



Mohammed Choudhury
State Superintendent of Schools

August 19, 2022

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Dr. Tia McKinnon
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Charles County Public School System
P.O. Box 2770
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RE: [REDACTED]
Reference: #22-196

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.

ALLEGATION:

On June 22, 2022, the MSDE received a complaint from Ms. Monisha Cherayil, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public School System 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 CCPS 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 six years old and is identified as a student with a Developmental Delay under the IDEA. She attends [REDACTED] School. Prior to April 7, 2022, she attended [REDACTED] School. She has an Individual Education Plan (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 2021-2022 school year, in which she was enrolled in kindergarten, was developed on April 13, 2021. The IEP required the student to receive three and a half hours of specialized instruction in the general education setting.
2. On September 29, 2021, the IEP team met to review/ revise the student's IEP. The IEP team determined that the student would receive four hours and fifteen minutes per week of specialized instruction. To address the student's behavioral needs, the IEP team recommended that the student receive the following additional behavioral supports: frequent and/or immediate feedback, frequent breaks, positive/concrete reinforcers, home-school communication, and check-in/out (I.e. reviewing coping strategies, changes in procedures, reviewing schedule).
3. On January 13, 2022, the IEP team met to consider the need for an evaluation of the student. The IEP team recommended that a psychological, Functional Behavioral Assessment (FBA), speech language and academic assessment be conducted for the student.
4. On March 31, 2022, the IEP team met to review and revise the student's IEP, as appropriate, to conduct an annual review of the student's IEP. The IEP team determined that the student would receive seven hours and thirty minutes per week of specialized instruction inside the general education setting and ten hours per week of specialized instruction outside of the general education setting.
5. From September 2021 to April 2022, the student received 24 "minor" behavioral referrals resulting in office referrals and "removal from class temporarily". Behavioral reports prepared for the student during this time indicated that the parent was called multiple times for conversations to assist with behavior incidents for a parent-teacher conference.
6. On April 4, 2022, the student was administratively transferred to her home school, "due to the approval being contingent on the student adhering to all school rules pertaining to academics, behavior, and attendance".
7. On April 5, 2022, the guardian of the above-referenced student submitted a "Request for Withdrawal From School Form" to Charles County Public Schools to effectuate the student's transfer to her home school.
8. On April 7, 2022, the student was enrolled and was present at [REDACTED] School.
9. On April 8, 2022, the student was absent from school and marked unexcused. There is no documentation as to why the student was absent. School staff report that the student's parent was informed that the student could start attending school on Monday, April 11, 2022.

CONCLUSIONS:

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 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

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ten (10) school days in a school year, school personnel must consult with at least one 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 for a student with a disability as a result of 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).

In order to ensure that students are provided with the disciplinary protections of the IDEA, the public agency must maintain accurate student records, including discipline data, in accordance with the Maryland Student Records System Manual (COMAR 13A.08.02.04).

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 this complaint, the complaint alleges that CCPS did not follow proper procedures when disciplinarily removing the student from school, during the 2021-2022 school year and that student's grandmother was asked to take the student home from school when her behavior was an issue.

Based on Findings of Facts #1 to #9, the MSDE finds that there is no documentation that the CCPS required that the student's grandmother remove the student from school following a disciplinary incident. However, based on the Findings of Facts #6 to #9 the MSDE finds that, based on concerns regarding the student's behavior, the CCPS staff requested that the student not attend school immediately upon their transfer to the new school, that these absences were not documented as disciplinary removals, in accordance with COMAR 13A.08.02.04 and 34 CFR §300.530. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

The MSDE further finds, based on Findings of Facts #1 to #9 that there is no documentation that the CCPS ensured that the administration at the student's school consulted with a psychologist or other health professional to determine that there was an imminent threat of serious harm to other students or staff that could not be reduced or eliminated through interventions and supports. Therefore, this office finds that a violation occurred with respect to this aspect of the 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. 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. Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

The MSDE requires the CCPS to provide documentation by November 1, 2022, of the following actions:

- a. That the IEP team has convened to review FBA results and if a Behavioral Intervention Plan is required for the student.
- b. That the IEP team has convened to determine the student's present level of functioning and performance related to her behavior and indicate how the student's progress for improving her skills in this area will be measured.
- c. 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.
- d. Ensured maintenance of the student's educational record with respect to disciplinary removals.

The CCPS 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 CCPS to provide documentation by December 1, 2022, of the steps taken to ensure that the violation does not recur at [REDACTED] School and [REDACTED] School.

Additionally, the CCPS must ensure that staff at the student's current and prior school have 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.

Further, the CCPS must train staff at the student's current and prior school on the provisions of Maryland law related to disciplinary removals to prevent any future unlawful suspensions.

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 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

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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: Maria Navarro
Tia McKinnon
LeWan Jones
[REDACTED]
Alison Barmat
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