



August 4, 2022

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Mr. Scott Szczerbiak  
Director of Special Education  
23160 Moakley Street  
Leonardtown, MD 20650

Mrs. Cynthia K. Kilcoyne  
Director of Special Education  
23160 Moakley Street  
Leonardtown, MD 20650

RE: ██████████  
Reference: #22- 185

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 June 8, 2022, the MSDE received a complaint from Mr. ██████████, hereafter “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the St. Mary’s County Public Schools (SMCPS) 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 SMCPS has not provided you with access to the student’s education record since March 8, 2022, in accordance with 34 CFR §§300.501 and .613.
2. The SMCPS has not ensured that the student has been consistently provided with the accommodations, supplementary aids, and services required by the Individualized Education Program (IEP) since the start of the 2021- 2022 school year in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is seventeen years old and is identified as a student with an Other Health Impairment under the IDEA. He attends ██████████ School and has an IEP that requires the provision of special education instruction and related services.

**ALLEGATION #1: ACCESS TO THE STUDENT'S EDUCATIONAL RECORD**

**FINDINGS OF FACTS:**

1. On March 8, 2022, the parent requested a copy of the student's educational record from the SMCPS staff.
2. There is no documentation that the parent has been provided access to the student's educational record.

**CONCLUSIONS:**

Based upon the Finding of Fact #1- #2, the MSDE finds that the SMCPS did not provide the parent with access to the student's education record since March 8, 2022, in accordance with 34 CFR §§300.501 and .613. Therefore, this office finds that a violation occurred with respect to allegation #1.

**ALLEGATION #2: PROVISION OF ACCOMMODATIONS, SUPPLEMENTARY AIDS, AND SERVICES**

**FINDINGS OF FACTS:**

3. The student's IEPs developed on June 9, 2021, and May 27, 2022, required that the student be provided with accommodations, supplementary aids, and services, including:
  - redirect student
  - small group
  - frequent breaks
  - reduce distractions to self
  - notes and outlines
  - calculator
  - extended time
  - use of organizational aids as needed
  - set clear expectations daily
  - present lessons in multiple forms daily
  - paraphrase questions and instructions daily
  - allow for alternate ways to demonstrate learning as needed
  - check-in and check-out daily
  - break down assignments into smaller units daily
  - delete extraneous information on assignments and assessments daily
  - social skills training weekly

- advanced preparation for schedule changes as needed
  - strategies to initiate and sustain attention daily
  - preferential seating daily
4. While there is documentation that extended time was provided on February 18, 2022, April 27, 2022, and May 3, 2022, there is no additional documentation that the student was provided with accommodations, supplementary aids, and services at any other time during the 2021- 2022 school year.

**CONCLUSIONS:**

Based upon the Findings of Fact #3- #4, the MSDE finds that the SMCPS did not ensure that the student was consistently provided with accommodations, supplementary aids, and services, as required by the IEP since the start of the 2021- 2022 school year in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to allegation #2.

**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).

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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.

### **Student Specific**

The MSDE requires the SMCPS to provide documentation that the student is being provided with the accommodations, supplementary aids, and services, including:

- redirect student
- small group
- frequent breaks
- reduce distractions to self
- notes and outlines
- calculator
- extended time
- use of organizational aids as needed
- set clear expectations daily
- present lessons in multiple forms daily
- paraphrase questions and instructions daily
- allow for alternate ways to demonstrate learning as needed
- check-in and check-out daily
- break down assignments into smaller units daily
- delete extraneous information on assignments and assessments daily
- social skills training weekly
- advanced preparation for schedule changes as needed
- strategies to initiate and sustain attention daily
- preferential seating daily

The MSDE requires the SMCPS to provide documentation that the parent has been provided with access to the student's educational records.

The MSDE requires the SMCPS to provide documentation that the IEP team has convened and determined whether the violation related to the lack of accommodations, supplementary aids, and services and the parent's access to the student's educational record 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 remedies 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 SMCPS must ensure that the parent is 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-Based**

The MSDE requires SMCPS to provide documentation of the steps taken to ensure that the violation does not recur at [REDACTED] School. Those steps must include staff development, as well as tools created to document and monitor the provision of IEPs to staff members, IEP supports, and supplementary aids and services to students with disabilities attending [REDACTED] School. The MSDE further requires the submission of the completed monitoring tool for a random sample of ten (10) students by December 1, 2022.

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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 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:sd

c: James Scott Smith  
Scott Szczerbiak  
Cynthia Kilcoyne  
██████████  
Alison Barmat  
Gerald Loiacono  
Diane Eisenstadt  
Sarah Denney