



## Massachusetts Department of Elementary and Secondary Education

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75 Pleasant St, Malden, Massachusetts 02148-4906

Telephone: (781) 338-3700

TTY: N.E.T. Relay 1-800-439-2370

March 22, 2018

Tommy Chang, Superintendent  
Boston Public Schools  
2300 Washington Street  
Roxbury, MA 02119

Re: Intake PRS 1526  
Student Name: [REDACTED]  
**Letter of Finding**

Dear Superintendent Chang:

On January 25, 2018, the Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from Ms. Elizabeth McIntyre involving the Boston Public Schools. 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 Mr. [REDACTED] 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 March 15, 2018;
- discussed the District's Local Report and the concerns with the complainant;
- reviewed the complainant's response to the District's Local Report;
- reviewed relevant state and federal education laws and regulations.

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(s), our findings and required corrective actions follow.

## CONCERNS AND FINDINGS

1. The complainant alleged that the District assigned a short-term suspension to the student on November 15, 2017 and did not provide written notification to the parent and student. The complainant alleged that the student was sent home without notice of suspension or notice of a hearing on November 15, 2017. This concern was reviewed pursuant to 603 CMR 53.02:

*“Short-term Suspension means the removal of a student from the school premises and regular classroom activities for ten consecutive school days or less. A principal may, in his or her discretion, allow a student to serve a short-term suspension in school. Removal solely from participation in extracurricular activities or school-sponsored events, or both, shall not count as removal in calculating school days.”*

And, 603 CMR 53.06(1):

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

The question of whether the student was asked to leave the school on the afternoon of November 15, 2017 is indicative of when the student’s suspension started. The District stated the the student was not sent home on the afternoon of November 15, 2017 by school personnel, however, the police report dated November 15, 2017 stated that the student was asked to leave the building by the School Safety Officer following a verbal altercation between the student, school personnel and the School Safety Officers. During this same incident, a verbal altercation occurred between a teacher at the school and the School Safety Officers when the teacher sought to intervene in the matter. The same teacher was the person who escorted the student from the building according to the Police Report. Further, it is the Department’s understanding that student left the school premises prior to school dismissal. The Department notes in the January 19, 2018 letter from the BPS Operational Superintendent, which upheld the student’s suspension, the letter identified the student leaving class without permission as one of the code of conduct violations. Of the infractions listed in the letter, there is no indication that the student was also disciplined for leaving school grounds without permission. It is the Department’s determination that the student was asked to leave the building on November 15, 2017 following an incident. Therefore, the student’s suspension started on the afternoon of November 15, 2017.

The District reports that on November 15, 2017, the student received verbal notice of a hearing to occur on November 16, 2017. The District also reports giving verbal notice to the parent on November 15, 2017 by way of a telephone call alerting the parent to a hearing scheduled for the next morning. The District also claims that a written notice of a hearing was issued on November 15, 2017.

There are two references in the District's documentation that the student may have received the written notice of a hearing on November 15, 2017:

- The District provided a copy of an email from Engagement Counselor [REDACTED] (paraprofessional) to Assistant Superintendent [REDACTED] which was sent on January 22, 2018 stating that the student in this case received a written Notice of Hearing before the student left school on November 15, 2017.
- The District also provided the Department with a copy of the Superintendent's January 19, 2018 decision following the Appeal to Suspension which references that the student received a Hearing notice on November 15, 2017.

The Complainant responded to this section of the Local Report with the claim that because the notice of the Hearing wasn't in writing, specifically to the parent, that neither the parent nor student knew what the meeting was about and didn't have the opportunity to review the record, invite counsel, invite witnesses, prepare questions for cross examination or formally ask for a recording. It is the complainant's contention that because all the rights were not spelled out in writing prior to the Hearing, due process was not complete.

The Department notes that January 19, 2018 letter from the BPS Operational Superintendent, in the section under "2" of the Hearing Officer's Disposition, the Hearing Officer stated that the parent was notified by telephone and was made aware of the disciplinary hearing by telephone. There is no indication in the Hearing Officer's disposition that written notice was provided to the parent prior to the hearing. The District does not claim to have provided written notice to the parent prior to the hearing. It is the Department's understanding that the parent signed the hearing notice the day of the principal's hearing, which was November 16, 2017. Under 603 CMR 53.06(1), it is not sufficient to provide only verbal notice to the parent. **The District did not comply with 603 CMR 53.06 (1) in this matter because it did not provide written notice to the parent prior to the hearing.**

2. The complainant alleged that the District imposed a long-term suspension on November 16, 2017, without considering alternatives to suspension and without providing due process protections of written and/or verbal notice of a suspension hearing and without allowing the student in this case to present witnesses in her defense.

The Department investigated this allegation pursuant to 603 CMR 53.05, MGL Chapter 71 Section 37H <sup>3/4</sup>:

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

*as mediation, conflict resolution, restorative justice, and positive interventions and supports.”*

And, 603 CMR 53.06(1):

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

And, 603CMR 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 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.”*

And, 603 CMR 53.08(3)(b) *Principal Hearing - Long-term Suspension:*

*“At a minimum, in addition to the rights afforded a student in a short-term suspension hearing, the student shall have the following rights:*

- 1. In advance of the hearing, the opportunity to review the student's record and the documents upon which the principal may rely in making a determination to suspend the student or not;*
- 2. the right to be represented by counsel or a lay person of the student's choice, at the student's/parent's expense;*
- 3. the right to produce witnesses on his or her behalf and to present the student's explanation of the alleged incident, but the student may not be compelled to do so; and*
- 4. the right to cross-examine witnesses presented by the school district; and*
- 5. the right to request that the hearing be recorded by the principal, and to receive a copy of the audio recording provided to the student or parent upon request. If the student or parent requests an audio recording, the principal shall inform all participants before the hearing that an audio record will be made and a copy will be provided to the student and parent upon request.”*

And, 603 CMR 53.09(2):

*“A student who is placed on long-term suspension following a hearing with the principal shall have the right to appeal the principal's decision to the superintendent.”*

And, 603 CMR 53.09(6):

*"The student shall have all the rights afforded the student at the principal's hearing for long-term suspension under 603 CMR 53.08(3)(b)."*

The District does not address the topic of alternatives to suspension in its Local Report. The Superintendent's January 19, 2018 Decision following Appeal lists several school interventions that occurred either before or during the incident itself and are not relevant to discipline following the incident.

The District provided documentation that both Hearing Notices and Suspension Notices were provided to the parent and student during the Hearing on November 16, 2017. As outlined above, the written Notice of the Hearing was not provided to the parent prior to holding the Hearing on November 16, 2017.

**Because the parent wasn't afforded written notice of the principal's suspension hearing, the Department finds that the District did not comply with all of the requirements under 603 CMR 53.05, M.G.L. Chapter 71 Section 37H ¾, 603 CMR 53.06(1), 603CMR 53.06(3), 603 CMR 53.08(3)(b), 603 CMR 53.09(2), and 603 CMR 53.09(6) in this matter.**

3. The complainant alleged that there is a conflict with how the District is defining the length of the suspension from November 16, 2017. The complainant alleged that the District defines the suspension as only five (5) days because the second five (5) days were to be served in a program called "Succeed Boston". The complainant stated that because the student was assigned away from her regular classroom setting at Succeed Boston (previously known as the Counseling and Intervention Center/Baron Center), the student is removed from the "school premises" and "regular classroom activities" 603 CMR Section 53.02. Succeed Boston was not proposed as a voluntary placement, but rather a required placement by the District according to the complainant. When the District held a subsequent hearing for an appeal to the long-term suspension, the student was faced with evidence that she did not know existed, the District interviewed witnesses without allowing the complainant to cross-examine them, denied the presence of witness, and failed to issue a decision for over a month.

The Department investigated this matter pursuant to 603 CMR 53.02:

*"In-school Suspension means removal of a student from regular classroom activities, but not from the school premises, for no more than ten consecutive school days, or no more than ten school days cumulatively for multiple infractions during the school year. Removal solely from participation in extracurricular activities or school-sponsored events, or both, shall not count as removal in calculating school days. In-school suspension for ten days or less, consecutively or cumulatively during a school year, shall not be considered a short-term suspension under these regulations. If a student is placed in in-school suspension for more than ten days, consecutively or cumulatively during a school year, such*

*suspension shall be deemed a long-term suspension for due process, appeal, and reporting purposes.”*

*“Long-term Suspension means the removal of a student from the school premises and regular classroom activities for more than ten consecutive school days, or for more than ten school days cumulatively for multiple disciplinary offenses in any school year. A principal may, in his or her discretion, allow a student to serve a long-term suspension in school. Removal solely from participation in extracurricular activities or school-sponsored events, or both, shall not count as removal in calculating school days. Except for students who are charged with a disciplinary offense set forth in M.G.L. c. 71, § 37H(a) or (b), or M.G.L. c. 71, § 37H ½ no student may be placed on long-term suspension for one or more disciplinary offenses for more than 90 school days in a school year beginning with the first day that the student is removed from school. No long-term suspension shall extend beyond the end of the school year in which such suspension is imposed.”*

An email provided by the District written on November 16, 2017 by [REDACTED] to Ms. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] stated that the student was suspended for “5 days out of school and 5 days at Succeed Boston.” It is clear in the email that the District representative (Dean of Students) considered the Succeed Boston placement as part of the student’s suspension. The District claimed that the student did not attend the program in its Local Report; the complainant claimed that the student did attend. Attendance information provided to the Department is for the 2016/2017 School Year and therefore, is not dispositive. Whether or not the student actually attended the Succeed Boston program is not determinative as to whether student received a 10-day suspension. Because the Department view’s this suspension as a long-term suspension, (ten days plus the afternoon of November 15, 2017), the requirement of 603 CMR 53.13(1) applies.

Students required to attend the Succeed Boston Program are removed from their “school premises” and from their “regular classroom activities”. Therefore, removal to the Succeed Boston Program constituted days of suspension. Therefore, the student’s suspension was a long-term suspension with five (5) days of suspension from school, five (5) days of removal to attend the Succeed Boston program and the additional removal that occurred on November 15, 2017. In total, the student was suspended from school for 11 days.

The Complainant stated in a telephone call with the Department on March 21, 2018 that because she considered this to be a long-term suspension, the District was obligated to provide additional due process elements consistent with 603 CMR 53.08(3)(b); including the right to have the District consider alternatives to suspension and the right to cross examine witnesses at the hearing.

The District limited the student’s right to due process in a couple of fundamental ways both in the initial hearing held on November 16, 2017 and during the Superintendent’s Appeal held on December 19, 2017. In the initial hearing, the parent was not properly informed of her rights

through the provision of a written notice. The parent and student was not allowed to call a teacher, [REDACTED], as a witness because the Hearing Officer (Mr. [REDACTED]) determined that the teacher's involvement with the incident was not sufficient to be considered relevant. Following its review of the Police Report, it is clear to the Department that the teacher was involved and was a witness in this matter, and her exclusion precluded the possibility of adequate due process.

During the Superintendent's Appeal, the District brought forth evidence that was not available during the initial Hearing and was not made available to the Complainant at any other time prior to the Appeal Hearing. Examples of this evidence include internal emails between staff at the school discussing the provision of written notice, a videotape of the incident itself and having access to the logs from interviews of staff at the school. **Therefore, the District did not comply with 603 CMR 53.08(3)(b) in this matter.**

4. The complainant alleged that the District did not provide work to the student to ensure access to her regular educational programming as required by 603 CMR 53.13(1):

*"Any student who is serving an in-school suspension, short-term suspension, long-term suspension, or expulsion shall have the opportunity to earn credits, as applicable, make up assignments, tests, papers, and other school work as needed to make academic progress during the period of his or her removal from the classroom or school. The principal shall inform the student and parent of this opportunity in writing when such suspension or expulsion is imposed."*

The District reported that work was sent to the Succeed Boston program for the time that the student was assigned to the program. The District indicated that it was seeking emails to this affect, but no documentation of this was provided as part of the Local Report to the Department. Further, the District did not address how the student was afforded the opportunity to make academic progress for the five (5) in which the student was suspended and was not assigned to the Succeed Boston Program. **Therefore, the Department finds that the District did not comply with 603 CMR 53.13(1) in this matter.**

5. The complainant alleged that the superintendent took over a month to issue a decision as to the appeal on the long-term suspension.

The Department was investigated this allegation pursuant to 603 CMR 53.09(7):

*"The superintendent shall issue a written decision within five calendar days of the hearing which meets the requirements of 603 CMR 53.08(3)(d)1. through 4. If the superintendent determines that the student committed the disciplinary offense, the superintendent may impose the same or a lesser consequence than the principal, but shall not impose a suspension greater than that imposed by the principal's decision."*

The District reports that the Superintendent's decision did not come out until January 19, 2018 following a December 19, 2018 meeting. This is clearly over the five-day timeline stated in the regulation. **The Department finds that the District did not comply with 603 CMR 53.09(7) in this matter.**

CORRECTIVE ACTION WHICH MUST BE IMPLEMENTED

- A. After providing notice consistent with the regulatory requirements for a long-term suspension, the District will provide the student and the student's parent(s) with the opportunity to participate in a hearing addressing the November 15, 2017 incident, such that the students and the parent(s) are afforded due process. Alternatively, because the District did not provide due process to the student in this case, the District may expunge the suspension from the student's record.
- B. Please provide evidence to the Department that the District held a hearing and provided due process consistent with the requirements of 603 CMR 53.00 or evidence that the District expunged the student's suspension, and removed it from the student record.
- C. Afford the student the opportunity to make up work and make academic progress for the days missed from school.
- D. The District must review the procedures for the provision of notice as required by 603 CMR 53.00 with the administrators responsible for discipline in the school. The name and title of the presenter and the staff in attendance must be provided to the Department.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than April 16, 2018**. 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) 338-3720.

Sincerely,

*Nathan Lemmon*

Nathan Lemmon, PRS Specialist  
Problem Resolution System Office

*D. Paolillo*

Dean Paolillo, PRS Supervisor  
Problem Resolution System Office

Enclosures: Response Form

CC: Cindie Neilson, Assistant Superintendent, Boston Public Schools  
Andrea Alvez-Thomas, Compliance Manger, Boston Public Schools  
Daniel Mayers, Compliance Liaison, Boston Public Schools  
Elizabeth McIntyre, Complainant's Attorney