



Massachusetts Department of Elementary and Secondary Education

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March 14, 2019

Andrew Bott, Superintendent
Brookline Public Schools
333 Washington Street
Brookline, MA 02445

Re: Intake PRS 2325
Group Name: All Students
Letter of Finding

Dear Superintendent Bott:

On December 3, 2018, the Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from Ms. Linda Monach involving the Brookline Public Schools. A copy of the signed statement was forwarded to your office by the complainant. The Department's investigation included the following steps:

- Review of the statement of concern and supporting documentation;
- Communications with the counsel for the District, regarding the statement of concern;
- Written request for a Local Report from the District;
- Review of the District's Local Report and supporting documentation submitted to the Department on December 10, 2018;
- Review of relevant state and federal laws and regulations;
- Consultation amongst Problem Resolution System staff;
- Review of the District's Local Report submitted to the Department on December 10, 2018;
- Conducted an onsite visit to substantially separate classrooms at the Runkel Elementary School.

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 concerns, our findings and required corrective actions follows.

CONCERNS AND FINDINGS

1. The complainant alleged that the District does not provide equitable instructional learning spaces for students with disabilities. The complainant alleged noncompliance with 603 CMR 28.03(b), which states in part:

"The school district shall provide facilities and classrooms for eligible students to maximize the inclusion of such students into the life of the school. Facilities and classrooms serving only students with disabilities shall be at least equal in all physical respects to the average standards of general education facilities and classrooms. Resource rooms and separate classrooms for students with disabilities shall be given the same priority as general education programs for access to and use of instructional and other space in public schools in order to minimize the separation or stigmatization of eligible students.

All eligible students shall have access to school facilities including, but not limited to, those areas necessary to implement the student's IEP."

2. The complainant alleged that a substantially separate special education program, located at the Runkle School, is in violation of 603 CMR 28.06(6). 603 CMR 28.06(6) states:

"When eligible students aged five and older receive special education services for some or all of the school day outside of the general education environment, the school district shall make every effort to maintain the student's access to the general curriculum and participation in the life of the school. The school district shall devote resources to develop the school district's capacity for serving such eligible students in less restrictive alternatives."

On January 18, 2019, the District submitted its Local Report (Report) to the Department. This Report included:

- A. For students currently enrolled in the substantially separate program at Runkle Elementary School:
 - Student names and their daily schedules;
 - Names and schedules of teachers assigned to the classroom;
 - Names and schedules for all related service providers assigned to provide services in the classroom;
 - Names and schedules for all paraprofessionals assigned to work in the classroom.
- B. A narrative response addressing the learning spaces, depicted in photographs provided by the complainant, at the Driscoll, Baker, and Heath Schools.
- C. A narrative description addressing the allegations.

Allegation One: Equitable Instructional Space

A review of the November 27, 2018, Superintendent's report to the Brookline School Committee determined that between 2005 and 2018, the District has added 1,599 K-8 students. This increase in student population has created significant overcrowding issues in five (5) of the (8) K-8 schools in the District. The Superintendent's report to the school committee noted the following enrollment at each of the District's K-8 schools:

School	2018 Enrollment	Capacity	Number of students Over + or (Under) Capacity
Baker	762	679	+83
Coolidge Corner	873	945	(72)
Driscoll	614	574	+40
Heath	522	553	(31)
Lawrence	705	572	+133
Lincoln	581	437	+144
Pierce	865	634	+231
Runkle	581	634	(35)

[BBJ(1)]

The District's narrative response addressed all the learning spaces that were depicted in photographs provided by the complainant and were included in the Superintendent's November 27, 2018 report. The District asserted that most of the spaces identified are not regarded as part of the instructional learning spaces for protected classes of students, as those students do not use those spaces. Rather, the spaces noted in the Superintendent's report and the District's Local Report are identified as staff offices, general education spaces, and areas used by all students (i.e. the cafeterias and gymnasiums). The District asserted that while some learning spaces are not ideal, the instructional needs of the students are being met.

The District's initial Local Report addressed the concerns of the Baker School, Driscoll School, Heath School and the Runkle School. The Department notes that the initial complaint identified concerns with other schools within the District, specifically, the Lawrence School, Lincoln School and the Pierce School. The Department received additional information from the Brookline Public Schools dated February 13, 2019 entitled Update on Building Projects within Public Schools of Brookline Re: 2325 providing planned actions to address building inadequacies. This document provided some information regarding Piece School, but did not specifically address the concerns identified in the initial complaint to the Department. The original complaint noted at the Pierce School that "an entire wing of the school" is not accessible, and the complainant alleged is not compliant with the Americans with Disabilities Act (ADA). While the Problem Resolution System Office does not enforce ADA accessibility, the Department notes, the District must also ensure accessibility under Section 504. Further, the allegation noted that the location of the school nurse was also in an inaccessible area.

The Department's review of the District's Report and supporting information determined that there are significant issues concerning the locations for the provision of services for students in protected classes, such as students eligible for special education services and English Language Learners in the District's schools. For example, in reviewing the District's Report, at the Driscoll School, there are, "small group breakout space in the hallway" and this space in the hallway is used for specialized instruction for "students in Kindergarten through second grade who have IEPs". The District also acknowledged that the space was not designed as a classroom, though the District maintained that the students' instructional needs were being met. The Department notes, however, that depending on the individual needs of each of these students, there may in fact be students whose needs are not being met because of the instructional environment.

While the Department understands that the students are receiving instructional services, these students with disabilities are not receiving the same priority as general education programs for access to, and use, of instructional space. Providing special education services to special education students in a hallway does not minimize the separation or stigmatization of these students or ensure student confidentiality regarding the provision of special education services.

The Department finds that the District has not fully complied with 603 CMR 28.03(b) in this matter.

Allegation Two: Instructional Space at Runkle Elementary School

On Thursday, February 7, 2019, Department representatives conducted an onsite visit to the Runkle Elementary School to review the substantially separate special education programs. Department staff determined that the seven (7) substantially separate classrooms (RISE Program) are located within instructional space with their grade level peers. That is, grades K-8 RISE Program classrooms are located within the same halls as grade level general education classrooms and this proximity allows for student access to the general curriculum and participation in the life of the school.

At the time of the Department's visit, there appeared to be very few students within the RISE classrooms. The Department sought additional information concerning why few students occupied the RISE classrooms during the Department's onsite visit. Communication between District staff and the Department, along with a review of student and District staff schedules, determined that the students within the RISE program participate in inclusion opportunities throughout the school day and do not remain in the RISE classrooms for a significant portion of their school day. Student and staff schedules show that school personnel support students during their periods of inclusion, with a 1:1 ratio. This allocation of resources demonstrates that the District has developed the capacity for serving RISE students in less restrictive environments. **The Department has determined that the District complied with 603 CMR 28.06(6) in this matter.**

The Department notes that the District fully acknowledges that the overcrowding of students at the K-8 schools has affected all students and staff. The District has taken proactive measures to address this concern, which includes various building projects within the District. On December 13, 2018, the Brookline Town Meeting Members voted to move forward with the Driscoll School Expansion Project and Baldwin School Building Projects. For the Baldwin School, the allocation of \$ 1.5 million allows the building committee and architects to develop the design for the school. The District has developed timelines for the other school building construction and renovation measures to address the overcrowding at the District schools.

CORRECTIVE ACTION THAT MUST BE IMPLEMENTED

- A. The District must immediately relocate those special education students receiving special education services in hallways within the District's schools to an appropriate instructional space. The District must provide a list of the K-8 Schools in which students were receiving instruction in the hallways, and how each school has arranged for the provision of services in a classroom or service provider location. Provide the Department with the specific actions taken to ensure compliance *603 CMR 28.03(b)* regarding this matter.
- B. The District must review the concerns identified in the initial complaint for the Lawrence School, Lincoln School and the Pierce School, and propose its corrective actions to address the identified concerns. The District's corrective action plan must include an accessibility plan for the Peirce School for the inaccessible locations, and specifically how the District will ensure access to nursing services to students with limited mobility.
- C. The District will provide the Department with an update of any proposals, additions, or changes to the District's planned building projects.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than April 30, 2019**. A standard response form is enclosed for your use in responding to this request. **A copy of your Report must also be sent to the person who registered this complaint.**

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 (D.P.)

Rhonda Mojkowski, PRS Specialist
Problem Resolution System Office

Dean Paolillo

Dean Paolillo, PRS Supervisor
Problem Resolution System Office

C: Casey Ngo-Miller, Interim Deputy Superintendent of Schools
Linda Monach, Complainant

Enclosures: Response Form

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

School District: Brookline Public Schools

**CORRECTIVE ACTION REPORT
In Response to Intake PRS 2325**

Name Group: All Students

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) _____

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