



Mohammed Choudhury  
State Superintendent of Schools

November 2, 2022

Ms. Megan Berger  
Assistant Managing Attorney  
Disability Rights Maryland  
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Ms. Terri Savage  
Executive Director of Special Education  
Howard County Public Schools  
10910 Clarksville Pike  
Ellicott City, Maryland 21042

RE: [REDACTED]  
Reference: #23-035

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.

**ALLEGATIONS:**

On September 16, 2022, the MSDE received a complaint from Ms. Megan Berger, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public School System (HCPSS) 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 HCPSS did not follow proper procedures when disciplinarily removing the student from school, from December 9, 2021- January 7, 2022, as required by 34 CFR §300.530 and COMAR 13A.05.01.10.
2. The HCPSS did not follow proper procedures when determining the student's educational placement from December 9, 2021- January 7, 2022, in accordance with 34 CFR §300.114 - .116.

**BACKGROUND:**

The student is twelve (12) years old and is identified as a student with Autism 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. During the 2021-2022 school year, prior to December 9, 2021, the student was disciplinarily removed from school on the following dates:
  - One day on September 24, 2021, for disruption;
  - One day on October 22, 2021, for Student Assault and/ or Battery on Staff;
  - One day on November 22, 2021, for a physical attack on another student; and
  - One day on December 7, 2021, for disruption.
2. On December 9, 2021, the parents and the student attended a reinstatement conference after the one-day suspension on December 7, 2021. The student was not able to safely process the incident and continued to make threatening comments about the other student. The parent and school team determined the student could not return to school due to unsafe behaviors. The school team indicated at the time that the student could not return to his educational placement, and instead stated that a "threat assessment" would be completed for the student before he could return to his educational setting in January 2022. The student was taken to Sheppard Pratt in ElkrIDGE for immediate mental health attention.
3. There is email documentation between the parent and the school staff, on December 10, 2021, that a meeting was held between the school staff and the parent to discuss the process of the above-referenced student receiving a threat assessment. The parents provided consent. The school team informed the parents that the student could not return to school until a threat assessment was complete and the student would attend virtual night school as an alternate placement to receive educational services until the evaluation was completed.
4. During the December 10, 2021, meeting, the parents requested a Manifestation Determination Review (MDR) meeting. The parents were denied due to the school system stating MDR meetings are held after a child is suspended for 10 days.
5. The student did not receive educational service on December 9, 2021, December 10, 2021, and December 13, 2021 through December 15, 2021, as he transitioned into his interim placement. The student was awarded compensatory services for the days of missed educational service.
6. On December 15, 2021, the student was approved for an administrative transfer to the Evening School (virtual) pending the outcome of the threat assessment.
7. There is no documentation of the IEP team meeting to develop or review and revise, as appropriate, the current IEP and BIP.
8. The Evening School operates Tuesday, Wednesday, and Thursday.
9. The student attended the Evening School on December 16, 2021, January 4, 2022, and January 5, 2022, due to winter break closing schools from December 21, 2021 through January 4, 2022.
10. On December 31, 2021, the Disability Rights of Maryland requested the IEP team convene for an MDR meeting on behalf of the student and parents for the disciplinary removal of the student over ten (10) days as a result of the threat assessment.

11. The threat assessment was completed on January 6, 2022, and the student returned to his educational placement on January 7, 2022.
12. On January 13, 2022, an MDR meeting was held by the IEP team per the parent's request to determine if the student's conduct was a manifestation of his disability for the behavior displayed on December 7, 2021. The IEP team determined that the behavior was a manifestation of the student's disability beyond ten (10) days in a school year, without holding a manifestation determination review.
13. During the January 13, 2022 MDR meeting, the parents questioned the school team as to the number of days the student was suspended. The school team states the student was suspended for a total of four days (September 24, 2021, October 22, 2021, November 22, 2021, and December 7, 2021) and an MDR meeting is "typically held when the student has reached to 10-day mark or is close to being suspended for 10 days". The school team explained the student was recommended for a threat assessment due to the threatening comments made during the December 9, 2021, reinstatement meeting and the student was placed in the Evening School as an interim placement pending the results of the threat assessment. The HCPSS stated that the removal of the student from school during the evaluation period of the threat assessment was not a suspension or disciplinary removal.
14. The parents and their counsel disagreed with the school team's position during the January 13, 2022, meeting. The parent's position is that the student did not receive Free Appropriate Public Education (FAPE) from December 9, 2021- January 6, 2022 (over 10 days), and was removed from school through a suspension.
15. The HCPSS Safe and Supportive School: Policy 1040 Implementation Procedures - Process for Obtaining a Threat Assessment for Students Exhibiting Threatening behaviors states in its footnote "Students are suspended while the school awaits a decision re: whether they are safe to return to school".
16. The HCPSS Safe and Supportive School: Policy 1040 Implementation Procedures - Safe and Supportive School policy under threat management Frequently Asked Questions: For a student with an IEP what if the threat assessment is scheduled for more than 10 days after the incident?

When a student with an IEP requires a threat assessment, please contact the Office of Psychological Services IMMEDIATELY to ensure prompt processing of the request. Should the appointment be scheduled after the 10 days of suspension have expired the student will need to return to school and adult supervision be provided.

17. Based on HCPSS Policy 1040, the student was suspended for the period from December 9, 2021, through January 6, 2022, and did not receive his procedural safeguards until January 13, 2022.

**DISCUSSION/CONCLUSIONS:**

A student with a disability may be disciplinarily removed from school. However, after the tenth day of disciplinary removal during the school year, a student with a disability must be provided with the services necessary 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 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, and 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).

The instructional setting for the provision of educational services to a student who has been disciplinarily removed from school may not be a student's home; this is because 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).

School personnel may remove a student to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the State or the local education agency;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the State or the local education agency; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the State or the local education agency. (34 CFR § 300.530)

The IDEA neither requires nor prohibits the use of "threat assessment" tools to aid school administration in determining the disciplinary steps necessary to address violations of codes of conduct. The use of these tools, however, may not be used in a fashion that would violate the rights of students under the IDEA. To the contrary, the IDEA requires that the rights of students with disabilities be protected during the time period in which information is collected to complete the "threat assessment" tool including providing appropriate services to students in the setting required by their IEP. (Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Procedures U.S. Department of Education, Office of Special Education and Rehabilitative Services, July 19, 2022).

#### **ALLEGATION #1:**

Based on Findings of Facts #2 to #17, the MSDE finds that the HCPSS did not follow proper procedures when disciplinarily removing the student from school, from December 9, 2021- January 7, 2022, as required by 34 CFR §300.530 and COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #2:**

Based on Findings of Facts #6 to #13, the MSDE finds that the HCPSS did not follow proper procedures when determining the student's educational placement from December 9, 2021- January 7, 2022, in accordance with 34 CFR §300.114 - .116. Therefore, this office 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.<sup>1</sup> 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.<sup>2</sup> 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 HCPS to provide documentation by January 1, 2023, that it has offered the student any additional compensatory services or another remedy to redress the violation identified above.

The HCPS 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 HCPSS to provide documentation by February 1, 2023, that it has identified all students in with disabilities eligible under the IDEA during the 2021-2022 school year who were disciplinarily

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<sup>1</sup> 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.

<sup>2</sup> 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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removed from their educational setting and either did not receive appropriate services pending completion of a “threat assessment” tool. For those students identified, the HCPSS must ensure that an IEP team convenes and determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services, and develops a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

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

MF/sj

c: Michael Martirano  
Kelly Russo  
[REDACTED]  
Alison Barmat  
Gerald Loiacono  
Diane Eisenstadt  
Stephanie James