



Mohammed Choudhury
State Superintendent of Schools

January 6, 2023



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

RE: [REDACTED]
Reference: #23-084

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 November 9, 2022, MSDE received a complaint from Ms. [REDACTED] the “complainant,” on behalf of her son. 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.

MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures when disciplinarily removing the kindergarten student since July of 2022, in accordance with COMAR 13A.08.01.11(C)(1)(b).
2. The MCPS has not ensured that the student has been consistently provided with special education supports as required by the Individualized Education Program (IEP) since July of 2022, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged that the student is not provided with adult support and proper accommodations.

BACKGROUND:

The student is five (5) years old and is identified as a student with an Emotional Disability under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP, in effect at the start of the 2022-2023 school year, was developed on May 23, 2022, and was amended on July 20, 2022, by the IEP team, as the student transitioned from a Preschool Education Program (PEP) itinerant program within his private preschool setting into a general education kindergarten setting. The amended IEP reflects identified needs in the areas of Early Learning Skills in Language and Literacy, Early Learning Skills in Math, and Early Learning Skills in Social Foundations. The IEP includes goals to address those needs, as well as supplemental aids, supports, and instructional accommodations. The IEP team determined that the student required thirty (30) hours per week of special education services in the general education environment due to concerns for safety and to account for the level of support needed in the school building, during instruction, independent work, transitional times, activities, lunch, specials, and recess.
2. The IEP requires that the student be provided with the following supports on a daily basis: "The IEP and classroom staff will closely supervise the student during the school day across all settings, particularly during transitions and unstructured activities outside the classroom, such as walking to and from the bus and on the playground. Adults should hold the student's hand during these transitions to prevent him from leaving the area and keep him safe."
3. On August 23, 2022, the student was suspended for one day for exhibiting "unsafe behaviors." While there is documentation of the parent receiving written notice of the incidents that occurred with a date and time for a re-entry meeting following the student's suspension, there is no documentation of school staff consulting with mental health professionals prior to suspending the student.
4. There is documentation the school staff completed a Functional Behavioral Assessment (FBA) for the student on September 14, 2022, due to his demonstration of behavior challenges that included leaving the learning environment (elopement), physical aggression, and vocal outbursts which impacted his availability for learning and the learning of others.
5. There is documentation that the school staff developed a Behavior Intervention Plan (BIP) for the student on September 21, 2022.
6. On September 27, 2022, the student was suspended for two (2) days for being "physically aggressive" and engaging in "destructive behaviors." While there is documentation of the parent receiving written notice of the incidents that occurred with a date and time for a re-entry meeting following the student's suspension, there is no documentation of school staff consulting with mental health professionals prior to suspending the student.
7. On October 3, 2022, the IEP team convened to revise the student's BIP, first developed on September 21, 2022. The team proposed to update the crisis plan within the BIP, to reflect the supports and processes that will take place when the student requires support. The team proposed to revise the prevention strategies for the following behaviors:
 - Leaving designated learning locations;
 - Physical aggression; and
 - Vocal outbursts.
8. There is documentation that the complainant's "presence was requested to help de-escalate the student's behavior" at school when in crisis, throughout the school year.

9. On October 7, 2022, the student was suspended for three (3) days for exhibiting “physically aggressive behaviors toward staff and students.” While there is documentation of the parent receiving written notice of the incidents that occurred with a date and time for a re-entry meeting following the student’s suspension, there is no documentation of school staff consulting with mental health professionals prior to suspending the student.
10. Although there is documentation that the school staff developed a “Support Schedule” during the 2022-2023 school year, with staff assigned to assist the student throughout the day in all areas daily, the student continued to elope from the classroom during this time.
11. There is documentation that a visual schedule and behavior expectations were provided to the student during the 2022-2023 school year.
12. There is documentation that the student had access to a visual board for the student to pick alternate learning locations during the 2022-2023 school year.
13. There is documentation that a collection of materials for, “preferred” and “curricula” was created and offered within the student’s selected learning location during the 2022-2023 school year.
14. There is documentation that visual “common body expectations” and “common language” cards were provided to the student during the 2022-2023 school year.
15. There is documentation that the student was provided with the use of a “Mindful Room Schedule” and that a teacher was assigned to assist him with the schedule.
16. There is documentation that the student was provided with the use of a “Calm Corner” with visual expectations and examples of how to calm his body during the 2022-2023 school year.
17. There is documentation of social stories created for the student during the 2022-2023 school year.
18. There is documentation of modified tasks and activities that reflected grade-level curricular lessons that were provided to the student during the 2022-2023 school year.

DISCUSSION/CONCLUSIONS:

ALLEGATION #1 DISCIPLINARY REMOVALS OF THE STUDENT

With few exceptions, Maryland law prohibits the suspension or expulsion of a child enrolled in a public prekindergarten program or in kindergarten, first or second grade without first consulting with a school psychologist or other mental health professional, to determine that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports (COMAR 13A.08.01.11).

In order to ensure proper student records management, the local public agencies in Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.09). The Maryland Student Records System Manual (2020) requires the local school system to maintain school discipline records, including information, which verifies and/or supports the suspension or expulsion of a student. This includes documentation of the consultation between school administration and a

school psychologist (or other mental health professional) to determine that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports.

In this complaint, the complainant alleges that the MCPS did not ensure that school officials consulted with a school psychologist or other mental health professional to assess the threat posed by the student's behavior and to reduce or eliminate that harm without suspending them. Based on the Finding of Facts #3-7 and #9, MSDE finds that there is no documentation that the MCPS followed proper procedures prior to the disciplinary removals of the student since during the 2022-2023 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 PROVISION OF SPECIAL EDUCATION SUPPORTS

Based on the Findings of Facts #2, #10- #18, MSDE finds that the MCPS has ensured that the student has been consistently provided with special education support as required by the Individualized Education Program (IEP) since July of 2022, in accordance with 34 CFR §§300.101 and .323. 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to ensure that it completes the required actions consistent with 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. Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE required the MCPS to provide documentation by February 28, 2023, that the IEP team has convened and determined whether the violation related to the student's disciplinary removal had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings. The MCPS must ensure that the complainant is provided with written notice of the team's decisions.

School and System Based

MSDE requires the MCPS to conduct an audit at [REDACTED] School to determine if there are similarly situated students with IEPs, and provide documentation to MSDE by March 31, 2023, of the results of the audit. Further, the MCPS must inform MSDE of the steps taken to ensure that the violation does not recur at [REDACTED] School.

Additionally, the MCPS must:

1. Ensure that the MCPS' administrators have regular and prompt access to a school psychologist, trained on the provisions of the Maryland law, who can respond to behavior incidents, including those involving students in grades prekindergarten through second grade.
2. Provide training for the MCPS' administrators and related staff on the provisions of Maryland law to prevent any future unlawful suspensions for students in prekindergarten through second grade.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC/sj

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