



Mohammed Choudhury  
State Superintendent of Schools

August 19, 2022

Ms. Monisha Cherayil, Esq.  
201 N Charles Street  
Suite 1200  
Baltimore, MD 21201

Dr. Tia McKinnon  
Director of Special Education  
Charles County Public School System  
P.O. Box 2770  
La Plata, MD 20646

RE: [REDACTED]  
Reference: #22-197

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 eight years old and is identified as a student with an Other Health Impairment under the IDEA. He attends [REDACTED] School. Prior to April 7, 2022, he attended [REDACTED] School. He 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 2021-2022 school year was developed on September 22, 2020, in which he was enrolled in second grade. The IEP required the student to receive five hours of specialized instruction in the general education setting and two hours outside 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 32.5 hours per week of specialized instruction. To address the student's behavioral needs, the IEP team considered input from a behavioral specialist. In response to this input, the IEP team recommended that the student receive additional reinforcement when not sleeping, small group setting, 1:1 attention, and positive praise in the classroom setting.
3. On February 3, 2022, the IEP team met to update the student's IEP and discuss compensatory services. His present levels of performance noted that the student's difficulties with attention impacted his participation in the general education setting. The general education teacher also stated that the student does not display the same disruptive behavior as he did at the beginning of the school year and his academic performance also increased.
4. From September 2021 to April 2022 the student received 16 behavioral referrals including six "major" and six "minor" offenses, resulting in five office referrals since February of 2022 at [REDACTED] School. Behavioral reports prepared for the student during this time indicated that the parent was called multiple times for conversations to assist with behavior incidents or for a parent-teacher conference.
5. On April 4, 2022, the student was administratively transferred to his home school, "due to the approval being contingent on the student adhering to all school rules pertaining to academics, behavior, and attendance".
6. 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 his home school.
7. On April 7, 2022, the above-referenced student was enrolled and was present at [REDACTED] School.
8. 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.
9. On April 29, 2022, the IEP team met with the guardian to propose a Functional Behavioral Assessment (FBA) in order to develop a Behavior Intervention Plan (BIP) due to noncompliance in following teacher directions, completing academic assignments, difficulty regulating his emotions, and aggressive behaviors towards his peers. The IEP team added the use of a behavioral chart as a supplementary aid to target aggressive behaviors towards peers and to aid in following directions.

#### **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 ten 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).

Ms. Monisha Cherayil, Esq.  
Dr. Tia McKinnon  
August 19, 2022  
Page 3

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 his behavior was an issue.

Based on Findings of Facts #7 and #8, 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 FOF #7 and #8 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 FOF #1 to #8 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](mailto:diane.eisenstadt@maryland.gov).

### **Student-Specific**

The MSDE requires the CCPS to provide documentation by November 1, 2022, that the IEP team has taken the following actions:

- a. Provide documentation that the IEP team has convened to review FBA results and a BIP has been created. The BIP is to be reviewed quarterly or sooner if applicable;
- b. Provide documentation that the IEP team has convened to determine the student's present level of functioning and performance related to his behavior and indicate how the student's progress for improving his skills in this area will be measured;
- c. Ensured maintenance of the education record with respect to disciplinary removals; and
- d. 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 CCPS must also ensure that the IEP team considers the difference between the student's present and expected levels of performance when determining the services needed to remediate the violations. 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.

Ensure that all CCPS administrators have regular, prompt access to a school psychologist, trained on the provisions of Maryland law, who can respond to behavior incidents, including those involving students in grades prekindergarten through fifth grade.

Train all CCPS administrators on the provisions of Maryland law to prevent any future unlawful suspensions – including send-homes following behavioral infractions for all students.

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.

Ms. Monisha Cherayil, Esq.

Dr. Tia McKinnon

August 19, 2022

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. 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:sj

c: Maria Navarro  
Tia McKinnon  
LeWan Jones  
[REDACTED]  
Alison Barmat  
Diane Eisenstadt  
Stephanie James