



June 17, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Dr. Kathrine Pierandozzi
Executive Director of Special Education
Baltimore County Public Schools
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: [REDACTED]
Reference: #22-136

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.

ALLEGATIONS:

On April 21, 2022, the MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) 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 BCPS did not follow proper procedures when disciplinarily removing the student from school, since January 2022, as required by 34 CFR §300.530 and COMAR 13A.05.01.10.
2. The BCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his social/emotional needs since January 2022 in accordance with 34 CFR §300.324.

BACKGROUND:

The student is eighteen (18) years old and is currently assigned to home and hospital teaching (HHT). He is identified as a student with an Other Health Impairment (OHI) under the IDEA and has an IEP that requires the provision of special education instruction.

FINDINGS OF FACTS:

1. The student's IEP, in effect in January 2022, was developed on September 22, 2021. The IEP requires that the student be provided with four (4) hours and fifteen (15) minutes of specialized instruction each week.
2. There is documentation that the school staff were in communication with the parent during the beginning of the 2021-2022 school year regarding the student's conduct in class and behavior.
3. On January 24, 2022, the parent contacted the school staff requesting an "urgent" IEP meeting to discuss the student's behavior and academic performance.
4. On January 26, 2022, the student was involved in a fight at his school. The BCPS determined that the student would be suspended for more than ten days.
5. On January 31, 2022, the IEP team met to conduct a manifestation meeting for the student. The IEP team determined that the student's behavior was not a manifestation of his disability and determined that he could be disciplinarily removed from his educational setting.
6. On February 7, 2022, the student began attending the Rosedale Center, an alternative educational setting.
7. On March 23, 2022, the student was referred for a long-term suspension as a result of theft and behavior on the school bus. He was proposed for a long-term suspension exceeding ten (10) days.
8. On March 28, 2022, the IEP team met to conduct a manifestation determination for the student. The IEP team determined that the conduct was not a manifestation of his disability and determined that the student could be removed from his educational setting.
9. Following the student's suspension, the BCPS disciplinary hearing officer determined that the student would be "assigned to the home teaching program".

10. There is no documentation that the student has consistently been provided with the educational services required by his IEP since he was removed from the Rosedale Center.
11. There is no documentation that the IEP team has met for the student to review and revise the student's IEP, or Behavior Intervention Plan (BIP) to consider positive behavioral interventions following the student's disciplinary issues.

DISCUSSION/CONCLUSIONS:

Allegation #1

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten (10) school days for each incident that results in disciplinary removal. In Maryland, for each period of removal after a student with a disability has been removed for the cumulative equivalent of ten (10) school days in a school year, school personnel must consult with at least one (1) of the student's teachers to determine what services to provide to enable the student 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 or a student with a disability as a result of a 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, an 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).

In accordance with COMAR 13A.05.01, the instructional setting for the provision of educational services to a student who has been removed from school may not be a student's home. 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).

Based on Findings of Facts #4-#10, the MSDE finds that while the IEP team met to determine that the student's conduct was not a manifestation of his disability following the decision to disciplinarily remove the student from his educational setting, the BCPS did not follow proper procedures when assigning the student to his home and has not ensured that the student was provided with appropriate services following his removal, in accordance with 34 CFR §300.530 and COMAR 13A.05.01.10. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

Allegation #2

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts, #1-#11, the MSDE finds that the IEP team has not met to review and revise the student's IEP, as appropriate, to consider the need for positive behavior supports and to address the parent's concerns related to the student's behavior. Therefore, the MSDE finds that a violation occurred 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 actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

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.

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 BCPS to provide documentation by October 1, 2022, of the following:

- a. That the student is being provided with the services required by his IEP.
- b. That the IEP team has convened for the student to determine his appropriate educational setting.
- c. That the IEP team has convened to determine the services needed to remediate the violations identified in this investigation.

The BCPS 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.

School-Based

The MSDE requires the BCPS to provide documentation by December 1, 2022, that staff at the student's home school and the alternative education setting properly implement the provisions of the IDEA related to addressing parent's concerns and the need for behavioral interventions for students eligible under the IDEA.

System-Based

The MSDE requires the BCPS to provide documentation by December 1, 2022, to ensure that staff responsible for making disciplinary decisions properly implement the requirements of the IDEA and state law with respect to disciplinarily removing students with disabilities from their educational settings. The MSDE also requires the BCPS to review the student records of all students disciplinarily placed in a home teaching program and provide documentation by December 1, 2022, that no students identified as receiving special education services have been placed in that setting.

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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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:gl

c: Darryl L. Williams
Conya Bailey
Jason Miller
Charlene Harris
Alison Barmat
Gerald Loiacono
Diane Eisenstadt