

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

December 18, 2018

Cindie Neilson, Assistant Superintendent
Boston Public Schools
2300 Washington Street
Roxbury, MA 02119

Re: Intake PRS 2173

Student Name: [REDACTED]

Letter of Finding

Dear Assistant Superintendent Neilson:

On September 20, 2018, the Massachusetts Department of Elementary and Secondary Education ("Department") received a written statement of concern from Attorney Stephanie Molina ("advocate") involving Boston Public Schools ("District" and "BPS"). As the Problem Resolution System ("PRS") Office Specialist inquiring into this matter, I have taken the following steps:

- I reviewed the statement of concern and supporting documentation.
- I spoke with the BPS Compliance Liaison regarding the statement of concern.
- I requested a Local Report from the District.
- I reviewed the District's Local Report and supporting documentation submitted to the Department on October 4, 2018.
- I discussed the District's Local Report and the concerns with the complainant.
- I reviewed relevant state and federal special education laws and regulations.
- I received and reviewed the complainant's response to the District's Local Report.

The Department's inquiries indicate 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 additional concerns identified in a phone conversation with the complainant, our findings and required corrective actions are as follows:

CONCERNS AND FINDINGS

1. The complainant alleged that the student was formally disciplined and excluded twice for the same incident in violation of M.G.L. c. 71, § 37H. The complainant alleged that, after an incident and arrest which occurred on November 8, 2017, a "suspension" hearing was held on November 9, 2017. This hearing resulted in a three-day suspension from school, followed by 10 days at the Boston Counseling and Intervention Center. The complainant alleged that an "expulsion" hearing was then held on November 22, 2017 for the same offense. After that hearing, the student was expelled from the school and placed at [REDACTED] for the remainder of the school year.

The Department investigated this allegation pursuant to M.G.L. c.71, §37H and general due process principles. M.G.L. c. 71, § 37H provides, in relevant part:

The superintendent of every school district shall publish the district's policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school buildings, the school facilities or on the school grounds or on school buses by any individual, including school personnel. Said policies shall further restrict operators of school buses and personal motor vehicles, including students, faculty, staff and visitors, from idling such vehicles on school grounds, consistent with section 16B of chapter 90 and regulations adopted pursuant thereto and by the department. The policies shall also prohibit bullying as defined in section 37O and shall include the student-related sections of the bullying prevention and intervention plan required by said section 37O. Copies of these policies shall be provided to any person upon request and without cost by the principal of every school within the district.

Each school district's policies pertaining to the conduct of students shall include the following: disciplinary proceedings, including procedures assuring due process; standards and procedures for suspension and expulsion of students; procedures pertaining to discipline of students with special needs; standards and procedures to assure school building security and safety of students and school personnel; and the disciplinary measures to be taken in cases involving the possession or use of illegal substances or weapons, the use of force, vandalism, or violation of a student's civil rights. Codes of discipline, as well as procedures used to develop such codes shall be filed with the department of education for informational purposes only.

In each school building containing the grades nine to twelve, inclusive, the principal, in consultation with the school council, shall prepare and distribute to each student a student handbook setting forth the rules pertaining to the conduct of students. The student handbook shall include an age-appropriate summary of the student-related sections of the bullying prevention and intervention plan required by section 37O. The school council shall review the student handbook each spring to consider changes in disciplinary policy to take effect in September of the following school year, but may consider policy changes at any time. The annual review shall cover all areas of student conduct, including but not limited to those outlined in this section.

Notwithstanding any general or special law to the contrary, all student handbooks shall contain the following provisions:

(a) Any student who is found on school premises or at school-sponsored or school-related events, including athletic games, in possession of a dangerous weapon, including, but not limited to, a gun or a knife; or a controlled substance as defined in chapter ninety-four C, including, but not limited to, marijuana, cocaine, and heroin, may be subject to expulsion from the school or school district by the principal.

(b) Any student who assaults a principal, assistant principal, teacher, teacher's aide or other educational staff on school premises or at school-sponsored or school-related events, including athletic games, may be subject to expulsion from the school or school district by the principal.

(c) Any student who is charged with a violation of either paragraph (a) or (b) shall be notified in writing of an opportunity for a hearing; provided, however, that the student may have representation, along with the opportunity to present evidence and witnesses at said hearing before the principal.

After said hearing, a principal may, in his discretion, decide to suspend rather than expel a student who has been determined by the principal to have violated either paragraph (a) or (b).

(d) Any student who has been expelled from a school district pursuant to these provisions shall have the right to appeal to the superintendent. The expelled student shall have ten days from the date of the expulsion in which to notify the superintendent of his appeal. The student has the right to counsel at a hearing before the superintendent. The subject matter of the appeal shall not be limited solely to a factual determination of whether the student has violated any provisions of this section.

(e) Any school district that suspends or expels a student under this section shall continue to provide educational services to the student during the period of suspension or expulsion, under section 21 of chapter 76. If the student moves to another district during the period of suspension or expulsion, the new district of residence shall either admit the student to its schools or provide educational services to the student in an education service plan, under section 21 of chapter 76.

(f) Districts shall report to the department of elementary and secondary education the specific reasons for all suspensions and expulsions, regardless of duration or type, in a manner and form established by the commissioner. The department of elementary and secondary education shall use its existing data collection tools to obtain this information from districts and shall modify those tools, as necessary, to obtain the information. On an annual basis, the department of elementary and secondary education shall make district level de-identified data and analysis, including the total number of days each student is excluded during the school year, available to the public online in a machine readable format. This report shall include district level data disaggregated by student status and categories established by the commissioner.

(g) Under the regulations promulgated by the department, for each school that suspends or expels a significant number of students for more than 10 cumulative days in a school year, the commissioner shall investigate and, as appropriate, shall recommend models that incorporate intermediary steps prior to the use of suspension or expulsion. The results of the analysis shall be publicly reported at the school district level.

The District has acknowledged noncompliance based on “past practice” of the Boston Public Schools in all three areas of this complaint. To address noncompliance in this complaint, the District proposes to highlight its corrective action as described in its Statement of Assurance which is included below in its entirety.

The Department finds and the District acknowledges noncompliance with M.G.L. c.71, §37H in this matter.

2. The complainant alleged that the District failed to accurately count and report the student’s removal to the Boston Counseling and Intervention Center for 10 days as an out-of-school suspension in violation of 603 C.M.R. 53.14, and that the District did not provide notice to the parent and/or student of this suspension violating the student’s due process rights.

The Department investigated this allegation pursuant to M.G.L. c. 71, § 37H (e) and (f):

(e) Any school district that suspends or expels a student under this section shall continue to provide educational services to the student during the period of suspension or expulsion, under section 21 of chapter 76. If the student moves to another district during the period of suspension or expulsion, the new district of residence shall either admit the student to its schools or provide educational services to the student in an education service plan, under section 21 of chapter 76.

(f) Districts shall report to the department of elementary and secondary education the specific reasons for all suspensions and expulsions, regardless of duration or type, in a manner and form established by the commissioner. The department of elementary and secondary education shall use its existing data collection tools to obtain this information from districts and shall modify those tools, as necessary, to obtain the information. On an annual basis, the department of elementary and secondary education shall make district level de-identified data and analysis, including the total number of days each student is excluded during the school year, available to the public online in a machine readable format. This report shall include district level data disaggregated by student status and categories established by the commissioner.

And, 603 CMR 53.14:

Student Suspension and Expulsion Data Collection and Reporting

(1) *Every school district, charter school, and virtual school shall collect and annually report data to the Department regarding in-school suspensions, short- and long-term suspensions, expulsions, emergency removals under 603 CMR 53.07, access to education services under 603 CMR 53.13, and such other information as may be required by the Department. Such data shall be reported in a manner and form directed by the Department.*

(2) *The principal of each school shall periodically review discipline data by selected student populations, including but not limited to race and ethnicity, gender, socioeconomic status, English language learner status, and student with a disability status. In reviewing the data, the principal shall assess the extent of in-school suspensions, short- and long-term suspensions, expulsions, and emergency removals under 603 CMR 53.07, and the impact of such disciplinary action on selected student populations. The principal shall further determine whether it is necessary or appropriate to modify disciplinary practices due to over-reliance on expulsion, or in-school or out-of-school suspension, or emergency removals, or the impact of such suspensions, removals, and expulsions on selected student populations compared with other students.*

The District responded to this allegation by acknowledging noncompliance and referring back to corrective action taken as the result of another recent complaint (described below by the District) which included the same suspension, expulsion and due process issues.

The Department finds and the District acknowledges noncompliance with M.G.L. c. 71, § 37H (e) and (f) and 603 CMR 53.14 in this matter.

3. The complainant alleged that the student in this case was not provided a list of alternative educational service options as required under M.G.L. c. 76, § 21.

The Department investigated this allegation pursuant to M.G.L. c. 76, § 21 which reads, in part:

...Any school or school district that expels a student or suspends a student for more than 10 consecutive school days shall provide the student and the parent or guardian of the student with a list of alternative educational services. Upon selection of an alternative educational service by the student and the student's parent or guardian, the school or school district shall facilitate and verify enrollment in the service.

The Department is including the Operational Superintendent's acknowledgement of noncompliance and Statement of Assurance in this letter in order to memorialize the District's current position and set its policy direction related to these due process matters:

Statement of Assurance

Regarding PRS-2173 Boston Public Schools ("BPS" or the "District") received a letter dated May 29, 2018 from Nathan Lemmon of the Massachusetts DESE Problem Resolution System

Office. The letter was regarding the findings of another matter logged as PRS - 1651. The findings in May 29, 2018 letter address two of complaints raised in the PRS-2173 case. Specifically, 1) the student was formerly excluded twice for the same incident and 2) the District failed to count and report the student's removal to the Boston Counseling and Intervention Center/Succeed Boston as an out-of-school suspension. In the May 29, 2018 letter of finding, DESE found that the Boston Public School's practices/procedures regarding implementation of its Code of Conduct did exclude students twice for the same incident. The letter also found that the District failed to count and report the student's removal to the Boston Counseling and Intervention Center/Succeed Boston as an out-of-school suspension. Given the findings in the May 29, 2018 letter, and the nature of the similar complaints with PSR-2173, we anticipate a similar finding given the past practice of Boston Public Schools.

Since the May 29, 2018 letter, the Boston Public Schools has taken the following steps to address the concerns raised about these disciplinary practices: 1) Began implementing the corrective actions required in the May 29, 2018 letter by June 15, 2018; 2) Internal meetings to discuss the findings and the implications of the findings on BPS practices and procedures; 3) During the summer of 2018, planned communication to schools regarding procedural changes that will need to occur in light of the findings in the May 29, 2018 letter and identified Code of Conduct attachments (forms) that would need to be modified in order to implement the new expectations; 4) September 11, 2018, issued a memorandum (see attached) regarding Changes to Suspension Procedures Regarding Succeed Boston (formerly known and BPS Counseling and Intervention Center) and other Code of Conduct Updates that included directions on the expectations that students are not suspended then expelled for the same incident and inform school leaders and their staff that moving forward when a student attends the Succeed Boston Program (formerly known and BPS Counseling and Intervention Center) that those days will need to count as suspension days. 5) Provided school staff individual support regarding these changes until district wide Professional Development can occur; and 6) Finalize fall 2018 professional development planning regarding implementing the BPS Code of Conduct with our BPS Code of Conduct Advisory Council. This professional development will begin on November 8, 2018 and will include further information on the required changes and presentation of the the new Code of Conduct Attachments (forms) that will need to be used moving forward.

Given the changes described above, Boston Public Schools will implement the following corrective action regarding the PRS-2173 case. 1) Offer the student in this case to return to [REDACTED] if that is his preference; 2) Expunge the students disciplinary record as it relates to the November 8, 2017 incident; 3) To the extent the student has fallen behind or is failing to meet graduation requirements because of school exclusion, offer compensatory services to help the student catch up or amend the transcript to reflect the changes; 4) Provide written directions and training for school leaders and their staff regarding Due Process that will include clarifying when BPS students are assigned to Succeed Boston or any "Counseling and Intervention Center" those days will count as suspension days from school pursuant to 603 CMR 53.00; and the expectation for them to continuing to work with the Office of Educational Options to provided alternative service options for student when they are excluded from school.

The Department finds and the District acknowledges noncompliance with M.G.L. c.71, §37H; and M.G.L. c. 76, § 21 based on past BPS practice and finds that the District did not

comply with M.G.L. c.71, §37H; and M.G.L. c. 76, § 21 in the matters raised in this particular complaint.

CORRECTIVE ACTION ACCEPTED:

The Department accepts the corrective action proposed by the Boston Public Schools in its Local Report to the allegations in this complaint and requests the following additional corrective action.

CORRECTIVE ACTION WHICH MUST BE IMPLEMENTED

1. **By January 18, 2019** please provide the Department with an update of the educational status of the student in this case. Include information relative to this complaint, e.g. special education placement and services, attendance, discipline record, and provision of any compensatory services delivered.
2. **By January 18, 2019**, please provide to the Department documentation of the November, 2018 professional development regarding implementing the BPS Code of Conduct with our BPS Code of Conduct Advisory Council.

Also provide documentation of training for school leaders and their staff regarding Due Process that will include clarifying when BPS students assigned to *Succeed Boston* or any "Counseling and Intervention Center" that those days will count as suspension days from school pursuant to 603 CMR 53.00;

Include documented communication of the expectation that administrators will work with the BPS Office of Educational Options to provided alternative service options students when students are excluded from school.

PROGRESS REPORT TO BE SUBMITTED TO THE DEPARTMENT

3. Please conduct a review of all long-term suspensions in the District which have occurred at points in time after the corrective action was implemented and conduct a review to ensure that these changes to policy reach all schools and programs in the District:
 - a. Code of Conduct has been updated throughout the District with an appropriate mid-school-year method, (addendums, emails, robocalls, flyers, brochures, pamphlets, etc.);
 - b. Student long-term suspensions have all been one suspension per behavioral incident;
 - c. Time at *Succeed Boston* or any "Counseling and Intervention Center" has been counted as suspension days on the student's disciplinary record;

4. Please report back to the Department the results of the review with the number of long-term suspensions, the percentage of compliance found and the information relative to the student in this case by **March 29, 2019**.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than January 18, 2019**. 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 provide the Department with the required Progress Report pursuant to these findings **no later than March 29, 2019**. A standard response form is enclosed for your use in responding to this request. **A copy of your Progress Report must be sent to the Department only.**

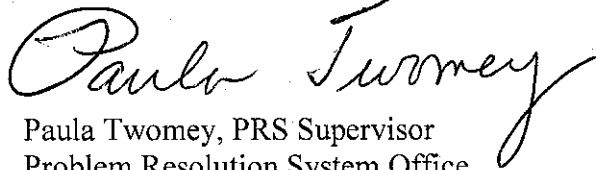
Also note that for matters related to special education the parties may seek mediation and/or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. Such a hearing, however, is a new proceeding and is not for the purposes of reviewing the Department's 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) 338-3720.

Sincerely,



Nathan Lemmon, PRS Specialist
Problem Resolution System Office



Paula Twomey, PRS Supervisor
Problem Resolution System Office

Enclosures:
Response Form

Cc: Andrea Alvez-Thomas, Compliance Manger, Boston Public Schools
Daniel Mayers, Compliance Liaison, Boston Public Schools
Stephanie Molina, Complainant Advocate Attorney

MASSACHUSETTS DEPARTMENT OF
ELEMENTARY AND SECONDARY EDUCATION

Problem Resolution System

Boston Public Schools
CORRECTIVE ACTION REPORT
In Response to Intake PRS 2173

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(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.

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 Office

PROGRESS REPORT

School District: Boston Public Schools

PROGRESS REPORT
In Response to Intake PRS0002173

Progress Report Prepared by: _____ Date: _____

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

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

**This District's PROGRESS Report was sent to the DEPARTMENT ONLY on
(date) _____**

Page ___ of ___