

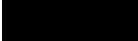


Mohammed Choudhury
State Superintendent of Schools

February 8, 2022





Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: 
Reference: #22-071

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On December 10, 2021, the MSDE received a complaint from Ms.  , hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures when disciplinarily removing the student from school since October 2021, in accordance with 34 CFR §§300.530-.536.
2. The MCPS did not follow proper procedures when determining the student’s educational placement in December 2021, in accordance with 34 CFR §§300.114 -.116.

BACKGROUND:

The student is eighteen (18) years old and is assigned to the [REDACTED]. He is currently under evaluation to determine his eligibility under the IDEA. He is eligible under Section 504 of the Rehabilitation Act of 1973 and has a plan (504 Plan) that requires the provision of accommodations in the general education program.

FINDINGS OF FACTS:

1. On October 8, 2021, the student was recommended for a disciplinary removal from school for a period of more than ten (10) days resulting from an “attack on adults.”
2. The Child Find referral dated October 13, 2021, reflects that the complainant and the school staff suspected that the student was a student with a disability under the IDEA and identified concerns related to his cognitive functioning and social and emotional behavior.
3. On October 14, 2021, the Individualized Education Program (IEP) team convened for a manifestation determination meeting because the IEP team suspected that the student may be a student with a disability under the IDEA. The team reviewed the student’s educational and disciplinary records, including attendance, teacher reports, current grades, previous psychological and educational testing, and student and parental input. Based on this review, the team determined that the student’s behavior was a manifestation of his suspected disability and recommended that the student return to school on October 15, 2021. The team also recommended reconvening for an IDEA evaluation meeting for the student on October 18, 2021.
4. On October 18, 2021, the IEP team convened to conduct an IDEA evaluation for the student. The IEP prior written notice reflects that the team reviewed the data from the manifestation determination meeting, and recommended that psychological and educational assessments, behavior rating scales, and a Functional Behavioral Assessment (FBA) be conducted on the student. The complainant provided consent for the assessments on October 26, 2021.
5. There is documentation reflecting that on November 9, 2021, portions of the psychological assessment were conducted with the student; however, the complainant had not returned the behavior rating scale portion of the assessment to the school staff, as requested.
6. The Parent Contact Log, dated November 12, and 30, 2021, reflects that the school staff contacted the complainant by electronic mail (email) to remind her to submit the behavior rating scales portion of the psychological assessment in order for the report to be completed.
7. On November 30, 2021, the student was recommended for a disciplinary removal from school for a period of two (2) days resulting from “disruption and a threat to an adult.”

8. There is documentation that on December 2, 2021, the complainant was notified by the MCPS staff that, due to the student's "serious nature of the incidents dating back to June 24, 2021," and because the school administration determined that the student was "unable to neither be safe nor non-disruptive in the school setting, he was being administratively placed" at the [REDACTED] [REDACTED].¹ The documentation also reflects that the student was scheduled to have an "intake meeting" with the Montgomery [REDACTED] [REDACTED] staff on December 3, 2021.
9. The MCPS Student Transfer and Administrative Placement Regulation (JEE-RE: January 7, 2019) states the following for an administrative placement initiated by the principal:

"Prior to initiating a request for an administrative placement, the principal and the pupil personnel worker assigned to the student's home school will review the student's educational, medical, and behavioral record and consider different school placements, and schedule a conference with the parent/guardian and the student. If an administrative placement is indicated, the following steps are implemented: a) after consulting with the principal and the appropriate area associate superintendent in the Office of School Support and Improvement (OSSI) as to the reason(s) for the administrative placement, the Director of Pupil Personnel and Attendance Services (DPPAS) will identify an appropriate school placement for the student. b) The pupil personnel worker will arrange any necessary conferences with the parent/guardian, student, principal of the receiving school, and the Office of Student and Family Support and Engagement (OSFSE) staff, as well as supply written confirmation of the placement, athletic eligibility, and athletic waiver process."
10. There is no documentation indicating that the complainant and the student participated in the intake meeting which was scheduled to be held with school staff on December 3, 2021.
11. The student's class schedule for the 2021 - 2022 school year at [REDACTED] High School and [REDACTED] reflects that he was enrolled in the general education classes with the provision of accommodations through a 504 Plan.
12. The [REDACTED] attendance log dated from December 3, 2021, reflects that the student has not participated in virtual instruction since being administratively transferred to the school.
13. An email correspondence dated December 7, 2021, between the MCPS Central Office staff and the school staff, reflects that attempts were made to arrange for the student to be assessed virtually; however, the parent was "not in agreement with the arrangement."

¹ [REDACTED] is a full-time virtual learning program for students in kindergarten to Grade 12. The [REDACTED] [REDACTED] is a centrally managed program that partners with students' home schools to provide the academic and social emotional support students need to access virtual instruction (<https://www2.montgomeryschoolsmd.org/schools/virtualacademy>).

14. An email correspondence dated December 22, 2021, from the MCPS staff to the complainant, reflecting that, based on the MCPS staff's understanding from their recent phone conversation, the complainant informed the school staff that the student would not participate in the in-person assessments due to her work schedule, and that she did not agree to have the student assessed virtually.
15. An email correspondence dated January 17, 2022, reflects that the MCPS staff met with the complainant to discuss how assessments could be conducted for the student. The correspondence reflects that the parties agreed to conduct in-person assessments for the student at a mutual location on February 3, 2022. However, there is no documentation indicating that the assessments have been completed.

DISCUSSION/CONCLUSIONS:

A student who has not been determined to be eligible for special education and related services under the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of knowledge: A public agency must be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred, (1) the parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services; (2) the parent of the student requested an IDEA evaluation of the student; or (3) the teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or to other supervisory personnel of the agency (34 CFR §300.534).

A student with a disability may be disciplinarily removed from school. However, after the tenth (10) day of disciplinary removal during the school year, a student with a disability must be provided with the services necessary to appropriately progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

Once a change in educational placement² occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require that the IEP team convene within ten business days of the removal to determine whether the student's behavior was a manifestation of the disability, and if so, develop, or review and revise, as appropriate, and existing BIP (34 CFR §§300.530, .536, and COMAR 13A.08.03).

If the student's behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agrees to a change in placement. If the student's behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary

² A disciplinary removal constitutes a change in educational placement if the student is removed for more than ten (10) consecutive school days or ten (10) cumulative school days in a school year, if those removals constitute a pattern of removal of the student (34 CFR §300.536).

during the period of removal in order to enable the student to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

Allegation#1: Disciplinary Procedures

Based on the Findings of Facts #1 - #4 and #7, the MSDE finds that, since October 2021, the student has not been removed from school for more than ten (10) days, and thus, the disciplinary procedures were not applicable in the instances of these removal, in accordance with 34 CFR §§300.530-.536. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: Placement Determination

The student's placement is determined at least annually, is based on the student 's IEP, and is as close as possible to the student 's home. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR §300.116).

A change in location is not always a change in placement. A placement is a point along the student's continuum of placement options while a location is the physical location where the child receives related services, such as a classroom. However, a change in location may constitute a change in placement if the change in location substantially alters the student's educational program (*Letter to Fisher*, 21 IDELR 992, [OSEP 1994]).

Based on the Findings of Facts #8 - #12, the MSDE finds that, although the student was in the process of being evaluated under the IDEA, which afforded him disciplinary protections under the IDEA, the administrative placement of the student at the [REDACTED] did not constitute a change in placement because the placement did not substantially alter the student's special educational program, in accordance with 34 CFR §§300.114 -.116. Therefore, this office does not find that a violation occurred with respect to the allegation.

ADDITIONAL DISCUSSION

Evaluation Timeline

The IEP team shall complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral.

The timeline for completion of the initial evaluation does not apply if the parent of the student repeatedly fails or refuses to produce the student for assessments (34 CFR §300.301 and COMAR 13A.05.01.06).

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Based on the Findings of Facts #2 - #6, and #13 - #15, the MSDE finds that the school system attempted to conduct an evaluation of the student which began on October 18, 2021. However, the parent of the student repeatedly failed or refused to produce the student for assessments in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred.

TIMELINE:

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention/Special Education Services

MEF:ac

c: Monifa B. Mcknight
Diana Wyles
Maritza Macias
[REDACTED]
Brian Morrison
Gerald Loiacono
Albert Chichester