



Mohammed Choudhury
State Superintendent of Schools

March 31, 2023



Ms. Brandy Brady
Supervisor of Special Education
Somerset County Public Schools
7982-A Tawes Campus Drive
Westover, Maryland 21871

RE: [REDACTED]
Reference: #23-136

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 January 30, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Somerset County Public Schools (SCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The SCPS did not ensure that the student's teachers had access to the student's Individualized Education Program (IEP) at the start of the school year 2022- 2023, which has resulted in the supports and services not being provided, in accordance with 34 CFR §§300.101 and .323.
2. The SCPS has not ensured that the student has been provided with the special education instruction and accommodations required by the IEP since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged:
 - a. The student is not provided with academic instruction in the mornings as prescribed by her IEP;
 - b. The student is not provided frequent breaks; and
 - c. The student is not receiving math instruction when placed in In-School Intervention.
3. The SCPS has not ensured that the student’s IEP was reviewed and revised to address the lack of expected progress toward achieving the IEP goals since October 2022, in accordance with 34 CFR §300.324.

4. The SCPS did not ensure that the IEP team addressed the parent's concerns about the student's behavior since January 25, 2023, in accordance with 34 CFR §300.324.
5. The SCPS did not follow proper procedures when disciplinarily removing the first grade student during the 2022- 2023 school year in accordance with COMAR 13A.08.01.11(C)(1)(b).

BACKGROUND:

The student is six years old and is identified as a student with Speech and Language Impairment under the IDEA. She has attended [REDACTED] since the start of the school year 2022- 2023 and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

Allegation #1

TEACHER ACCESS TO STUDENT IEP

1. There is documentation that the teacher signed a receipt of receiving and reviewing the student's "IEP at a Glance," which includes her goals, objectives, and accommodations, on August 29, 2022.
2. There is documentation the teacher communicated with the parent via "Class Dojo" on August 31, 2022. The parent inquired if the student's IEP had been "transferred over." The staff replied, "I know she has speech services that start next week. As far as a hard copy of the IEP, I have not seen it yet."

CONCLUSIONS:

Based on the Findings of Facts #1 - #2 MSDE finds the SCPS did ensure that the student's teachers had access to the student's Individualized Education Program (IEP) at the start of the school year 2022- 2023, which has resulted in the support and services being provided, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation has not occurred with respect to this allegation.

Allegations #2 and #5

**PROVISION OF SPECIAL EDUCATION SERVICES AND DISCIPLINARY
REMOVAL OF FIRST GRADE STUDENT**

3. The IEP in effect at the start of the 2022- 2023 school year was developed on May 19, 2022. The IEP reflects that the student requires support in the areas of Speech and Language to address her articulation needs. The student requires speech and language services four times a month for 30 minutes per session, in a one-on-one or small group setting outside of the general education classroom. The student does not require specialized instruction in the classroom setting for any other academics.
4. The student's IEP requires that she be provided with in-class accommodations and support to address her behavioral needs. The student's IEP includes supplementary aids and services, program modification, and supports in the following areas:
 - a. Instructional Support via a picture schedule, organizational aids, preferred morning instruction, and repetition of directions;
 - b. Behavioral Supports via visual and verbal support to encourage/reinforce appropriate behavior in academic and non-academic settings, manipulatives and/or sensory activities to promote listening and focusing skills, and frequent changes (frequent breaks) in activities or opportunities for movement; and

- c. Physical/Environmental Support via preferential seating.
5. The student's May 19, 2022, IEP includes present levels of academic achievement and functional performance (PLAFFP) in the area of social/emotional/behavioral to support the addition of accommodations and supplementary aids and services addressing her behavioral needs; however, the IEP states her behavior does not impact the student's academic achievement and/or functional performance.
 6. On December 7, 2022, the IEP team met to consider the need for an evaluation of the student in response to parental concerns regarding the student's behavior. During the meeting, the IEP team reviewed the student's current classroom data. The complainant expressed concern that the student was not progressing in reading and math, and she requested additional testing. The team also reviewed the student's aids and services. In response to the parent's concerns related to the student's need to preferred morning instruction, the team noted, "the parent is aware of that aid (preferred morning instruction) not being able to be met due to the school's academic schedule."
 7. The schedule for the student's class shows the academic instructional times are:
 - 9:15-11:15- Reading
 - 11:15-12:00- Social Studies/Science
 - 1:30-3:00- Math
- Preferred Morning Instruction pertains to Reading and Math.
8. There is documentation that the student received breaks throughout the day from a CORE (Calm Oneself, Regulate Emotion) team member or from the classroom teacher.
 9. During the 2022-2023 school year, the student was disciplinarily removed from class and placed in an alternative setting receiving In School Intervention (ISI)¹ in response to her behavior on the following dates:
 - Half day on January 5, 2023, for Unsafe behavior;
 - One day on January 12, 2023, for Unsafe behavior;
 - One day on January 17, 2023, for Unsafe behavior;
 - Half day on January 18, 2023, for Disruptive behavior;
 - One day on January 20, 2023, for Unsafe behavior;
 - Half day on January 25, 2023, for Unsafe behavior and;
 - Half day on March 8, 2023, for Unsafe behavior.
 10. There is no documentation that while in ISI the student received academic instruction in the form commensurate with that provided by the classroom teacher, that the work provided to the student

¹ According to the [REDACTED] Administrative Procedures, In School Intervention (ISI) is defined as removing a student within the school building "from the student's current education program, but that is not considered an in-school suspension, because a student continues to receive education that commensurate with what occurs in the classroom as well as special education services (if applicable), adequate progress in the curriculum and association with peers. In School Suspension (ISS) is defined as the removal within the school building of a student from the student's current education program for up to but not more than 10 school days in a school year for disciplinary reasons by the school administrator."

allowed her to progress in the curriculum, or that the student's accommodations and supplementary aids and services were implemented while she was in ISI.

11. There is documentation that when the student was provided with ISI, she received her speech and language services.

CONCLUSIONS:

Disciplinary Removal of the Student

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. Maryland law further prohibits the suspension of students in second grade or below for more than five days unless required by federal law (COMAR 13A.08.01.11(C)(1)).

An in-school removal is not considered a day of suspension as long as the student is afforded the opportunity to continue to appropriately progress in the general curriculum, receive the special education and related services specified on the student's IEP, receive instruction commensurate with the program afforded to the student in the regular classroom; and participate with peers as they would in their current education program to the extent appropriate. (COMAR 13A.08.01.11(C)(2)(a)).

In this case, the SCPS contends that the student's removals did not constitute a suspension because the student was provided with work to complete while participating in "in school intervention", continued to interact with peers in specials classes, was supervised or monitored by appropriate staff, and continued to receive the services and supports required by her IEP. However, based on the Findings of Fact #9 -#11, MSDE finds that there is no documentation that the student continued to receive "instruction commensurate with the program afforded the student" or the accommodations and supports required by the student's IEP while she was participating in the in school intervention. Therefore, MSDE finds that the student was subject to in-school suspensions, and the SCPS did not follow proper procedures when disciplinarily removing the first-grade student during the 2022- 2023 school year in accordance with COMAR 13A.08.01.11(C)(1)(b); this office finds a violation occurred with respect to this allegation.

Provision of Special Education Services and Supports

Based on the Findings of Facts #3 - #7, and #10, the SCPS has not ensured that the student has been provided with the special education instruction and accommodations required by the IEP since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation occurred with respect to this allegation.

Allegations #3 and #4

ADDRESSING THE LACK OF EXPECTED PROGRESS AND PARENT BEHAVIORAL CONCERNS

12. On January 25, 2023, the parent sent an email to the school staff expressing her concern about the student receiving "exclusionary discipline" and that the student may not have been provided with the appropriate services. She requested that the IEP team meet to address her concerns.
13. On February 14, 2023, the IEP team met to address the parent's concerns regarding the student's increase in behaviors, her academics, and the status of the student's testing. The parent requested additional support to be added to the IEP to assist the student in math due to her missing

instructional time due to her behavior. The parent also inquired from the IEP team if the school psychologist had observed the student and what positive behavioral interventions were available for the student in the classroom. The IEP team responded that the student had not been observed by the school psychologist. The school-based team rejected the request for additional accommodations as the student's IEP is "appropriate to meet the student's needs in the least restrictive environment" and her current diagnosis is speech and language. The school base team responded that the student would be provided the following positive behavioral interventions until the testing that was requested on December 7, 2022, was completed:

- a. A daily behavior chart;
- b. Involvement in Girls Club;
- c. Frequent breaks;
- d. Fidgets on her desk;
- e. Use of the "Cozy Corner" located in the classroom;
- f. PBIS Monthly Incentives;
- g. Opportunities to be a student of the week and 1st-grade start student; and
- h. Daily informal check-ins from staff that support her behaviors.

The school-based team also stated they will continue to use the aids that are on her IEP, including preferred morning instruction.

14. On March 1, 2023, the IEP team met to review assessments that were requested by the parent due to an increase in the student's behavior, determine services, determine continued eligibility, and review, and revise the IEP, if appropriate. The IEP team agreed to assess the student in the areas of reading, math, writing skills, cognitive/intellectual, motor and speech, and language. During the meeting, the team reviewed the assessment and determined that the student continues to qualify for special education services with the disability classification of speech and language and does not meet the criteria for the disability classification of Other Health Impairment per the parent's request for her Attention Deficit Hyperactivity Disorder (ADHD) diagnosis.
15. During the meeting, the school-based staff stated, "there are no other disabilities that would require the student to receive direct instruction required for special education services" and explained that her ADHD could be handled through a 504 Plan, which will provide her with all of the accommodations that she needs since classroom services are not needed. The team reviewed the three eligibility criteria questions for the Other Health Impairment Classification.
 1. Does the student have a disability? Yes, ADHD.
 2. Does the diagnosed disability adversely affect the child's educational performance? Yes.
 3. Does the child require "specially designed instruction" to receive FAPE? No. The student does not qualify academically and does need specially designed instruction for her ADHD.
16. The school-based team rejected the parent's request while stating, "the educational and psychological data does not support the need for a coding change because all of her needs can be addressed with a 504 Plan." The parent and parent's counsel expressed their concerns and stated "specially designed instruction" does not only apply to academics, it can be for social/emotional difficulties in the academic setting as well. The school base staff stated the student "does not need a person in the classroom providing services for her behavior and it can be addressed through a 504 plan." The school-based team expressed that the student is receiving weekly therapy to work on her social-emotional skills from an outside provider, allowed to take breaks when needed, and is able to

join “Girls Club” if she has a “good day” as an incentive. The team states the student is making small progress.

17. The IEP team was scheduled to meet within 30 days to create a 504 plan for the student.
18. There is documentation that on March 1, 2023, the IEP team removed the previous accommodations from the student’s IEP due to them “not matching an articulation difficulty.”
19. The reports of the student’s progress towards the achievement of her speech and language-related service goals dated November 3, 2022, and January 26, 2023, reflect that the student was “making sufficient progress to meet goal” towards achievement of her annual IEP goals.

CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student’s disability that are identified in the evaluation data. 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 IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.101, .320, and .324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the IEP team must revise the IEP, as appropriate, to address any lack of expected progress (34 CFR §300.324).

In this case, the complainant alleges that the SCPS has not ensured that her concerns related to the student’s unaddressed behavior needs and that the student’s IEP was not reviewed and revised to address the lack of expected progress toward achieving the IEP goals since October 2022, in accordance with 34 CFR §300.324.²

Based on Findings of Fact #19, MSDE finds that the reports of the student’s progress towards achievement of the annual IEP goals during the 2022 - 2023 school year stated the student was “making sufficient progress to meet the goal,” thus, it would not warrant the IEP team to meet to address a lack of progress. Therefore, this office finds that a violation has not occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #12- #18, MSDE finds the SCPS did not ensure that the IEP team addressed the parent’s concerns about the student’s behavior, and has not addressed the student’s behavioral needs, since January 25, 2023, in accordance with 34 CFR §300.324. 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

² While the SCPS has referred the student to a Section 504 team to address the student’s needs related to her diagnosis of ADHD, the IEP team has an affirmative duty to address each of the academic, developmental, and functional needs of the student in her IEP, consistent with 34 CFR §300.324(a)(1)(iv).

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.³ This office will follow up with the public agency to ensure that it completes the required actions consistent with MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes 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.⁴ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student specific:

MSDE requires the SCPS to provide documentation by May 1, 2023, that the IEP team has convened completed the following:

- Ensured that the student is receiving the special education services and supports required by her IEP;
- Considered the parent's concerns related to the student's behavior and determined the behavioral supports required for the student to receive a FAPE; and
- Determined the amount and nature of compensatory services or other remedy to redress the illegal disciplinary removal of a student in first grade, the delay in considering the parent's concerns related to the student's behavior and determining the appropriate behavioral supports, and the lack of implementation of the student's IEP, and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The SCPS must ensure the manner and delivery of all supplementary aids and services are explicit and clarified to ensure all readers have a consistent understanding of implementation.

The SCPS 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: Similarly Situated Students

MSDE requires the SCPS to provide documentation by May 31, 2023, of the steps taken to ensure that the [REDACTED] School staff properly implements the requirements for developing and implementing IEPs. The documentation must include a description of how the SCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

With respect to the illegal disciplinary removals, the SCPS must provide documentation that it has identified all students with disabilities under IDEA who have been disciplinary removed in second grade or below serving in ISI. For those students identified, the [REDACTED] School must ensure that an IEP

³ 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, 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.

⁴ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

team convenes to review documentation that the student has completed work commensurate with that in the classroom and received the special education supports required by the IEP, in accordance with COMAR 13A.08.01.11. If the IEP determines that the student was subject to the violation described in this Letter of Findings, the IEP team must determine the amount and nature of compensatory services or other remedy to be provided to any similarly situated student for the loss of services, and develop 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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC/sj

c: John B. Gaddis
Gerald Loiacono
Diane Eisenstadt
Stephanie James