



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

September 14, 2020



Mr. Scott Szczerbiak  
Director of Special Education  
St. Mary's County Public Schools  
23160 Moakley Street  
Leonardtown, MD 20650

RE:   
Reference: #21-002

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 July 16, 2020, the MSDE received a complaint from Ms.  hereafter "the complainant," on behalf of her 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 student.

The MSDE investigated the following allegations:

1. The SMCPS has not ensured that the Individualized Education Program (IEP) team has identified all of the student's needs and developed an IEP that addressed those needs, since November 2019, in accordance with 34 CFR §§300.101, .304, .323 and .324. The complainant specifically expressed concern about the following areas of need:
  - a. Fine motor skill and visual motor skills;
  - b. Written language mechanics and written language expression;
  - c. Social, emotional and behavior skills; and
  - d. Organizational skills.

2. The SMCPS has not ensured that proper procedures were followed in March 2020, in response to the request for an IEP meeting, in accordance with 34 CFR §§300.324. and .503.
3. The SMCPS has not ensured that the IEP has been implemented, since November 2019, in accordance with 34 CFR §§300.101 and .323. The complainant specifically alleged that the student was not provided with opportunities to type written assignments and extended time to complete assignments, as required by the IEP.

### **BACKGROUND:**

The student is nine (9) years old and is identified as a student with an Emotional Disability under the IDEA. He has an IEP that requires the provision of special education and related services.

The student attended the [REDACTED] ([REDACTED] ES) until the March 16, 2020 closure of all schools, as a result of the national COVID-19 pandemic.

### **ALLEGATIONS #1 AND #2                    IEP DEVELOPMENT AND REQUEST FOR IEP TEAM MEETING**

### **FINDINGS OF FACTS:**

#### September 2019

1. On September 3, 2019, following his family's relocation from [REDACTED] to Maryland, the student enrolled in [REDACTED] ES. At the time, the student had an IEP that was developed in June 2019 by the [REDACTED] Public Schools ([REDACTED] IEP) that required the provision of special education services due to his "significant delays" in social and emotional functioning. On the same date, the student was referred for an initial evaluation to determine his eligibility for special education services in Maryland.
2. On September 12, 2019, the IEP team convened to review the [REDACTED] IEP and the referral for an initial evaluation, and to determine whether additional data was needed in order to determine the student's eligibility for special education services in Maryland.
3. The IEP team reviewed the [REDACTED] IEP which documents that the student has been diagnosed with an Adjustment Disorder, anxiety, and Attention Deficit Hyperactivity Disorder (ADHD). The [REDACTED] IEP also documents that the student presents with "significant depression and anxiety."
4. The [REDACTED] IEP states that the student has "social difficulties," "poor social skills," and difficulty with impulse control and self-regulation. It also states that the student engages in "negative self-talk" when upset or frustrated, and that he will cry, destroy assignments, and refuse to complete work if he is frustrated. The [REDACTED] IEP also states that the student has "the ability to quickly escalate, especially during writing" and documents that

he requires assistive technology through access to word prediction programs for writing assignments that require more than three (3) sentences.

5. The [REDACTED] IEP documents that the student needs positive behavioral interventions, supports and strategies, in addition to a positive reinforcement behavior plan using preferred items, in order to address behaviors that “impede” his learning. It also documents that the student requires specially designed instruction consisting of weekly social skills instruction and daily instruction in the area of social and emotional skills.
6. Based on suspecting that the student has an Emotional Disability, the IEP team decided that additional information was needed in order to determine the student’s eligibility for special education services in Maryland. The complainant agreed to the team’s recommendations for assessments of the student’s academic performance, intellectual functioning, social, emotional and behavioral development, health/physical status, as well as a classroom observation.

#### November 2020

7. On November 4, 2019, the IEP team convened and reviewed the results of the assessments and observation that were recommended at the September 2019 meeting.
8. The IEP team discussed that the student achieved a full scale Intelligence Quotient (IQ) of 121 which represents his cognitive functioning is in the “very high” range, and that he is performing in the “average” range in broad reading and broad math.
9. The IEP team also discussed that, while the student is functioning in the “average” range in broad written language, his score on a subtest measuring writing fluency reflects his functioning in the “below average” range in this area. On this assessment, the student struggled with producing correctly formed letters which made his handwriting difficult to read; he also struggled with producing complete sentences with correct grammar. The evaluator concluded that the student may need additional instruction to address handwriting as well as writing mechanics of spelling, capitalization and punctuation.
10. The IEP team also considered the student’s “below average” performance on a test measuring his coordination of visual perceptual and motor integration skills. While the student’s score on the visual perception portion of the test was in the “average range, his score on the motor coordination portion of the test was in the “very low” range. When asked to copy images, the student became “easily frustrated” and his performance reflected errors in spacing between items and not drawing straight lines.
11. The results of an assessment measuring the student’s behavior using rating scales were also discussed with the IEP team. All three (3) individuals assessed using this tool, the student, the complainant, and a teacher, rated the student’s behavior in the “clinically significant” range in the area of depression.
12. In addition to these ratings, the teacher also rated the student’s behavior in the “clinically

- significant” range in the areas of externalizing problems, anxiety, attention problems, and withdrawal. Here, the teacher’s ratings reflect that the student almost always argues when he does not get his way, easily loses his temper, is distracted, and easily cries.
13. The student also rated his own behavior in the “clinically significant” range in the areas of anxiety, attention problems, and sense of inadequacy. His responses document that he sometimes can’t control what happens to him, doesn’t seem to do anything right, has trouble controlling his thoughts, is disappointed with his grades, and forgets to do things.
  14. The complainant rated the student’s behavior in the “at risk” range in the areas of anxiety and attention problems. Here, the complainant’s ratings reflect that the student almost always worries about what his parents and teachers think, and about making mistakes.
  15. The IEP team discussed observations of the student by a school counselor during which the student demonstrated difficulty with appropriate responses to peers and adults, produced large handwriting that was “difficult to read,” became “frustrated” with a copying task and threw his pencil, “slumped down under his desk,” cried, “lightly slapped himself on the face” and laid on the floor.
  16. Based on the results of the assessments, the IEP team determined the student’s initial eligibility in Maryland as a student with an Emotional Disability who requires special education and related services.
  17. On November 18, 2020, the IEP team reconvened. The team reviewed the results of an “occupational therapy screening” (OT screening) that was conducted in response to a referral from the IEP team and a teacher.
  18. The OT screening documents that the student mastered the writing goal in his Virginia IEP that required him to “increase writing skills to grade/proficiency level in the area(s) of ideas and content, organization, voice, word choice, sentence fluency, and conventions.”
  19. During the OT screening, the student demonstrated the “ability to produce and properly form” the letters of the alphabet, but he struggled when asked to copy a sentence and formed letters with different sizes, “some large and some very small.”
  20. Based on the results of the OT screening, no evaluation was recommended. The IEP team documented that the student’s handwriting difficulties “appeared to be related to his lack of attending to what he is doing and difficulty copying information.” They decided to implement various strategies to support the student, collect data on the effectiveness of those strategies, and reconvene to determine whether an OT evaluation is required.
  21. At the November 18, 2019 meeting, the IEP team developed an initial Maryland IEP for the student. Based on the recent assessment data, the IEP team identified that the student has needs in the areas of social, emotional and behavior skills, written language mechanics, visual motor skills, and health-related needs due to his ADHD and depression

diagnoses.

22. The IEP includes an annual goal to address written language mechanics. The goal states that “When given a topic prompt, [the student] will write 3-5 sentences that include appropriate grammar, capitalization, ending punctuation, phonetic spelling of unknown words, and correct letter formation [on] 4 out of 5 writing tasks.”
23. The IEP requires that the student be provided with one (1) hour per week of specialized instruction in a general education classroom in order to address his difficulties with writing mechanics.
24. To address the student’s visual-motor needs, the IEP includes a supplementary support that requires the student to be provided with opportunities to type written assignments. The IEP reflects that this support is required on a daily basis and clarifies that it is needed “due to [the student's] deficit in handwriting and fluency [and that] he will have the opportunity to type out written assignments as needed to help with his legibility and overall written expression.”
25. To address the student’s behavior, as well as his health-related needs, the IEP includes accommodations requiring small group instruction, frequent breaks, and extended time to complete classwork and assessments. It also includes supplementary supports that require, on a daily basis, frequent and/or immediate feedback to address his frustration, and encouragement and positive reinforcement for appropriate behavior.
26. The IEP also includes two (2) behavioral goals. The first behavioral goal states that the student “will develop strategies to appropriately ask for assistance in the classroom (i.e. identifying the best time to ask for help, raising his hand, waiting to be called on, asking his question at an appropriate voice level - practiced in one on one counseling sessions and in the classroom).” The second behavioral goal states that “given a scenario of an incident that occurred or perceived difficulty, [the student] will use a tool to evaluate the size of the problem, how it makes him feel, and a possible solution in 4/5 trials.”
27. To assist the student with achieving the IEP behavior goals, and to address his health-related needs, the IEP requires counseling as a related service four (4) times each month.

December 2019 - June 2020

28. On January 15, 2020, the school staff began using a daily behavior chart for the student to earn a reward based on his scores across the school day for being respectful, responsible and ready to learn.
29. On January 17, 2020, the school staff documented that the student was making sufficient progress towards mastery of the IEP goal for written language mechanics. However, in the narrative portion of the progress report, the school staff also noted that the student is “often resistant” to writing, and becomes “defensive and often shuts down” when asked to correct his writing.

30. Also on January 17, 2020, the complainant sent an electronic mail (email) to the school staff requesting assistance due to concerns about the student's behavior and academic performance.
31. On January 23, 2020, the school staff documented that the student was making sufficient progress towards mastery of the IEP behavioral goals.
32. On January 30, 2020, the complainant sent an email to the school staff asking whether the student's handwriting had improved, and if there is any other support to assist him. The school staff responded on February 3, 2020, reporting that the student's "handwriting is better sometimes, it depends on his mood and the assignment."
33. On February 18, 2020, the complainant sent the school staff an email requesting the student's participation in a STEM program for the following school year. In its response on February 20, 2020, the school staff reported that she did not have concerns about the student's ability with respect to the academic content of the program. However, she also stated that she was "concerned about his disorganization<sup>1</sup> leading him to get upset when things are lost. Also, they have to [do] a lot of writing which he is hesitant to do if it is not an area of interest to him. He sometimes refuses to write even when something is of interest to him." In addition, the school staff noted her understanding that students in the program "have a lot more homework which might cause a problem at home." The school staff offered to write a recommendation if that is what the complainant desired.
34. On March 5, 2020, the complainant requested an IEP team meeting to address concerns about the student's behavior.<sup>2</sup>
35. On March 10, 2020, the school staff and the complainant exchanged emails about scheduling an IEP team meeting for the morning of March 26, 2020, which the complainant reported was not a mutually convenient time for her to attend. On the following day, the school staff sent an email to the complainant informing her that she would receive "a new meeting notice as soon as I arrange with [the] team to reschedule."
36. On March 13, 2020, the school staff documented that the student was making sufficient progress towards mastery of all of the IEP goals.
37. A review of the daily behavior charts between January 15, 2020 and March 13, 2020 reflects that the student frequently demonstrated interfering behaviors, including "calling out," "shouting out," and not following directions, and that he refused to complete a writing task approximately five (5) times.

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<sup>1</sup> The student's report card documents that he received a grade of "NI" for "needing improvement" in the area of organization skills in the first, second, and third quarters of the 2019 - 2020 school year.

<sup>2</sup> This request followed a parent-teacher conference on the same date that did not resolve the complainant's concerns.

38. A review of the counselor's service provider logs from December 2019 to March 2020 also reflects occasions when the student "called out," threw items, yelled, and left the classroom without permission.
39. On June 18, 2020 the school staff documented that the student was making sufficient progress towards mastery of all of the IEP goals.
40. The student's report card for the fourth quarter of the 2019 - 2020 school year includes comments by a school staff noting "marked improvement" in the student's written responses submitted through the online platform used for instruction since schools closed in March 2019. The comments further note that the student has been including more text evidence and is using complete sentences in his writing.
41. The student's report card for the 2019 - 2020 school year documents that he received grades of "SC," representing a strong command of the standards, or "PC," representing partial command of the standards, in each academic content area assessed.

August 2020

42. On August 7, 2020, the school staff scheduled an IEP team meeting for August 18, 2020. The SMCPS acknowledges that there was a delay in scheduling an IEP meeting in response to the complainant's request in March 2020.
43. On August 18, 2020, the IEP team convened. The IEP team discussed that the student "struggles to complete written work due to poor handwriting and a lack of confidence." They also discussed that the student "can be a perfectionist" and therefore needs to be encouraged to complete more difficult tasks once he has new skills.
44. At the August 2020 IEP meeting, the team reviewed the report of an OT evaluation that was conducted by a private provider on July 21, 2020. The report reflects that an examination was performed using therapeutic exercises and activities, and states that the student was identified as having "organizational, fine motor and gross motor, attention, emotional and behavior regulation deficits associated with ADHD, anxiety, and lack of coordination." The IEP team documented that, while the report identifies areas of weakness for the student, the report "is incomplete without any formal assessment data."
45. The IEP team discussed the complainant's request for assessments of the student's fine motor skills and written language expression, and a Functional Behavior Assessment (FBA), and agreed to the request. While the complainant also requested an assistive technology (AT) assessment, the IEP team agreed that an AT screening would be completed to obtain information "to share with our AT Instructional Resource Teacher."

46. The IEP team agreed that the student requires more support, and recommended the following additional supplementary supports:
- Alternative ways to demonstrate his knowledge, including the use of speech-to-text for longer written assessments or sharing answers orally;
  - The use of a graphic organizer to assist with developing pre-writing strategies and to minimize the length of writing when possible;
  - The use of a checklist for editing work;
  - Advance preparation of schedule changes;
  - A home-school communication system, to include a daily behavior update; and
  - A consultation by a psychologist with the student's teacher and school counselor to ensure shared communication about the student's behavior.

The IEP team also agreed to a daily check-in and check-out system with a familiar person for the student to receive assistance with planning his day and strategies for positive behavior.

## **CONCLUSIONS:**

### **Allegation #1            IEP Development**

Based on the Findings of Facts #1 -#6, the MSDE finds that, following his enrollment in the SMCPS in September 2019, the IEP team conducted an evaluation to gather current information to identify the student's needs and his eligibility for special education services in Maryland. Based on the Findings of Facts #7 - #16, the MSDE finds that, on November 4, 2019, the IEP team reviewed the evaluation data and found the student eligible under the IDEA as a student with an Emotional Disability.

Based on the Findings of Facts #8 – #15, #17 - #21, the MSDE finds that, on November 14, 2019, the IEP team developed an initial IEP that addresses written language mechanics, social, emotional, and behavior skills, visual motor skills, and health-related needs, which are the areas of need identified through the September 2019 evaluation data.

Based on the Findings of Facts #19, #29, #32 and #43, the MSDE finds that, while the data reflects that the student can produce the shapes needed to form letters, there is documentation that, since January 2020, the student has continued to demonstrate difficulty with writing, including resistance and refusal.

However, based on the Findings of Facts #43, #45 and #46, the MSDE finds that, in August 2020, the IEP team revised the IEP to include additional supplementary supports to assist the student with writing and his behavior, and agreed to conduct assessments of his fine motor skills and fine motor skills, a Functional Behavior Assessment, an assistive technology screening.

Based on the Findings of Facts #29, #31, #36, #39 and #41, the MSDE finds that there is documentation that, since November 2019, the student has made sufficient progress towards mastery of the annual IEP goals, and that he is progressing through the general curriculum.

Based on the Findings of Facts #7 - #27, #43 and #46, the MSDE finds that, since November 2019, the IEP has required special education supports and services that address the student's identified needs in written language expression, visual motor skills and social, emotional and behavior skills, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, the MSDE does not find a violation with respect to these aspects of the allegation.

Based on the Findings of Facts #3 - #41 and #43 and #45, the MSDE also finds that, prior to August 2020 when the IEP team decided to conduct assessments of the student's written language expression and fine motor skills, there was no data identifying needs in these areas that would require that the IEP address, in accordance with . Therefore, the MSDE does not find a violation with respect to these aspects of the allegation.

Based on the Finding of Fact #33, the MSDE finds that in February 2020, the school staff raised concern about the student's organizational skills. Based on the Findings of Facts #33 and #44, the MSDE further finds that the student's report card, as well as the July 2020 report of a private OT evaluation, also document concerns about his organizational skills.

However, based on the Findings of Facts #1 - #46, the MSDE finds that there is no documentation that the IEP team has considered concerns about the student's organizational skills, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

#### **Allegation #2            Request for IEP Team Meeting**

Based on the Findings of Facts #34, #35, #42 and #43, the MSDE concurs with the SMCPS, that there was a delay, from March 2020 to August 2020, in scheduling an IEP team meeting in response to a request made by the complainant in March 2020, in accordance with 34 CFR §§300.324. Therefore, the MSDE finds a violation with respect to this allegation.

#### **ALLEGATION #3    IEP IMPLEMENTATION**

##### IEP Implementation

47. As stated above, the IEP requires that the student be provided with opportunities to type written assignments, as well as extended time to complete classwork and assessments.
48. The daily behavior charts document that, on approximately five (5) occasions between January 15, 2020 and March 13, 2020, the student refused to complete a writing task. However, there is no documentation that the student was provided the opportunity to type his written assignment on any of these occasions.

49. There is no documentation that the student did not complete written assignments.
50. On January 15, 2020, the complainant sent an email to the school staff expressing concern about whether the student ran out of time to complete a math test because he only answered eight (8) out of the twelve (12) total questions. In its response on the same date, the school staff explained that, "I give the students 1 minute to complete all of the problems." There is no documentation that the student was provided extended time to complete this math test.

### **CONCLUSIONS:**

Based on the Findings of Facts #47 and #48, the MSDE finds that there is no documentation that the student was provided with opportunities to type his assignments when he refused to write them, on some occasions between January 15, 2020 and March 13, 2020, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #49, the MSDE also finds that there is no documentation that the student did not complete written assignments. Therefore, the MSDE does not require student-specific corrective action for the violation.

Based on the Findings of Facts #47 and #50, the MSDE also finds that, there is no documentation that the student was provided with extended time in January 2020 to complete a math test, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE also finds a violation with respect to this aspect of the allegation.

### **CORRECTIVE ACTION/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.<sup>3</sup> This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

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<sup>3</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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.

If the public agency anticipates that the action will not be completed within the timeframe indicated, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>4</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **Student-Specific**

The MSDE requires the SMCPS to provide documentation that the IEP team has convened and taken the following actions:

- (a) Reviewed the results of the assessments and AT screening that were recommended by the team at the August 2020 meeting;
- (b) Considered the concerns raised about the student's organizational skills; and
- (c) Revised the IEP, as appropriate, consistent with the data.

If the IEP is revised to add services based on a review of the data, the IEP team must also determine the amount and nature of compensatory services or other remedy for the loss of services from March 2020, and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

### **School-Based**

The MSDE requires the SMCPS to provide documentation of the steps it has taken to ensure that the [REDACTED] ES staff comply with the IDEA requirements for IEP development, IEP implementation, and response to request for an IEP team meeting. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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.

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<sup>4</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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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 Special Education/  
Early Intervention Services

MEF/ksa

c: J. Scott Smith  
Sherry O'Dell  
■  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Nancy Birenbaum