



Mohammed Choudhury  
State Superintendent of Schools

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Ms. Brandy Brady  
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7982A Tawes Campus Dr.  
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RE: [REDACTED]  
Reference: #22-188

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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.

**ALLEGATION:**

On May 26, 2022, the MSDE received a complaint from Ms. Megan Berger hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Somerset County Public Schools (SCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the SCPS did not follow proper procedures when disciplinarily removing the student from school, during the 2021-2022 school year, as required by 34 CFR §300.530 and COMAR 13A.05.01.10.

**BACKGROUND:**

The student is eighteen years old and prior to graduating at the end of the 2021-2022 school year was identified as a student with an emotional disability under the IDEA. During the time that the

student was eligible under the IDEA, he had an IEP that required the provision of special education instruction. During the time period covered by the investigation, the student attended [REDACTED] and [REDACTED] School and [REDACTED] School.

**FINDINGS OF FACTS:**

1. During the 2021-2022 school year, prior to February 22, 2022, the student was disciplinarily removed from school on the following dates:
  - Half of a day on September 2, 2021, for a verbal altercation;
  - One day on September 17, 2021, for leaving his space and disrupting class;
  - One day on October 1, 2021, for disrespect towards staff;
  - Two days on October 7, 2021, for possession of cigarettes and lighters;
  - Two-and-a-half days on October 18, 2021, for possession of a knife;
  - One-and-a-half days on November 8, 2021, for possession of a lighter and disrespect towards staff;
  - Nine days on November 10, 2021, for disrupting a class and threatening staff;
  - One-and-a-half days on December 8, 2021, for leaving his space and assaulting peers; and
  - Half a day on January 26, 2022, for assaulting a peer.
2. Following the December 8, 2021, disciplinary removal, the IEP team met to determine if the student's conduct was a manifestation of the student's disability. The IEP team determined that it was not, and that the student would be placed in an alternative placement until January 27, 2022.
3. On February 1, 2022, the student returned to his educational placement. The IEP team determined that the student would receive his instruction in the general education setting with "occasional pull out time for his small group, extended time, frequent break accommodations"
4. On February 23, 2022, the student was disciplinarily removed from school for threatening to assault a staff member. In correspondence to the student's parent, the SCPS indicated that the student would be "suspended for 10 days" and proposed that the student be subject to "expulsion from school".
5. On March 4, 2022, the IEP team determined that the student's behavior on February 23, 2022, was a manifestation of his disability. The IEP team did not indicate at the time that the student would be returning to his educational placement, and instead stated that a "threat assessment" would be completed for the student before he could return to his educational setting.

6. On March 10, 2022, the SCPS completed a threat assessment tool for the student identifying him as an "imminent threat".
7. On March 21, 2022, following the completion of the threat assessment tool, the IEP team met for the student to discuss his educational placement. During the IEP team meeting, SCPS staff informed the parent that the student would be "administratively" transferred to his vocational school where he would attend his vocational classes in person and receive his academic instruction virtually.
8. While there is documentation that the student received some of the services required by his IEP between February 23, 2022, and March 21, 2022, there is no documentation that the student was provided the services required by his IEP prior to March 21, 2022.
9. There is no documentation that the student was offered the special education services and support following the March 21, 2022 IEP team meeting.
10. The student graduated at the end of the 21-22 school year.

#### **DISCUSSION/CONCLUSIONS:**

A student with a disability may be disciplinarily removed from school. However, after the tenth 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 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 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 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).

The instructional setting for the provision of educational services to a student who has been disciplinarily removed from school may not be a student's home; this is because placement in the home is the most restrictive environment along the continuum of placements because it does not

permit instruction to take place with other students. In Maryland, an educational placement in the student's home is only appropriate if a school psychologist, licensed physician or psychiatrist provides verification that a student is unable to attend school due to a physical or emotional condition (COMAR 13A.05.01.10).

School personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the State or the local education agency,
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the State or the local education agency, or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the State or the local education agency. (34 CFR § 300.530)

The IDEA neither requires nor prohibits the use of "threat assessment" tools to aid school administration in determining the disciplinary steps necessary to address violations of codes of conduct. The use of these tools however, may not be used in a fashion that would violate the rights of students under the IDEA. To the contrary, the IDEA requires that the rights of students with disabilities be protected during the time period in which information is collected to complete the "threat assessment" tool including providing appropriate services to students in the setting required by their IEP. (*Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Procedures* U.S. Department of Education, Office of Special Education and Rehabilitative Services, July 19, 2022).

Based on Findings of Facts #1 to #9, the MSDE finds that the SCPS did not ensure that the student was returned to his educational setting following the determination that the student's conduct that led to his removal from school on February 22, 2022, was a manifestation of his disability.

#### **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.

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The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required 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.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

### **Student-Specific**

The MSDE requires the SCPS to provide documentation by September 1, 2022, that it has offered the student compensatory services or another remedy to redress the violation identified above. In this case, the student has received a high school diploma. Therefore, the student will no longer be eligible for special education and related services at that time. However, the student is entitled to compensatory services to remedy the loss of appropriate services for a one (1) year period.

The United States Department of Education, Office of Special Education Programs (OSEP) has addressed the remedies for violations of the IDEA that relate to the provision of compensatory education to students who are no longer eligible under the IDEA. In Letter to Riffel, the OSEP stated that “a student’s graduation with a regular high school diploma would not, in our view, relieve a school district of its obligation to provide compensatory education to remedy a denial of a FAPE” (33 IDELR 188). Compensatory services often are appropriate as a remedy even after the period when a student is otherwise entitled to receive a FAPE because, like a FAPE, compensatory education can assist a student in the broader educational purposes of the IDEA, including obtaining a job or living independently.

In this case, the compensatory services would be implemented as a remedy for the loss of services. When considering the compensatory services required to redress the loss of appropriate services during this time period, the school system and the parent may consider alternative methods to redress the loss of appropriate services to the student. The alternative

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<sup>1</sup> 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.

<sup>2</sup> 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.

