

\$275

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT  
CIVIL ACTION NO. 19-1251D

JANE DOE, alias, as mother and next friend of )  
MICHELLE DOE, alias, a Minor Child, )  
Plaintiff )

VS. )

MICHAEL KELLY, Individually and in his )  
official capacity as School Director of the )  
Robert H. Goddard Academy; the CENTRAL )  
MASSACHUSETTS COLLABORATIVE; and )  
MAUREEN BINIENDA, in her official )  
capacities as Superintendent of Worcester )  
Public Schools and as Board Chair of the )  
Central Massachusetts Collaborative, )  
Defendants )

VERIFIED COMPLAINT AND  
APPLICATIONS FOR  
INJUNCTION AND  
DECLARATORY RELIEF

FILED

AUG 28 2019

ATTEST [Signature] CLERK

1

Q3A Complaint

1. Michelle Doe, daughter of Plaintiff Jane Doe ("Plaintiff"), is a traumatized and behaviorally challenged child of 16 years old who was recently suspended for an entire school year from the Robert H. Goddard Academy, a public school designed to support students with social and emotional needs. Without her consent, Academy staff placed Michelle in a mediation session with another student that devolved into a physical fight between them. Defendant School Director Michael Kelly suspended Michelle for allegedly hitting a teacher who restrained her during the fight. Informed she was in a meeting to discuss behavioral support for Michelle, Plaintiff received no notice whatsoever that Defendant School Director Michael Kelly contemplated suspending her daughter at any time before -- or during -- what purported to be Michelle's suspension hearing with staff from the Academy and Worcester Public Schools on June 17, 2019. Without notice, Plaintiff and Michelle were denied their rights to present evidence and witnesses, to seek counsel, and to any meaningful opportunity to be heard.

2. Plaintiff, Michelle's mother and next friend, seeks declaratory relief under G.L. c. 231A §2, and money damages under G.L. c. 12, § 11I, c. 76, § 16, and c. 93 § 103. She contends that the Defendants violated their rights secured by G.L. c. 71 § 37H, c. 76 § 16, 603 CMR 53.07, and the Massachusetts Constitution and its Declaration of Rights.

### **PARTIES**

3. Plaintiff and her daughter Michelle reside together in Worcester, Worcester County, Massachusetts. At all relevant times Michelle was registered as a student in the Worcester Public Schools. Plaintiff is Michelle's legal custodian.

4. Defendant Maureen Binienda is and at all relevant times has been employed by the Defendant Worcester School Committee as Superintendent of Schools and has acted under its authority and on its behalf. She is the educational leader for the school system, provides administrative leadership for all school staff in operational matters, and is obliged under G.L. c. 71, § 59 to "manage the system in a fashion consistent with state law and the policy determinations of [the] school committee." Defendant Binienda is also the Board Chair of the Central Massachusetts Collaborative, the body that operates the Robert H. Goddard Academy. She is sued in her official capacities

5. Defendant Central Massachusetts Collaborative ("CMC" or "Collaborative") operates the Robert H. Goddard Academy, a public school designed to "meet the emotional, social, academic and post-secondary challenges" of a diverse student population. At all times relevant it employed Defendant School Director Michael Kelly, who acted under its authority and on its behalf.

6. Defendant Michael Kelly ("Kelly") was at all relevant times the School Director of the Robert H. Goddard Academy ("Academy" or "RGA"). He was appointed School Director by the

Executive Director and employed by the Collaborative, under whose authority and on whose behalf he has acted. As the Academy's School Director, he is the educational administrator and manager of the Academy subject to the supervision and direction of the Executive Director. He is the administrative head of the Academy for disciplinary matters. 603 CMR 53.02. He is sued individually and in his official capacity.

### **STATEMENT OF FACTS**

7. Michelle Doe is a student with disabilities who suffers from emotional and behavioral challenges that interfere with her learning. Michelle has experienced significant trauma both in and out of school, including having witnessed domestic violence at an early age and having a teacher tie her hands behind her back as punishment when she was younger. Defendants were aware of this trauma through psychological evaluations of Michelle.

8. For the 2018-2019 school year, Michelle was enrolled at the Robert H. Goddard Academy, a school in the Central Massachusetts Collaborative.

9. On June 7, 2019, RGA staff member Kara Ford asked Michelle if she wanted to participate in a mediation session with another student with whom she was in conflict. Michelle declined the mediation but agreed to discuss the conflict privately with Ford.

10. Michelle followed Ford into her office, where she found the other student together with RGA staff member Paul Bailey, who commenced a mediation session between the students.

11. Surprised, Michelle, who has a Behavior Improvement Plan that calls on RGA staff to de-escalate conflicts, remained standing by the door.

12. The forced mediation session quickly devolved into first a verbal and then a physical fight between the students.

13. In stopping the fight, RGA staff Paul Morse, Michael Moore and Peter Weisman restrained Michelle against a wall, despite RGA staff's awareness of her trauma history.

14. In an "Incident Report" dated June 17, 2019, Kelly alleged that Michelle hit Mr. Weisman during the restraint.

15. After the restraint, Kelly escorted Michelle to the lobby where they soon met Plaintiff. Shortly thereafter, Kelly informed Plaintiff that Michelle, who by then was calm, was under a two-day emergency removal under G.L. c. 71 § 37H 3/4 and provided her with written notice thereof. Mr. Kelly told Plaintiff he would be investigating the incident and would call her by no later than the afternoon of Monday, June 10, 2019.

16. The emergency removal notice that Kelly provided Plaintiff stated that "[t]he student has the opportunity for a hearing with me before the expiration of the two (2) school day emergency temporary removal. I will send you another notice with the hearing date and time."

17. Plaintiff did not receive any communication from Mr. Kelly on either Monday, June 10, 2019, or Tuesday, June 11, 2019, the dates of her daughter's emergency removal.

18. On Wednesday, June 12, 2019, Ms. Doe sent Michelle back to RGA, believing Michelle was allowed to return after the expiration of two school days.

19. Later that day, Ms. Doe received a phone call from Ms. Elizabeth Driscoll, the Assistant Director of RGA, informing Ms. Doe that Michelle was not allowed at RGA, and that Ms. Doe should come pick up Michelle immediately.

20. When Ms. Doe arrived to pick Michelle up, Kelly told her they would have to meet with Worcester Public Schools' Special Education Department ("WPS") and confirmed the date with her via email later that day.

21. On June 17, 2019, Plaintiff and Michelle attended the meeting, still unclear as to its purpose. When Plaintiff asked why they were meeting, a woman at the meeting representing either CMC or WPS told Plaintiff it would involve discussing Michelle's Individualized Education Program ("IEP") and how to better support her in the RGA environment.

22. Ms. Ford, Ashley Kinnear, Dr. Jean Lindquist-Grady, and Kelly attended the meeting for RGA. Ms. Kathy Koki-Mayo, Evaluation Team Chair for Worcester Public Schools, attended for WPS.

23. RGA staff commenced the meeting by discussing ways in which Michelle could be better supported at RGA.

24. Kelly then read from an Incident Report describing the June 7, 2019 incident.

25. Ms. Koki-Mayo then questioned Michelle about the incident and her behavior generally.

26. When Ms. Koki-Mayo asked Michelle whether the Incident Report was correct. Michelle replied that it was not.

27. Ms. Koki-Mayo then asked Dr. Lindquist-Grady if she believed the incident was caused by or "directly substantiate to" Michelle's disabilities. Both Ms. Koki-Mayo and Dr. Lindquist-Grady agreed in the negative, because—Ms. Koki-Mayo said-- Michelle was able to "use her skills" at all times. There was no discussion of the fact that Michelle had a Behavior Improvement Plan that calls for staff to use de-escalation techniques with her because as a result of her history of trauma, she is likely to react in an uncontrollable way when restrained.

28. Kelly then announced to Ms. Doe that Michelle was suspended for 180 school days. Kelly handed Ms. Doe a previously prepared document entitled "Notice of Long-Term Suspension Finding" ("Notice").

29. At no time before the meeting did Ms. Doe receive notice that her daughter was facing a 180-day suspension.

30. At no time during the meeting did Ms. Doe receive notice that her daughter was facing a 180-day suspension.

31. Because she did not know what was at stake, Ms. Doe was not motivated to prepare for a legally significant proceeding by seeking counsel, marshalling evidence, contacting witnesses and otherwise prepare to defend her daughter's rights.

### **CLAIMS**

Defendants' conduct, as set forth above, violates the provisions of law cited below, giving rise to the following claims for relief:

#### **COUNT I: Illegal Emergency Removal**

32. By suspending Michelle on an emergency basis in advance of a hearing without finding facts sufficient to support the conclusion required by 603 CMR 53.07, that there was no feasible alternative to immediate removal because Michelle's continued presence in school would pose a danger to persons or property or disrupt the school, and without noticing or holding a hearing within two days following the removal, the Defendants, jointly and severally, unlawfully excluded Michelle from school in violation of G.L. c. 71 § 37H 3/4 and G.L. c. 76 § 16, and denied Michelle due process of law guaranteed by the Massachusetts Constitution and Declaration of Rights.

**COUNT II: Denial of Procedural Right to Adequate Notice**

33. By failing to provide any notice that the RGA contemplated suspending Michelle for 180 school days, the Defendants, jointly and severally, violated G.L. c. 71 § 37H, G.L. c. 76 § 16, and the Massachusetts Constitution and Declaration of Rights.

**COUNT III: Denial of Statutory and Constitutional Rights in the Conduct of the Suspension Hearing**

34. By failing to provide any notice that RGA contemplated suspending Michelle for 180 school days, the Defendants, jointly and severally, denied her any meaningful opportunity to present evidence or witnesses at her supposed hearing, and further denied Michelle the right to confront and cross-examine Kelly or any of the witnesses to the June 7, 2019 incident, violating Michelle's rights under G.L. c.71 § 37H, G.L. c. 76 § 16, and the Massachusetts Constitution and Declaration of Rights.

**COUNT IV: Denial of Substantive Due Process**

35. By suspending Michelle without the provision of procedural protections against arbitrariness, the Defendants, jointly and severally, violated G.L. c. 71, § 37H while engaging in conduct so unfair that it shocks the conscience, in violation of the substantive content of the Massachusetts Constitution and Declaration of Rights.

**COUNT V: Defendants' Violations of G.L. c. 93, § 103 and Mass. Const. amend. CXIV**

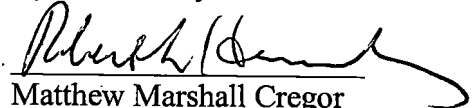
36. By excluding Michelle from school under the circumstances set forth above, Defendants, jointly and severally, denied her, because of disability, the full and equal benefit of state laws that require proceedings to protect against the arbitrary deprivation of these rights, in violation of G.L. c. 93, § 103 and Mass. Const. amend. CXIV.

**WHEREFORE**, Plaintiff prays that this Honorable Court:

- A. Order a hearing on short notice in 7 days, or as such date as assigned by this Court, for hearing to show cause why this Court should not order that defendants immediately restore Michelle's presence at RGA until such time as parties can agree to a suitable alternative and expunge her record of suspension;
- B. Enjoin Defendants, preliminarily and permanently (1) from barring Michelle's presence at RGA and (2) to expunge her record of suspension;
- C. Declare that the Defendants:
- i. Violated Michelle's rights by excluding her from the RGA from June 7, 2019 through June 12, 2019 for more than the two days allowed by 603 CMR 53.07 and without determining an emergency or noticing or holding a hearing within two days of the exclusion, as required by 603 CMR 53.07;
  - ii. Unlawfully excluded Michelle from school by failing to provide mandated notice and procedural protections in the hearing process, in violation of Mass. Gen. Laws ch. 71, § 37 H and the Massachusetts Constitution and Declaration of Rights;
  - iii. Engaged in process so patently unfair in excluding Michelle for 180 school days that it shocks the conscience in abrogation of substantive due process protections under the Massachusetts Constitution and Declaration of Rights.
- D. Order, under Mass. Gen. Laws ch. 76, §16, that the Defendant Collaborative pay compensatory damages to Plaintiffs for Michelle's unlawful exclusion from the School and for violation of her rights under the laws and Constitution of Massachusetts;
- E. Order the Defendants, jointly and severally, to pay Plaintiffs' costs and reasonable attorneys' fees;
- F. Enter such further order as in its judgment is equitable and just.

Respectfully submitted,

JANE DOE,  
By her attorneys:



Matthew Marshall Cregor

BBO No. 673785

Robert LeRoux Hernandez

BBO No. 231920

Mental Health Legal Advisors  
Committee

24 School St., 8<sup>th</sup> Floor

Boston MA 02108

617-338-2345

Dated: August 28, 2019

**VERIFICATION**

I, Jane Doe, alias, have read the foregoing Verified Complaint. I declare under penalty of perjury that the factual statements set forth in the foregoing Verified Complaint are true and correct based on my personal knowledge, information and belief.

Executed on August 28, 2019

  
Jane Doe, Alias