

**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF EDUCATION**

█ by his
Parent, █.,
Complainant,

VS.

Bristol Warren School District
Respondent.

COMPLAINT/ REQUEST FOR IMPARTIAL DUE PROCESS HEARING

Parties and Jurisdiction

1. Complainant, █, (“Parent”) brings this action on behalf of herself and her minor son, █ to seek a special education impartial due process hearing and obtain relief from the Respondents for Respondents’ failure to provide █ with a free and appropriate education (“FAPE”), failure to properly evaluate, failure to provide an appropriate educational placement, failure to provide due process in relation to discipline and discriminatory treatment in violation of state and federal laws and regulations and violation of state law regarding interrogation of elementary students.
2. █ is a student with a disability who recently turned six years old (6) and is a resident of Warren, RI, where he lives with his mother, █. Complainants have resided in Warren at all times pertinent to this Complaint.
3. As the district of █ residence, the Bristol/Warren School Department (“District”) is responsible for providing █, with FAPE, transportation as well as related services and accommodations under state and federal law and regulations to address all of his unique needs.
4. The District receives federal funds.
5. Parent brings this action pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*
6. As the State Educational Agency, the Rhode Island Department of Elementary and Secondary Education (“RIDE”) has jurisdiction over this matter and is responsible for establishing, implementing, determining financial responsibility, and developing procedures for administering a system of due process.

Factual Background

7. ■■■ is a student with a disability, with a diagnosis of ADHD, combined type and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, who qualifies for, and is entitled to, special education and related services from the District.
8. ■■■ has a history of trauma of which the District is aware.
9. Prior to attending an integrated pre-school program in the District in the 2021-22 school year, ■■■ had been expelled from multiple pre-schools.
10. A psychological evaluation was conducted in the spring of 2021, when ■■■ was four (4) years old and in the District's pre-school program due to "behavioral concerns" and noted he had been "expelled from several childcare programs due to oppositional, defiant and aggressive behaviors."
11. The psychological evaluation confirmed a diagnosis of ADHD, combined, moderate and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct which the evaluator found "best captures ■■■ emotional and behavioral symptoms in response to an identifiable stressor."
12. The evaluation included educational recommendations, including, but not limited to, the continuance of an IEP and "[a]cademic instruction in small group or 1:1 setting" and "a predictable behavior management system."
13. Upon information and belief, the District did not conduct a Functional Behavior Assessment ("FBA") nor did it develop a Behavior Intervention Plan ("BIP") for pre-school.
14. Upon information and belief, the District did not provide ■■■ with appropriate supports and instruction while in the integrated pre-school.
15. School records document, in the needs section of ■■■ current IEP, that last year, in January of 2022, ■■■ "began demonstrating regression in his overall behavior" and had difficulty with self-control, noting that on two occasions he was removed from the classroom due to unsafe behavior ("hands on adults, trying to flip tables, throwing toys, standing on a table") and was written up multiple times on the special education bus for, "unsafe behaviors." It also notes that ■■■ history includes being asked to leave two daycares "due to difficult behaviors."
16. ■■■ was in-patient at Bradley Hospital in or about the Spring of 2022.
17. ■■■ current IEP went into effect in March of 2022, and indicates it is in effect through February 17, 2023 ("IEP").

18. The last IEP meeting for ██████ was held on or about June 9, 2022.
19. Upon Parent's information and belief, the June 9th meeting was supposed to be a re-entry meeting following ██████ discharge from Bradley.
20. The Bradley clinical team attended this meeting and informed the District team that ██████ required a therapeutic educational environment.
21. At the June 9, 2022, IEP meeting, the District determined that ██████ should not return to school for the last two weeks of school, found him eligible for extended school year services ("ESY") and informed Parent they would look for a placement for summer 2022 where they would assess whether he could be successful in an integrated setting.
22. ██████ was discharged from Bradley on June 10, 2022.
23. The Bradley written discharge summary reiterated the clinical team's educational recommendation that ██████ would not be successful nor safe in typical classroom environment and recommended placement in a "therapeutic classroom environment . . . given that he has required multiple safety interventions including the use of supine stability hold which required 3 staff members to manage severe aggressive behavior with some injuries resulting."
24. After the June IEP meeting, Parent was informed that the District had not yet found a program for ██████ for the 2022 ESY program.
25. The District failed to place ██████ in any program or provide any educational services in the summer of 2022.
26. In the fall of 2022, the District disregarded Bradley's recommendations and placed Student at Hugh Cole Elementary School ("Hugh Cole").
27. The District failed to provide appropriate supports and services to Student while at Hugh Cole.
28. In the span of four (4) months, ██████ discipline record shows he had more than twenty (20) documented disciplinary actions for a range of behaviors, including but not limited to fights, aggression to staff and other children, property damage and elopement, and some of the disciplinary records indicate that in some instances, ██████ aggression resulted in injuries to classmates and staff.
29. The District did not develop nor properly implement an appropriate behavior intervention plan ("BIP") in response to any of these incidents.

30. The District failed to properly classify all suspensions, calling some “removal from class” and another, “spent afternoon with Admin.”
31. Per the District’s records, [REDACTED] was suspended a total of five (5) days, exclusive of other removals.
32. The last day that [REDACTED] attended school was December 19, 2022.
33. Per his discipline records, he was suspended for three (3) days for an assault on a peer that allegedly took place on December 19, 2022.
34. Although the disciplinary records state that the suspension was for three days, [REDACTED] has not been allowed to return to school since that date.
35. At no point has the District held a manifestation determination review (“MDR”) regarding the incident that took place on December 19, 2022.
36. Parent was informed verbally, that [REDACTED] was suspended until further notice and pending investigation.
37. Although [REDACTED] has been effectively suspended since the December 19, 2022, the school district has classified multiple days following the December 19, 2022, incident as, “Absent, excused” in [REDACTED] school portal/attendance record.
38. On December 19, 2022, Parent received a call that [REDACTED] was held from the bus and that she had to pick him up from Hugh Cole. Parent was told that [REDACTED] was being, or was going to be, interviewed by the assistant principal and police.
39. At the time of the call, Parent was attending an educational meeting for her other child and confirmed that she would come to the school. Parent did not provide consent for interrogation of her six year old, with disabilities, without her being present.
40. Parent arrived at Hugh Cole approximately forty (40) minutes after receiving the call to pick up [REDACTED]
41. Upon entering the school, Parent observed [REDACTED] leaving a conference room, accompanied by school staff and a uniformed police officer, one of whom relayed that he had “admitted” the allegations against him.
42. Instead of waiting for [REDACTED] mother to arrive, despite knowing she was on her way, the District permitted and facilitated the police interrogation of [REDACTED] a 6 year old child with disabilities, without parental consent or presence.

43. On or about January 12, 2023, the District sent a referral to Bradley School North, stating in the referral letter it was, “as a result of a discipline incident and determination that his needs cannot be met in a public school at this time.”
44. In January, 2023, the District scheduled an IEP meeting, which it later cancelled.
45. On or about February 3, 2023, Parent toured Bradley School North and was later told [REDACTED] was accepted.
46. Upon information and belief, [REDACTED] has been accepted to the Bradley program, but he has been unable to start in that program due to a mechanical issue on school grounds.
47. Upon information and belief, due to this mechanical facility issue at Bradley, its students have been receiving education virtually and continue to do so as of the date of the filing of this Complaint.
48. The parties are in agreement that [REDACTED] is unable to benefit from virtual education.
49. [REDACTED] has not been in school since December 19, 2022 and has not received any educational services since that day.
50. As of the filing of this Complaint, [REDACTED] remains out of school.
51. As of the filing of this Complaint, the District has not provided [REDACTED] with any education since December 19, 2022.

First Claim for Relief (IDEA)

52. Complainant incorporates Paragraphs 1-51 by reference and states that District failed to provide [REDACTED] with FAPE by:
 - a. Failing to develop an appropriate IEP and failure to place in him in an appropriate placement for the 2021-22 school year;
 - b. Failing to provide him with ESY services in violation of his IEP in the summer of 2022;
 - c. Failing to develop an appropriate IEP and failure to place in him in an appropriate placement for the 2022-23 school year;
 - d. Failing to timely and properly conduct evaluations of [REDACTED], including FBAs;
 - e. Failing to timely develop, revise and implement BIPs for [REDACTED];
 - f. Acting with reckless disregard when failing to properly supervise or support [REDACTED] at the time of the incident on December 19, 2022;
 - g. Improperly removing [REDACTED] from the learning environment without due process or documentation on multiple occasions from September, 2022-December 19, 2022;

- h. Improperly implementing a long term suspension of [REDACTED] on December 19, 2022, without providing him with due process, including but not limited to notification of the charges against him and the discipline imposed;
- i. Failing to conduct a manifestation determination when [REDACTED] was suspended for more than ten (10) days;
- j. Failing to provide [REDACTED] with any educational services during the long term suspension from December 19, 2022 and continuing through the filing of this Complaint;
- k. Failing to provide [REDACTED] with a safe educational environment; and
- l. Failing to hold an IEP meeting timely to have an IEP in effect when the current one expires on February 17, 2023.

Second Claim for Relief (violation of RIGL 16-21.5-2)

- 53. Hugh Cole is an elementary school subject to RIGL 16-21.5-2(a), which provides that, “before making an elementary school pupil available to a law enforcement officer for the purpose of being questioned, the principal . . . shall take immediate steps to obtain the oral consent of the parent . . .” Further, “[i]f the parent or guardian requests that the public not be questioned until he or she can be present, the pupil may not be made available to the law enforcement officer for questioning until the parent or guardian is present.” RIGL 16-21.5-2(b).
- 54. Complainant incorporates Paragraphs 1-51 by reference and alleges that District violated RIGL16-21.5-2 by making [REDACTED], an elementary school student, available to law enforcement for questioning without obtaining parental consent and, in absence of that consent, by failing to wait until Parent was present, as a result of which, [REDACTED] has suffered harm.

Third Claim for Relief (State and Federal Due Process Rights, 42 U.S.C. § 1983)

- 55. Complainant incorporates Paragraphs 1-51 by reference and alleges that District violated [REDACTED]’s due process rights and 42 U.S.C. § 1983, state and federal law and District policies with respect to the imposition of discipline without proper notification of the charges, proposed discipline or appeal rights as a result of which, [REDACTED]. has suffered harm.

Fourth Claim for Relief (State and Federal Equal Protection Rights, 42 U.S.C. § 1983)

- 56. Complainant incorporates Paragraphs 1-51 by reference and alleges that District discriminated against [REDACTED] on the basis of his disability when it failed to properly document and categorize [REDACTED]’s removal from school, removed him without due process and failed to provide him with education during the long-term removal.
- 57. [REDACTED] was subjected to disparate treatment as a result of his disability. Data suggests that the District persistently engages in the disproportionate use of disciplinary action and suspensions against students with disabilities.

58. District was aware of its obligation to follow procedural due process to effectuate a long term suspension and to provide [REDACTED] with educational services to enable him to make progress on his IEP goals; its failure is a reckless and blatant disregard, deliberate indifference and/or gross dereliction of its duties, as a result of which [REDACTED] suffered harm from the ongoing lack of education from December 19, 2022 to the time of the filing of this Complaint.

Fifth Claim for Relief (Section 504)

59. Complainant incorporates Paragraphs 1-51 by reference.

60. District receives federal funds and is subject to the requirements of Section 504 of the Rehabilitation Act of 1973.

61. [REDACTED] is a qualified individual with a disability protected from discrimination based on disability by Section 504 of the Rehabilitation Act of 1973.

62. [REDACTED] is entitled to equal opportunity to benefit from education provided by District and reasonable accommodations for his disability.

63. Throughout the time at issue in this complaint, [REDACTED] had actual knowledge and information to support the fact that [REDACTED] behaviors were disability-related and required accommodations.

64. [REDACTED] was entitled to reasonable accommodations with respect to his disability-related behaviors.

65. [REDACTED]'s mother requested that [REDACTED]'s needs be accommodated in an appropriate setting and that he receive education while removed from school.

66. District violated [REDACTED] rights under Section 504 by punishing him for his disability-related behavior without providing proper supports and accommodations.

67. District's failure to provide [REDACTED] with FAPE and with reasonable accommodations violated his rights under Section 504 and caused him harm.

68. District acted intentionally or with deliberate indifference or gross misjudgment in violating [REDACTED]'s rights under Section 504.

69. For the reasons stated above, District violated [REDACTED] rights under 504.

Sixth Claim for Relief (ADA)

70. Complainant incorporates Paragraphs 1-51 by reference.

71. District is a public entity under Title II of the Americans with Disabilities Act (ADA).
72. ■■■ is a qualified individual with a disability protected from discrimination based on disability by the ADA.
73. Throughout the time at issue in this complaint, District was aware and had information that supports the fact that ■■■'s behaviors were disability-related and required accommodations.
74. ■■■ was entitled to reasonable accommodations with respect to his disability-related behaviors.
75. ■■■'s mother requested that ■■■'s needs be accommodated, and he receive appropriate supports in an appropriate placement, but the District placed him in an integrated classroom, contrary to clinical advice, and without proper supports, supervision or programming.
76. District's violated ■■■'s rights under the ADA by failing to accommodate him and punishing him for disability-related behavior in violation of his rights under the ADA.
77. District's failure to provide ■■■ with FAPE and with reasonable accommodations violated his rights under the ADA.
78. District acted intentionally or with deliberate indifference or gross misjudgment in violating his rights under the ADA.
79. ■■■ suffered harm and damages as a result of District's actions.
80. For the reasons stated above, the District violated the ADA.

Relief Requested

Parent, on her own behalf and on behalf of ■■■, respectfully requests that the Hearing Officer, after conducting a hearing on the merits:

1. Find that ■■■ is a student with a disability entitled to FAPE from the District;
2. Find that ■■■ is an individual with a disability entitled to protection under the ADA and Section 504 of the Rehabilitation Act;
3. Find that the District failed to provide ■■■ with FAPE during the 2021-22 school year;

4. Find that the District failed to provide [REDACTED] with FAPE during the summer of 2022 by failing to provide ESY in violation of his IEP;
5. Find that the District failed to provide [REDACTED] with FAPE from September 2022 to December 19, 2022;
6. Find that the District's failure to provide [REDACTED] with FAPE is ongoing from December 19, 2022.
7. Find that the District failed to provide [REDACTED] with due process in relation to this removal from school following the December 19, 2022 incident;
8. Find that the District failed to conduct an MDR.
9. Find that the District failed to properly accommodate [REDACTED] from 2021 to the present;
10. Find that the District failed to properly supervise [REDACTED] on December 19, 2022;
11. Find that the District failed to properly document all of [REDACTED]'s removals and suspensions from school;
12. Find that the IEP proposed by the District for the 2021-22 school year was not reasonably calculated to provide [REDACTED] with FAPE or meaningful educational progress in light of his unique circumstances;
13. Find that the IEP proposed by the District for the 2022-23 school year was not reasonably calculated to provide [REDACTED] with FAPE or meaningful educational progress in light of his unique circumstances;
14. Find that the District failed to properly evaluate [REDACTED] when it failed to conduct FBAs in response to multiple disciplinary incidents;
15. Find that the District failed to properly develop or implement a BIP for [REDACTED].;
16. Find that the District failed to fully implement [REDACTED] current IEP when it did not provide ESY in the summer of 2022;
17. Find that the District failed to comport with the Basic Education Program by failing to have appropriate staffing to meet his social emotional needs;
18. Find that [REDACTED] remains out of school as of the date of the Complaint;

19. Find that the District violated [REDACTED] rights under Section 504 and the ADA and denied him reasonable accommodations that he requires;¹
20. Order the District to write to develop an appropriate IEP for [REDACTED] with a therapeutic educational placement as his placement, including ESY;
21. Order the District to provide [REDACTED] with compensatory education for the denial of FAPE for any period during which District did not provide nor offer [REDACTED] with FAPE (Academic year 2021-22; Summer 2022; Academic year 2022-23 until [REDACTED] begins receiving education in an appropriate therapeutic placement);
22. Order the District to provide Hugh Cole staff with training regarding proper procedures regarding the discipline of students with disabilities, inclusive of training related to positive behavior interventions, MDRs, FBAs, BIPs, interrogation of students, parent notification and due process rights.
23. Order the District to review and revise [REDACTED] discipline record and update reporting to the RI Department of Education, as necessary.
24. Find that Complainants are the prevailing parties; and
25. Order such additional relief as the facts may dictate and deemed appropriate under the circumstances.

Respectfully submitted by Complainants,
[REDACTED] and his Parent, [REDACTED]

Through their Attorneys,
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¹ To the extent this forum cannot provide compensatory damages for all claims, Complainants include these claims and requests for relief in this complaint to the extent necessary to exhaust her administrative remedies pursuant to 20 U.S.C. § 1415(I).

Cooperating counsel,
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF RHODE ISLAND

CERTIFICATE OF SERVICE

I, Christine Marinello, certify that, on February 16, 2023, I served the within Complaint for Due Process on the Bristol Warren School District and Bristol Warren School Committee via mail and email, addressed to:

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