



## 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

March 5, 2019

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

Re: Intake PRS 2130

Student Name: [REDACTED]

**Letter of Finding**

Dear Assistant Superintendent Neilson:

On August 27, 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 26, 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 issued an extension letter dated October 25, 2018 following complainant's request for additional time to review the Local Report.
- 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 concern(s) included in the signed statement, and additional concern(s) 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 District did not implement the student's IEP following the period in September of 2017 when BPS informed the parent that the student was not permitted to attend the school at which he was enrolled, and while arrangements for transportation to his new placement were pending. The student was alleged to have missed approximately 7 days of school and received no educational services during this period.

The Department investigated this allegation pursuant to 603 CMR 28.05(7)(b):

*"Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay."*

And, 603 CMR 28.06 (2)(d)(2):

*"The school district shall not delay implementation of the IEP due to lack of classroom space or personnel, shall provide as many of the services on the accepted IEP as possible and shall immediately inform the parent in writing of any delayed services, reasons for delay, actions that the school district is taking to address the lack of space or personnel and shall offer alternative methods to meet the goals on the accepted IEP. Upon agreement of a parent, the school district shall implement alternative methods immediately until the lack of space or personnel issues are resolved."*

The District states that the student was not denied access to school during September of 2017 and provided copies of attendance sheets and three email messages for support. One email message shows that the District was communicating on Friday, September 8, around the topic of setting up a tour of the Harvard Kent School for the parents of the student in this case. The tour was to occur on Monday, September 11, with the hopes of having the student's father attend in order to provide translation services for the mother. It is not clear from subsequent emails if the tour occurred as planned. Another email provided by the District shows that on September 12, the student was, at that point, awaiting the arrangement of transportation with an indication of a need for door-to-door transportation because of safety concerns. There was a request for the student's ID number prior to arranging transportation. Another email demonstrates that the District had offered to make a staff member available over at the Hernandez School after September 13, to help implement the student's IEP; presumably, until the parties were to have agreed on a new school for the student.

The District does not address the student's attendance from September 11 through September 19, whether transportation was set up during that period, or whether the student received services beginning September 13 at the Hernandez School, as offered by the assistant superintendent in her email.

The attendance sheet provided to the Department by the District is daily-marked by an asterisk on the days from September 11 through the 19<sup>th</sup>. In a phone conversation with the District on November 26, 2018, the District stated that the student did not begin school until December 21, 2017. Because the District did not provide documentation or other information as to whether the

student had any school or placement to go to from September 8 through September 19, or that specialized transportation was set up during that period, **the Department determines that the District did not comply with 603 CMR 28.05(7)(b) or CMR 28.06 (2)(d)(2) in this matter.**

2. The complainant alleged that the District did not provide the parents with copies of the student's records within 10 days of the initial request. When records were provided late, they did not provide the parents with the complete student record, including attendance records, IEP progress reports and school discipline records. The complainant alleged that the parent made the request for records on September 21, 2017 and again on November 29, 2017.

This allegation was reviewed pursuant to 603 CMR 23.07(2):

*"The eligible student or the parent, subject to the provisions of 603 CMR 23.07(5), shall have access to the student record. Access shall be provided as soon as practicable and within ten days after the initial request, except in the case of non-custodial parents as provided in 603 CMR 23.07(5). Upon request for access, the entire student record regardless of the physical location of its parts shall be made available."*

And, 603 CMR 23.02:

*"The student record shall consist of the transcript and the temporary record, including all information recording and computer tapes, microfilm, microfiche, or any other materials regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the public schools of the Commonwealth. The term as used in 603 CMR 23.00 shall mean all such information and materials regardless of where they are located, except for the information and materials specifically exempted by 603 CMR 23.04."*

The District acknowledges that records were not all sent as requested on September 21, 2017. BPS acknowledges that it did not provide attendance records, IEP progress reports, and school discipline records. The complainant states in her November 20, 2018 response to the Local Report that she had not received a complete copy of the student's records; specifically missing are incident reports and suspension hearing notices. **The District did not fully comply with 603 CMR 23.07(2) and 603 CMR 23.02 in this matter.**

3. The complainant alleged that the District had not provided copies of all important documents in the requested language of the home for the parents in this case during the 2017-2018 school year. The complainant alleged that the District did not provide translated documents in the areas of:
  - Special Education documents – proposed IEPs, evaluation consent forms, progress reports etc.;
  - Suspension and hearing notices;
  - Notices of occurrences of physical restraint.

This allegation was investigated pursuant to 603 CMR 28.07(8)(b):

*“(8) Communications with parents and students. Each district shall ensure that all communications and meetings with parents and students pursuant to 603 CMR 28.00 meet the following standards:*

*(a) Communications shall be in simple and commonly understood words.*

*(b) Communications shall be in both English and the primary language of the home, if such primary language is other than English. Any interpreter used to implement this provision shall be fluent in the primary language of the home.”*

And, pursuant to 28 CFR 42.405 (d)(1) and (2):

*“(1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.*

*(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to title VI.”*

The District acknowledges that a FBA consent form, suspension and hearing notices, and physical restraint reports were not sent in the primary language of the home from the Harvard/Kent School during the 2017-2018 school year. The District provided the Department with copies of translated IEPs and NI forms from the 2017-2018 school year.

The Department notes the complainant contends that the parent in this case has not received any of the examples of the translated documents until they were provided through the PRS complaint process. **The Department finds that the District did not fully comply with 603 CMR 28.07(8)(b) and 28 CFR 42.405 (d)(1) and (2) in this matter.**

4. The complainant alleged that the District did not provide due process protections regarding in-school suspensions which took place on at least seven occasions when the student was removed from the classroom on October 6, November 1, 13 and 14, and December 8, 2017 and January 18, 2018. The complainant alleges that the student was not provided the opportunity to dispute charges and explain the circumstances surrounding the alleged incidents, and that BPS did not provide oral or written notice of the in-school suspension or invited the parents to a meeting with the principal in violation of 603 CMR 53.10 (3), (4), and (5).

The Department investigated this allegation pursuant to 603 CMR 53.10:

*(1) The principal may use in-school suspension as an alternative to short-term suspension for disciplinary offenses.*

*(2) The principal may impose an in-school suspension for a disciplinary offense under 603 CMR 53.10, provided that the principal follows the process set forth in 603 CMR 53.10(3) through (5) and the student has the opportunity to make academic progress as set forth in 603 CMR 53.13(1).*

*(3) The principal shall inform the student of the disciplinary offense charged and the basis for the charge, and provide the student an opportunity to dispute the charges and explain the circumstances surrounding the alleged incident. If the principal determines that the student committed the disciplinary offense, the principal shall inform the student of the length of the student's in-school suspension, which shall not exceed ten days, cumulatively or consecutively, in a school year.*

*(4) On the same day as the in-school suspension decision, the principal shall make reasonable efforts to notify the parent orally as soon as possible of the disciplinary offense, the reasons for concluding that the student committed the infraction, and the length of the in-school suspension. The principal shall also invite the parent to a meeting to discuss the student's academic performance and behavior, strategies for student engagement, and possible responses to the behavior. Such meeting shall be scheduled on the day of the suspension if possible, and if not, as soon thereafter as possible. If the principal is unable to reach the parent after making and documenting at least two attempts to do so, such attempts shall constitute reasonable efforts for purposes of orally informing the parent of the in-school suspension.*

*(5) The principal shall send written notice to the student and parent about the in-school suspension, including the reason and the length of the in-school suspension, and inviting the parent to a meeting with the principal for the purpose set forth in 603 CMR 53.10(4), if such meeting has not already occurred. The principal shall deliver such notice on the day of the suspension by hand-delivery, certified mail, first-class mail, email to an address provided by the parent for school communications, or other method of delivery agreed to by the principal and the parent.*

The District states that there is no documentation available to support complainant's allegations that these events occurred on those dates. The District asserts that, on dates of documented "suspensions," proper procedures were followed. The complainant, however, provided documentation of removals from class through Daily Point Sheets and email messages. In addition, the District's own conduct log contains details about incidents on October 6, November 13 and January 18. Although the log does not describe the disciplinary action taken on those days, the Daily Point Sheets provided by the complainant and some of the emails indicate that the student was removed from class on the following dates: October 6 (removed for 2 class periods possibly 3 periods), November 1 (removed for 1 period), November 13 (removed for 3 periods), November 14 (removed "some time in office"), December 8 (removed for at least 1 period possibly up to 3 periods), January 18 (removed for 1 period possibly 2 periods).

In providing guidance as to the requirements of 603 CMR 53.10 (“In-School Suspension”), the Department’s “Advisory on Student Discipline under Chapter 222 of the Acts of 2012” at fn. 24 states that the Department “does not consider a *de minimus* involuntary removal from classroom activities as a day of suspension, provided it is not a recurring event.”<sup>1</sup> The Department’s “Questions and Answers” on Student Discipline Laws and Regulations (updated Dec. 23, 2016) also states:

5.Q. If a teacher sends a student to the assistant principal’s office due to behavior issues and the student returns to class following a discussion with the assistant principal, does that lost class time count as an ISS [in-school suspension]?

A. For purposes of ISS, the time does not count if it is less than half of the time that the school is in session that day, provided the student is not removed from class in this manner on a recurring basis.

The Department encourages schools to maintain a record of such referrals to track the extent to which “referral to the office” is used as a classroom management tool, by whom, and with which students. Periodic review of the data may reveal overuse of the response by some educators or impact on particular students or subgroups of students that should be further examined and addressed as appropriate.

BPS has further refined this requirement for its District. BPS’s Code of Conduct, Section 6.1, provides:

Removals from class shall last only as long as necessary to ensure that the conditions justifying the removal have ended, and in no case beyond the end of two (2) class periods or 90 minutes, whichever occurs first ... Where possible, safe, supportive and non-exclusionary remedies and processes described in Section 5 should be attempted prior to removal from class. When a student is removed from class beyond ninety minutes or two class periods, it will constitute a suspension and requires the notification of suspension procedures to be initiated.<sup>2</sup>

BPS has also chosen to provide greater procedural protections in circumstances where a student is removed from the classroom. If a student is removed from the same class more than one time, Section 6.2 provides that “[w]hen a student has been removed from the same class more than once” a building administrator or designee “shall ... mail a written report of the removal and the reasons for it, prepared by the teacher, to the student’s parent” within two school days. In

---

<sup>1</sup> The Advisory further states: “For example, if a teacher refers a student to the principal’s office for misconduct in class, and the principal meets with the student and sends the student to her next class, the teacher’s referral would not count as a suspension. However, school administrators should keep track of such referrals to monitor both the sources of referrals, repeated referrals of the same student, and the impact on selected student groups, such as racial/ethnic minorities and students with disabilities to see if such groups are disproportionately affected.” p. 4 at fn. 24.

<sup>2</sup> Further, BPS’s Code of Conduct defines “suspension” to include “in-school suspension for purposes of calculating the total number of days of exclusion from school. See BPS Code of Conduct, Section 9.

addition, “[n]o student may be removed from the same class more than two (2) times per week or four (4) times per marking period unless the student is offered a hearing” that comports with the short-term suspension procedures. Section 6.3.

Here, based on the documentation provided by the complainant, it appears student was removed from the classroom for 3 periods on November 13 and December 8 (and possibly October 6). On those dates, according to BPS’s own Code of Conduct, the building administrator or designee should have initiated procedures to notify the parents and hold a hearing in accordance with its procedures in Section 9. In addition, to the extent student was removed from the same class more than once during the alleged occurrences, BPS should have provided a report of the removal to the student’s parents. It appears that there was written communication (in email form) to the parents whenever an incident arose in the classroom. However, the content of the emails, was not detailed enough to indicate if, when, and for how long the student was removed from the classroom. As also mentioned below, those communications were also in English and not in the primary language of student’s home.

If the removals for three (3) periods also constituted half of the school day, the principal was also obligated under 603 CMR 53.10(3)-(5) to inform the student of the offense, provide the student with an opportunity to explain the circumstances, inform the student of the length of the suspension, make reasonable efforts to notify the parents orally as soon as possible, invite the parents to a meeting to discuss student’s academic performance and behavior, strategies for student engagement, and possible responses to the behavior, and to provide written notice of the suspension. Because we do not have information as to the length of the classroom removals relative to the school day on particular days, we are unable to determine if the District violated 603 CMR 53.10(3)-(5) in this regard. In any event, regardless of the length of time of each classroom removal relative to the length of the school day, at the point that the classroom removals became “recurring,” particularly given that BPS has chosen to equate a classroom removal with an in-house suspension, the principal should have followed the procedures in 603 CMR 53.10(3)-(5).<sup>3</sup>

Not only did the District not follow its own procedures in Sections 6 and 9 of its Code of Conduct, but **the District did not comply with 603 CMR 53.10 (3)-(5) in this matter.** The complainant alleged that the School did not provide a hearing prior to a one-day suspension on October 13, 2017. Specifically, the complainant alleges that the District provided a notice of a hearing in an email to the parents on October 12, 2017 but that, after a telephone conversation that evening, no hearing took place the next day as stated in the notice.

The Department investigated this allegation pursuant to 603 CMR 53.06(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*

---

<sup>3</sup> The Department notes that student is a student with disabilities entitled to the protections of the federal Individuals with Disabilities Education Act (IDEA). Once the “recurring” classroom removals amount to 10 days, the district would be required to follow the procedures in 34 CFR §§ 300.530-.536.

*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."*

The District provided a copy of an email to the parent of the student in this case dated October 12, 2017, explaining the basis for the disciplinary action and attaching a notice of disciplinary hearing for the next day, at 10:00 a.m. In its Local Report, the District states "the parents did not attend the hearing but did reportedly speak with the principal on the phone" and that "this served as the hearing." The District, however, did not provide any documentation as to any aspect of the telephone call, including whether the parents understood the telephone call to constitute a hearing. The District also did not provide any information to show that the telephone "hearing" complied with the requirements of a principal's hearing under 603 CMFR 53.08 (2) other than its assertion that "this served as the hearing."

While the District provided written notice to the parents (although not in Spanish as addressed below) for a disciplinary hearing on October 13, at 10:00 a.m. as required by 603 CMR 53.06, the District purportedly decided to conduct a telephone hearing the evening before. The parents dispute that a hearing took place and the District did not provide any supporting information or documentation regarding the telephonic hearing and whether the hearing complied with the requirements in 603 CMR 53.08 (2). Even if the telephone call constituted the hearing as the District asserts, the District did not provide the parents with a written determination as to the suspension, including the reasons for it, the type and duration of the suspension, and the opportunity to make up assignments during the suspension period as required by 603 CMR 53.08(2)(c). **The Department finds that the District did not fully comply with 603 CMR 53.06(1) and 603 CMR 53.08(2) in this matter.**

5. The complainant alleged that the School used excessive force when administering a restraint on the Student in this case on December 8, 2017. The complainant provided copies of pictures taken after the restraint indicating marks and bruising on the child.

The Department investigated this allegation pursuant to *603 CMR 46.05 (2) Use of force:*

*"A person administering a physical restraint shall use only the amount of force necessary to protect the student or others from physical injury or harm."*

And, *603 CMR 46.05 (5):*

*"Safety requirements. Additional requirements for the use of physical restraint:*

*(a) No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin temperature and color, and respiration.*

*(b) Restraint shall be administered in such a way so as to prevent or minimize physical harm. If, at any time during a physical restraint, the student expresses or demonstrates significant physical distress including, but not limited to, difficulty breathing, the student shall be released from the restraint immediately, and school staff shall take steps to seek medical assistance.*

*(c) If a student is restrained for a period longer than 20 minutes, program staff shall obtain the approval of the principal. The approval shall be based upon the student's continued agitation during the restraint justifying the need for continued restraint.*

*(d) Program staff shall review and consider any known medical or psychological limitations, known or suspected trauma history, and/or behavioral intervention plans regarding the use of physical restraint on an individual student.*

*(e) After the release of a student from a restraint, the public education program shall implement follow-up procedures. These procedures shall include reviewing the incident with the student to address the behavior that precipitated the restraint, reviewing the incident with the staff person(s) who administered the restraint to discuss whether proper restraint procedures were followed, and consideration of whether any follow-up is appropriate for students who witnessed the incident."*

The District reports that two Crisis Prevention Intervention (CPI) trained staff completed the restraint that occurred on December 8, 2017. The District states that each person wrote up an account of the restraint that was reviewed and discussed with School-based administration. The District claims that no injuries to staff or student were reported as a result of the restraint. The District reports that the student was monitored by the second staff member throughout the restraint and the student did not seem to exhibit signs of distress. The restraint was reportedly less than one minute prior to the assistant principal taking part to help de-escalate. The District states that a phone call was made home by the assistant principal that day (December 8, 2017) and a formal notice of restraint was sent on the following Monday December 11, 2017.

The complainant stresses that the student was photographed following the restraint and provided the Department with pictures of the student's arms with bruising. The complainant claims that the restraint was used as a form of punishment and that restraint was used immediately following destruction of property. The Department is not able to determine any staff person's state of mind with regards to if the restraint on December 8, 2017 was administered as punishment. The Department is also unable to determine if undue force was used in the application of restraint on the student in this case. Both determinations are prohibitively subjective in the context of determining noncompliance.

A reasonable conclusion following review of photographs in this case can be made however, that the student was injured in the December 8, 2017 restraint. (See Allegation number 7 below.)

Although there are indications in the incident reports provided to the Department by the District as part of its Local Report that the restraint was initiated immediately following property destruction, there are also indications in the incident report from December 8, 2017 that the

student was being physical and aggressive with staff (pushing body into staff) that could prompt a reasonable assumption that the student required restraint intervention at that point. **The District is found to have complied with 603 CMR 46.03(2)(c)**, which prohibits restraint "as a response to property destruction, disruption of school order, a student's refusal to comply with a public education program rule or staff directive, or verbal threats when those actions do not constitute a threat of assault, or imminent, serious, physical harm."

6. The complainant alleged that the School did not provide to the parent a full restraint report following restraints administered on December 1, 2017 and December 8, 2017.

The Department investigated this allegation pursuant to 603 CMR 43.06 (3) and (4):

*"(3) Informing parents. The principal or director of the program or his/her designee shall make reasonable efforts to verbally inform the student's parent of the restraint within 24 hours of the event, and shall notify the parent by written report sent either within three school working days of the restraint to an email address provided by the parent for communications about the student, or by regular mail postmarked no later than three school working days of the restraint. If the school or program customarily provides a parent of a student with report cards and other necessary school-related information in a language other than English, the written restraint report shall be provided to the parent in that language. The principal shall provide the student and the parent an opportunity to comment orally and in writing on the use of the restraint and on information in the written report."*

*(4) Contents of report. The written report required by 603 CMR 46.06(2) and (3) shall include:*

*(a) The name of the student; the names and job titles of the staff who administered the restraint, and observers, if any; the date of the restraint; the time the restraint began and ended; and the name of the principal or designee who was verbally informed following the restraint; and, as applicable, the name of the principal or designee who approved continuation of the restraint beyond 20 minutes pursuant to 603 CMR 46.05(5)(c).*

*(b) A description of the activity in which the restrained student and other students and staff in the same room or vicinity were engaged immediately preceding the use of physical restraint; the behavior that prompted the restraint; the efforts made to prevent escalation of behavior, including the specific de-escalation strategies used; alternatives to restraint that were attempted; and the justification for initiating physical restraint.*

*(c) A description of the administration of the restraint including the holds used and reasons such holds were necessary; the student's behavior and reactions during the restraint; how the restraint ended; and documentation of injury to the student and/or staff, if any, during the restraint and any medical care provided.*

*(d) Information regarding any further action(s) that the school has taken or may take, including any consequences that may be imposed on the student.*

*(e) Information regarding opportunities for the student's parents to discuss with school officials the administration of the restraint, any consequences that may be imposed on the student, and any other related matter.*

The Department noted that because images of the child taken following restraint in this case do indicate some level of injury, the Department investigated this allegation pursuant to 603 CMR 46.06 (7):

*“Report all restraint-related injuries to the Department. When a physical restraint has resulted in an injury to a student or program staff member, the program shall send a copy of the written report required by 603 CMR 46.06(4) to the Department postmarked no later than three school working days of the administration of the restraint. The program shall also send the Department a copy of the record of physical restraints maintained by the principal pursuant to 603 CMR 46.06(2) for the 30-day period prior to the date of the reported restraint. The Department shall determine if additional action by the program is warranted and, if so, shall notify the program of any required actions within 30 calendar days of receipt of the required written report(s).”*

The District acknowledges that the School did not report all the details in which the restraints were described including the names of the staff and their titles, the exact start and end times of the restraints, alternatives attempted, description of actual restraint type, and the student's reaction were not included in these reports to parents. The reports were also not translated into the home language of Spanish. **The District did not fully comply with 603 CMR 43.06 (3) and (4) in this matter.**

As mentioned above, a reasonable conclusion is made that the student was injured if a connection can be drawn between bruises on a child and physical restraint applied to the same child, on the same day. The District reports that there were no injuries to the student or staff on the day of the restraint in question, but the Department would stress that when a child is marked, that would be an indication of injury and would prompt a report to the Department pursuant to 603 CMR 46.06 (7). **The District did not fully comply with 603 CMR 46.06 (7) in this matter.**

The District proposes to conduct professional development regarding proper documentation for restraints and the follow up to those restraints. The professional development will be held for all staff at the School working with students in the emotional impairment classrooms according to the District's proposal. The Department accepts the District's proposal for training at the school and requests the following additional corrective action.

#### CORRECTIVE ACTION WHICH MUST BE IMPLEMENTED

1. Please provide a copy of the student's entire student record to the complainant and to the Department as soon as possible, and **no later than March 15**. The record should reflect all documents requested by the complainant since he enrolled in BPS in response to [REDACTED] September 21, 2017 and November 29, 2017 requests.

2. The Department has made prior findings in regard to student record requests including:

PRS 2143 (Letter of Finding November 30, 2018) The Department found non-compliance with regard to a student record request at the Holmes Elementary School. The corrective action is ongoing in this case.

PRS 1560 (Letter of Finding February 12, 2018) The Department found non-compliance with regard to student record requests at Chittick Elementary.

PRS 1129 (Letter of Finding December 4, 2017) The Department found non-compliance with regard to student record requests at the Blackstone Elementary.

Therefore, in consideration of the current and prior findings made concerning Boston Public Schools on this topic, the District must develop a student records request response protocol that ensures parent requests for records system-wide are consistently honored in accordance with Massachusetts laws and regulations. The new protocol must include the specific individuals responsible for each step in the process including coordination within individual schools and the District data systems to provide all types of records including, but not limited to, Main Office files, applicable special education files, nurses' office files and all materials necessary to ensure full compliance with all legal requirements, including a protocol and procedure for ensuring prompt record provision during the summer months. **Please submit the District's plan for Department approval by April 30, 2019.**

Additionally, the Department is requiring follow-up activities on the part of the District including submission of internal monitoring and compliance reports demonstrating complete and timely provision of student records in accordance with all legal requirements. The Department may also conduct onsite review activities to validate the District's reporting and ensure ongoing compliance. The District will be informed regarding the specifics of this process and the due dates for the required materials following review and approval of the District's CAP plan.

3. Please offer compensatory services for the seven (7) full school days missed at the beginning of the 2017-2018 school year, when the student in this case was without a clearly defined school to attend or a clearly defined method of transportation to school available. (See form below.)

4. Please provide the Department and the complainant with complete translations of the student's current IEP, progress reports and evaluation reports from the 2017-2018 school year and 2018-2019 school year to the complainant no later than **April 1** and to the Department as part of the CAP materials due on **April 30, 2019**. Please also make provisions to ensure that all required documents are translated in the future, or until notice of a change is provided by the parent.
  
5. The Department has made prior findings with regard to the topic of requests made for translation and interpretation services including:
  - PRS 17-0906 (Letter of Finding June 28, 2017) The Department found non-compliance with regard to the provision of translated documents at the Henry L. Higginson School.
  
  - PRS 17-0693 (Letter of Finding June 30, 2017) The Department found non-compliance with regard to the provision of translated documents at Lee Academy.
  
  - PRS 17-0646 (Letter of Finding April 21, 2017) The Department found non-compliance with regard to the provision of translated documents at the East Boston Early Learning Center.
  
  - PRS 16-0942 (Letter of Finding July 13, 2016) The Department found non-compliance with regard to the provision of translated documents at the James Hennigan School.
  
  - PRS 15-0489 and 15-0488 (Letters of Finding March 20, 2015) The Department found noncompliance with regard to the provision of translated documents at the Everett Elementary School.

In consideration of the findings contained in this complaint and other previous findings of noncompliance made in regard to Boston Public Schools on this topic, **by April 30, 2019** the District will submit to the Department for approval a memorandum describing the District's legal obligation to provide parents and guardians who have a primary language spoken other than English, all communications in their primary language, pursuant to 603 C.M.R. 28.07 (8) and 28 CFR § 42.405(d)(1) and (2) and the changes in District policy and procedure which are being implemented to ensure immediate and ongoing full compliance with this requirement. Subsequent to Department approval, the memorandum will be issued to all District personnel and administrators.

Additionally, the Department is requiring follow-up activities on the part of the District including submission of internal monitoring and compliance reports demonstrating complete and timely provision of translated notices in accordance with all legal requirements. The Department may also conduct onsite review activities to validate the District's reporting and ensure ongoing compliance. The District will be informed regarding the specifics of this process and the due dates for the required materials following review and approval of the District's CAP plan.

6. Please provide a memo to the Building administrator outlining the requirements of 603 CMR 53.10(4) to discuss and explore non-punitive solutions to school suspensions. Please provide the Department with a copy of the memo **by April 30, 2019**. Please review training materials for District Administrators regarding BPS procedures in its Code of Conduct related to the issuance of in-school and out-of-school suspensions, including but not limited to:

- a. Short-Term Suspension: Definitions and Procedures, Sections 9.1-9.8.3
- b. Long-Term Suspension: Definitions and Procedures, Sections 10.1-10.7.

Provide copies of the materials to the Department for review and approval **by April 30, 2019**.

7. The Department accepts the District's proposed Corrective Action in regard to this element of the complaint. Please provide the Department **by April 30, 2019**, a copy of a memorandum to school administrators pursuant to 603 CMR 46.06(4) and 603 CMR 46.06(7) detailing the legal obligation of responsible staff, specifically principals and program directors, to document the use of restraint and to make reasonable efforts to verbally inform the student's parent of the restraint within 24 hours of the event, to provide parents with a written report of the restraint, with required content, and in the parents' primary language, to give the parent an opportunity to comment orally and in writing on the use of the restraint and on the information in the written report and to report to the Department all restraints where an injury occurred to a student or staff member. The memorandum should also detail each Principal's obligation to maintain an ongoing record of all reported instances of physical restraint and to make that record available for review upon the parent's request. The memo will need to include an emphasis on the reasons why the use of restraint was required to ensure the student's safety, whether specific de-escalation strategies or alternatives to restraint were attempted and/or whether other, less restrictive methods could have been used to manage the student's behavior.

COMPENSATORY SERVICES PLAN TO BE DEVELOPED AND IMPLEMENTED

Because the Department has found noncompliance in this case and a resulting denial of a free appropriate public education (FAPE) for this student, the Department requires the District to develop a plan of compensatory services to be implemented for the student. The District should develop the compensatory services plan with the student's parents, secure the signed approval of the parents, and submit it to the Department on the attached form. If the District and the parents are unable to develop a mutually acceptable plan of compensatory services **by April 30, 2019** the Department will develop a plan and specify the compensatory services that the District must provide. Failure to implement such a plan may result in the withholding of funds.

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.

**Provide the Department with the required Corrective Action Report and the signed Plan of Compensatory Services pursuant to these findings no later than the above referenced date. If the District and the complainant are unable to agree on a Plan of Compensatory Services, the District and complainant must each provide their proposals to the Department.** Standard response forms are enclosed for your use in responding to these requests.

We 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 Alves-Thomas, Compliance Manager, Boston Public Schools  
Daniel Mayers, Compliance Liaison, Boston Public Schools  
Stephanie Molina, Complainant Attorney Advocate  
Liza Hirsh, Case Manager, Massachusetts Advocates for Children

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

School District: Boston Public Schools  
**CORRECTIVE ACTION REPORT**  
In Response to Intake PRS 2130

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 \_\_\_

