

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

'Ms. Poplar' o/b/o 'N.P.',
Complainant

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v.

) HRC Complaint No. PA20-0017

Milton Middle School &
Milton Town School District,
Respondent

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

The following vote was taken on a motion to find that there are **reasonable grounds** to believe that Milton Middle School and Milton Town School District, the Respondents, illegally discriminated against 'Ms. Poplar' o/b/o 'N.P.', the Complainant, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair For X Against ___ Absent ___ Recused ___

Nathan Besio For X Against ___ Absent ___ Recused ___

Donald Vickers For ___ Against X Absent ___ Recused ___

Dawn Ellis For X Against ___ Absent ___ Recused ___

Joan Nagy For ___ Against ___ Absent X Recused ___

Charles Kletecka, Alternate For X Against ___ Absent ___ Recused ___

Entry: X Reasonable Grounds ___ Motion failed

Dated at Montpelier, Vermont, this 23rd day of September, 2021

BY: VERMONT HUMAN RIGHTS COMMISSION



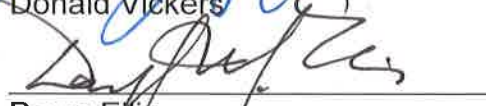
Kevin Christie, Chair



Nathan Besio



Donald Vickers



Dawn Ellis



Charles Kletecka, Alternate



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INVESTIGATIVE REPORT

HRC Case No.: PA20-0017

COMPLAINANT: Ms. Poplar o/b/o N.P.

RESPONDENT: Milton Middle School and Milton Town School District

CHARGE: Discrimination in public accommodation based on disability

SUMMARY OF COMPLAINT

N.P., a student with Oppositional Defiant Behavior and Attention Deficit Hyperactivity Disorder, attended Milton Middle School. N.P. took daily medicine to mitigate the impact of his disabilities. N.P. took his medication either at home or in the school nurse's office. Katrina Antonovich, one of N.P.'s teachers, repeatedly asked N.P. in front of the class whether N.P. had taken his medication. Ms. Antonovich's questioning revealed N.P.'s private medical information to other students and humiliated N.P. Ms. Antonovich's behavior created a hostile environment for N.P.

SUMMARY OF RESPONSE

Ms. Antonovich did not ask N.P. about his medication, but she did ask if N.P. had checked in with the nurse. Asking this question is a common practice within Milton Middle School because the nurse's office also serves as a Wellness Center, where students can take a break, check in with an adult for physical or social emotional needs, or engage in mindfulness activities. Brandy Brown, Milton Middle School's co-principal, investigated whether Ms. Antonovich shared N.P.'s private information in front of the class and found that the allegations were unsubstantiated.

PRELIMINARY RECOMMENDATIONS

This investigation makes a preliminary recommendation to the Human Rights Commission (HRC) to find there are **reasonable grounds** to believe that Milton Middle School and Milton Town School District discriminated against N.P. on the basis of his disability.

DOCUMENTS

Investigation

- Complaint – 3/5/2020
- Response – 3/24/2020

Documents

- 504 Plan for N.P. – 2019
- Notes from Brandy Brown, Co-Principal for Milton Middle School

Emails

- Email from Ms. Poplar, Mother of Complainant, to Brandy Brown, Co-Principal for Milton Middle School – 2/11/2020
- Email from Brandy Brown, Co-Principal for Milton Middle School, to Ms. Poplar, Mother of Complainant – 2/11/2020
- Email from Brandy Brown, Co-Principal for Milton Middle School, to Human Rights Commission – 5/18/2021

Facebook Messenger Messages

- Message from Courtney LaCasse, Former Nurse for Milton Middle School, to Ms. Poplar, Mother of Complainant – 2/11/2020
- Message from Courtney LaCasse, Former Nurse for Milton Middle School, to Ms. Poplar, Mother of Complainant – 3/5/2020

INTERVIEWS

- Brandy Brown, Co-Principal for Milton Middle School – 10/14/2020
- Dorey Demers, Nurse for Milton Middle School – 10/14/2020
- Jaime St. Cyr, Paraprofessional for Milton Middle School – 10/14/2020
- Robert Innaco, Behavior Specialist for Milton Middle School – 10/14/2020
- Joseph Smith, Special Educator for Milton Middle School – 10/14/2020
- Katrina Antonovich, Teacher for Milton Middle School – 10/14/2020
- Ms. Poplar, Mother of Complainant – 1/5/2021
- N.P., Complainant – 1/5/2021
- Courtney LaCasse, Former Nurse for Milton Middle School – 1/13/2021
- Sandy Schlegel, Mother of Milton Middle School Student – 4/19/2021

FACTUAL HISTORY

2018

N.P. attended Milton Middle School.¹ All qualified elementary and secondary public school students who meet the definition of an individual with a disability are entitled to receive regular or special education and related aids and services that are designed to meet their individual educational needs.² School districts often create a “504 plan,” based on Section 504 of the Rehabilitation Act, for qualified students to describe the aids and services the students need to

¹ Interview with Ms. Poplar, 1/5/2021.

² U.S. Department of Education, *Office for Civil Rights, Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*, available at: <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>.

access their education.³ N.P. had difficulty focusing, he was argumentative, and he was struggling with his grades.⁴ N.P.'s mother, Ms. Poplar, decided to have N.P. evaluated to see if he qualified for a 504 plan that might help him better succeed in school.⁵

In May, a Milton Town School District psychologist evaluated N.P.⁶ The psychologist found that N.P. has Oppositional Defiant Behavior and Attention Deficit Hyperactivity Disorder.⁷

2019

Milton Town School District created a 504 plan for N.P.⁸ Joseph Smith is a special educator at Milton Middle School who manages the cases of students who have 504 plans, including N.P.'s case.⁹ N.P.'s plan stated that N.P.'s teachers need to use a calm, quiet voice when addressing N.P.'s behavior, that they should not engage in power struggles and that they should give N.P. opportunities to share his anger.¹⁰ Teachers and other school employees who work with students who have 504 plans may learn details about a student's 504 in order to help implement the plan's contents.¹¹

N.P. struggled to settle down during mornings, and he was more successful in his afternoon classes.¹² N.P. generally took medication each weekday morning to help mitigate the impact of his disabilities.¹³ He would sometimes take his medication at home, but he most often took his medication in the school nurse's office.¹⁴

At the beginning of the 2019-2020 school year, one of the nurses would request that N.P. be sent to the nurse's office in order for N.P. to take his medicine.¹⁵ Each year, students on a 504 plan have a meeting with the school.¹⁶ On October 1, N.P. and his parents met with Co-Principal Brown, Ms. Antonovich and Mr. Smith. Although N.P.'s medication is not part of his 504 plan, they decided at the meeting that N.P. could start his day in the nurse's office to take his medication instead of being called from class.¹⁷

On October 22, N.P. told Co-Principal Brown that Ms. Antonovich shares his private business in front of their class.¹⁸ Co-Principal Brown asked him what Ms. Antonovich would say, and he told her that Ms. Antonovich would say, "go to the nurse."¹⁹

³ *Id.*

⁴ Interview with Ms. Poplar, 1/5/2021.

⁵ *Id.*

⁶ 504 Plan for N.P., 2019.

⁷ *Id.*

⁸ *Id.*

⁹ Interview with Mr. Smith, 10/14/2020.

¹⁰ 504 Plan for N.P., 2019.

¹¹ Interview with Mr. Smith, 10/14/2020.

¹² Interview with Ms. St. Cyr, 10/14/2020.

¹³ Complaint, 3/5/2020.

¹⁴ Interview with Nurse LaCasse, 1/13/2021; Response, 3/24/2020.

¹⁵ Response, 3/24/2020.

¹⁶ Interview with Co-Principal Brown, 10/14/2020.

¹⁷ Interview with Co-Principal Brown, 10/14/2020; Email from Co-Principal Brown to HRC, 5/18/2021.

¹⁸ Notes from Co-Principal Brown, 10/22/2019.

¹⁹ *Id.*

Courtney LaCasse was a school nurse who regularly saw N.P.²⁰ She was usually in the nurse's office when N.P. took his medication in the mornings, and N.P. would sometimes come to the nurse's office when he needed a break.²¹ N.P. did not take the medication on half days, and he could choose whether he wanted to take it on any day.²² The nurses would encourage him to take the medicine, and, if he did not take it, they would let N.P.'s mother know that he had not taken the medicine.²³

When teachers were having a difficult time with N.P., they would sometimes contact Mr. Smith to ask if N.P. had visited the nurse.²⁴ According to Mr. Smith, the question was understood to be about whether N.P. had taken his medication.²⁵ Robert Innaco is a behavior specialist whom teachers can call for help when a child is misbehaving.²⁶ Mr. Innaco received calls from multiple teachers for help with N.P.²⁷ Mr. Innaco knew N.P. took medication at the nurse's office because the nurses would sometimes call Mr. Innaco and ask him to get N.P. out of class to come and take his medication.²⁸

Katrina Antonovich was N.P.'s social studies teacher for both N.P.'s seventh and eighth grade years.²⁹ Each trimester, the times of the classes would change.³⁰ When N.P. was in seventh grade, his class with Ms. Antonovich was mostly in the afternoon.³¹ When N.P. began eighth grade, his class with Ms. Antonovich was in the morning.³² According to Ms. Antonovich, N.P. would make derogatory comments towards her, such as telling her that she smelled like a dog.³³ According to N.P., Ms. Antonovich would get angry with students, yell at them and sometimes throw things.³⁴ She would also cry in front of the class and tell the students that they treated her like a doormat.³⁵

Ms. Antonovich and N.P. asked the school to switch N.P. to another class so that N.P. would not be in Ms. Antonovich's class in the mornings.³⁶ Because of the limited availability of paraeducators, the only time N.P. could be in Ms. Antonovich's class was in the morning.³⁷ Jaime St. Cyr is a paraprofessional who helps teachers with students who have 504 plans.³⁸ Ms. St. Cyr helped with N.P. in Ms. Antonovich's class and other classes.³⁹ Ms. St. Cyr helped N.P.

²⁰ Interview with Nurse LaCasse, 1/13/2021.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Interview with Mr. Smith, 10/14/2020.

²⁵ *Id.*

²⁶ Interview with Mr. Innaco, 10/14/2020.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Interview with N.P., 1/5/2021.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Interview with Ms. Antonovich, 10/14/2020.

³⁴ Interview with N.P., 1/5/2021.

³⁵ *Id.*

³⁶ Interview with Ms. St. Cyr, 10/14/2020.

³⁷ Interview with Ms. Antonovich, 10/14/2020.

³⁸ Interview with Ms. St. Cyr, 10/14/2020.

³⁹ *Id.*

get his work done, and she would take N.P. on walks when he needed a break.⁴⁰ Ms. St. Cyr stated that N.P. was a “jokester” who liked to keep talking when the class was trying to work.⁴¹

2020

Around the end of January, Ms. Antonovich called the nurse’s office to check whether N.P. had taken his medication.⁴² Nurse LaCasse told Ms. Antonovich, “[N.P.] came to see me. That’s what I can tell you.”⁴³ In her interview, Nurse LaCasse stated that she does not remember how many times Ms. Antonovich called the nurse’s office to ask whether N.P. had taken his medication, but she remembers that day in particular because Nurse LaCasse’s child was sick that day.⁴⁴

Around January 29, Ms. Antonovich called the nurse’s office to ask whether N.P. had taken his medication.⁴⁵ Dorey Demers is another school nurse who regularly saw N.P.⁴⁶ Nurse Demers told Ms. Antonovich that she could not force any student to take medication and whether a student has taken medication is between nurse and student.⁴⁷ She told Ms. Antonovich that she should treat the student like any other student with a behavioral need and that she could contact her behavioral support team.⁴⁸

On February 10, Nurse Demers was in the nurse’s office when she overheard a conversation between N.P. and an adult in the hallway.⁴⁹ N.P. was telling the person that he already took his medicine that day and he did not need to check in about his medication.⁵⁰ Nurse Demers assumed that the conversation she had heard was related to Ms. Antonovich’s class because the conversation happened in the morning, when N.P. is in Ms. Antonovich’s class.⁵¹ When N.P. came into the nurse’s office, Nurse Demers told N.P. that the only people who needed to know whether N.P. took his medication were N.P. and nurse.⁵² She told N.P. that he could tell someone who asked him about his medication that it is not their concern.⁵³

Nurse Demers told Nurse LaCasse about the conversation she had overheard, and Nurse Demers said that she was going to send an email to the staff who worked with N.P. telling them that they should assume N.P. has taken his medicine and not ask N.P. about his medicine.⁵⁴ Later that day, Nurse Demers also told Co-Principal Brown about the conversation she had overheard.⁵⁵ Nurse Demers asked Co-Principal Brown if she should reach out to Ms. Antonovich.⁵⁶ Co-Principal

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Interview with Nurse LaCasse, 1/13/2021.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Interview with Nurse Demers, 10/14/2020; Notes from Co-Principal Brown, 3/4/2021.

⁴⁶ Interview with Nurse Demers, 10/14/2020.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Facebook Messenger Message from Nurse LaCasse to Ms. Poplar, 2/11/2020.

⁵⁵ Interview with Nurse Demers, 10/14/2020.

⁵⁶ *Id.*

Brown told her she would take care of the situation, and Nurse Demers did not send out the email she had mentioned to Nurse LaCasse.⁵⁷

Co-Principal Brown reviewed camera footage from the hallway and saw that the person talking to N.P. was Ms. St. Cyr.⁵⁸ In Ms. St. Cyr's interview with the HRC, she stated that Ms. Antonovich sometimes asked Ms. St. Cyr to take N.P. down to check in with Nurse LaCasse.⁵⁹ Co-Principal Brown saw that no one else was in the hallway when the conversation happened, and she chose not to follow up further about what had happened.⁶⁰

On February 11, Co-Principal Brown met with N.P., and she talked to him about Mrs. Antonovich and N.P.'s behavior at a school assembly.⁶¹ Co-Principal Brown's notes state that N.P. told her that he and Mrs. Antonovich do not get along and that Mrs. Antonovich asks Ms. St. Cyr about N.P.'s medication.⁶²

Also, on February 11, N.P. called his mother from the school nurse's office and told her he was frustrated that Ms. Antonovich asked him about his medication in front of their class and that Ms. Antonovich would never believe him about whether he had taken his medication.⁶³ N.P. told Ms. Poplar that Ms. Antonovich would either call the nurse's office or make him go down with the class aide to verify that he had taken his medication.⁶⁴ N.P. told Ms. Poplar that he did not want to be in Ms. Antonovich's class anymore and that he did not like Ms. Antonovich.⁶⁵

At first, Ms. Poplar was in disbelief because she thought teachers would know better than to talk about N.P.'s medication in front of his peers.⁶⁶ Ms. Poplar asked to speak with Nurse LaCasse.⁶⁷ According to Ms. Poplar, Nurse LaCasse confirmed that what N.P. was saying was going on.⁶⁸ Nurse LaCasse remembers telling Ms. Poplar that she and Nurse Demers talked about the issue of privacy regarding N.P.'s medication.⁶⁹ Facebook Messenger messages from that day show that Nurse LaCasse messaged Ms. Poplar, writing:

I am so sorry today was the first you heard about it all I feel like I let the poor kid down some by not letting you know about it sooner I tried to keep down playing [sic] and changing the subject when they brought him down to check in but it's been rough these last couple weeks with having him check in about meds. He is having a hard time with the week of [Mrs. Antonovich] in the mornings purely because he knows how things will go as soon as he gets up there. He tries so hard to not talk about a lot of it and just handle it himself but it's gotten to the point where he just gets in trouble so he isn't in there which isn't fair to him... It's so not okay. He is the only one that should be allowed to talk about his meds and if

⁵⁷ *Id.*

⁵⁸ Interview with Co-Principal Brown, 10/14/2020.

⁵⁹ Interview with Ms. St. Cyr, 10/14/2020.

⁶⁰ Interview with Co-Principal Brown, 10/14/2020.

⁶¹ Notes from Co-Principal Brown, 2/11/2021.

⁶² *Id.*

⁶³ Interview with Ms. Poplar, 1/5/2021.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Interview with Ms. Poplar, 1/5/2021.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Interview with Nurse LaCasse, 1/13/2021.

he wants to disclose if he is on meds or if he has taken them or not that's up to him no one else. I'm hoping something will be done so this stops.⁷⁰

On the same day, Ms. Poplar emailed Co-Principal Brown, writing that N.P. had informed her of “some pretty upsetting things” about Ms. Antonovich and that Ms. Antonovich “had caused [N.P.] a great amount of humiliation and...broken [the Health Insurance Portability and Accountability Act (HIPAA)].⁷¹ Co-Principal Brown emailed Ms. Poplar on the same day, writing that N.P. and Ms. Antonovich “continue to have tension in their relationship” and that she would like to follow up with Ms. Poplar about N.P.’s perspective about what was going on. Ms. Poplar emailed Co-Principal Brown that evening, writing:

I can not [sic] believe that your response to this would be a tone of blaming [N.P.], or that this is in anyway [sic] his fault. I don't care what the tension is between the student and teacher. He is a minor [sic], a student. [Ms. Antonovich] is a teacher, an adult. I don't care what the circumstances were, she bullied a student and she broke a law. She had no right to speak about [N.P.]’s medication use, and in front of his peers, she had no right to question him about taking his medication, she had no right to follow up or to send a class aid [sic] to follow up with a nurse because she didn't believe [N.P.] took his medication. That is absolutely none of her business, she has zero say over his medication. She humiliated him, she crossed the line...I assume you have opened an investigation...⁷²

On February 13, Ms. Poplar told Co-Principal Brown that other parents told her that their students in Ms. Antonovich’s class know that N.P. takes medication because Ms. Antonovich asks N.P. publicly about his medication.⁷³ After their conversation, Co-Principal Brown opened an investigation of Ms. Poplar’s complaint.⁷⁴

On February 14, Co-Principal Brown interviewed Ms. Antonovich, who told her that she did not talk about N.P.’s medication in class.⁷⁵ Ms. Antonovich also gave Co-Principal Brown a written statement stating that she “did not say anything” about N.P.⁷⁶ On February 18, Co-Principal Brown interviewed Justin Sachs, an inclusion worker from the Howard Center, who told her that Ms. Antonovich has not shared private information about N.P., as far as he knows.⁷⁷ On February 19, Co-Principal Brown interviewed Ms. St. Cyr, who told her that she had not heard Ms. Antonovich mention N.P.’s medication in front of their class, but that Ms. Antonovich would ask N.P. whether he had gone to the nurse’s office.⁷⁸

On February 21, Co-Principal Brown met with N.P., Ms. Poplar and Mr. Smith, and they discussed the possibility that the relationship between N.P. and Ms. Antonovich may be “beyond

⁷⁰ Facebook Messenger Message from Nurse LaCasse to Ms. Poplar, 2/11/2020.

⁷¹ Email from Ms. Poplar to Co-Principal Brown, 2/11/2021.

⁷² Email from Ms. Poplar to Co-Principal Brown, 2/11/2021.

⁷³ Notes from Co-Principal Brown, 2/13/2020.

⁷⁴ Notes from Co-Principal Brown.

⁷⁵ Notes from Co-Principal Brown, 2/14/2020.

⁷⁶ Notes from Co-Principal Brown.

⁷⁷ Notes from Co-Principal Brown, 2/18/2020.

⁷⁸ Notes from Co-Principal Brown, 2/19/2020.

repair.”⁷⁹ Later that day, Co-Principal Brown finished her investigation and decided that the allegation against Ms. Antonovich was unsubstantiated.⁸⁰ Co-Principal Brown left a voicemail with Ms. Poplar to let her know the outcome of the investigation.⁸¹

On February 25, Co-Principal Brown met with Ms. Poplar to discuss the investigation.⁸² Ms. Poplar told Co-Principal Brown that Nurse Demers and Nurse LaCasse were aware of Ms. Antonovich’s behavior and had told Ms. Poplar that the behavior was “unacceptable.”⁸³ Co-Principal told Ms. Poplar that she would extend her investigation to include information from Nurse Demers and Nurse LaCasse.⁸⁴

Ms. Poplar did not feel that Co-Principal Brown was going to take care of the situation appropriately, and she called Milton Town School District’s superintendent, Amy Rex.⁸⁵ Superintendent Rex called Ms. Poplar back and told Ms. Poplar that she was aware of the investigation being conducted by Co-Principal Brown and that the investigation would be a proper one.⁸⁶ Superintendent Rex also told Ms. Poplar that she would not be informed of the details of the outcome of the investigation because the issue was a personnel matter.⁸⁷

On March 4, Co-Principal Brown interviewed Nurse Demers, who told her that Ms. Antonovich called Nurse Demers to ask about N.P.’s medication but that she does not know if Ms. Antonovich shared information about N.P.’s medication publicly and she did not talk about that topic with Ms. Poplar.⁸⁸ Nurse Demers also told Co-Principal Brown that N.P. told her that people have referred to him coming to see the nurse as “rehab.”⁸⁹

On March 4, Co-Principal Brown also interviewed Nurse LaCasse, who told her that she thought Nurse Demers was going to send an email to the employees involved with N.P. telling them that they should not pull N.P. out of class to check on whether he has taken his medication, and that she told Ms. Poplar that Nurse Demers was going to send the email.⁹⁰ Nurse LaCasse also told Co-Principal Brown that it is common for teachers, including Ms. Antonovich, to call to ask about medication, and that she does not know whether Ms. Antonovich’s calls to ask about medication were made publicly.⁹¹ Nurse LaCasse messaged Ms. Poplar about the interview with Co-Principal Brown, writing that Co-Principal Brown “was investigating my communication skills with parents I think more than anything.”⁹²

On March 5, Ms. Poplar filed a complaint on behalf of N.P. with the Vermont Human Rights Commission.⁹³

⁷⁹ Notes from Co-Principal Brown, 2/21/2020.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Notes from Co-Principal Brown, 2/25/2020.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Interview with Ms. Poplar, 1/5/2021.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Notes from Co-Principal Brown, 3/4/2020.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Facebook Messenger Message from Nurse LaCasse to Ms. Poplar, 3/5/2020.

⁹³ Complaint, 3/5/2020.

On March 10, Co-Principal Brown called Ms. Poplar and told her that the information she received from the nurses did not change the outcome of her investigation.⁹⁴ Co-Principal Brown determined that she could not corroborate that Ms. Antonovich had talked about N.P.'s medication; she could only corroborate that Ms. Antonovich asked N.P. to go to the nurse.⁹⁵ Principal Brown chose not to include children in the investigation due to privacy concerns and because of the lack of corroboration in the answers she received from the adults she interviewed.⁹⁶

Ms. Poplar decided not to send N.P. back to school until she knew N.P. would not have to go back to Ms. Antonovich's classroom.⁹⁷ N.P. missed three days of school, and then Principal Brown decided to allow N.P. to finish the school year virtually with support from Mr. Smith.⁹⁸

Sandy Schlegel is a parent of one of the students who was in Ms. Antonovich's class with N.P.⁹⁹ In her interview with the HRC, Ms. Schlegel stated that her son told her that Ms. Antonovich talked about N.P.'s medication and why he takes medication in front of the class.¹⁰⁰ Ms. Schlegel does not remember when her son told her about Ms. Antonovich's comments, but she estimated that it was in early spring.¹⁰¹ Ms. Schlegel is also a substitute teacher for the Milton School District, which she said gave her the opportunity to learn more about teachers than other parents who have not worked for the school.¹⁰² Once, she saw a student scream at Ms. Antonovich, and then Ms. Antonovich "got in the student's face and screamed back at him...you could see spittle from both sides."¹⁰³ Ms. Schlegel was surprised that Ms. Antonovich did not choose to walk away or deal with the situation differently.¹⁰⁴ Ms. Schlegel has observed Ms. Antonovich yelling at students on several occasions.¹⁰⁵

LEGAL ANALYSIS

There are many overlapping laws that govern a student's right to privacy including the Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA). The Commission has limited jurisdiction. This investigation was tasked with determining whether Milton Middle School and Milton Town School District violated Vermont's Fair Housing and Public Accommodations Act (VFHPAA) The VFHPAA states:

- (c) No individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations, or be subjected to discrimination by any place of public accommodation on the basis of his or her disability...¹⁰⁶

⁹⁴ Interview with Co-Principal Brown, 10/14/2020.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Interview with Ms. Poplar, 1/5/2021.

⁹⁸ Interview with Co-Principal Brown, 10/14/2020; interview with Ms. Poplar, 1/5/2021.

⁹⁹ Interview with Sandy Schlegel, 4/19/2021.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ 9 V.S.A. § 4502.

Vermont's legislature intended the VFHPAA to be construed consistently with the Americans with Disabilities Act (ADA).¹⁰⁷ Thus, this investigation considers cases and regulations involving the ADA in order to help interpret the VFHPAA.

While the VFHPAA does not specifically address the disclosure of confidential information, the ADA addresses confidentiality in the context of employment, stating that information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record.¹⁰⁸ Although this investigation is about alleged discrimination in a place of public accommodation, the analysis also considers information related to discrimination in employment. The Supreme Court of Vermont has chosen to apply employment law precedent to public accommodations cases, stating, "[w]hile these are primarily employment-discrimination decisions, we see no reason why they would not apply in this context."¹⁰⁹

Section 504 of the federal Rehabilitation Act states, "[n]o otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program".¹¹⁰ Courts in the Second Circuit have stated that the analysis for discrimination under Section 504 is the same as for discrimination under the ADA.¹¹¹ A Section 504 case regarding disclosure of a student's private information indicates that the complainant must show that the respondent acted with deliberate indifference.¹¹²

The specific elements of a prima facie case may vary depending on the claim and the particular facts of the case.¹¹³ To select the elements for this prima facie case, this investigation considers the absence of closely related language or precedent under the VFHPAA and the available language and precedent under the ADA and Rehabilitation Act. To establish a prima facie case, Ms. Poplar must demonstrate that 1) N.P. is a person with a disability, 2) N.P. was denied the benefits of the school's services, programs or activities, or was otherwise discriminated against by the school; (3) such denial of benefits or discrimination was because of N.P.'s disability, (4) the school knew about the discrimination against N.P.; and (5) the school acted with deliberate indifference.¹¹⁴

A. The Five Elements of the Prima Facie Case for Disability Discrimination

1. N.P. is a person with a disability

¹⁰⁷ 9 V.S.A. § 4500.

¹⁰⁸ 42 U.S.C. § 12112(d).

¹⁰⁹ Bhatt v. University of Vermont, 184 Vt. 195, 200 (2008).

¹¹⁰ 29 U.S.C. § 794.

¹¹¹ De Figueroa v. City of New York, 403 F. Supp. 3d 133, 158 (E.D.N.Y. 2019); Henrietta D. v. Bloomberg, 331 F.3d 261, 272 (2d Cir.2003).

¹¹² M.P. ex rel. K. D.P. v. Indep. Sch. Dist. No. 721, 200 F.Supp.2d 1036, 1041 (D.Minn.2002).

¹¹³ Robertson v. Mylan Labs., Inc., 848 A.2d 310, 321 (2004).

¹¹⁴ B.C. v. Mount Vernon Sch. Dist., 837 F.3d 152, 158 (2d Cir. 2016); Avaras v. Clarkstown Centr. Sch. Dist., No. 15 Civ. 2042 (NSR), 2017 WL 3037402 at *27 (S.D.N.Y. July 17, 2017); M.P. ex rel. K., D.P. v. Independent School Dist. No. 721, New Prague, 200 F.Supp.2d 1036, 1041 (D.Minn.2002).

N.P. has Oppositional Defiant Behavior and Attention Deficit Hyperactivity Disorder.¹¹⁵ The major life activity that is impacted by N.P.'s disability is his ability to learn. Milton Middle School and the Milton School District do not contest that N.P. has a disability.¹¹⁶

Finding: N.P. is a person with a disability.

2. N.P. was either denied the benefits of the school's services, programs, or activities, or was otherwise discriminated against by the school

Ms. Antonovich asked Ms. St. Cyr about N.P.'s medication in front of N.P.'s peers, effectively stating N.P.'s private medical information in front of his class. Ms. Antonovich's insistence on receiving information about whether N.P. had taken his medicine is documented in a Facebook message from Nurse LaCasse to N.P.'s mother, and another student in N.P.'s class corroborated that Ms. Antonovich talked about N.P.'s medication and why he takes medication in front of the class. Ms. Antonovich's behavior towards N.P. resulted in N.P. regularly leaving the classroom to avoid interacting with Ms. Antonovich. Nurse LaCasse wrote, "it's gotten to the point where he just gets in trouble so he isn't in there which isn't fair to him... It's so not okay. He is the only one that should be allowed to talk about his meds and if he wants to disclose if he is on meds or if he has taken them or not that's up to him no one else. I'm hoping something will be done so this stops."¹¹⁷

In *Fleming v. State University of New York*, a Second Circuit court refused to grant a respondent's motion for summary judgment in a case about an employer revealing private medical information, stating that the complainant successfully alleged discrimination under the Rehabilitation Act.¹¹⁸ Similarly, in *Medlin v. Rome Strip Steel Co., Inc.*, a Second Circuit court refused to grant a respondent's motion for summary judgment in a case about an employer revealing private medical information, stating that the complainant successfully alleged violation of the ADA.¹¹⁹ Here, Ms. Antonovich's comments in front of N.P.'s class establish that she discriminated against N.P.

Finding: N.P. was denied the benefits of the school's services, programs, or activities or otherwise discriminated against by the school.

3. The denial of benefits of the school's services, programs, or activities, or discrimination was because of N.P.'s disability

N.P.'s Oppositional Defiant Behavior and Attention Deficit Hyperactivity Disorder impacted his ability to learn, which led to N.P. receiving a 504 plan. Ms. Antonovich participated in N.P.'s annual 504 meeting, and she was aware of a variety of actions suggested by N.P.'s 504 plan in order to deal with N.P.'s behaviors associated with his disability. Ms. Antonovich discussed N.P.'s medication because of his disability-related behavior.

Finding: The discrimination was because of N.P.'s disability.

4. The school knew about the discrimination against N.P.

¹¹⁵ 504 Plan for N.P., 2019.

¹¹⁶ Response, 3/24/2020.

¹¹⁷ Facebook Messenger Message from Nurse LaCasse to Ms. Poplar, 2/11/2020.

¹¹⁸ *Fleming v. State Univ. of New York*, 502 F.Supp.2d 324, 339 (E.D.N.Y.2007).

¹¹⁹ *Medlin v. Rome Strip Steel Co.*, 294 F.Supp.2d 279, 295 (N.D.N.Y.2003).

N.P. had multiple conversations with Co-Principal Brown in which he told her that Ms. Antonovich talks about his medication in front of his class. On October 22, 2019, N.P. told Co-Principal Brown that Ms. Antonovich shares his private business in front of their class.¹²⁰ Co-Principal Brown asked him what Ms. Antonovich would say, and he told her that Ms. Antonovich would say, “go to the nurse.”¹²¹ On February 11, 2020, N.P. again talked to Co-Principal Brown and told her that Ms. Antonovich asks about his medication.¹²² N.P.’s mother also talked to and emailed Co-Principal Brown about Ms. Antonovich’s disclosure of N.P.’s private medical information.

Finding: The school knew about the discrimination against N.P.

5. The school acted with deliberate indifference

This investigation considers whether the school acted with deliberate indifference, either through Ms. Antonovich’s actions before N.P. left Ms. Antonovich’s class or through Co-Principal Brown’s actions after N.P. told her about Ms. Antonovich’s behavior. Abuse by teachers is intolerable and tragic, but that such wrongdoing occurred does not automatically render a school liable.¹²³ Deliberate indifference is a stringent standard, requiring proof that a school actor disregarded a known or obvious consequence of her action.¹²⁴ A school is deliberately indifferent if its response is clearly unreasonable in light of the known circumstances.¹²⁵ Deliberate indifference may also be found when remedial action only follows after a lengthy and unjustified delay.¹²⁶

After Co-Principal Brown’s conversation with N.P. in October, in which he told her that Ms. Antonovich asked him if he had visited the nurse, she did not take further action because asking about visiting the nurse is a common practice within Milton Middle School, a question that does not necessarily relate to or indicate that a student has a disability.¹²⁷ The nurse’s office also served as a Wellness Center, where students could take a break, check in with an adult for physical or social emotional needs, or engage in mindfulness activities.

Around January 29, Ms. Antonovich called the nurse’s office to ask whether N.P. had taken his medication, and Nurse Demers told Ms. Antonovich that she could not force any student to take medication and whether a student has taken medication is between the nurse and student.¹²⁸ She told Ms. Antonovich that she should treat the student like any other student with a behavioral need and that she could contact her behavioral support team.¹²⁹ Less than two weeks later, on February 11, N.P. called his mother from the school nurse’s office and told her he was frustrated that Ms. Antonovich asked him about his medication in front of their class and that Ms. Antonovich would never believe him about whether he had taken his medication.¹³⁰ N.P. told

¹²⁰ Notes from Co-Principal Brown, 10/22/2019.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Harrison v. Klein Indep. Sch. Dist., No. 20-20115, 2021 WL 1305871, at *4 (5th Cir. Apr. 7, 2021).

¹²⁴ Connick v. Thompson, 563 U.S. 51, 61-62, 131 (2011); I.S. by & through Disla v. Binghamton City Sch. Dist., 486 F. Supp. 3d 575, 603 (N.D.N.Y. 2020).

¹²⁵ K.M. v. Hyde Park Central School District, 381 F.Supp.2d 343, 359 (S.D.N.Y.2005).

¹²⁶ Hayut v. State Univ. of N.Y., 352 F.3d 733, 751 (2d Cir.2003).

¹²⁷ Interview with Nurse Demers, 10/14/2020.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Interview with Ms. Poplar, 1/5/2021.

Ms. Poplar that Ms. Antonovich would either call the nurse's office or make him go down with the class aide to verify that he had taken his medication.¹³¹ Nurse Demers confirmed that Ms. Antonovich's aide, Ms. St. Cyr, accompanied N.P. to the nurse's office to verify that he had taken his medicine.¹³² Additionally, another student in Ms. Antonovich's class corroborated N.P.'s allegation when he told his parent that he had heard Ms. Antonovich talk about N.P.'s medication and why he takes medication.¹³³

Ms. Antonovich's decision to talk about N.P.'s medication even after Nurse Demers informed her that whether a student has taken medication is between the nurse and the student appears to be unreasonable. Ms. Antonovich disregarded N.P.'s autonomy in choosing when to take his medication and disregarded his word when he stated that he had taken his medication. Although N.P. may have contributed to the negative relationship with Ms. Antonovich, it was Ms. Antonovich who was in the position of authority in the classroom, and the adult with more resources than N.P, who is a minor, a student, and a person with a disability. N.P.'s 504 plan stated that N.P.'s teachers need to use a calm, quiet voice when addressing N.P.'s behavior, and that they should not engage in power struggles.¹³⁴ However, Ms. Antonovich was not calm and quiet when she addressed N.P.'s behaviors, and she appears to have inappropriately used her position of power over N.P. to find out his personal medical information, influence his personal medical decisions, and disclose his personal medical information.

Although Ms. Antonovich's actions in February were sufficient to establish that the school acted with deliberate indifference, this investigation considers whether Co-Principal Brown also acted with deliberate indifference when she responded to the situation.

In February, Nurse Demers told Co-Principal Brown her concerns about N.P. being asked about his medication, mentioning Ms. Antonovich and asking if she should email Ms. Antonovich about the problem.¹³⁵ Co-Principal Brown told Nurse Demers that she would take care of the situation, but she decided that no further action was needed after she reviewed the school's video footage and saw that there was no one else present when Ms. St. Cyr, the paraprofessional who helped Ms. Antonovich, asked N.P. about his medication.

The next day, N.P. told Co-Principal Brown that Ms. Antonovich asks about his medication, and N.P.'s mother told Co-Principal Brown that Ms. Antonovich talked about N.P.'s medication in front of his class. Two days later, Co-Principal Brown opened an investigation, in which she interviewed Ms. Antonovich and other employees who potentially had information related to any disclosure of medical information by Ms. Antonovich. Co-Principal Brown also met with N.P.'s mother and expanded her investigation to include Nurse Demers and Nurse LaCasse after N.P.'s mother told her that they also had information related to Ms. Antonovich and N.P.

Co-Principal Brown determined that the complaint against Ms. Antonovich was unsubstantiated because Ms. Antonovich denied revealing N.P.'s private information and Ms. St. Cyr, who was also in Ms. Antonovich's classroom, stated she had not heard Ms. Antonovich mention N.P.'s medication in front of the class.¹³⁶ Both nurses told Co-Principal Brown that, because they were

¹³¹ *Id.*

¹³² *Id.*

¹³³ Interview with Sandy Schlegel, 4/19/2021.

¹³⁴ 504 Plan for N.P., 2019.

¹³⁵ Interview with Nurse Demers, 10/14/2020.

¹³⁶ Notes from Co-Principal Brown, 2/14/2020; Notes from Co-Principal Brown, 2/21/2020.

not present in Ms. Antonovich's classroom, they did not know when Ms. Antonovich asked about N.P.'s medication whether she did so in front of the class.¹³⁷

Principal Brown chose not to include children in the investigation due to privacy concerns and because of the lack of corroboration in the answers she received from the adults she interviewed.¹³⁸ Despite finding that the complaint was unsubstantiated, Co-Principal Brown allowed N.P. to finish the school year virtually with support from Mr. Smith after Ms. Poplar kept N.P. out of school until she knew he would not have to return to Ms. Antonovich's class.¹³⁹

Although each factual scenario is different, courts have given a variety of examples of when a school's conduct is or is not considered deliberate indifference. A court stated that an assistant director of special education for an elementary school was deliberately indifferent when she failed to investigate alleged abuse.¹⁴⁰ Another court stated that a school's failure to create an Individualized Education Program (IEP) for a student, who was then excluded from the school for almost his entire junior year and prevented from obtaining a sufficient number of credits to enable him to graduate on time, could qualify as deliberate indifference.¹⁴¹ Another court stated that a school employee ignoring someone's discriminatory comments to a student was tacit approval for the comments and showed deliberate indifference.¹⁴² Conversely, another court stated that, even when a school waited to resolve an issue for over eight months, that delay did not constitute deliberate indifference.¹⁴³

Here, Co-Principal Brown arguably could have looked into the situation surrounding what Ms. Antonovich said about N.P. and his medication after she talked to N.P. in October. Her failure to pursue the issue tacitly authorized Ms. Antonovich's inquiries about N.P.'s medication. In an even clearer instance, Co-Principal Brown tacitly authorized Ms. Antonovich's inquiries about N.P.'s medication when she chose not to take action in response to Nurse Demers' concerns, which were corroborated by video footage. Although Co-Principal Brown promptly investigated the complaint that Ms. Poplar initiated, her conclusion that the claim of misconduct by Ms. Antonovich was unsubstantiated appears to have been incorrect.

Although the deliberate indifference standard is a stringent one, the U.S. Supreme Court has stated that the burden of establishing a prima facie case is not onerous.¹⁴⁴ Ultimately, Ms. Poplar can show that Milton Middle School and Milton School District acted with deliberate indifference because Ms. Antonovich disregarded Nurse Demers' instructions that N.P.'s medical information was between the nurse's office and the student, and she continued to ask N.P. about his medication, including in front of the class. Although Co-Principal Brown eventually conducted an investigation and removed N.P. from Ms. Antonovich's class, she also tacitly authorized Ms. Antonovich's behavior when she failed to respond to the initial concern expressed by N.P. and the subsequent concern expressed by Nurse Demers.

¹³⁷ Notes from Co-Principal Brown, 3/24/2020.

¹³⁸ *Id.*

¹³⁹ Interview with Co-Principal Brown, 10/14/2020; interview with Ms. Poplar, 1/5/2021.

¹⁴⁰ Doe ex rel. Doe v. Darien Bd. Of Educ., 110 F. Supp. 3d 386, 408 (D. Conn. 2015).

¹⁴¹ Conway v. Bd. of Educ. of Northport-East Northport Sch. Dist., No. 13 Civ.5283, 2014 WL 3828383 at *18 (E.D.N.Y. Aug. 1, 2014).

¹⁴² Evesham Twp. Bd. of Educ., 710 F. App'x 545, 549 (3d Cir. 2017).

¹⁴³ Karasek v. Regents of University of California, 956 F.3d 1093, 1107 (9th Cir. 2020).

¹⁴⁴ Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).

Finding: The school acted with deliberate indifference.

Conclusion

Ms. Poplar provided sufficient evidence to establish a prima facie case of disability discrimination. Therefore, this investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that Milton Middle School and Milton Town School District discriminated against N.P. based on his disability in violation of the Vermont Fair Housing and Public Accommodations Act.

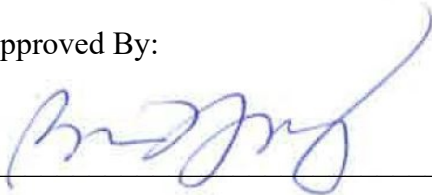


Cassandra Burdyslaw, Investigator

8/26/2021

Date

Approved By:



Bor Yang, Executive Director

8/26/2021

Date