



February 3, 2023

Mr. Levi Bradford, Esquire
Ms. Monisha Cherayil, Esquire
Public Justice Center
201 N. Charles Street
Suite 1200
Baltimore, Maryland 21201

Ms. Trinell Bowman
Associate Superintendent-Special Education
Prince George's County Public Schools
John Carroll Administration Building
1400 Nalley Terrace
Hyattsville, Maryland 20785

RE: [REDACTED]
Reference: #23-107

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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 December 6, 2022, MSDE received a complaint from Mr. Levi Bradford and Ms. Monisha Cherayil, hereafter, "the complainants," on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Prince George's County Public Schools (PGCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements with respect to the above-referenced student.

MSDE investigated the allegation that the PGCPS did not follow proper procedures when disciplinarily removing the student from school on April 28, 2022, and June 9, 2022, in accordance with 34 CFR §§300.530, COMAR 13A.08.02, COMAR 13A.08.03, 13a.08.01.11¹, and the Maryland Student Records System Manual.

BACKGROUND:

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

¹ This citation was erroneously omitted from the allegation as identified in the December 15, 2022 correspondence to the parties.

FINDINGS OF FACTS:

1. On April 28, 2022, the student, who at that time was in the second grade, was suspended for three days for violating the student code of conduct. The "Notice of Student Suspension" form, generated following the incident, reflects that the student was suspended for "classroom disruption, elopement, attack on an adult, physically attacking an adult including striking a staff member and destruction of property." The form also reflects the following procedures were utilized prior to the suspension:

"Guidance procedures"

- Teacher/Parent Conference or Contact
- Teacher/Counselor Conference
- Teacher/Administrator Conference
- Counselor/Student Conference

"Administrative procedures"

- Administrator/Student Conference

2. The documentation reflects that the school staff attempted unsuccessfully to reach the school psychologist during the incident. A school guidance counselor was available and attempted to calm the student during the incident. However, there is no documentation that the school administration consulted with a school psychologist or other mental health professional in order to determine if there was an imminent threat of serious harm to students or staff that could not be eliminated with the use of interventions or supports prior to deciding to suspend the student.

4. On June 9, 2022, the student was suspended for seven days. The June 9, 2022, "Notice of Student Suspension" form reflects that the student was suspended due to "classroom disruptions, destruction of property, spitting on staff/attempted attack on adults." The form also reflects the following procedures were utilized prior to the suspension:

"Guidance procedures"

- Teacher/Student
- Teacher/Parent Conference or Contact
- Teacher /Administrator Conference
- Counselor/Student Conference

"Administrative procedures"

- Administrator/Student Conference
- Administrator/Parent Conference

There is no evidence that the school administration consulted with a school psychologist or other mental health professional in order to determine if there was an imminent threat of serious harm to student or staff that could not be eliminated with the use of interventions or supports on June 9, 2022.

5. On June 15, 2022, the IEP team met to review the safety plan and discuss the student's return from suspension. The Prior Written Notice reflects that the student's seven day suspension was not warranted and that the student could return to school after serving five days of the suspension.

DISCUSSION/CONCLUSIONS:

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. Maryland law further prohibits the suspension of students in second grade or below for more than five days unless required by federal law (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.

The complainants alleged that the PGCPs 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. The complainants further alleged that the PGCPs violated state law by proposing a suspension of a first grade student for more than five days.

Based on Findings of Facts #1- #5, MSDE finds that the PGCPs did not follow proper procedures when disciplinarily removing the student from school on April 28, 2022, and June 9, 2022, in accordance with 34 CFR §§300.530, COMAR 13A.08.02, COMAR 13A.08.03, and the Maryland Student Records System Manual when it failed to ensure that the school administration consulted with a school psychologist or other mental health professional and proposed a suspension of the student for more than five days. Therefore, this office finds that a violation occurred with respect to this allegation. Notwithstanding that violation, MSDE further finds that based on Finding of Fact #5, the student was not required to serve the seven day suspension proposed on June 9, 2022; therefore, no additional student based corrective action is required to address this aspect of the violation.

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.² 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.

² 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, 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.

Mr. Levi Bradford, Esquire
Ms. Monisha Cherayil, Esquire
Ms. Trinell Bowman
February 3, 2023
Page 4

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.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

MSDE requires the PGCPs to provide documentation by March 15, 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 PGCPs must ensure that the complainants are provided with written notice of the team's decisions.

The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School and System Based

MSDE requires the PGCPs to conduct an audit at [REDACTED] School, to determine if there are similarly situated students with Individualized Education Programs (IEPs), and provide documentation to MSDE by May 1, 2023, of the results of the audit. Further, the PGCPs must inform MSDE of the steps taken to ensure that the violation does not recur at [REDACTED] School.

Additionally, the PGCPs must:

1. Ensure that the PGCPs' administrators have regular and prompt access to a school psychologist or other mental health professional, 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 PGCPs' 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Mr. Levi Bradford, Esquire
Ms. Monisha Cherayil, Esquire
Ms. Trinell Bowman
February 3, 2023
Page 5

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

DMC/ra

c: Monica Goldson
Darnell Henderson
Keith Marston
Henry Johnson
Diane Eisenstadt
Gerlad Loiacono
Rabiatu Akinlolu