



December 7, 2016

Via Hand-Delivery

Timothy J. Noonan, Esq.
Executive Director
State of Vermont
Labor Relations Board
13 Baldwin Street
Montpelier, VT 05602

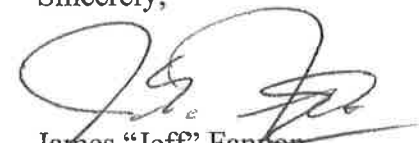
RE: Rutland Education Association
Rutland City Public Schools Board of School Commissioners et al.
VLRB Case No.: _____

Dear Mr. Noonan:

Please find enclosed for filing the original and four copies of the Rutland Education Association's unfair labor practice charge. Copies have been forwarded this day to the Respondent at the address listed in the ULP.

If you have any questions, please do not hesitate to contact me. Thank you in advance for your attention to this matter.

Sincerely,



James "Jeff" Fannon
General Counsel

Enclosures

cc: Ellen Green-REA
Sue Ponto-REA
Mary Moran
Rob Bliss
Dick Courcelle
Robert Kurchena

VERMONT LABOR RELATIONS BOARD

RUTLAND EDUCATION)	
ASSOCIATION,)	
Affiliated with Vermont-NEA,)	
Petitioner,)	
)	Case No.: _____
v.)	Charge of an
)	Unfair Labor Practice
RUTLAND CITY PUBLIC)	
SCHOOLS, BOARD OF)	
SCHOOL COMMISSIONERS,)	
(President: Dick Courcelle and)	
Clerk: Robert Kurchena))	
)	
MARY E. MORAN,)	
(Individually and in her capacity as)	
Superintendent of the Rutland City)	
Public Schools),)	
)	
ROBERT S. BLISS,)	
(Individually and in his capacity as)	
Assistant Superintendent of the)	
Rutland City Public Schools),)	
)	
Respondents.)	

INTRODUCTION

The Rutland Education Association charges the Rutland City Public Schools Board of School Commissioners and the superintendent Mary Moran and assistant superintendent Robert Bliss with violations of 21 V.S.A. §§ 1735 and 1726(a)(1) and (3) when they retaliated against the employees for the Rutland Education Association's concerted activities concerning school safety issues.

THE PARTIES

1. The petitioner, the Rutland Education Association, is a labor organization affiliated with Vermont-NEA and the National Education Association (hereinafter the “Association” or “REA”). The Association is the exclusive bargaining agent of the teachers and support staff employed in the Rutland City Public Schools.” The Association’s address is c/o Vermont-NEA, 10 Wheelock Street, Montpelier, Vermont 05602-3737.

2. The Respondent, Rutland City Public Schools Board of School Commissioners (hereinafter “School Board”), is the employer of all of the teachers and support staff employed in the Rutland City Public Schools System. *Id.* and as defined by 16 VSA § 1981(3) & (4). School Board chair, Dick Courcelle’s mailing address is 38 Giorgetti Blvd., Rutland, VT 05701; and School Board clerk, Robert Kurchena’s mailing address is 26 Marolin Acres, Rutland, VT 05701.

3. The Respondent, Mary Moran, is the superintendent and employed by the School Board to be the chief manager of the Rutland City Public Schools. Ms. Moran’s address is: Rutland City Public Schools, 6 Church Street, Rutland, VT 05701.

4. The Respondent, Robert Bliss, is the assistant superintendent and employed by the School Board. Mr. Bliss’s address is: Rutland City Public Schools, 6 Church Street, Rutland, VT 05701.

JURISDICTION

5. The Vermont Labor Relations Board has jurisdiction over this matter pursuant to 21 V.S.A. §§ 1727 and 1735.

FACTS

6. The parties are signatories to a collective bargaining agreement covering the teachers employed by the Rutland City Public Schools.

7. Over the last several school years but at least starting no later than the 2012-13 academic year, the Rutland City Public Schools experienced a spike in student-on-staff violence.

8. During the 2011-12 academic year, the Association, by and on behalf of its members, did raise student-on-staff school safety concerns with Rutland City Public School administrators, including Ms. Moran and Mr. Bliss.

9. During the 2011-12 academic year, the Rutland Support Staff Association (“RSSA”), which represents the unlicensed staff employed by the School Board, by and on behalf of its members, filed a complaint with the Vermont Department of Labor (“DOL”) about student-on-staff school safety concerns.

10. On or about October 3, 2013 the Respondents, “(Rutland City Schools/Rob Bliss, Assistant Superintendent) received a Hazard Alert Letter [] regarding response to workplace violence.” Attachment 1.

11. Notwithstanding the DOL “Hazard Alert Letter,” the student-on-staff violence continued during the 2013-14, 2014-15, and 2015-16 school years.

12. In or about February 2016, again prompted by faculty, staff, and the REA, the DOL conducted a workplace safety investigation of the Rutland City Public Schools.

13. As a result of the DOL workplace safety investigation and in a series of emails by and between Respondent Rob Bliss and DOL Senior Health Compliance Specialist Debra

L. Kingsbury, Mr. Bliss attempted to blame staff for workplace violence by asserting that “the adults [i.e., staff] were antagonizing the student.” Attachment 2.

14. In the same email exchange with Ms. Kingsbury, Mr. Bliss wrote that he “anticipated” that “the union will attempt to belittle the fact that their members did not conduct themselves professionally.” Attachment 2.

15. On or about March 18, 2016, the DOL provided Respondents with a “Violation Worksheet” that, *inter alia*, indicates 33 employees were exposed to 71 “instances” of workplace violence during the 6-month period starting August 2015 through January 2016. Attachment 3.

16. Additionally, on or about March 18, 2016, the DOL issued a “Citation and Notification of Penalty” because “[t]he [Rutland City Public Schools] did not furnish to each of [its] employees employment and a place of employment free from recognized hazards that are causing significant physical harm to [its] employees in that in or around August 2015 through January 2016 paraeducators and other staff were exposed to the hazard of workplace violence by physically and emotionally challenged students.” Attachment 4.

17. The March 18, 2016 “Citation and Notification of Penalty” imposed two fines for “serious citations concerning hazardous conditions at [the Rutland City Public School’s] facilities.” The fines against the Respondent Rutland City Public Schools totaled \$4,500.00. Attachment 4.

18. The Rutland City Public Schools and the Commissioner of the Vermont Department of Labor engaged in settlement discussions that resulted in the Rutland City Public Schools agreeing to pay \$2,250.00 in fines and agreeing, *inter alia*, to provide a safe

workplace for its employees. Specifically, the Rutland City Public Schools agreed to the following:

- a. The [Rutland City Public Schools] agrees to develop and document a procedure for staff/student interaction that identifies practices and [personal protective equipment] to be followed when dealing with difficult situations and students. This procedure will create a standardized method to address staff safety concerns across all of [Rutland City Public School's] worksites. This procedure will involve staff in the development and review stages and provide tangible services for staff who have been found to have been injured in an incident of student force.
- b. The [Rutland City Public Schools] agrees to provide this procedure in written form to VOSHA by June 30, 2016.

Attachment 5.

19. On or about May 13, 2016, the settlement was approved by the Vermont Occupational Safety and Health Review Board. Attachment 6.

20. Sometime in June 2016, Respondent Rob Bliss did provide Petitioner Rutland Education Association (“REA”) and DOL with the required and agreed upon written “procedure.” Attachment 7.

21. The draft procedure, at page 1 paragraph 4, states as follows:

Preventing the #1 cause of injury in the workplace, Slips, Trips, and Falls:

Beginning with the 2016-17 school year. All employees will be expected to wear closed toed shoes with a high traction sole. This will cause us to shift our thinking on professional footwear, but this is the first “step” in preventing injuries. According to OSHA, the majority of injuries and claims are the direct result of slips, trips, and falls.

Attachment 7—emphasis in original.

22. On or about June 27, 2016, the REA responded to DOL employee and VOSHA Program Manager, Dan Whipple, expressing, *inter alia*, dismay over the procedure’s

“closed toed shoes” requirement because it was never part of the DOL investigation, penalties, or settlement. Attachment 8.

23. On or about July 8, 2016, Dan Whipple responded to the Rutland City Public School’s required and agreed draft procedure and, inter alia, described the closed-toe shoes requirement as follows:

“Page one, paragraph 4; “Preventing the #1 cause of injury in the workplace ...”

Assessment: It seems very odd to have this statement and resulting policy change in this procedure. Is this related to the hazard (workplace violence) we had originally spoken about? Do you have an increase in reportable injuries as a result of ‘inappropriate’ footwear? While this hazard could be a valid concern, addressing it in this procedure seems odd and distracting from the original intent of protecting workers from hazards associated with violent interactions.”

Attachment 9 at page 1.

24. Notwithstanding Mr. Whipple’s July 8 statement to Respondent Rob Bliss that the closed-toe shoe requirement was “very odd” and “distracting” from the hazards investigated and about which the DOL and School Board did settle the workplace safety investigation, on or about July 11, 2016, Rob Bliss issued a memo to all faculty and staff of the Rutland City Public Schools addressing, in an emphasized/underlined format, and requiring all staff to wear closed toed shoes. Attachment 10.

CHARGE I: Intimidation, restraint, and coercion

25. Paragraphs 1 – 25 are incorporated herein by reference.

26. Pursuant to 21 V.S.A. §§ 1735 and 1726(a)(1), Respondents, by and through Assistant Superintendent Rob Bliss, retaliated against all Rutland City Public Schools employees because of the REA’s and employees’ complaints to the DOL/VOSHA for the student-on-staff violence, and did interfere, restrain, coerce, and discourage union activity.

Respondents, by and through Mr. Bliss's July 11 memo and closed toed shoe requirement, committed an unfair labor practice under 21 V.S.A. §1726(a)(1) by interfering with, restraining, and coercing all bargaining unit members in the exercise of their legal right to file complaints of work safety to VOSHA. The closed toed shoe requirement was unrelated to the complaints filed by bargaining unit members, and such a policy was not intended to protect the staff, but rather to punish them for filing VOSHA complaints. This retaliation was directed at the REA and its members who filed the VOSHA complaints on behalf of the entire staff employed in the Rutland City Public Schools.

CHARGE II: Discrimination in the terms and conditions of employment

27. Paragraphs 1 – 27 are incorporated herein by reference.

28. Pursuant to 21 V.S.A. §§ 1735 and 1726(a)(3), Respondents, by the actions of Assistant Superintendent Bliss, committed an unfair labor practice thereby discriminating against the faculty and staff represented by the REA in violation of 21 VSA § 1726(a)(3).

29. Pursuant to 21 V.S.A. §§ 1735 and 1726(a)(3), Respondents, by and through Assistant Superintendent Rob Bliss, by his anti-union email exchange with the DOL (attachment 2) and his retaliatory memo (attachment 10) did, intentional and in a retaliatory fashion, interfere with faculty and staff's VOSHA rights and collective action statutory rights, and did, therefore, commit an unfair labor practice, and thereby Respondents, and very specifically Respondent Bliss, discriminated against the Rutland City Public School employees represented by the REA in violation of 21 VSA § 1726(a)(3).

WHEREFORE, the Rutland Education Association requests the following relief:

- a. A declaration that the Respondents, the School Board, Superintendent Moran, and Assistant Superintendent Bliss, unlawfully intimidated the faculty, staff, and Association.
- b. A declaration that the Respondents unlawfully discriminated against the faculty, staff, and Association.
- c. An order that the Respondents cease and desist from threatening and/or retaliating against employees.
- d. An order that the Respondents cease and desist from requiring employees from wearing closed toed shoes.
- e. A requirement that the Respondents reimburse any employees who purchased closed toed shoes because of Assistant Superintendent Bliss's unlawful retaliatory and intimidating July 11, 2016 memorandum.
- f. A requirement that the Respondent Board post copies of the Labor Relations Board's decision in the several schools in places commonly used for communications between the school and the employees and the public.
- g. An order directing Respondents to pay the Association's attorney's fees.

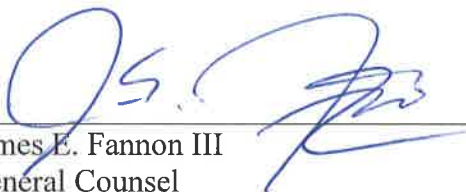
CONCLUSION

For the reasons stated above, the Association requests the Labor Relations Board to conduct a hearing on the merits of this charge, to conclude that the Respondents committed the unfair labor practices as charged, and to provide the relief requested.

Dated at Montpelier, Vermont, this 7th day of December, 2016

Rutland Education Association

By:


James E. Fannon III
General Counsel
Vermont-NEA
10 Wheelock Street
Montpelier, Vermont 05602-3737
(802) 223-6375

State of VERMONT County of WASHINGTON

In said county on the 7TH day of DECEMBER, 2016, personally appeared JAMES E. FANNON, III who swore to the truth of the foregoing charges of unfair labor practices.


Notary Public

T.E 2-10-2019



State of Vermont
Department of Labor
Workers' Compensation and Safety Division
5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601-0488
www.labor.vermont.gov

[phone] 802-828-2288
[fax] 802-828-2195 or
802-828-0408
[tdd] 802-828-4203

October 3, 2013

Rutland Public Schools
Attn: Rob Bliss
6 Church Street
Rutland, VT 05701

RE: VOSHA Inspection #316744457

Dear Mr. Bliss:

An inspection of your workplace and evaluation of your OSHA recordkeeping logs at Rutland Intermediate School, Rutland, VT 05701 from March 30, 2012 to April 12, 2013 disclosed the following conditions which are consistent with employee injuries and illnesses which can be caused by workplace violence risk factors observed in your facility. There were, as indicated on your OSHA 300 logs, numerous cases of employees being exposed to scratches, bites, contusions, concussions, and other problems when dealing with aggressive patients at your facility.

This inspection was initiated due to a complaint, which stated "Paraeducators working with aggressive and volatile students are not being properly trained or monitored. Paraeducators have been injured. Walkie-talkies are used, but response to calls for help is not adequate. There are no written descriptions of expectations for the students. There is no post-incident debriefing."

In the interests of workplace safety and health, I recommend that you take the necessary steps to materially reduce or eliminate your employees' exposure to the conditions listed above.

Components of a successful process to address workplace violence include accurate injury and illness recordkeeping, occupational health management and treatment for employees suffering workplace violence-related illness and injuries, workplace analysis of jobs and tasks to assess hazards and the steps to abate them, engineering, administrative, and work practice controls or actions to materially reduce or eliminate the hazards, and education and training of workers and management.



We have evaluated your efforts to address these hazards. Please consider the following:

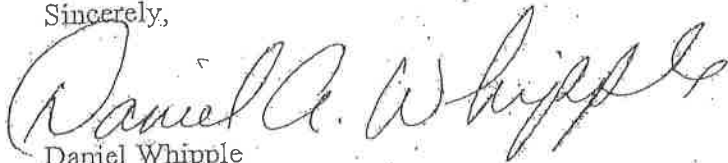
- Affirm management commitment to a worker-supportive environment that places as much importance on employee safety and health as on serving the students
- Ensuring management and frontline employees (including paraeducators) work together on the safety and health program, perhaps through a team or committee approach
- Establishing a comprehensive program of medical and psychological counseling and debriefing for employees experiencing or witnessing assaults and other violent incidents
- Having employee questionnaires or surveys to get employees' ideas on the potential for violent incidents and identify or confirm the need for improved security measures
- Providing post-incident response and evaluation. All workplace violence programs should provide comprehensive treatment for employees who are victimized personally or may be traumatized by witnessing a workplace violence incident. Injured staff should receive prompt treatment and psychological evaluation whenever an assault takes place, regardless of its severity
- Continuing to train employees on workplace violence prevention, using de-escalation techniques and restraints if necessary
- Sharing workplace violence prevention evaluation reports with employees. Any changes in the program should be discussed at regular meetings of the safety committee, union representatives or other employee groups
- See attached addendum for further considerations

Please provide this Office with a progress report on your efforts to address these conditions. We may return to your worksite in the future to further examine the conditions noted above. If subsequent inspections identify that employees are being exposed to the hazards identified in this letter you may be cited for violating VOSHA regulations.

Attached is a list of available resources that may be of assistance to you in preventing work-related injuries and illnesses in your workplace.

If you have any questions, please feel free to call the VOSHA area office at 802-828-2765.

Sincerely,



Daniel Whipple
VOSHA Manager

Kingsbury, Deb

From: Rob Bliss <rbliss@rutlandschools.org>
Sent: Wednesday, March 02, 2016 11:57 AM
To: Kingsbury, Deb
Subject: RE: Clarification

I made a note. I asked, "Did you take testimony that adults treated the student poorly, antagonized him?" You responded, "Yes."

I understand that you cannot provide any further information, because you need to maintain confidentiality.

I asked that question specifically because we were informed by staff, who fear the union, that they gave such testimony. I wanted our union leaders to know that and to make it part of the record.

I asked for a specific delineation for teachers and staff because I anticipate the union will attempt to belittle the fact that their members did not conduct themselves professionally.

From: Kingsbury, Deb [<mailto:Deb.Kingsbury@vermont.gov>]
Sent: Wednesday, March 02, 2016 10:32 AM
To: Rob Bliss
Subject: RE: Clarification

Rob,
I do not recall you asking if staff were antagonizing a specific student, but asking in general if we had testimony that behavior by students was potentially elevated by actions of adults. I responded "yes" because those sentiments were expressed to me. However, we cannot verify that was actually the case, and, because of the confidentiality of the witness statements, I cannot give further clarification.

Thank you,
Deb Kingsbury

From: Rob Bliss [<mailto:rbliss@rutlandschools.org>]
Sent: Tuesday, March 01, 2016 10:19 AM
To: Kingsbury, Deb
Subject: RE: Clarification

Deb,

Thanks for this. I would like to ask a clarifying question.

At our meeting the other day I asked if you had taken testimony that the adults were antagonizing the student. You confirmed that you had.

Was that testimony from Paras and Teachers?

From: Kingsbury, Deb [<mailto:Deb.Kingsbury@vermont.gov>]
Sent: Monday, February 29, 2016 10:34 AM
To: Eloise McGarry; Robert Bliss; Susanne Engels
Cc: Murray, Stephen
Subject: Clarification

I realized after the closing conference that there may be some confusion as to the scope of the citations and abatement. While the conditions we discussed were primarily observed at the Rutland Northeast School, the abatement should be applied at all of the schools under the "Rutland City Schools" umbrella.

Please contact me if you have any questions.

Thank you,

Please be aware that email addresses for VT State employees have changed. My new email address is deb.kingsbury@vermont.gov

Debra L. Kingsbury

VOSHA Senior Health Compliance Specialist

Vermont Department of Labor

271 North Main Street, Suite 216

Rutland, VT 05701

Office: (802) 786-5870

Cell: (802) 279-7502

Fax: (802) 786-5146

Violation Worksheet

Print Date : 03/18/2016

					Inspection Number	1095528
					Opt. Insp. Number	030-15
Establishment Name	Rutland City Public Schools					
DBA Name						
Type Of Violation	Serious	Citation Number	1	Item/Group	1 /	
Number Exposed	33	No. Instances	71	REC	Complaint	
Special Enforcement?				Employer's Relationship to Hazard		
Standard	General Duty Clause					
Substance Codes				Photo/Video Number		
Alleged Violation Description	<p>General Duty Clause: Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or significant physical harm to his employees; and the employer shall comply with safety and health standards promulgated under the VOSHA Code.</p> <p>LOCATION: Northeast Elementary School, Rutland, Vermont</p> <p>VIOLATION: The employer did not furnish to each of his employees employment and a place of employment free from recognized hazards that are causing significant physical harm to his employees in that in or around August 2015 through January of 2016 paraeducators and other staff were exposed to the hazard of workplace violence by physically and emotionally challenged students.</p> <p>Employer (Rutland City Schools/Rob Bliss, Assistant Superintendent) received a Hazard Alert Letter on or around October 3, 2013 regarding response to workplace violence. Suggested efforts to address these hazards included the following:</p> <ul style="list-style-type: none"> "Affirm management commitment to a worker-supportive environment that places as much importance on employee safety and health as on serving the students (employee interviews do not demonstrate this is happening) "Ensuring management and frontline employees (including paraeducators) work together on the safety and health program, perhaps through a team or committee approach (employee interviews do not demonstrate this is happening) "Establishing a comprehensive program of medical and psychological counseling and debriefing for employees experiencing or witnessing assaults and other violent incidents (a post-incident review now occurs) "Having employee questionnaires or surveys to get employees' ideas on the potential for violent incidents and identify or confirm the need for improved security measures (employee interviews do not demonstrate this is happening) "Providing post-incident response and evaluation. All workplace violence programs should provide comprehensive treatment for employees who are victimized personally or may be traumatized by witnessing a workplace violence incident. Injured staff should receive prompt treatment and psychological evaluation whenever an assault takes place, regardless of its severity (post-incident review now occurs for employees who have been personally traumatized; it is unclear if this extends to witnesses. Employee interviews do not demonstrate that the review is comprehensive) "Continuing to train employees on workplace violence prevention, using de-escalation techniques and restraints if necessary (ongoing training in CPI occurs; employee interviews do not demonstrate this training is effective with all students) "Sharing workplace violence prevention evaluation reports with employees. Any changes in 					

Establishment Name	Rutland City Public Schools
	the program should be discussed at regular meetings of the safety committee, union representatives or other employee groups (employee interviews do not demonstrate this is happening)
Recommended Abatement Action	<p>Instituting an inclusive process where employees with recurring injuries/incidents (including emotional trauma) are removed from the situation/student and receive intensive counseling while retraining occurs.</p> <p>Personal protective equipment (i.e. "catchers vest", shin guards, arm protection) if it is not possible to remove the employee from the student during training/retraining.</p> <p>As mentioned in previous hazard alert letter, affirm management commitment to a worker-supportive environment that places as much importance on employee safety and health as on serving the students.</p> <p>Maintain a designated low-stimulation environment for potentially volatile students (a designated room at Northeast Primary School was created in January of 2016)</p>

Penalty

Severity	Medium		
Severity Justification	Bruises, scrapes, post traumatic stress		
Probability	Greater		
Probability Justification	Daily exposure; 1:1 assignment with behaviorally challenged, nonverbal and emotionally disturbed students		
Number of Times Repeated			
Gravity	Moderate	Gravity based Penalty	3500.00
Multiplier		Quick Fix	0%
Size	0%	Good Faith	15%
History	10%		
Calculated Penalty	2625.00	Proposed Penalty	2625.00
Proposed Penalty Justification:			

Abatement Details

Days to Abate	30 Wkg Days	Abatement Status	
User-entered Abatement Due Date		Date Abated	
Abatement Documentation Required?	Yes	Date Verified	
Abatement Completed Description:			

MultiStep Abatement

Type/Other Type	Days to abate	User entered Abatement Due Date	Completed(status)	Verify Date

Employee Exposure

Exposure Instance	No. Exposed	Employer	Name and Address Telephone Numbers	Duration	Frequency	Proximity
		Rutland Northeast Primary School	Lisa Cotrupi	5.00 day	2	
		Rutland City Public Schools	Amanda Pagano [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Teresa VanDine [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Leah Abatiell [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Liz Sojourner [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Rita Kelly [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		

		Rutland City Public Schools	Tori Tobin [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Lucy Davine [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Sandra Marcell [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Mary Kay Powers [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Judy Olsen [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	Darlene Brookman [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
		Rutland City Public Schools	April Sloan [REDACTED]	0.00		

			Home: [REDACTED] Work: Personal Mobile: Fax:			
		Rutland City Public Schools	Meghan Ferguson [REDACTED] Home: [REDACTED] Work: Personal Mobile: Fax:	0.00		
6.5 hours	3	Rutland City Schools	Joanne Earle [REDACTED] Home: [REDACTED]	5.00 day		
		Rutland City Schools	Melinda Kimmel [REDACTED] Home: [REDACTED]	0.00		
		Rutland City Schools	Sarah Gecha [REDACTED] Home: 518-683-1269	0.00		

20. Instance Description: A. Hazard B. Equipment C. Location D. Injury/Illness E. Measurements

a) **Hazards-Operation/Condition-Accident:** Employee exposure to injury by students throwing, kicking, hitting, or otherwise exhibiting inappropriate behavior; lack of visible management support and appropriate placement for students.

Lack of a continuing and effective workplace violence prevention program that includes direct-care staff (paraeducators) in the planning and implementation of individualized services.

Lack of management commitment, including the endorsement and visible involvement of top management, providing the motivation and resources for workers and employers to deal effectively with workplace violence. This commitment should include:

Acknowledging the value of a safe and healthful, violence-free workplace and ensuring and exhibiting equal commitment to the safety and health of workers and students/visitors;

Allocating appropriate authority and resources to all responsible parties. Resource needs often go beyond financial needs to include access to information, personnel, time, training, tools, or equipment;

Assigning responsibility and authority for the various aspects of the workplace violence prevention program to ensure that all managers and supervisors understand their obligations;

Maintaining a system of accountability for involved managers, supervisors and workers;

Supporting and implementing appropriate recommendations from safety and health committees;

Effective management leadership begins by recognizing that workplace violence is a safety and health hazard.

Establishing a comprehensive program of medical and psychological counseling and debriefing for workers who have experienced or witnessed assaults and other violent incidents and ensuring that external trauma-informed care is available; and

Establishing policies that ensure the reporting, recording, and monitoring of incidents and near misses and that no reprisals are made against anyone who does so in good faith.

Additionally, management should: (1) articulate a policy and establish goals; (2) allocate sufficient resources; and (3) uphold program performance expectations.

Through involvement and feedback, workers can provide useful information to employers to design, implement and evaluate the program.

b) **Equipment:** Educational tools including blocks and toys; shoes, open and closed hands, feet, head

Sensory tools including brushes

c) **Location:** General Education Classroom 4B (Mrs. Pagano's Kindergarten classroom), Room 4C (Bean Bag Room), Optional Room (Motor Room), lunchroom, playground, and other areas at Rutland Northeast School, 117 Temple Street, Rutland, VT

d) **Injury/Illness (and Justifications for Severity and Probability):** Bruises/contusions, scratches, bites, concussions, excess trauma/stress resulting in post-traumatic stress disorder

e) **Measurements:** Visual and verbal; review of incident reports and follow-up administrative interviews, employee and employer interviews. Review of policies and procedures.

23. Employer Knowledge: Yes; school principal reviews incident reports and completes administrative interviews. Special educators expressed in or before June of 2015 that a separate area would need to be available for students transitioning from preschool to kindergarten classrooms; a separate classroom was not arranged until January 9, 2016 (inspection was opened in September of 2015, with some activity in September/October, but the majority of the active inspection occurring in December 2015/January 2016. School principal stated that they were planning to put this room together for the 2016-2017 school year but decided to make it happen this year).

Employer (Rutland City Schools/Rob Bliss, Assistant Superintendent) received a Hazard Alert Letter on or around October 3, 2013 regarding response to workplace violence. Suggested efforts to address these hazards included the following:

"Affirm management commitment to a worker-supportive environment that places as much importance on employee safety and health as on serving the students

"Ensuring management and frontline employees (including paraeducators) work together on the safety and health program, perhaps through a team or committee approach

"Establishing a comprehensive program of medical and psychological counseling and debriefing for employees experiencing or witnessing assaults and other violent incidents

"Having employee questionnaires or surveys to get employees' ideas on the potential for violent incidents and identify or confirm the need for improved security measures

"Providing post-incident response and evaluation. All workplace violence programs should provide comprehensive treatment for employees who are victimized personally or may be traumatized by witnessing a workplace violence incident. Injured staff should receive prompt treatment and psychological evaluation whenever an assault takes place, regardless of its severity

"Continuing to train employees on workplace violence prevention, using de-escalation techniques and restraints if

necessary

"Sharing workplace violence prevention evaluation reports with employees. Any changes in the program should be discussed at regular meetings of the safety committee, union representatives or other employee groups

Vermont Employee's claim and Employer First Report of Injury reports (Worker's Compensation "Form 1") were completed by Joanne Earle, paraeducator, for the following dates and reasons:

September 15, 2015 - "Working with child, child became angry and bit me"

September 16, 2015 - "On playground with child, child had playground toy hit me on face"

September 18, 2015 - "In classroom with child, not letting child hurt another child, child was out of control, throwing stuff, hitting and he punched me" (an additional sheet of paper was attached, describing two instances; one where they were on the playground and the child turned around suddenly and hit her on the chin, and another in the classroom where there were no children, three adults, the child got his meal, threw it on the floor, was violent, hitting, kicking, punching, self-injury, hit her in the chest and hit and kicked the classroom teacher)

September 24, 2015 - "Working with child, child hit me in chest. We were having gym class, child was walking around and hit me"

September 25, 2015 - five instances; one getting hit in the arms, one slapped with both hands on head, one hit numerous times on arms and head, one hit on the buttocks, one head butted in the chest

September 28, 2015 - "I was providing paraeducator services to a child, classroom supervision and toileting. Child was in classroom no warning he hit me, in bathroom he was standing there and hit my face and knocked my glasses off"

September 29, 2015 - three instances described, including headbutted in the chest, slapped in the arms, and threw two chairs at paraeducator, headbutted, and hit her in the arms.

September 30, 2015 - two instances described; both involved student throwing a chair, head butting, and hitting the paraeducator.

October 1, 2015 - five instances described; child was eating breakfast, threw it down and hit paraeducator in the chest, hit her in the forehead with a hard plastic object and slapped her in the face, threw three chairs, cleared the work table and hit her in the chest, child became upset and hit her in the arm, and child became upset while going to speech and hit paraeducator in the arms.

October 5, 2015 - two instances described; one in motor room, paraeducator attempting to do brushing on child, child was in the chair, turned and slapped her face. Another instances where paraeducator was attempting to do activity with child, child threw chair, became upset and slapped paraeducator on top of the head.

October 6, 2015 - two instances described; one where child became upset and head butted paraeducator in the right breast, another where child was encouraged to get off the slide so another child could use it, got off the slide and hit another paraeducator

October 12, 2015 - two instances described; one in the motor room, child refused brushing, ran around room, opened and shut doors, climbed on radiators in an unsafe manner, approached paraeducator and hit her several times. Another where child ran from playground area, was being redirected back to secure area, head butted paraeducator in arms and chest, ran ahead and hit another adult.

October 14, 2015 - two instances described; one where paraeducator was slapped in the face, another where the child didn't want to do an activity, threw chair, head butted paraeducator and slapped her arms.

October 15, 2015 - "lining child up for lunch, in line he headbutted me right breast"

November 4, 2015 - "redirecting child, child ran to me, punch to right breast"

November 12, 2015 - four instances described; one returning from concert, child became upset and hit paraeducator in the arms, one on the sidewalk returning to school from the playground, child hit paraeducator in the left breast with closed fist, one child returning to classroom from lunchroom, child became agitated and pinched and hit paraeducator in the arm, and fourth child threw chairs, became upset and hit her in the arms.

November 18, 2015 - "Child was trying to leave playground, tried to redirect him he punched me"

November 19, 2015 - two instances described; "numerous hits to chest area, arms, kicks to my legs, slaps numerous over and over on my body lasted at least 20 minutes" and "return to room for snack child slapped me in arms"

November 20, 2015 - three instances described: working with child, threw snack and juice, hit paraeducator in right breast with closed fist and kicked her legs and feet; child refused to do work, pushed desk, threw chair, hit paraeducator in left breast with closed fist; bolted from playground several times, when paraeducator tried to redirect him back to playground he punched her several times in her upper body.

December 2, 2015 - six instances described; on way to beanbag room child slapped paraeducator in the face, hit her arms and tried to head-butt her; working with child in beanbag room he hit her in the arms and slapped her; child hit paraeducator in chest in gym during yoga program; during bike riding time, child hit paraeducator numerous times on arms and chest, kicked her in legs; in classroom, child threw chair at paraeducator, hit her numerous times in arms, legs, and chest; in classroom during indoor recess, child slapped paraeducator in the arms and hit another student

December 3, 2015 - three instances described; child hit paraeducator on the arms, threw objects off table, went to floor, refused to sit in chair, threw off shoes and threw one; child asked for numerous objects then refused them, hit paraeducator in arms, face, knocked glasses to floor, kicked paraeducator, ran from classroom, threw bin of legos on floor; child refused to put jacket on, weather was too cold to not have a jacket on, paraeducator escorted him back to school building, where he was hitting her on back and arms. Upon entering the building he hit a school guest.

December 8, 2015 - five instances described; hit paraeducator on back and arms, threw things off desk; hit paraeducator on back and arms and threw chair; hit paraeducator in chest while also hitting other paraeducator and special educator; hit paraeducator in back while taken to motor room; hit paraeducator in the back and arms, also hit another paraeducator and two children. Threw a wooden toy at her which hit her in the chest.

December 9, 2015 - four instances described; hit on back and arms; hit in head, child stripped clothes off in bathroom; hit paraeducator in face, arms and back while she was trying to pick up work area; kicked paraeducator, hit teacher, threw food on floor, threw milk carton at other children

December 11, 2015 - "came back from music. Child threw hard toy figure at me. He picked it up again and threw it and hit my elbow. He threw chair and hit my hand. He threw toys at me over several minutes. He slapped me several time. He hit teacher several times. We called for assistance because he undressed himself and we need help to redress him."

December 14, 2015 - two instances; flopped on carpet, child got mad, threw down schedule, ran from classroom.

December 18, 2015 - "brushing child - following SpeEd teachers direction. Was brushing child kick me in right breast" - also a full sheet showing child's activity from 9:00am to approximately 10:40am.

Rutland Public Schools Policy Number 6130 "Safety of Personnel" states:

"The Board recognized the right of all personnel to work in an environment, which is as free as practicable from hazards and risks to their safety, and comply with all City, State and Federal regulations.

The School District, in accordance with state and federal law intends to promote a healthful environment for all members of the school community."

Rutland Public Schools Policy Number 5670 "Safety/Security Policy" states:

"The Board of School Commissioners of the Rutland City School District hereby declares that it is the policy of this School District to provide a safe and secure environment to all those persons; students, staff and visitors, who lawfully enter upon District property or who travel in District for the purposes of this District."

Northeast Primary School Safety Response Procedures for 2015-2016 state:

"RED CARD EMERGENCY SYSTEM

Pre-teach students about the use of Red Emergency Cards and what to communicate upon delivery. (location of emergency, nature of emergency as either medical or behavioral, and student or adult involved.)

1. In case of an emergency situation in a classroom (such as a medical emergency, students fighting, or any circumstance) where a staff member is unable to reach office by intercom or phone, the staff member would direct a student to the office or nurse with the Red Emergency Card. If a person is not in the nurse's office or main office, the card should then get delivered to Mrs. Engels' office or the planning room.
2. Keep the Red Card near the door.
3. If you are in need of a new Red Card, please make one by using red construction paper. Cards are usually a 3" by 5".
4. Please have your last name and room number printed clearly on your card. Please label it "Emergency Card".

ACTING OUT PERSONS (AOP) AND BEHAVIORAL CRISES

When does an acting out situation move into a crisis situation?

When a student has lost rational thinking and/or control over their behavior. Within the Crisis Prevention Institute (CPI) continuum a person has gone through Questioning, Refusal, and now is in Release or Intimidation. When there is a clear or imminent threat of danger.

Who should have a Safety Team?

1. Individual students who have shown a pattern of escalated behaviors on more than 2 occasions within the year.
2. Safety Teams and safety plans are developed at team meetings and from the Behavior Intervention Plans (BIPs). These teams should include an Administrator, classroom and co-teachers, planning room staff and a counselor, and any others who work well with the student or has a rapport with the student.
3. These Safety Teams are managed by Special Educators if the student is an IEP student or in the referral process. If not they are managed by the teacher and/or the Counselor.
4. A copy of the Safety Team and plan should be reviewed by the administrator and case managers on a regular basis.
5. Teachers/Paraeducators working with a student with a Safety Team need to have the plan in their Sub Plans. 1:1 Paraeducators need to also have a copy of the student's accommodations and a list of strategies in their Sub Plans.

If a student is in crisis in the classroom:

1. Call the Planning Room. If Lisa is not reached call (or send red card) to the Office. If Carol is not reached call Susanne. Communicate name of student and nature of crisis.)
2. Attempt verbal de-escalation, use supportive stance, block and move if necessary while student crisis team convenes.
3. If necessary, send your students (with an adult if possible) to the classroom next door to you. Staff member must stay with volatile student.
4. If a student has a Safety Team, Susanne, Counselor or Lisa may convene it through office communication if needed after their initial assessment/response to the call. Administration or designee will decide if a Clear the Halls is necessary.

If a student is volatile in the hallway:

1. Have available staff call or send red card to Lisa, Main Office, or Susanne.
2. Attempt verbal de-escalation, use supportive stance, block and move if necessary (CPI).

3. If you have students with you, please send them to their destination if possible or to the nearest classroom if needed.
4. If a student is blocking your way to your classroom, please go to your classroom via another route or find another location. Do not "walk through or over" the student.
5. Administration or designee will come and decide if a Clear the Halls is necessary.

HAND-HELD RADIO USE

1. Hand Helds (or Walkie Talkies) are used during recess, dismissal and when classes are outside, as a means of communication between outside staff and office. They are given to staff members who either need to be in quick communication with the Main Office or when working with student(s) who have significant medical or behavioral issues.
2. If you will be using one, please see Main Office personnel or an administrator for instructions on how to use the Walkie Talkies.
 - a. Channels: We use Channel 1 and 3 (1 internally and 3 to maintenance) Rutland Intermediate School and Rutland High School use channels 1 and 2. Rutland Middle School uses channel 8.
3. Walkie Talkies are on "open channels", which means other school and/or anyone with a scanner may hear you. It is OK to say a students' name, but no further information such as a disability or specific issue should be discussed over the air. Privacy policies are still applicable. Please ask for a person to call you on the phone and have your conversation that way so it remains confidential. Walkie Talkies are not used for full conversations.

CLEAR THE HALLS PROCEDURES

(Drill for this or Secure the Building needs to happen 1 time every other month)

This procedure is used when halls need to be cleared for safety or privacy reasons. When this response is needed the phone page lines will be used to communicate emergency information. An announcement stating that "May I have your attention, may I have your attention. Please clear the halls" will be made by principal or person designated in her absence.

1. Teachers should lock classroom door, shut lights and shades, move students away from doors and windows, and take attendance.
2. Fire drill card with either red (not all students accounted for) or green (all students accounted for) should be placed in the window.
3. Only use classroom phone or intercom for emergencies.
4. Students in small groups with teachers should remain in those designated small work spaces.
5. Students and teachers in the hallway should go to the nearest opened room and remain until directed.
6. If or when the situation is stabilized but privacy in halls is still needed, principal will announce "Please remain in clear the halls procedure with all students and adults remaining in classrooms. However, teachers may resume classroom activity within the classrooms."
7. Students and adults will remain in rooms doing quiet activities in the room until notified."

24. **Comments:** School principal stated that one employee who was injured many times was under a lot of stress from having one child die and another child imprisoned. CSHO discovered through internet search that one child had died in 2008 and could not determine if another child was imprisoned.

Rutland Public Schools Policy Number 6180, "Employee Assistance Program", states "This School District believes it is in the interest of the employee, the employee's family and the School District to provide an employee service which deals with persistent problems.

The purpose of this policy is to assure employees that if such personal problems are the cause of unsatisfactory job performance they will receive careful consideration and an offer of assistance to help resolve such problems in an

effective and confidential manner.

Employees are assured that their job, future and reputation will not be jeopardized by utilizing this employee service, however, nothing in this policy will negate their policies of the Board of School Commissioners or contractual obligations which have been agreed to by the Board and various groups of employees.

Since employee work performance can be affected by the problems of an employee's spouse or other dependents, the program is available to the families of our employees as well."

Paraeducator reassignment occurred on or around December 18, 2015 when, during a team meeting, the paraeducator demonstrated how she talked with the student she was assigned to. ([REDACTED] interview, at approximately 8:28 she states "she grabbed him [Kevin, school psychologist] by the shoulders and she yelled and she says I tell him would you just stop that").

25. Other Employer Information: Rutland Public Schools Policy Number 7410 "School Conduct and Discipline" states "In order to accomplish the goals of Rutland Public Schools Mission Statement an orderly, safe, healthy, drug and alcohol free environment must be present. Such an environment is best achieved through the use of self-discipline that comes from the recognition that one is responsible for one's own behavior. Every effort should be made by staff to encourage and nurture that sense of responsibility in each student."



Citation and Notification of Penalty

Company Name: Rutland City Public Schools
Inspection Site: 117 Temple Street Rutland, VT 05701

Citation 1 Item 1 Type of Violation: **Serious**

General Duty Clause: Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or significant physical harm to his employees; and the employer shall comply with safety and health standards promulgated under the VOSHA Code.

LOCATION: Northeast Elementary School, Rutland, Vermont

VIOLATION: The employer did not furnish to each of his employees employment and a place of employment free from recognized hazards that are causing significant physical harm to his employees in that in or around August 2015 through January of 2016 paraeducators and other staff were exposed to the hazard of workplace violence by physically and emotionally challenged students.

Employer (Rutland City Schools/Rob Bliss, Assistant Superintendent) received a Hazard Alert Letter on or around October 3, 2013 regarding response to workplace violence. Suggested efforts to address these hazards included the following:

"Affirm management commitment to a worker-supportive environment that places as much importance on employee safety and health as on serving the students (employee interviews do not demonstrate this is happening)

"Ensuring management and frontline employees (including paraeducators) work together on the safety and health program, perhaps through a team or committee approach (employee interviews do not demonstrate this is happening)

"Establishing a comprehensive program of medical and psychological counseling and debriefing for employees experiencing or witnessing assaults and other violent incidents (a post-incident review now occurs)

"Having employee questionnaires or surveys to get employee's ideas on the potential for violent incidents and identify or confirm the need for improved security measures (employee interviews do not demonstrate this is happening)

"Providing post-incident response and evaluation. All workplace violence programs should provide comprehensive treatment for employees who are victimized personally or may be traumatized by witnessing a workplace violence incident. Injured staff should receive prompt treatment and psychological evaluation whenever an assault takes place, regardless of its severity (post-incident review



Citation and Notification of Penalty

Company Name: Rutland City Public Schools
Inspection Site: 117 Temple Street Rutland, VT 05701

now occurs for employees who have been personally traumatized; it is unclear if this extends to witnesses. Employee interviews do not demonstrate that the review is comprehensive)

"Continuing to train employees on workplace violence prevention, using de-escalation techniques and restraints if necessary (ongoing training in CPI occurs; employee interviews do not demonstrate this training is effective with all students)

"Sharing workplace violence prevention evaluation reports with employees. Any changes in the program should be discussed at regular meetings of the safety committee, union representatives or other employee groups (employee interviews do not demonstrate this is happening.)

Possible abatement may include: Instituting an inclusive process where employees with recurring injuries/incidents (including emotional trauma) are removed from the situation/student and receive intensive counseling while retraining occurs.

Personal protective equipment (i.e. "catchers vest", shin guards, arm protection) if it is not possible to remove the employee from the student during training/retraining.

As mentioned in previous hazard alert letter, affirm management commitment to a worker-supportive environment that places as much importance on employee safety and health as on serving the students. Maintain a designated low-stimulation environment for potentially volatile students (a designated room at Northeast Primary School was created in January of 2016.)

Date By Which Violation Must be Abated:

May 04, 2016

Proposed Penalty:

\$2625.00

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.132(d)(1): The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

- * Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;
- * Communicate selection decisions to each affected employee; and,
- * Select PPE that properly fits each affected employee.



Citation and Notification of Penalty

Company Name: Rutland City Public Schools
Inspection Site: 117 Temple Street Rutland, VT 05701

LOCATION: Rutland Northeast School, Rutland, Vermont

VIOLATION: On or about September 23, 2015 and times before and after, CSHO discovered the employer did not properly assess the workplace to determine that employees exposed to the hazard of workplace violence (i.e. hitting, kicking, pinching, having items thrown at them) were not provided with personal protective equipment. Examples of appropriate PPE would include chest protection, shin protection, and arm protection

Date By Which Violation Must be Abated:
Proposed Penalty:

April 06, 2016
\$1875.00

for: [Signature]
Daniel A. Whipple
VOSHA Manager

Vermont Department of Labor
Occupational Safety and Health Administration
VOSHA
P.O. Box 488
5 Green Mountain Drive
Montpelier, VT 05601
Phone: (802) 828-2765 Fax: (802) 828-0408



**INVOICE/
DEBT COLLECTION NOTICE**

Company Name: Rutland City Public Schools
Inspection Site: 117 Temple Street Rutland, VT 05701
Issuance Date: 03/18/2016


Summary of Penalties for Inspection Number: 1095528

Citation 1 Item 1, Serious	\$2625.00
Citation 1 Item 2, Serious	\$1875.00
TOTAL PROPOSED PENALTIES:	\$4500.00

To avoid additional charges, please remit payment promptly to the VOSHA office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "VOSHA". Please indicate VOSHA's Inspection Number Number (indicated above) on the remittance. Please forward payment to:

Vermont Department of Labor
PO Box 488
Montpelier, VT 05601-0488

VOSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.


Daniel A. Whipple
VOSHA Manager

3/18/2016
Date

State of Vermont
V.O.S.H.A. REVIEW BOARD
133 State Street
Montpelier, VT 05633-6701

[phone] 802-828-2775
[fax] 802-828-1132

Office Location:
13 Baldwin Street
Montpelier, VT 05633



May 4, 2016

Dina Atwood, Attorney
Stitzel, Page & Fletcher
P.O. Box 1507
Burlington, VT 05402

Re: Commissioner of Labor v. Rutland Public Schools
Docket No. RB # 982, Inspection No. 1095528

Dear Ms. Atwood:

The Settlement Agreement and Stipulation in the above-referenced matter has been received and filed with the Review Board on May 4, 2016.

Though the terms of the Stipulation and Settlement have been found acceptable after review by the Review Board, under VRB Rule 2200.100(c)(1), it cannot be officially approved by the Review Board until at least ten (10) days following service of said settlement proposal on affected employees. Service of employees occurs by posting of the enclosed *Notice of Settlement Agreement*, together with a copy of the *Settlement Agreement Stipulation*, in an area or areas where all affected employees have an opportunity to read said Settlement Agreement and Stipulation.

Also enclosed please find a Certification of Posting certifying that the enclosed notice and settlement agreement were served through posting as required and the dates of posting. After the completion of the ten (10) day period of posting, an authorized company representative needs to complete and sign said certification, filling in the location where the settlement was posted, and then file it with the VOSHA Review Board. Upon its receipt of the Certificate of Posting, the VOSHA Review Board will issue a Final Order in this matter based upon its terms and provisions. The Stipulation and Settlement agreement will NOT become final order until after the Certificate of Posting has been received.

Sincerely,

VERMONT OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD


Carolyn Desch, Clerk

Copy to: Dirk Anderson, General Counsel, Vermont Department of Labor
Erin Sylvia, Administrative Assistant, VOSHA



RECEIVED
MAY 02 2016
VOSHA

DO NOT ACCEPT UNLESS THIS CHECK IS PRINTED WITH A COLOR BACKGROUND, CONTAINS A VOID PANTOGRAPH, MICROPRINTING FACE AND BACK, UV FIBERS AND A WATERMARK ON THE REVERSE SIDE.

Rutland City Public Schools
5 Church Street
Rutland, VT 05701

MERCHANT'S BANK
RUTLAND, VT

58-2/116

CHECK DATE 04/28/2016	CHECK # 000256088
AMOUNT \$2,250.00	

PAY Two thousand two hundred fifty and xx / 100

TO THE ORDER OF
Vermont State of
Department of Labor
PO Box 488
Montpelier VT 05601-0488



VOID AFTER 180 DAYS
W. S. Wilton

⑈000256088⑈ ⑆011600020⑆ ⑈43002443⑈

STATE OF VERMONT

**OCCUPATIONAL SAFETY &
HEALTH REVIEW BOARD**

Commissioner)
Department of Labor,)
Complainant)
v.)
Rutland City Schools)
Respondent)

Docket No.: RB982

SETTLEMENT AGREEMENT AND STIPULATION

The Commissioner of Labor (“Complainant”) and Rutland City Schools (“Respondent”) (collectively “the parties”), hereby stipulate:

1. Following V.O.S.H.A. inspection #1095528, the Commissioner of Labor issued two serious citations concerning hazardous conditions at the Respondent’s facilities, on March 18, 2016 located at 117 Temple Street, Rutland, Vermont, in violation of the O.S.H.A. General Duty Clause and OSHA General Industry Standards. Respondent Rutland City Schools timely contested the citations, with penalties totaling \$4,500.00.
2. Following a formal conference with the Respondent on April 4, 2016 the Complainant agreed to a reduction in the penalty amount of the issued citations in exchange for certain actions to be taken by the Respondent, as set forth below.
3. With respect to Citation 1, Item 1, for a serious violation of OSHA General Duty Clause 29 USC 654 Section 5(a)(1), requiring that each employer shall furnish to each of its employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, the Complainant agrees to reclassify the citation from serious to unclassified and reduce the proposed penalty from

\$2,625.00 to \$1,312.50.

4. With regard to Citation 1, Item 2, for a serious violation of OSHA General Industry Standard 29 CFR 1910.132(d)(1), requiring that the employer complete an assessment of the workplace to determine if hazards are present or likely to be present that necessitate the use of personal protective equipment (PPE), and to provide the necessary PPE for employee use, the Complainant agrees to reclassify the citation from serious to unclassified and reduce the proposed penalty from \$1,875.00 to \$937.50.

5. In arriving at this negotiated settlement, the Complainant and Respondent agree to certain efforts of the Respondent to provide both immediate and longer term abatement of the hazards that resulted in the citation being issued. Among those abatements that the Respondent agrees to provide:

a. The Respondent agrees to develop and document a procedure for staff/student interaction that identifies practices and PPE to be followed when dealing with difficult situations and students. This procedure will create a standardized method to address staff safety concerns across all of Respondent's worksites. This procedure will involve staff in the development and review stages and provide tangible services for staff who have been found to have been injured in an incident of student force;

b. The respondent agrees to provide this procedure in written form to VOSHA by June 30, 2016.

6. The Respondent agrees to pay the total stipulated penalty amount of \$2,250.00 within 30 days of signing this stipulated agreement, or this agreement will be considered null and void, thereby reinstating the original total penalty amount of \$4,500.00, which penalty amount shall be immediately due in full.

7. Each party hereby agrees to bear its own fees and other expenses incurred in connection with this matter.

8. The parties respectfully request that the VOSHA Review Board approve and issue a final order in the above matter based upon this settlement agreement and stipulation.

Dated this 21st day of April, 2016.

Dated this 27 day of April, 2016.



Dirk Anderson, Esq.
General Counsel
Vermont Department of Labor
5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601



Mary Moran, Superintendent
Rutland City Schools
6 Church Street
Rutland, VT 05701

STATE OF VERMONT

VERMONT OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD
DOCKET NO. RB 982

VERMONT COMMISSIONER OF LABOR,
Complainant

vs.

RUTLAND CITY SCHOOLS,
Respondent

FINAL ORDER

WHEREAS pending a hearing on this matter, the parties entered into the following stipulation signed and dated May 21, 2016 by the Complainant and May 2, 2016 by the Respondent, which included the following stipulated terms and settlement provisions relating to this matter:

“The Commissioner of Labor (“Complainant”) and Rutland City Schools (“Respondent”) (collectively “the parties”), hereby stipulate:

1. Following V.O.S.H.A. inspection #1095528, the Commissioner of Labor issued two serious citations concerning hazardous conditions at the Respondent’s facilities, on March 18, 2016 located at 117 Temple Street, Rutland, Vermont, in violation of the O.S.H.A. General Duty Clause and OSHA General Industry Standards. Respondent Rutland City Schools timely contested the citations, with penalties totaling \$4,500.00.
2. Following a formal conference with the Respondent on April 4, 2016 the Complainant agreed to a reduction in the penalty amount of the issued citations in exchange for certain actions to be taken by the Respondent, as set forth below.
3. With respect to Citation 1, Item 1, for a serious violation of OSHA General Duty Clause 29 USC 654 Section 5(a)(1), requiring that each employer shall furnish to each of its employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, the Complainant agrees to reclassify the citation from serious to unclassified and reduce the proposed penalty from \$2,625.00 to \$1,312.50.

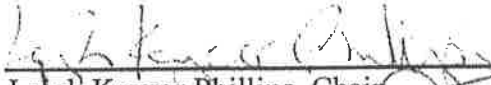
NOW THEREFORE, it is hereby:

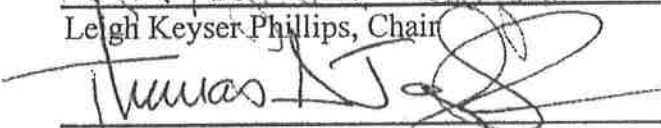
ORDERED, that the Citations issued to the Respondent on March 18, 2016 as the result of the VOSHA inspection, are hereby amended to conform with the stipulated terms set forth herein and that the settlement agreement between the parties, based upon said stipulated terms, is hereby approved, and it is

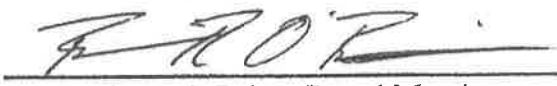
FURTHER ORDERED, that the Respondent abate all remaining violations and pay the penalty within the time prescribed herein within.

DATED at Montpelier, Washington County, State of Vermont, this 18th day of May, 2016.

VERMONT OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD


Leigh Keyser Phillips, Chair


Thomas A Jagielski, Board Member


Benjamin R. O'Brien, Board Member

Copy to: Dina Atwood, Attorney, Rutland City Schools
Dirk Anderson, General Counsel, Vermont Department of Labor
Erin Sylvia, Administrative Assistant, VOSHA

Rutland City Public Schools Procedure

Student-Staff Interactions and Safety Across All Worksites

Working in Rutland City Public Schools, and in the profession of public education, requires working with all students. The district mission, "Every Student, Every Day," means that we will treat each child in the school district as our own and do our best to understand, welcome, nurture, and teach them each day. Rutland City Public Schools has a long and strong history of caring for all students and that will continue.

When we welcome all students, there are times when we must be willing and prepared to teach and interact with students who exhibit behaviors that are aggressive. **Maintaining safety for the good of faculty, staff, and students is the main goal of the procedures presented below.**

Nothing in this procedure is intended to hinder, or stand counter to, the educational laws that define and protect the rights of students and families who attend our schools. It is also not intended to create a "one size fits all" approach to team problem solving in an effort to support faculty, staff and students. Rather, it emphasizes the critical importance of the team process, including faculty, staff, administration, parents and students in creating informed solutions that honor the rights and well-being of all, in keeping with education law.

Preventing the #1 cause of injury in the workplace, Slips, Trips, and Falls:

Beginning with the 2016-17 school year, all employees will be expected to wear closed toed shoes with a high traction sole. This will cause us to shift our thinking on professional footwear, but this is the first "step" in preventing injuries. According to OSHA, the majority of injuries and claims are the direct result of slips, trips, and falls.

1. Procedure for staff/student interaction that identifies practices and PPE (personal protective equipment) to be followed/used when dealing with difficult situations and students.

Assessing the need for practices and PPE:

1. The best way to assess the need for additional planning, practices, or PPE related to student interaction is via an historical review. To that end, the following should occur on an annual basis:
 - a. At the end of each school year, classroom teachers, special education case managers and paraeducator, within the team process, should review student history and files to determine if next year's team will need a plan for practices and PPE in advance. This will allow for an informative transition.
 - b. At the beginning of each year, and upon arrival of new students to the district, the classroom teacher, special education case manager, and support services

administration should review the student's record and file to determine if there is need for a rapid team meeting to plan for practices and/or PPE.

2. In the event that any staff member becomes aware of student life circumstances that are, or may be soon, driving a change in behavior for student(s), the information should be brought to the attention of the school administration and the members of the student's team, including the classroom teacher; case manager. In that event, the team should consider the need for a problem solving team meeting. If a problem solving meeting is needed, school administration will compel team members to attend. Within that team meeting, the team should consider the need for additional practices and PPE.
3. In the event that there is a sudden change of events and behavior, nothing prevents any staff member from requesting PPE in their own interest. In addition, nothing prevents school administration from requiring PPE to be worn or taking needed action to address a situation. If such a request is made by an employee, the school administration will respond within five days.

Planning for practices and PPE:

The best method for planning for practices and PPE exists in the team problem solving process. Where students have individual plans in place (IEP, 504, EST), that team will meet to consider the needs of the student and staff. In keeping with those teams and rules, behavior plans, PPE, continuum of placement, and methods of instruction will be considered.

Implementation:

If there is a need for any additional practices in the form of environment, educational plan, behavior plan, or PPE, that will be designed within the team problem solving process.

When considering practices, use this list as a resource:

1. FBA (Functional Behavioral Assessment) with Individual behavior plans
2. CSP (coordinated service plan) - Part of that team is a safety crisis plan in all environments
3. Consult with specialists, psychologists, local Board Certified Behavioral Analyst, I-Team, New England Center for Children
4. CPI (Crisis Prevention Institute) training and update
5. Advanced CPI or other approved protocol
6. Modify schedule
7. Modify food/nutrition
8. Modify environment to remove potential problems
9. Communication plan (phone, card system, call button, radio)
10. More frequent observation by district administration and specialists
11. "Shifts" for working with different students
12. What data will be collected to assess the efficacy of the plan

When considering PPE, use this continuum as a resource:

1. All staff shall wear closed toe shoes with soles offering good "traction" and movement.
2. Long heavy fabric pants, tops, and sleeves.
3. Arm and leg guards (see NECC resources: http://www.amazon.com/Cloth-Forearm-Hand-Pad-X-large/dp/B001YQDN24/ref=sr_1_15?ie=UTF8&qid=1462362297&sr=8-15&keywords=forearm+pads)
4. Torso Protection (see VOSHA resource: <http://west.loadup.com/military/surplus/13135.html>)
5. The use of hand-held protective pads (see NECC resource: http://www.amazon.com/Goplus-Boxing-Punching-Target-Sparri ng/dp/B00BU11UKU/ref=sr_1_5?ie=UTF8&qid=1462362500&sr=8-5&key words=blocking+pads+boxing)
6. The use of large mats/pads for use in planned seclusion/de-escalation. (see NECC resource: http://www.resilite.com/Products/Non-Folding-Incline-Mats_RIM.aspx)

Ongoing assessment and problem solving:

Upon establishing a team and need for additional practices or PPE, the team should set a next meeting, within a reasonable timeframe, to meet again. The purpose of that meeting will be to assess the quality and success of implementation, and to problem solve any issues.

Nothing in this section prohibits a meeting being called sooner, but the team must consider the amount of time needed to assess the success of the plan. Ongoing assessment of PPE should be part of the process. Teams should track behavior related to the presence of PPE.

2. Standardized method to address staff safety concerns across all (RCPS) worksites.

In the event that any staff or faculty member has a concern for their own safety, the safety of the student(s), or the safety of another staff member, the staff member should bring the concern to the attention of the building administration and share all information related to the situation. There is no safety value in withholding information.

When school administration receives a concern, the building leader will assess the state of the staff member in question, offer support, and investigate the safety issue. Then, consider the tangible services. If needed, a team problem solving meeting will be expedited to address the situation.

Please note that a safety concern does not mitigate the requirements of FERPA and student rights. Discussing a student with any person who does not have a "need to know" is a breach of FERPA, RCPS Policy, and school procedure.

All student information, written or discussed, at RCPS is confidential and protected by FERPA. Apply this test when deciding whether or not to share information with any employee or community member.

1. Is the person a school or district employee, or parent/guardian?
2. Does this person work directly with the student in question?
3. Will the information the person wants allow him/her to help the student in question?
4. Does the person "need to know?"

If you are unsure, keep it confidential and get back to the person after checking with the Principal or Director of Support Services. If you answer "no" to any of the above questions, it is a clear indication that the information should NOT be shared.

3. Tangible services for staff who have been injured in an incident of student force.

In the event that any staff member has been injured (See definition of "injury" in resources below) in an accident of student force, or has been significantly stressed by a difficult interaction, faculty and administration should provide as needed the following continuum of services and supports:

1. All processes in keeping with law and rule 4500
2. Informal check in with the faculty member to assess his/her well-being
3. Formal interview process as established by RCPS administration
4. Assessment by school nurse each incident and First Aid as needed
5. Occupational Health assessment
6. Employee Assistance(Invest EAP or other)
7. Short break
8. Allowing sick leave for the remainder of the day
9. Emergency room evaluation
10. Ongoing check ins and support from district personnel
11. Re-training in CPI to ensure safety of staff and students or other approved safety protocol
12. Evaluating the ability of the employee to perform the duties and responsibilities associated with his/her job

Providing a "safe and healthy environment that fosters mutual respect" is the goal of RCPS and of this procedure. The district will provide training, support, and a safe environment according to student needs. In order to maintain a safe environment it is the district's responsibility to provide training and support, and the employee's responsibility to follow the protocols as they are outlined in this document, building level procedures, and the students' individual plans.

Resources:

Autism Speaks: Positive Strategies for Supporting Behavior Improvement: http://www.autismspeaks.org/sites/default/files/section_5.pdf

Intervention Strategies for Aggression/Hitting: <http://www.special-learning.com/blog/article/25>

FERPA: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Vermont AOE Special Education Resources: <http://education.vermont.gov/special-education>

VOSHA Resource: <http://labor.vermont.gov/vosha/>

VOSHA Definition of "Injury": Generally, a **recordable injury** or illness under OSHA is one that requires medical treatment beyond first aid, as well as one that causes death, days away from work, restricted work or transfer to another job, or loss of consciousness. (OSHA 1904.5) **Injury or illness.** An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illness includes both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (OSHA 1960.2)

Preventing Violence Against Teachers: <http://www.apa.org/monitor/2013/11/ce-corner.aspx>

Critical Incident Stress:
<https://www.osha.gov/SLTC/emergencypreparedness/guides/critical.html>

Intervention Strategies for Aggression/Hitting: <http://www.special-learning.com/blog/article/25>

RUTLAND

EDUCATION ASSOCIATION

Dan Whipple
State of Vermont
Department of Labor
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June 27, 2016

Dear Dan,

As per our conversation on June 23, 2016, here are the REA comments regarding the RCPS document sent to VOSHA to address the citations about safety violations. As we discussed, I have split the REA concerns into ULPs and continuing safety issues. Please feel free to call me at 802-438-0010 if you have any questions. Thank you for your continued support for safety in RCPS.

Unfair Labor Practices against all employees in retaliation for contacting VOSHA:

1. The district's contention that the #1 cause of injury in the workplace may be true nation-wide throughout all industry and workplace categories, but it was never once mentioned in the VOSHA citations against RCPS and is primarily retaliation against the employees because of protected union activity (grievance procedure and contacting VOSHA).
2. The discussion about a breach of FERPA and RCPS policy needs to include that discussing any issue or situation with union leadership is not a breach but rather a protected activity. As that section is currently written, there would be no communication allowed with representatives of the REA.

Continuing Safety Concerns:

1. Under "Assessing the need for practices and PPE", Section 3: "... nothing prevents any staff member from requesting PPE in their own interest." All requests should be reviewed by administration and a response received within 5 business days.

Section 3: "...or taking needed action to address a situation." Is this suggesting that the employee is at fault and may be terminated from employment to address the situation?

2. Under "Implementation": #9 - the communication plan should be specified for each school building, and all equipment needs to work properly as well as having someone to answer phones if that is the preferred method. Currently this level of communication does not exist in a cogent system for each school: In many schools the intercom system doesn't work, and there is not always someone available to answer phones or to contact an administrator.

#10 - the REA feels that with high needs students, there should be administrative observations at least once per week, and that besides observation, there should be feedback and support for the teacher/para.

3. PPE continuum: Any requirement to wear a certain type of clothing or shoes should be paid for with district funds (i.e. - Stafford teachers and teachers of lab sciences have money in their budgets to purchase appropriate clothing/lab gear.) Such requirement for clothing, footwear, and PPE should be written in the IEP of the student so that all *individuals* who need such protection will be informed appropriately.

4. Under "Ongoing assessment and problem solving: - ..."within a reasonable time frame..." - the timeframe needs to be spelled out, and frequent checks on effectiveness of the program should be given a specific timeframe depending on the needs of the student and staff.

5. Under "2. Standardized method to address staff safety..." - paragraph 2 - "When school administration receives a concern, the building leader will assess the state of the staff member in question and offer support, considering the tangible services" This does not appear to address the root causes of any safety issues and appears to put the cause on the staff member's state of being. Administration does indeed have a responsibility to address any needs of the staff member, but also to address the needs of the student and investigate the situation/root causes of any injuries. Such investigation should be done immediately with a report back to the team within 5 business days. The administration should also call a team meeting to analyze the situation and develop revised plans as needed.

6. Under "3. Tangible services for staff..." - #3 - should be initiated by administration for every injury report filed.

#8 should be an administration day, not a sick day. Staff members might hesitate to take the time they need that day if it will be charged as a sick day.

#12 "evaluating the ability of the employee to perform the duties and responsibilities associated with his/her job." - to what end? There should be an evaluation of the situation and how to make it safer.

Comments about the process sent in an email to Asst. Supt. Rob Bliss on June 8, 2016, by Ellen Green, President, REA and Susan Ponto, VP, REA

Rob, I have to say that we are disappointed that this committee was comprised of a majority of administrators with only two volunteers under the RSSA contract and 2 under the REA contract. The timing was difficult for most of the people you invited, and when they weren't available, it would have been nice to open up the process to more affected employees.

We are also disappointed that rather than work collaboratively to honestly make RCPS a safer place to work and learn, you chose to focus on an irrelevant topic of safety and use that as punitive retaliation tool.

We are most aggrieved by the treatment of Lucy Davine, a committed, compassionate, and collaborative volunteer who was belittled, intimidated and shut-down in her efforts to address the real issues raised by VOSHA. As an example of this, you felt a need to apologize to her, but not in front of the whole group where she was publicly humiliated. (***Retaliation***)

Respectfully submitted,

Ellen P. Green

President, Rutland Education Association



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July 8, 2016

Robert S. Bliss
 Assistant Superintendent of Schools
 Rutland City Public Schools

Abatement Complete for Dan

Dear Rob, I have received and reviewed the procedure you sent me in response to the citations issued in relation to case number 1095528. While it appears that this procedure does minimally address the hazard of teachers interacting with and potentially being injured by students and others (and thus will be accepted as abatement), I do have some suggestions I hope you will address going forward.

My suggestions are as follows:

- Opening statement in the procedure: While I understand that there are laws directing the treatment of students and families that are enrolled in Rutland city schools, I would suggest that the opening statement of a safety procedure contain more of a management commitment to staff safety than one statement in a paragraph "Maintaining safety for the good of faculty, staff, and students is the main goal of the procedures presented below." I would suggest you access page 6 and 7 of the OSHA guidance document 3148 Preventing Workplace Violence for Health Care and Social Service Workers (which I have included in this email).
- Page one, paragraph 4; "Preventing the #1 cause of injury in the workplace..."
 Assessment: It seems very odd to have this statement and resulting policy change in this procedure. Is this related to the hazard (workplace violence) we had originally spoken about? Do you have an increase in reportable injuries as a result of "inappropriate" footwear? While this hazard could be a valid concern, addressing it in this procedure seems odd and distracting from the original intent of protecting workers from hazards associated with violent interactions.
- Assessing the need for practices and PPE:
 #3. I am concerned with the statement (talking about requests for PPE) "If such a request is made by an employee, the school administration will respond within five days." In actuality, the OSHA standard requires that PPE be made available as soon as knowledge that a hazard exists that could cause employees physical harm. Since the tasks that we are speaking of have already caused physical harm, the appropriate timeframe for the PPE to be made available would be immediately.
- Generally: There is often mention of a "Team" in your procedure. It's not clear who this team would be made up of (although there is one reference to a team process including "classroom teachers, special education case managers, and Para educators" is mentioned). I would suggest you have a committee equally represented by management and staff, dedicated to looking at



incidents of exposure and investigating root causes, with interest in supporting staff and creating solutions going forward. This team would be in addition to teams that are focused on individual students and the education plans of those students.

- #3. Tangible services for staff who have been injured in incident of student force: My general observation of this section of the procedure is that it sounds punitive. If I'm a staff person and I know this is what will be the protocol if I'm injured in an "Incident of student force" I might be encouraged to not report that incident. While it seems the medical provisions of this portion of the procedure are satisfactorily accounted for, the physiological aspect (which OSHA considers a very important factor in cases such as this) is only very minimally addressed and certainly not in a way that engages management in the process. That said there are no less than 4 opportunities for an employees to be re-assessed, relieved, or retrained (specifically Item 3, Item 7, Item 11 and Item 12). While I wouldn't suggest that these issues not be addressed at an appropriate time (following an investigation by the above mentioned team for example) putting them in the context of procedures immediately following an incident which could have cause a level of trauma to a staff person seems remedial at a time when supportive might be more in order. I would suggest page 22-24 of the above mentioned OSHA guideline as recommendation going forward.
- Assessment of the effectiveness of the program : There seems to be no means by which the program can be continually assessed for effectiveness. Recommendations usually range from annually to each time an incident occurs. Whatever you decide for frequency, the program should be assessed for effectiveness with an eye towards continual improvement. This assessment should be collaborative (and a good task for the team to conduct). Suggestions for improvement should be encouraged and acted upon by management

Rutland City Schools should be commended for the efforts to create a program for effectively meeting the challenges of mitigating hazards in the workplace created by violent acts. However, just as in all matters safety and health related, the target is constantly moving and we can never rest on our successes. As the OSHA 3148 document states all solutions to hazards in the workplace must be rooted in these four concepts;

1. Management Commitment and employees involvement
2. Workplace hazards assessments
3. Hazard prevention and control
4. Employee training and information

I hope you will find this memo helpful in going forward with the interest of continual improvement of your program.

Best Regards



Daniel A. Whipple, OHST
VOSHA Program Manager

To: All RCPS Faculty and Staff

From: Rob Bliss

Date: July 11, 2016

Re: Safety Procedure to Begin School Year 2016-2017

This spring a committee of 18 faculty, staff, and administration formed to create a procedure intended to address specific safety concerns related to working with our student population. The committee and procedure were a mandate from the Vermont Occupational Safety and Health Administration (VOSHA), following a complaint and the resulting investigation.

Rutland City Public Schools is committed to safety for its employees. That intent and sentiment is embedded in the key sentence, bolded in paragraph two of the attached safety procedure, "*Maintaining safety for the good of faculty, staff, and students is the main goal of the procedures presented below.*" The document evolved through an iterative process over three meetings and "virtual work" via Google Docs.

You are being informed of this new procedure at this time for two reasons. First, so you can familiarize yourself with it and become part of a team effort to maintain safety for all employees and all students. Second, there is an implication for attire. Specifically, the procedure includes a sentence that states, "*Beginning with the 2016-17 school year, all employees will be expected to wear closed toed shoes with a high traction sole.*" We had been asked to inform all of this section of the procedure because it will impact how we prepare for work.

Please take a few moments to review the procedure. When the school year opens in August, each building will be spending some time establishing clarity on the document.

Safety is team effort. Working together, we can make sure that our employees, and therefore our students are safe each and every day.