



Mohammed Choudhury
State Superintendent of Schools

December 22, 2022

Ms. Megan Berger
Assistant Managing Attorney
1500 Union Ave. Suite 2000
Baltimore, Maryland 21211

Ms. Sonya McElroy
Co-Director of Special Education
Anne Arundel County Public Schools
1450 Furnace Avenue
Glen Burnie, Maryland 21060

RE: [REDACTED]
Reference: #23-072

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 October 26, 2022, the MSDE received a complaint from Ms. Megan Berger, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and Ms. [REDACTED]. In that correspondence, the complainant alleged that Anne Arundel County Public Schools (AACPS) 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 AACPS did not follow proper procedures when disciplinarily removing the kindergarten student during the 2021- 2022 school year in accordance with COMAR 13A.08.01.11(C)(1)(b).
2. The AACPS did not follow proper procedures when disciplinarily removing the student during the 2021- 2022 school year, in accordance with 34 CFR §300.530.

BACKGROUND:

The student is seven (7) years old, and since April 5, 2022, has been identified as a student with an Emotional Disability under the IDEA. He attends [REDACTED] School. During the 2021-2022 school year, the student attended [REDACTED] School. He has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. During the 2021-2022 school year, from October 25, 2021, to June 6, 2022, the student was disciplinarily removed from school on the following dates:
 - One day on October 25, 2021, for Disrespect Toward Others;
 - One day on November 5, 2021, for an Attack on Adult;
 - One day and a half on December 2, 2021, for an Attack on Adult;
 - One day on December 16, 2021, for an Attack on Student;
 - One day on January 5, 2022, for an Attack on Student;
 - Three days and a half on February 14, 2022, for an Attack on an Adult;
 - Half day on March 29, 2022, for Unsafe Action;
 - One day on April 28, 2022, for Unsafe Action;
 - One day on May 16, 2022, for an Attack on Adult; and
 - One day on June 6, 2022, for an Attack on Adult.
2. On February 23, 2022, a special education teacher submitted a child find referral to the AACPS Division of Special Education.
3. On March 3, 2022, the IEP team held a meeting with the student's parents to review available student data and determined that additional assessments were necessary to complete the evaluation of the student.
4. There is documentation that the student's parent provided consent for the recommended assessments on March 8, 2022.
5. On April 5, 2022, the IEP team met to review the assessment information and determine eligibility under the IDEA. The IEP team reviewed the academic, psychological, and academic observation assessments completed for the student. Based on formal assessments, informal assessments data, classroom teacher reports, behavioral data, and observations, the team determined that the student meets the eligibility criteria for Emotional Disability under the IDEA, and as a result, requires specialized instruction in the areas of "behavior" and "learning behaviors".
6. On May 11, 2022, the IEP team met and developed the student's initial IEP.
7. On May 17, 2022, following an incident on May 16, 2022, where the student "attacked an adult", a Manifestation Determination Review (MDR) meeting was held by the IEP team to determine if the student's conduct was a manifestation of his disability. The IEP team determined that the behavior was a manifestation of the student's disability and that he would return to the placement from which he was removed.
8. On June 7, 2022, following an incident on June 6, 2022, in which the student was disciplinarily removed for an "Attack on an Adult", the IEP team convened to determine if the student's conduct was a manifestation of his disability. The IEP team determined that the behavior was a manifestation of the student's disability and that he would return to the placement from which he was removed.
9. There is no documentation of a school official engaging mental health professionals to determine if the student's behaviors presented an imminent threat of serious harm to himself, staff, or other students that could not be mitigated through other means other than suspension.

DISCUSSION/CONCLUSIONS:

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).

In addition, once a change in educational placement occurs for a student with a disability as a result of disciplinary removal, State and federal regulations require that the IEP team convene within ten (10) 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 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 the public agency agree 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 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 REMOVAL OF KINDERGARTEN STUDENT

Based on Findings of Facts #1 - #9, the MSDE finds that the AACPS did not follow proper procedures when disciplinarily removing the kindergarten student during the 2021- 2022 school year in accordance with COMAR 13A.08.01.11(C)(1)(b). Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: MANIFESTATION PROCEDURE

Based on Findings of Facts #1 - #9, the MSDE finds that the AACPS was not required to make MDR determinations following disciplinary removals of the student during the 2021- 2022 school year, in accordance with 34 CFR §300.530. Therefore, this office finds that a violation did not occur with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR§300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

The MSDE requires the AACPS to provide documentation by February 1, 2023, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violations identified above and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The AACPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

Similarly Situated Students

The AACPS is required to determine whether there are any other students with disabilities whose rights were violated in the Prohibition of Suspension and Expulsion for Prekindergarten to Second-grade students eligible under the IDEA. If there are other similarly situated students, AACPS must convene an IEP team meeting to determine appropriate compensatory services to address the violation. The compensatory service plans, if any, must be delivered within a year of the date of this Letter of Findings.

The MSDE requires the AACPS to provide documentation by February 28, 2023, of a plan that includes a timeline in which the AACPS must provide training /professional development to all appropriate staff members regarding the provisions of Maryland law to prevent any future unlawful suspensions.

The AACPS must ensure that staff has access to a school psychologist or other mental health provider trained on the provisions of Maryland law related to disciplinary removals, who can respond to behavior incidents, including those involving students in grades prekindergarten through fifth grade, and a method for documenting the consultation between the mental health professional and administration to determine whether there are additional strategies to intervene with the student's behavior prior to suspension.

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.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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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

MF/sj

c: Mark T Bedell
Diane McGowan
[REDACTED]
Gerald Loiacono
Diane Eisenstadt
Stephanie James