interpreter services at the hearing if needed to participate;

(g) if the student may be placed on long-term suspension following the hearing with the principal:

1. the rights set forth in 603 CMR 53.08 (3)(b); and

2. the right to appeal the principal's decision to the superintendent.

(3) The principal shall make reasonable efforts to notify the parent orally of the opportunity to attend the hearing. To conduct a hearing without the parent present, the principal must be able to document reasonable efforts to include the parent. The principal is presumed to have made reasonable efforts if the principal has sent written notice and has documented at least two attempts to contact the parent in the manner specified by the parent for emergency notification.

(4) Written notice to the parent may be made by hand delivery, first-class mail, certified mail, email to an address provided by the parent for school communications, or any other method of delivery agreed to by the principal and parent.”

The District Report acknowledged that the administrator failed to provide the parent/guardian with written notice prior to the hearing. In fact, the principal held the hearing by telephone call immediately after verbally notifying the parent of the need for a hearing. The Complainant states that she was at work when called by the District, and was not given an option to schedule the hearing at another time or in person, or to discuss extenuating circumstances.

Documentation also includes statements from *superintendent designees* and from the principal describing the conversations regarding student incidents and possible suspensions. In each case, there is a statement at the end of the conversation description indicating the decision to suspend the student was made during that conversation and not after hearing the student’s explanation and the parent’s extenuating circumstances.

The written notice was provided to the parent when she came to the school for the student’s re-entry meeting. The holding of a phone hearing should only be as a last resort when the parent is unable to come to school. In this case, the parent came to school for a post-suspension, re-entry meeting. There should be no need for a re-entry meeting if a proper due process hearing is held.

The District Report includes a copy of the District Student Discipline Policy. This policy requires that “a principal must provide the student and the parent oral and written notice, and provide the student an opportunity for a hearing and the parent an opportunity to participate in such hearing before imposing suspension as a consequence for misconduct.”

The Department notes that the hearing is a hearing for the student, with the parent/guardian invited to attend. The practice of holding an immediate hearing over the phone fails to provide written notice for parental review before a hearing, and fails to remind the parent of her rights to re-schedule the hearing, to provide extenuating circumstances, or the rights for an interpreter. This practice also fails to provide the student with his written due process rights to dispute the charges before a suspension decision is made. **The District was out of compliance with the District’s policy and with 603 CMR 53.06.**

3. The Complainant alleged the District did not schedule and hold the hearing to include the student. The Complainant alleged the student was sent home on the bus, while the hearing was held right after school. The Complainant alleged noncompliance with 603 CMR 53.06(1):

Except as provided in 603 CMR 53.07 and 603 CMR 53.10, a principal may not impose a suspension as a consequence for a disciplinary offense without first providing the student and the parent oral and written notice, and providing the student an opportunity for a hearing on the charge and the parent an opportunity to participate in such hearing.

The Department also reviewed *603 CMR 53.05 Alternatives to Suspension under M.G.L. c. 71, § 37H¾* in this matter:

In every case of student misconduct for which suspension may be imposed, a principal shall exercise discretion in deciding the consequence for the offense; consider ways to re-engage the student in learning; and avoid using long-term suspension from school as a consequence until alternatives have been tried. Alternatives may include the use of evidence-based strategies and programs such as mediation, conflict resolution, restorative justice, and positive interventions and supports.

The Report acknowledged that the hearing was held with the parent and without the student, who had been put on the bus to go home. The Report notes that the hearing was held by phone right after school was dismissed.

The principal reported that “during the hearing, [he] presented the events that had taken place for which suspension was being considered and we discussed it as well as options. Because [the parent] had requested to hold the hearing over the phone, I have no knowledge if [the student] was present with her at the time, as at no time did she put him on the phone, although he had a right to participate in the hearing.” In fact, the principal had an obligation to ensure the student was present for the hearing.

The Complainant asserts that she was not given a choice to schedule the hearing for a different time, to have a face-to-face hearing, or to review a written description of the charges and written reminder of her and the student’s due process rights before a hearing. Each discussion documented, for a pre-suspension conversation with a superintendent designee, failed to include a discussion of possible alternatives and why they may or may not be recommended. In fact, the two times alternatives were provided, the student was still suspended.

The Report includes a review of suspension information documents for six other students. Documentation indicates parents were given a written choice to “attend the hearing” or to “waive participating in the hearing and accept the principal’s suspension recommendation.” This practice encouraged the parent to avoid a hearing and, thereby deprive the student of the opportunity to be heard prior to excluding him from school. As the principal did not even try to provide the student with a chance to participate, or to ensure the student was present, **the Department finds the District out of compliance with 603 CMR 53.06 (1)(c).**

The statements from the *designee* and the principal indicate alternatives to suspension were discussed for this student. However, even when alternatives were agreed, including movement to a new placement or consultation from the school psychologist, before the student was evaluated and found eligible, a suspension was still issued. **The District was out of compliance with 603 CMR 53.05.**

The Department also notes that documentation for one of the additional student’s reviewed includes statements that the “conversations with the family had been ongoing about securing for the child and family, consistent counseling supports via a community agency.” The principal’s statements suggest the District did not consider evaluating the student for special education or offering in-school counseling. **These two examples suggest that the District was also out of compliance with Child Find, as indicated in 34 CFR 300.11(a)(1)(i):**

All children with disabilities residing in the State...regardless of the severity of their disability, and who are in need of special education and related services (in Massachusetts, OR Related Services), are identified, located, and evaluated.

CORRECTIVE ACTION PROPOSED BY THE DISTRICT

- The District will revise its Decision to Suspend After Hearing Forms “whereby the administrator will identify when (date/time) and who the administrator contacted-Superintendent or designee, and (despite continuing to have reservations of having confidential student record documents now being located other than in the student record file), the District will also be adding “cc” to the Decision to Suspend After Hearing forms for the Superintendent.”

The Department does not accept the above proposed corrective action. The District must modify its procedure to require verbal notification of the superintendent, whenever possible. Also, procedures must include written notification of the superintendent, using the suspension determination document, prior to the initiation of a suspension, giving the superintendent time to discuss possible alternatives. Also, “designee” is not allowable.

- “The Superintendent will identify and assign a mentor from the District Leadership Team to the building administrator involved with this complaint for the 2020-2021 school year. The mentoring will focus on the implementation of Chapter 222 with fidelity.” The mentor, assigned by the superintendent, will also focus on “the need to ensure the student is present for any scheduled suspension hearing.”

The Department accepts this corrective action and requires the following:

ADDITIONAL CORRECTIVE ACTION WHICH MUST BE IMPLEMENTED

1. The District must submit a copy of the revised suspension hearing invitation and hearing-suspension determination forms. The District must amend the statement in the hearing notices, from “a student has a chance to discuss the charges and reason for possible suspension” to “the student has the right to dispute the charges against them,” in agreement with the regulation.
2. The District must amend its Disciplinary Process Flowchart to ensure the principal considers alternatives to suspension after the hearing, and not just before the hearing. The flowchart should also be clear that alternatives to suspension must also be considered for students in grades 4-12. Also, make it clear that a decision to suspend a student must not be determined prior to a suspension hearing.
3. The District must eliminate the option of a parent to “waive any participation at all and accept my recommendation for disciplinary action.” This option predetermines a decision to suspend the student and illegally eliminates the student’s due process rights.
4. The District must submit evidence of a review with all appropriate building administrators of the amended procedures and forms and appropriate District suspension policies. Submit to the Department the name and title of the reviewer, names and roles of attendees, date of training and materials used.

5. Identify the name and title of the assigned Mentor for the school administrator(s).
6. Review with appropriate administrators the specific regulatory guidelines of 603 CMR 53.00-53.14. Submit to the Department the name and title of the presenter, name and title of attendees, date and materials used. Especially review the following:
 - 603 CMR 53.08 (2)(d) regarding provision to the superintendent of the reason for issuing a suspension instead of an alternative, before a suspension begins;
 - 603 CMR 53.06(1) regarding scheduling and holding a hearing with the student before any suspension is begun;
 - 603 CMR 53.05 and 603 CMR 28.03 (3)(a) regarding consideration of alternatives;
 - 34 CFR 300.11(a)(1)(i): for evaluation, special education services and supports for eligible students, **including Child Find considerations** when a student has a suspected Disability and has not yet been evaluated;
 - 603 CMR 53.06 regarding provision of prior verbal and written notice of a hearing to the parent, and to the student, and review of the parent and student's rights;
7. Review the files of **all** students in pre-k through grade 3 who were suspended in the 2018-19 and 2019-20 school years. *Expunge the records of those students who may have had a suspected disability and did not receive evidence of supports including behavioral interventions (*before expunging, please review for behavioral patterns for Child Find). Expunge the records of all pre-k through grade 3 students including general education students who did not receive due process. Provide notice to the parents/guardians. Submit to the Department evidence of record review including student initials, grade levels of students, program, and outcome.

IMPLEMENTATION REPORT TO BE SUBMITTED TO THE DEPARTMENT

1. The District must submit to the Department by December 15, 2020 a report (3 student record reviews) of its findings as to an internal administrative review to ensure that required elements for student discipline are now being implemented in an appropriate manner based upon the above findings.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than October 15, 2020**. A standard response form is enclosed for your use in responding to this request. **A copy of your Report must also be sent to the person who registered this complaint. DO NOT DISCLOSE ANY PERSONALLY IDENTIFIABLE STUDENT INFORMATION.** Submit the Implementation Report to the Department only by **December 15, 2020**.

Also note that for matters related to special education the parties may seek mediation and/or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. Such a hearing, however, is a new proceeding and is not for the purposes of reviewing the Department's decision in this matter. Any order or decision issued by the BSEA on the issues raised in this complaint would be binding.

I would be pleased to provide further clarification of all information and requirements noted above if you find it necessary. Please email at George.K.Haile@mass.gov.

Sincerely,

George K. Haile

George K. Haile, PRS Specialist
Problem Resolution System Office

Paula Twomey

Paula Twomey, PRS Supervisor
Problem Resolution System Office

C: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], Parent
Ashley Francisque, Esq., Complainant, Justice Center of SE MA

Enclosure: Response Form

**MASSACHUSETTS DEPARTMENT OF
ELEMENTARY AND SECONDARY EDUCATION
Problem Resolution System**

School District: [REDACTED]

**CORRECTIVE ACTION REPORT
In Response to Intake PRS 3870**

Name of Student: [REDACTED] and Suspended Students in Pre-K to Grade 3

Response Prepared by: _____ Date: _____

The Corrective Action Report **must include a statement of assurance of the steps taken, or to be taken, to remedy the identified noncompliance issues**, any plan of compensatory services offered, together with completion date(s), persons responsible and copies of information documenting implementation of the Corrective Action.

A copy of this Corrective Action Report must be sent to the person registering this complaint. DO NOT DISCLOSE ANY PERSONALLY IDENTIFIABLE STUDENT INFORMATION.

**This District's Corrective Action Report was sent to the Complainant on (date) _____
Page ___ of ___**

**MASSACHUSETTS DEPARTMENT OF
ELEMENTARY AND SECONDARY EDUCATION
Problem Resolution System**

School District: [REDACTED]

IMPLEMENTATION REPORT

In Response to Intake PRS 3870

Response Prepared by: _____ Date: _____

The Implementation Report **must include a statement of assurance of the steps taken, or to be taken, to remedy the identified noncompliance issues**, any plan of compensatory services offered, together with completion date(s), persons responsible and copies of information documenting implementation of the Corrective Action.

A copy of this IMPLEMENTATION Report must be sent to the DEPARTMENT ONLY.

This District's Implementation Report was sent to the Department on (date) _____

Page ___ of ___