




May 26, 2023




Ms. Bonnie Watson
2424 Northgate Drive Suite #100
Salisbury, Maryland 21801

RE: 
Reference: #23-190

Dear Parties:

Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 March 30, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that Wicomico County Public Schools (WCPS) 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 WCPS has not followed proper procedures when responding to a request to amend the student’s education record since April 2022, in accordance with 34 CFR §§300.618 - .621.
2. The WCPS did not follow proper procedures when disciplinarily removing the student from school, since March 2022, in accordance with 34 CFR §300.530, COMAR 13A.08.02, and COMAR 13A.08.03.
3. The WCPS did not ensure that the student’s IEP addresses his behavioral needs since September 2022, in accordance with 34 CFR §300.324.
4. The WCPS has not ensured that the student has been provided with the support and services required by the IEP since the beginning of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleges that the student has not been provided with modification of assignments and home-school communication.
5. The WCPS did not provide the student with services in the placement required by his Individualized Education Program (IEP) since March 2023, in accordance with 34 CFR §300.116.

BACKGROUND:

The student is ten years old and attends [REDACTED] School. He is identified as a student with Other Health Impairment (OHI) under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

ALLEGATION #1, #2, & #5 Amendment of student record, Proper procedure when disciplinarily removing the student from school, & Provision of placement as required by the IEP.

FINDING OF FACTS:

1. There is no documentation of a written request from the parent to the WCPS requesting to amend the student education record since April 2022.
2. There is documentation of an amended conduct notice dated January 11, 2023, in response to the parent's verbal request on February 10, 2023, during an IEP team meeting. The original conduct notice included the statement that the student "blew a whistle in adult support's face and then began spitting on her." The amended report reflects the student "blew a whistle in adult support's face". The record was amended on February 10, 2023, to reflect updated information from the adult support. The parent was in agreement with the final edits.
3. The student's conduct history report from March 1, 2022 through April 30, 2023, reflects that the amended conduct notice is part of the student's record.
4. A notice of out of school suspension form dated January 24, 2023, reflects the student was suspended for 1.5 days. The suspension was the result of disruptions to the classroom environment on January 24, 2023. Due process was given to the student and the parent was informed of the suspension in person. School and classroom expectations were reviewed with both the parent and student. The following was included in the out of school suspension notice:
 - a. The student was eligible to complete all missed work, work may be requested in accordance with school policy, or the student may work with staff for academic support when he returned to school;
 - b. Procedural safeguards and parental rights and a community resource directory were provided to the parent;
 - c. Parent/guardian may request an opportunity to discuss the consequence and prior interventions and supports with the administrator as well as the opportunity to review their student's records as appropriate; and
 - d. Notice was provided to the parent on January 24, 2023, on the phone, in-person, and by mail.
5. A notice of out of school suspension form dated March 22, 2023, reflects the student was suspended for .5 days. The suspension was the result of a threat to adult and an attack on adult on March 21, 2023, and March 22, 2023. The parent was contacted by telephone and school expectations were reviewed with both the parent and student. The student admitted to the events that occurred on

March 21, 2023, and March 22, 2023. The following information was included in the out of school suspension notice:

- a. A statement that the student was eligible to complete all missed work, work may be requested in accordance with school policy, or the student may work with staff for academic support when he returned to school;
 - b. Procedural safeguards and parental rights and a community resource directory were provided to the parent;
 - c. A statement that the parent/guardian may request an opportunity to discuss the consequence and prior interventions and supports with the administrator as well as the opportunity to review their student's records as appropriate; and
 - d. Notice was provided to the parent on March 22, 2023, on the phone, in -person, and by mail.
6. A behavior threat assessment tool was completed based on the events of March 21 and 22, 2023. Parent and student interviews by the Behavior Threat Assessment Team (BTAT) were conducted as a part of the threat assessment process. The threat assessment process included the following:
 - a. The subject interview that occurred at the student's home school on March 23, 2023. The parent was allowed to be in the room during the interview;
 - b. A key observations form was completed by the BTAT to determine if a threat is low, moderate, or high;
 - c. The optional observations suggesting need for intervention form was completed by the BTAT;
 - d. A mental health assessment was conducted at the central office on March 24, 2023;
 - e. The Parent/Guardian Interview for the mental health assessment form was completed at the central office on March 24, 2023;
 - f. A Teacher/Staff Interview for the mental health assessment was completed; and
 - g. Response Intervention & Monitoring Plan completed on March 24, 2023.
7. The BTAT recommended that the student attend school virtually with a school issued laptop and 1:1 virtual support with special education accommodations implemented to support instruction and behaviors. On March 28, 2023, the WCPS provided a copy of the behavior threat assessment tool to the parent and informed her that the virtual instruction will begin on April 3, 2023.
8. The behavior threat assessment form included a signature page and Appendix C parent notification and agreement. This was provided to the parent on March 31, 2023. In an email dated March 31, 2023, the parent declined to sign the form. The form was signed by the School Psychologist.
9. The student did not receive specialized instruction and services required by the IEP from March 24, 2023 through March 31, 2023, while the WCPS completed the behavior threat assessments.
10. The student did not participate in virtual learning from April 5 through 10, as WCPS was closed for spring break.
11. The student participated in virtual learning at home from April 11 through April 19, 2023. On April 20, 2023, the student returned to a school setting, but was kept in a separate classroom with a dedicated support assistant. Instruction from the general educator was virtual, specialized instruction was provided in-person. On April 24, 2023, the IEP team met to discuss compensatory services for delay in providing services from March 20 through March 24, 2023. The team did not address the need for compensatory services for the time the student was receiving virtual services in

his home (March 25 through April 20, 2023, or when he returned to school and was in a separate classroom, April 20 through April 24, 2023). On April 24, 2023, the student was permitted to interact with nondisabled peers during recess, lunch, and specials.

12. There is no documentation that the IEP team met to consider the student's change of placement from March 20 through April 24, 2023. There is no documentation that the student was provided any of the procedural safeguards, including a manifestation determination, afforded students with disabilities when they are removed from their educational setting due to disciplinary infractions.

DISCUSSION /CONCLUSION

ALLEGATION #1

AMENDMENT OF STUDENT RECORD

A parent who believes that information in the education records collected, maintained, or used under the IDEA is inaccurate, misleading, or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing (34 CFR § 300.618).

Based on Finding of Facts #1 through #3, MSDE finds that WCPS amended the student record upon the parent's request on February 3, 2023, in accordance with 34 CFR §§300.618 - .621. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #2

PROPER PROCEDURES WHEN DISCIPLINARILY REMOVING THE STUDENT FROM SCHOOL

Under IDEA, the procedural safeguards and right to FAPE for a child with a disability must be protected throughout any threat or risk assessment process, including the provision of services during any removals beyond 10 cumulative school days in a school year. 34 C.F.R. §§ 300.101 and 300.530(d). States and LEAs should ensure that school personnel involved in screening for, and conducting, threat or risk assessments of children with disabilities are aware that the child has a disability and are sufficiently knowledgeable about the LEA's obligation to ensure FAPE to the child, including IDEA's discipline provisions. (Questions and Answers: Addressing the Needs of Children with Disabilities IDEA Disciplinary Provisions, U.S. Department of Education, Office of Special Education and Rehabilitative Services, OSEP Q&A 22-02, July 19, 2023).

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the public agency, the parent, and relevant members of the child's IEP team must conduct a manifestation review and consider all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine: (1) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (2) if the conduct in question was the direct result of the public agency's failure to implement the IEP (34 CFR § 300.530).

Based on Finding of Facts #4, #5, and #9 through #12, MSDE finds that the WCPS did not follow the proper procedures when removing the student since March 2022, in accordance with 34 CFR §§300.530, COMAR 13A.08.02., and COMAR 13A.08.03. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #5

PROVISION OF PLACEMENT AS REQUIRED BY THE IEP

Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The continuum required must include the alternative placements listed in the definition of special education (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and make provisions for supplementary services to be provided in conjunction with regular class placement. In determining the educational placement of a child with a disability, each public agency must ensure that the child's placement is determined at least annually, is based on the child's IEP, and is as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled (34 CFR §300.115).

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 as it does not permit instruction to take place with other students. (COMAR 13A.05.01.10).

The student's IEP required that he receive services in a comprehensive school setting, with special education services provided both in the general education setting and outside of the general education setting. From March 20 through April 2, 2023, the student received no instruction. From April 3 through April 19, the student received virtual instruction in his home. From April 20 until present, the student receives a hybrid program of virtual and in person educational programming, with access to his nondisabled peers. On April 24, 2023, the student's services and LRE were revised to reflect his current services. Based on Finding of Facts #9, #10 through #12, MSDE finds that the WCPS did not provide the student with services in the placement required by his Individualized Education Program (IEP) since March 2023, in accordance with 34 CFR §300.116. Therefore, this office finds that a violation did occur with respect to this allegation.

ALLEGATION #3

DEVELOPMENT OF IEP THAT ADDRESSES STUDENT'S BEHAVIORAL NEEDS

FINDING OF FACTS

13. The IEP in effect in September 2022 was developed on January 19, 2022, and amended on May 16, 2022. The IEP reflects areas of disability affected by the disability in Reading, Math, Written Expression, and Self-management. The self-management goal states "When given a verbal direction by an adult, the student will follow a verbal direction by starting the task or asking for clarification, if needed within 30 seconds of receiving the direction 75% of time in order to complete classroom tasks as measured by a daily behavior sheet." Adult Support is required daily for the following: prompting and redirection to initiate tasks and continue working until completion; application of

- prevention strategies (BIP); consistent application of response strategies (BIP); practice and assist with learning how to request help or a break; immediately recognize and praise positive actions; to demonstrate and model expected behaviors; and to offer support if requested by the student. The IEP reflects a functional behavior assessment (FBA) with the date of June 10, 2021, and a behavior intervention plan (BIP) implementation date of June 10, 2021. The IEP team agreed on June 10, 2021, that the BIP is appropriate for the student and would be reviewed by the team on January 14, 2022.
14. On January 12, 2023, the IEP team reviewed and revised the IEP as part of the annual review. The IEP reflects the areas affected are identified as reading phonics, math calculation, written language expression, reading comprehension, math problem solving, and self-management. The IEP reflects the BIP was reviewed on January 12, 2023, and no changes were needed at the time of the meeting. The student's self-management goal states, "When given a verbal direction by an adult, the student will acknowledge with a head nod or saying, "ok" and will follow a verbal direction by starting the task or asking for clarification, if needed within 30 seconds of receiving the direction 70% of time in order to complete classroom tasks as measured by a daily behavior sheet." Adult Support is required daily for the following: prompting and redirection to initiate tasks and continue working until completion; application of prevention strategies (BIP); consistent application of response strategies (BIP); practice and assist with learning how to request help or a break; immediately recognize and praise positive actions; to demonstrate and model expected behaviors; and to offer support if requested by the student. The IEP required ten weekly 30 minute sessions of specialized instruction in the general education classroom and five weekly 30 minute sessions of specialized instruction outside of the education classroom. The services were provided by the special education teacher and/or instructional assistant. The IEP also reflects that the student requires extended school year (ESY) services.
 15. The IEP developed on January 12, 2023, was amended on February 3, 2023. The IEP team amended the IEP to reflect a change in the student service hours. The student will continue to receive ten weekly 30 minutes sessions of specialized instruction in the general education classroom. The student will also receive twenty (20) weekly, 30 minutes sessions outside of the general education classroom. The services were provided by the special education teacher and/or instructional assistant.
 16. The IEP developed on January 12, 2023, was amended on April 24, 2023. The IEP team amended the IEP to reflect a change in the student's service hours. The student would now receive twenty two (22) weekly one hour sessions outside of the general education classroom. The service would be provided by the special education teacher and/or instructional assistant. The team developed a social emotional/behavior goal and added counseling services outside of the general education classroom once a week for 20 minutes. The counseling service is provided by the school counselor. The IEP also reflects that the student would receive two 60 minutes ESY sessions to support transition to middle school.
 17. The IEP team did not meet to consider the results of the threat assessment when it was completed in March 2023. The IEP team did not consider the placement recommendations from the BTAT or consider additional supports the student may have required based on the results of the assessment.

DISCUSSION /CONCLUSION

While the IEP team met several times to make adjustments to the student's IEP based on changing needs and to consider additional services, based on Finding of Fact #17, WCPS did not meet to consider the results of the BTAT and determine an appropriate placement based on the recommendations, or determine appropriate services for the student if the IEP team accepted those recommendations. Therefore, this office finds that WCPS did not ensure that the student's IEP addresses his behavioral needs since September 2022, in accordance with 34 CFR §300.324.

ALLEGATION #4

MODIFICATION OF ASSIGNMENTS & HOME SCHOOL COMMUNICATION

FINDING OF FACTS:

18. The IEP in effect at the beginning of the 2022-2023 school year was developed on September 22, 2021, and amended on May 16, 2022. The IEP reflects the student should receive altered/modified assignments daily. The student "required modified class and homework assignments, such as, but not limited to, changing the manner in which the material is presented, allowing alternate/flexible ways to demonstrate learning/understanding, reducing the quantity of required responses, adding visual aids/pictures, and/or limiting the number of questions/problems on a page. Such modified tasks/assignments will be provided for instructional and independent tasks/lessons in reading, mathematics, science and social studies. Written tasks in special areas (P.E., art, music, media) will need to be considered for modification."
19. The student's IEP does not require home/school communication.
20. There is documentation that the parent was sent quarterly progress reports, daily behavior charts with explanations, prior written notice following IEP team meetings, and IEP documents prior to and following IEP team meetings.
21. There is documentation that every email communication from the parent was responded to within 24 hours.
22. There is no documentation that the modifications required by the student's IEP were consistently provided.

DISCUSSION /CONCLUSION

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

Based on Finding of Fact #22, there is no documentation that the student was provided with the supports and modifications required by his IEP. MSDE finds a violation with respect to this allegation. Based on Findings of Fact #19, because there is no requirement that there be home/school communication, there is no violation with respect to that allegation. In addition, there is evidence that WCPS staff consistently responded to the parent each and every time she wrote to them, communicated with her on an almost daily basis, and provided her with all legally required documents.

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.

MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ 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 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.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

1. MSDE requires the WCPS to provide documentation by July 15, 2023, that the IEP team has convened and determined whether the violation related to the lack of documentation of the provision of supports has 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.
2. MSDE requires that the WCPS provide documentation by July 15, 2023, that the IEP team convened determine the amount and nature of compensatory services or other remedy to redress the violations related to the threat assessment. The IEP team must develop a plan for the provision of those services within a year of the date of this Letter of Findings.

WCPS 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.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

² 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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School-Based

MSDE requires the WCPS to provide documentation by September 1, 2023, of the steps taken to ensure that the staff at ██████████ School document modifications and supports provided to students based on their IEPs. Monitoring of these steps will be reported to MSDE by September 30, 2023.

System-Based

MSDE requires that WCPS take steps to ensure that Threat Assessment procedures are in compliance with the IDEA and protections afforded students with Disabilities. MSDE requires that WCPS administrators are provided with information through professional learning or other methods to ensure future compliance.

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,

Dr. Deann Collins
Deputy Superintendent
Division of Early Intervention/Special Education Services

DMC:ra

- c. Micah Stauffer
- Bonnie Watson
- ██████████
- Gerald Loiacono
- Diane Eisenstadt
- Rabiatu Akinlolu
- Paige Bradford
- Karla Marty