



Massachusetts Department of Elementary and Secondary Education

75 Pleasant St, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3700
TTY: N.E.T. Relay 1-800-439-2370

July 15, 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Intake PRS 3906

[REDACTED]

Letter of Finding

Dear Superintendent [REDACTED]

The Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from Jodi Guinn (Complainant) involving the [REDACTED] (District) on May 19, 2020. As the Problem Resolution System (PRS) Specialist inquiring into this matter, I took the following steps:

- Reviewed the statement of concern and supporting documentation;
- Requested a Local Report from the District;
- Reviewed the District’s Local Report and supporting documentation submitted to the Department on June 5, 2020;
- 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 staff.

The Department's inquiries determined noncompliance, and we are advising the District now of this finding, as well as of the required corrective action. The concern included in the signed statement, our findings and required corrective actions are as follows:

CONCERNS

The Complainant alleged the District improperly issued an emergency removal of the student on November 15, 2019. Specifically, the Complainant alleged the District issued an emergency removal of the student for swearing at a teacher two periods after the incident when the student

no longer posed a danger to the teacher or a disruption of the school day. In the time between the incident and the emergency removal the student visited the office twice to see the principal, was told to go back to class both times, took a math test, and participated in a class discussion. The Department investigated this concern pursuant to 603 CMR 53.07:

(1) Nothing in 603 CMR 53.00 shall prevent a principal from removing a student from school temporarily when a student is charged with a disciplinary offense and the continued presence of the student poses a danger to persons or property, or materially and substantially disrupts the order of the school, and, in the principal's judgment, there is no alternative available to alleviate the danger or disruption. The temporary removal shall not exceed two school days following the day of the emergency removal, during which time the principal shall:

(a) Make immediate and reasonable efforts to orally notify the student and the student's parent of the emergency removal, the reason for the need for emergency removal, and the other matters set forth in 603 CMR 53.06(2);

(b) Provide written notice to the student and parent as provided in 603 CMR 53.06(2);

(c) Provide the student an opportunity for a hearing with the principal that complies with 603 CMR 53.08(2) or (3), as applicable, and the parent an opportunity to attend the hearing, before the expiration of the two (2) school days, unless an extension of time for hearing is otherwise agreed to by the principal, student, and parent.

(d) Render a decision orally on the same day as the hearing, and in writing no later than the following school day, which meets the requirements of 603 CMR 53.08(2)(c) and (d) or (3)(c) and (d), as applicable.

(2) A principal may not remove a student from school on an emergency basis for a disciplinary offense until adequate provisions have been made for the student's safety and transportation.

FINDINGS

At the time of the Department's review, the [REDACTED]-year-old student (Student) was in [REDACTED]. On Friday, November 15, 2019, the Student arrived late to a morning class and spoke disrespectfully to the teacher. The complaint includes an affidavit signed by the student on March 1, 2020, describing the exchange. The Student reported:

On November 15, 2019, [REDACTED], I was two minutes late returning from getting breakfast, and was reprimanded by my teacher. I felt that I was being treated unfairly, which made me upset. I spoke inappropriately to my teacher. Following the incident, because I thought I had been treated unfairly, I went to the office to try to speak with the principal. The principal was unavailable, and I was told to go back to class. I returned to class and took a math test. When I finished my test, I asked if I could go to the office again. The principal was still unavailable. I then went back to class again, where I

participated in a class discussion and analyzed two poems. I was eventually called to the office two periods after the incident, and at that point I was emergency removed. My mother picked me up around noon.

The District's Local Report (Local Report) confirmed the sequence of events recounted in the Student's affidavit. The Local Report confirmed the Student returned to class after reporting to the office and he was "notified that he would be called to the office for further discussion after the teacher report was obtained." The District obtained the teacher's report during her free period and interviewed two other teachers who witnessed the Student's behavior. The Local Report states:

Upon receiving the teachers reports, the student was called to the office to be interviewed. Given the level of disrespect and insubordination, it was the determination of the [REDACTED] Staff that his behavior warranted an emergency removal. It is our position that behavior of this nature directed towards a staff member by a student is disruptive to the order of the school As [Student's] initial outburst was unpredictable, it was entirely possible for a similar such disruption later in the day.

The Complainant's response to the Local Report noted, "According to both the Student and the District, staff sent him back to class. This suggests that they did not perceive there to be an emergency. Furthermore, the teacher to whom he was disrespectful did not act with urgency in reporting the details to the Principal, presumably because she did not believe it required an immediate response." The Student did not cause a disruption in the two classes he attended following the incident. The Complainant's response further states, "As to the District's suggestion that the 'unpredictable' behavior could recur, there is no suggestion in the facts that the Student was not in control of himself. Given the length of time (over 2 class periods) it is unlikely that the behavior would have recurred."

The Local Report indicated the District proceeded with the emergency removal on November 15th and provided the Student's parents with written notification of a suspension hearing scheduled on November 18th at 9:30 am. The Student and his parents attended the hearing. The District issued a three-day suspension including the two days of emergency removal. The suspension dates included: Friday, November 15th, Monday, November 18th, and Tuesday, November 19th. The Local Report states, "Per [REDACTED] School's code of conduct, disrespect of a staff member is equivalent to a five-day suspension. Two days of [Student's] suspension were held in abeyance with the stipulation that he engage in a diversion contract, act with the goal of engaging in the counseling process and restorative practices." The Student returned to school on Wednesday, November 20th.

CONCLUSIONS

The PRS complaint form includes a "student program type" field for identifying a Student as "general education" or "special education." The complaint identified the Student as a "general education" student but the Complainant's response to the District's Local Report (Local Report) indicates the Student is a student eligible for special education services. The Student's special education status does not change the outcome of the Department's findings regarding this matter.

The Department's Questions and Answers Student Discipline Laws and Regulations G.L. c. 71, §37H ¾ and G.L. c. 76, §21 notes under IV, 12:

“Thus, if the student's continued presence is a danger or causes material and substantial disruption, *and* [**emphasis in the original**] there is no alternative to address the danger or disruption, the principal has the discretion to remove the student on an emergency basis. In such an emergency, the school is not required to provide *advance* oral and written notice to the student and parent prior to the student's removal from school.”

Under the Department's Advisory on Student Discipline under Chapter 222 of the Acts of 2012 part IV, it states in part,

“Regarding the standard for emergency removal, the facts must justify removing the student from the building to protect students or staff or property from harm, or to restore and maintain order in the school when it has been significantly disrupted due to the intensity and severity of the student's behavior. At the same time, the principal needs to consider whether there is another way to address the risks that the student's continued presence poses, without removing him or her from the school.”

Prior to a suspension or expulsion, a student must be provided with notice and an opportunity to be heard. Emergency Removals under M.G.L. c. 37 H ¾ , as outlined in 603 C.M.R. 53.07, offer a very narrow exception to that due process requirement, whereby a Principal may temporarily remove a student from school prior to having a hearing provided that certain conditions are met and the removal shall not exceed two days. An emergency removal pursuant to 603 C.M.R. 53.07 should only occur if a) the continued presence of the student poses a danger to persons or property, or materially and substantially disrupts the order of the school, *and* b) there is no alternative available to alleviate the danger or disruption.

The facts in this matter as reported by both parties, did not demonstrate the Student's continued presence posed a danger, would continue to substantially disruptive school order, or that the Principal was left with no alternatives available to alleviate any alleged ‘danger’ or disruption to school order. In fact, as documented by both parties to the Department, the student returned to class, completed a math test and attended classes without disruption for two periods, before the school instituted the emergency removal.

Based on the information gathered, the Department finds the District did not comply with 603 CMR 53.07.

CORRECTIVE ACTION THAT MUST BE IMPLEMENTED

- Conduct a training for the [REDACTED] administrators on the requirements of an emergency removal pursuant to 603 CMR 53.07. Provide the Department a copy of the training materials, and attendance sheet, and the credentials of the person conducting the training **no later than September 5, 2020**. If the District proceeds to conduct this training remotely, a statement of assurance from the District regarding the name and title of the trainer, the agenda and the school participants, is acceptable.

As part of the requested remedy in this matter, the complainant sought that the Department require any reference to the emergency removal of the student be removed from the student record.

The Department notes that under 603 CMR 23.08(1) *“The eligible student or the parent shall have the right to add information, comments, data, or any other relevant written material to the student record.”*

In addition, under 603 CMR 23.08(2):

The eligible student or the parent shall have the right to request in writing deletion or amendment of any information contained in the student record, except for information which was inserted into that record by an Evaluation Team. Such information inserted by an Evaluation Team shall not be subject to such a request until after the acceptance of the Evaluation Team Educational Plan, or, if the Evaluation Team Educational Plan is rejected, after the completion of the special education appeal process. Any deletion or amendment shall be made in accordance with the procedure described below:

(a) If such student or parent is of the opinion that adding information is not sufficient to explain, clarify or correct objectionable material in the student record, either student or parent shall present the objection in writing and/or have the right to have a conference with the principal or his/her designee to make the objections known.

(b) The principal or his/her designee shall within one week after the conference or receipt of the objection, if no conference was requested, render to such student or parent a decision in writing, stating the reason or reasons for the decision. If the decision is in favor of the student or parent, the principal or his/her designee shall promptly take such steps as may be necessary to put the decision into effect.

In consideration of the Department’s findings in this matter, the Department encourages the parties to follow the procedures under 603 CMR 28.08 to address any concern regarding the existing content of the student’s record.

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. Please return all required corrective action and implementation monitoring reports by the due dates specified to PRSCAP@doe.mass.edu.**

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 call (781) 338-3727 or email jennifer.simpson@mass.gov.

Sincerely,

Jennifer Simpson

Jennifer Simpson, PRS Specialist
Problem Resolution System Office



Dean Paolillo, PRS Supervisor
Problem Resolution System Office

CC:

[REDACTED]
Jodi Guinn, Complainant
[REDACTED]

Enclosures: Response Form

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

School District: [REDACTED]

**CORRECTIVE ACTION REPORT
In Response to Intake PRS 3906**

Name of Student: [REDACTED]

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, 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.

This District's Corrective Action Report was sent to the complainant on (date) _____

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