



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 21, 2017

[REDACTED]
[REDACTED]
[REDACTED]

Boston, MA 02124

Re: Intake PRS 0001254
Student Name: [REDACTED]
Letter of Finding

Dear Director [REDACTED]:

On October 18, 2017, the Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from Ms. Elizabeth McIntyre involving [REDACTED] (Charter School). As the Problem Resolution System (PRS) Specialist inquiring into this matter, I took the following steps:

- Reviewed the statement of concern and supporting documentation;
- Spoke with your office regarding the statement of concern;
- Requested a Local Report from the District;
- Reviewed the District's Local Report and supporting documentation submitted to the Department on November 13, 2017;
- Discussed the District's Local Report and the concerns with the complainant;
- Reviewed relevant state and federal education laws and regulations;
- Consulted with other Problem Resolution System staff.

The Department's inquiries determined noncompliance, and we are advising the Charter School 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 AND FINDINGS

- In the initial written complaint, the complainant identified concerns regarding the Charter School not meeting the evidentiary threshold to expel the student, who is a twelve (12) year old child in the 6th grade at the Charter School.

The Department notes that it does not have the authority to examine the factual basis used in a student's hearing to determine the disciplinary consequence nor does the Department have the authority to determine whether the student's actions warrant the disciplinary measure imposed by a school district. Under G.L. c. 71, § 37H, the principal has the discretionary authority regarding the disciplinary consequence after examining and weighing all of the facts. The Department's practice based on past administrative guidance, is to limit its authority to examining the procedures used by a school district and whether such procedures complied with applicable laws and regulations.

The Department requested that the Charter School report on the following remaining concern and any systemic occurrences of it:

The complainant alleged that the Charter School imposed various forms of discipline, emergency removal, short term out-of-school suspension, and an expulsion, all stemming from the same infraction and without providing the student and her parents with adequate due process in violation of the requirements under 603 CMR 53.00 and G.L. c. 71, § 37H.

On November 13, 2017, the Charter School submitted copies of the following documents to the Department:

- Written notices to the student's parent regarding the student's removals during the 2017-2018 school year;
- Documentation concerning the due process hearings for the student during the 2017-2018 school year;
- The student's attendance record during the 2017-2018 school year;
- Behavioral incident reports for the student for the 2017-2018 school year;
- Information about times the student was sent home from school for behavioral reasons during the 2017-2018 school year;
- Correspondence, emails between the Charter School, parent, and parent's attorney regarding the allegations;
- The educational services the student is currently receiving from the Charter School;
- The Charter School's Educational Service plan as required by 603 CMR 53.13;

- Narrative description addressing the allegations.

On September 29, 2017, the Charter School imposed an emergency removal of the student from school for alleged possession of a controlled substance. The Charter School contacted the student's parents via telephone and text message and informed them that the student needed to be picked up from school. Later that day, the Charter School sent an email to the parents enclosing a written letter and another document entitled "Notice of Student and Parent Rights under G.L. c. 71, § 37H." In the written letter, the Charter School notified the parents about the imposition of an emergency removal coupled with a short term out-of-school suspension of ten (10) days pursuant to Mass. Gen. L. c. 71, § 37H. The written notice included the disciplinary offense, the basis for the charge, potential consequences, length of removal, and the date the student could return to school pending a long term suspension/expulsion hearing on or before October 18, 2017. The notice also advised the parents to provide the Charter School with a preferred hearing date by October 4, 2017, and warned that, if the Charter School did not hear from the parents by October 4, the hearing date would be scheduled by the Charter School. The written letter directed the parents to the attached "Notice of Student and Parent Rights under G.L. c. 71, § 37H" as to their procedural due process rights during the hearing.

Based on the Department's review of emails and text messages between the Charter School's Dean of Students (Dean) and the parents, it appears that on Monday October 2, 2017 at 8:03 p.m., the Dean informed the parents of a disciplinary hearing for the following day, Tuesday, October 3, at 8:00 a.m. via email and text message. Upon receipt of this information via text message, the parent responded that she was getting legal assistance from the "ed law project" and she would not be "ready" for the hearing the following morning.

In the email message sent by the Dean on the evening of October 2, the Charter School informed the parents that the hearing the next day was "pursuant to the provisions of G.L. c. 71, §37H" and that it was to consider a "short term suspension of 8 days." It explained that the purpose of the hearing was to hear and consider information regarding the alleged incident, provide the student with an opportunity to dispute the charges and explain the circumstances of the infractions and that, if the parents chose not to attend, the hearing would be conducted in their absence with a decision effective immediately. The email also enclosed a hearing notice for the next day as well as the "Notice of Student and Parent Rights Under G.L. c. 71, § 37H." The enclosed hearing notice indicated that that the hearing was pursuant to § 37H as well as the disciplinary offense, basis for the charge, potential consequence, date and time for the next morning, location and participants. Unlike the email, the potential consequence stated in the notice was "up to 8 days out-of-school suspension and a possible long-term suspension of up to 90 days or expulsion pending a long-term suspension/expulsion hearing prior to October 17, 2017." Despite the parent's notification that they would not be ready to attend a hearing the next morning and that they had sought legal representation and that the Charter School previously informed the parents they had until October 4, 2017 to provide the Charter School with a preferred hearing date, the hearing was scheduled and held on October 3 without the parent or student present. That same day, the Charter School issued a notice imposing an eight (8) day out-of-school suspension. The written notice also included the disciplinary offense, the date of the hearing, the basis for the charge, the length of the suspension, the date the student could return to school "pending a long term suspension/expulsion hearing" prior to October 17, 2017 and notice

of appeal rights. Upon receipt of the notice via email on October 4, 2017, the mother responded to the Dean that the student's lawyer would be contacting the school and providing her contact information.

Then, on October 5, 2017, the Charter School issued another notice of a proposed hearing, scheduled for October 11, 2017. This notice included the disciplinary offense, the basis for the charge, and potential consequences; which included up to an additional eighty (80) days of out-of-school suspension or expulsion from school. The notice indicated the hearing was pursuant to G.L. c. 71, § 37H and referred the parents to the "Notice of Student and Parent Rights Under G.L.c. 71, § 37H." Based on a conversation between the student's legal counsel and the Department, the Department confirmed that the parent, student, and counsel for the student attended the October 11, 2017 disciplinary hearing. On October 16, 2017, the Charter School issued its written notice to the parents of its decision to expel the student under M.G.L. Chapter 71 Section 37H. The written notice included the disciplinary offense, the date the hearing occurred, the basis for the charge, the right to appeal the decision to expel the student to the superintendent, and educational services available to the student.

The Department's review of the Charter School's Educational Services plan for the student determined that the parent was provided written notification of the opportunity to receive education services and contact information for a Charter School staff member who could provide more detailed information regarding the education services available to the student. The parent and student's counsel reported to the Department that the student was receiving tutoring services at the local library.

The Charter School's multiple notices, varying disciplinary sanctions in the days and weeks following the alleged incident on September 29, 2017, as well as the notification of a hearing for the next morning and the holding of the hearing without parents present despite knowing that the parent stated that they could not be ready as they had sought legal counsel, caused grave confusion and deprived student and her parents of their due process rights.

When the school imposed an emergency two (2) day removal on September 29, 2017, it cited to G.L. c. 71, § 37H. Yet, Section 37H does not provide for an emergency removal. To the extent the Charter School may have been relying on 603 CMR 53.07(1)(c) for this action, that regulation explicitly does not apply to disciplinary offenses pursuant to Section 37H, the cited grounds for disciplinary action by the Charter School. Even if the Charter School had been operating under the mistaken belief that the regulation was applicable, the Principal was required to offer an opportunity for a hearing before the expiration of the two (2) school days, unless an extension of time for the hearing is otherwise agreed to by the principal, student and parent. In this matter, the Charter School had already provided notice that the parents had until October 4, 2017 to propose a date for the hearing, but the Charter School then provided notice on the evening of October 2 for a hearing the next morning at 8 a.m. and then proceeded with the hearing on October 3, 2017, without the parent or student in attendance and despite knowing that the parent had secured legal representation and could not attend, denying the student and parent of the required due process.

Moreover, the Charter School's actions in this matter were also confusing, at times contradictory and did not provide adequate due process because the Charter School purported to discipline the student multiple times for the same offense; first imposing a two-day emergency removal, then an eight (8) day out-of-school suspension, and then expelling the student.

M.G.L. Chapter 71 Section 37H (c) states: *“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).”

The District conducted a hearing and removed the student under M.G.L. Chapter 71 §37H (c) by imposing an eight (8) day suspension. This was in fact, the hearing required by M.G.L. Chapter 71 §37H(c), and as noted in that section of the law, at the principal's discretion, can choose to suspend not expel. The Charter School could not proceed to hold a second hearing with the principal for the same charges and impose an expulsion after already determining that the consequence warranted an eight (8) day suspension.

The Charter School did not fully comply with the requirements of M.G.L. Chapter 71 §37H(c) by holding a hearing under M.G.L. Chapter 71 §37H with the school principal determining the consequence of an 8-day out-of-school suspension, and then proceeding to hold a second hearing for the same offense with the school principal and then deciding to expel the student.

CORRECTIVE ACTION WHICH MUST BE IMPLEMENTED

- A. The Charter School must review with the Dean of Students and other administrators as appropriate, the Department's Advisory on Student Discipline under Chapter 222 of the Acts of 2012. The advisory can be found at: <http://www.doe.mass.edu/lawsregs/advisory/discipline/StudentDiscipline.html>. Please submit the name and title of the reviewer, the date of the review, the agenda and the staff in attendance.
- B. The Charter School must ensure its emergency removal notice identifies that parents are entitled to interpreter services. The charter school must provide a copy of its revised notice.
- C. The Charter School must review the requirements of 603 CMR 53.07(1)(c) with its administrators at the ██████ Charter School in ██████. Please submit the name and title of the reviewer, the date of the review, the agenda and the staff in attendance.
- D. The Charter School must reduce its suspension of the student to eight (8) days, consistent with its hearing decision on October 3, 2017. The Charter School must expunge the

student's record of any suspension in excess of the eight (8) days of suspension originally imposed under M.G.L. Chapter 71 Section H.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than January 8, 2017**. 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.**

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) 338-3714.

Sincerely,

Rhonda Mojkowski, PRS Specialist
Problem Resolution System Office

Dean Paolillo, PRS Supervisor
Problem Resolution System Office

c: [REDACTED], Principal, [REDACTED]
Elizabeth McIntyre, Complainant
[REDACTED] parent
[REDACTED], parent

Encl: Response Form