

**Complaint Investigation Report**  
**Parents v. Waterville Public Schools**  
**Complaint 19.014C**  
**Complaint Investigator: Jeannette Sedgwick**  
**October 16, 2018**

The Department of Education received this complaint on August 23, 2018.<sup>1</sup> The complaint investigator reviewed all documents, information, and responses from the parties. Interviews were conducted with the District's special education director, Assistant Principal, BCBA, and the District's social worker on September 24, 2018. The complaint investigator interviewed the complainants on September 25, 2018.

**FACTUAL FINDINGS**

1. The Student was a sixth grader in the 2017-2018 school year and is currently in the seventh grade in the District. The Student receives educational services primarily in the general education setting.
2. The Student qualifies for special education and related services for the qualifying disability of emotional disability (ED) and Specific Learning Disability (SLD).
3. The Student's IEP Team met several times during the 2017-2018 school year. On January 23, 2018, the Team added consultation with the school behavior analyst for 15 minutes each month to the Student's IEP and developed more detailed behavioral goals. The Team also implemented a safety plan which included the parents being able to speak with the Student on the phone for de-escalation if needed during the school day.
4. The Student's annual review took place on March 22, 2018.<sup>2</sup> Safety and behavioral plans were still in place during the end of the 2017-2018 school year.
5. The District and the parents entered into a mediated agreement (Agreement) on April 30, 2018. The parts of the Agreement that are relevant to this state complaint investigation are detailed below.
6. On May 15, 2018, the Student participated in conduct that violated the Code of Conduct at the school, disrespectful behavior to District staff. After this incident, the District contacted the Student's parents and requested that the Student be picked up prior to the

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<sup>1</sup> The parents also filed a request for a due process hearing that listed issues not included in the complaint. The parents withdrew the request for due process hearing approximately two days after filing it and proceeded with the state complaint investigation process.

<sup>2</sup> The new IEP, which was implemented in April 2018, contained instructional goals and direct services in ELA and mathematics and functional goals of OT, Speech/Language, and behavior, including consultation by a behavior analyst 1x15 minutes/month. One area of focus for learning is the Student's social interactions with peers and with his ability to understand and label his emotions.

end of the school day. The Student was disciplined for this incident with a detention the following week.

7. On June 6, 2018 the Student participated in conduct that violated the Code of Conduct, physical aggression towards another student. School staff communicated amongst themselves about the ability for the Student to be safe during the remainder of the day and during his bus ride home. The District's main office staff called the parents and asked for the Student to be picked up prior to the end of the school day.<sup>3</sup> The Student received suspension after this incident, which was served immediately.
8. The Student's IEP Team met on June 13, 2018 to discuss the Student's Functional Behavioral Assessment and other assessments. The Student's IEP Team met on June 13, 2018 and a new IEP was created after that meeting.
9. For the beginning of the 2018-2019 school year, the District has implemented some services in a new program, the Lighthouse Program, which provides a space designed for this Student and other students to have a place to debrief and de-escalate. District staff reports that the Student is using this program and the other many supports on his IEP, such as daily check-ins with the social worker, and has started the school year positively.

Other relevant facts will be included in the determinations below.

## **DETERMINATIONS**

1. The complainant alleged that after mediation on April 30, 2018, the District did not comply with the mediation agreement because of the following:

### **COMPLIANCE FOUND.**

- A. The District did not comply with #1 of the mediation agreement because it did not

“convene a consultation between [staff at the Student's former District] and the District's BCBA to discuss (a) the “Seven Steps” for de-escalation and debriefing and other strategies after a behavioral episode; and (b) How to integrate these strategies into [the Student's] behavior plan and safety plan.”

The complainant states that this part of the agreement was not followed after two incidents in the spring of 2018.

The parents understand #1 of the Agreement to mean that after the mediation, the Student would have provisions added to in his existing behavior and safety plans. The parents also understood that the use of certain de-escalation strategies, which included de-briefing with

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<sup>3</sup> On this occasion, the school called very close to dismissal time and the parents did not pick up the Student until the end of the school day.

particular staff, meant the exclusion of other District staff in that process. They wished to see strategies that had been used in the past with success to be used in the District.

The District understands this provision of the Agreement to mean that consultation with the Student's former school would occur and would result in provisions of future behavior and safety plans. The District implemented changes after the FBA was completed and discussed at a Team meeting near the end of the school year. These strategies were put in place in the beginning of the 2018-2019 school year.

The result of these differing interpretations meant that during school in May and June of 2018, the Student did not have a new or modified behavioral or safety plan after mediation had taken place. The parents reasonably believed that new strategies would be implemented when the Student was experiencing difficulties, which he did on at least two occasions in May and June while the FBA was being conducted.

Ultimately, the Agreement does not specify the timing of the consultation with the Student's former district. Nor was no implementation date for these strategies in the Agreement. The consultation occurred as specified in the Agreement.<sup>4</sup> When interviewed, District staff stated that they had followed the steps for de-escalation and debriefing and other strategies that had been discussed during mediation.<sup>5</sup> District staff also stated that debriefing with the Student occurred with her nearly daily in May and June 2018. The lack of specifics in the Agreement leads to the conclusion that there was no violation by the District.

B. The District did not comply with #4 of the mediation agreement, which states,

“If there is a behavioral incident, the ed. tech. will be a part of the de-escalation and debriefing strategy, along with the District's social worker. The ed. tech. and/or the social worker will communicate with the parents about the incident and what strategies were used to de-escalate and debrief.”

On May 15, 2018, the Student was disrespectful to an adult, an act which resulted in discipline. The Student was in the cafeteria when the District's social worker attempted to de-escalate the situation. The Assistant Principal was also in the cafeteria discussing the incident with the Student.

The parents state that debriefing with the ed. tech. and social worker did not happen after incidents on May 15, 2018 and June 6, 2018. The parents stated that it was their understanding that under the Agreement, only the ed. tech. and the social worker, not the Assistant Principal, would be a part of the de-escalation process and that the ed. tech. and social worker would

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<sup>4</sup> The District contacted the Student's former District on May 15 and 23, 2018.

<sup>5</sup> The District's social worker is a LSW with both public and private school experience with students who qualify for special education and related services who has been a licensed social worker for eleven years. She stated that she used restorative practices which use the same reflective questioning as the “Seven Steps” method in accordance with the existing behavioral plan, discussed in this complaint.

communicate with a parent. In this instance, in the parents' understanding, the ed. tech. sent the Student back to class without debriefing as stated in the Agreement.

District's staff stated that the Assistant Principal was following the Agreement when he contacted the parents. The social worker stated that she spoke with the Student after the May 15 incident involving disrespect to an adult. As stated above, the social worker stated that debriefing with the Student occurred nearly daily in May and June 2018.

On June 6, 2018, the Student was engaging with a peer in the classroom and harmed the peer with a pencil. After this incident, the parents believed there had not been any intervention by the ed. tech. in the situation leading up to the Student's behavior. The parents stated that the Student was interacting with the Assistant Principal during the debriefing process, which they believe should not have occurred because the ed. tech. and the social workers are authorized to debrief with the Student according to the Agreement.

The District staff stated that de-escalation worked as it should have on June 6, 2018.<sup>6</sup> The Student was talking with the Assistant Principal as well as the social worker after the incident occurred. The District has followed #4 of the Agreement.

The documentation and interviews demonstrate that both the District and the parents have been working together to fashion appropriate supports and services for Student, whose disabilities often manifest themselves in non-conforming behavior. Both parties have communicated frequently, have sought out possibilities for resolution, and have worked together so that parents and the District staff have a thorough understanding of how the Student's disabilities affect his educational experience.

2. The complainant alleged that the District sent the Student home without being suspended on May 15 and June 6, 2018, which resulted in a lack of educational services for the Student. MUSER IX(3)(B)(3). **NON-COMPLIANCE FOUND.**

A pattern of short-term disciplinary removals from a current placement may give rise to situations where children with disabilities do not receive "appropriate behavioral interventions and supports, and other strategies, in their IEPs."<sup>7</sup> While law and regulation support disciplinary removal for a child with a disability who violates a code of conduct, Districts must be mindful of the obligation to provide FAPE when considering the implications of a child's behavioral needs and the effects of short-term removals.<sup>8</sup> The practice of "send-homes" can lead to a failure to

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<sup>6</sup> The Student had difficulty talking with District staff after this incident occurred and remained upset for some time. Since this time, the Student's behavioral plans have been modified based on the FBA.

<sup>7</sup> *Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Plans*, 68 IDELR 76, 77 (August 1, 2016). Available at <https://sites.ed.gov/idea/files/dcl-on-pbis-in-ieps-08-01-2016.pdf>.

<sup>8</sup> *Id.*; 34 CFR 300.530(b)(1); MUSER XVII.

implement students; IEPs, the failure to accurately count the number of days students miss before a change of placement occurs, and the lack of opportunity for students to access the curriculum.<sup>9</sup>

In this instance, the parents stated that they were asked to take the Student home after the Student violated the Code of Conduct on May 15, 2018. The District stated that staff called the parents on this day in order to have the Student process the incident with the parent, a statement with which the parents disagree. District staff stated that it is often “in the best interest” of everyone to send home students as a “pre-emptive strike” when student actions warrant it. District staff also stated that early dismissal from school can also occur after an incident that would result in a suspension. On this day, the District contacted the Student’s parents to have them pick up the Student prior to the end of school. A detention was assigned for a date the following week.

On June 6, 2018, the District’s disciplinary notes state that the parents would not pick up the Student when the District called them prior to the end of the school day. The District stated that it is the usual procedure to send home all students early when they are suspended. After this incident, the Student was suspended.

Documentation shows that the District sent the Student home prior to the end of the school day on May 15, 2018 for a reason that was not disciplinary. This action did not significantly impact the Student’s ability to access the curriculum. Corrective action is detailed below.

#### CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. The District must send a memorandum to all District Principals, Assistant Principals, and others who have the authority to remove or discipline students about the proper policies and procedures for removing students from their educational placement for any reason, including the removal from school through non-disciplinary action.<sup>10</sup>

The District must send the memorandum and the with names and titles of the recipients of the memorandum, to the Department by **November 21, 2018**.

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<sup>9</sup> *Nickerson v. Lexington Pub. Sch.* 893 F. Supp. 2d. 276, 285 (Districts must provide ‘instruction and support services sufficient to permit the child to benefit educationally from that instruction.’ (internal citations omitted); *See Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 998, 1002 (2017); *Dear College Letter on the Inclusion of Behavioral Supports in Individualized Education Plans*, 68 IDELR at 76.

<sup>10</sup> *See Dear Colleague Letter on the Inclusion of Behavioral Supports in Individualized Education Plans*, 68 IDELR at 77.