



August 23, 2022

[REDACTED]  
[REDACTED]  
[REDACTED]

Ms. Debra Metheny  
Supervisor of Special Education  
Allegany County Public Schools  
108 Washington Street  
P.O. Box 1724  
Cumberland, MD 21502-1724

RE: [REDACTED]  
Reference: # 23- 001

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 July 11, 2022, the MSDE received a complaint from Ms. [REDACTED] hereafter “the complainant,” on behalf of her grandson, the above-referenced student. In that correspondence, the complainant alleged that the Allegany County Public Schools (ACPS) 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 ACPS did not provide the parent with a copy of the completed Individual Education Plan (IEP) document within five business days after the IEP team meeting convened on March 17, 2022, in accordance with COMAR 13A.05.01.07.
2. The ACPS has not ensured that the IEP team addressed the parent’s concerns regarding the student’s behavior since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.324.
3. The ACPS has not ensured that the complainant was afforded the opportunity to participate in the student's IEP team meeting held on May 17, 2022, in accordance with 34 CFR §§300.501.

**BACKGROUND:**

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

**ALLEGATION #1: PROVISION OF THE COMPLETED IEP DOCUMENT**

**FINDINGS OF FACTS:**

1. The ACPS acknowledges that they did not provide the parent with the completed IEP document within five business days following the IEP team meeting convened on March 17, 2022.
2. On April 21, 2022, the ACPS provided the parent with a copy of the completed IEP from the March 17, 2022, IEP team meeting. The ACPS and the parent further agreed that all IEP documents would be delivered directly to the parent for future meetings.

**CONCLUSIONS:**

Based upon the Finding of Fact #1, the MSDE finds that the ACPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting convened on March 17, 2022, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to allegation #1.

Notwithstanding that violation, the MSDE further finds, based on FOF #2, that the complainant was provided with a completed copy of the March 17, 2022, IEP on April 21, 2022, and that the ACPS and the parent agreed on a plan to ensure that the parent receives all required IEP documentation from future IEP team meetings. Therefore, no further student-specific corrective action is necessary to address this violation.

**ALLEGATION #2: ADDRESSING CONCERNS RELATED TO THE STUDENT'S BEHAVIOR**

**FINDINGS OF FACTS:**

3. The PWN, generated following the IEP meeting on October 5, 2021, reflects the following input from IEP team members related to the student's behavior:

"The student's occupational therapist completed a screening on the student during ELA. (...) He was also trying to make the other children laugh and she was not able to tell if it was a coping mechanism to deal with his attention or his motor delays."

"The student's science teacher, indicated that he definitely sees the distractive behavior and sees the off task behavior. He is very intelligent and when he is on task, he is an excellent student. In speaking with other teachers, they are not seeing a whole lot of the behavior of making other students laugh. He is not particularly disruptive in his class. He seems social and seems to get along with the other students in his class."

"The student's godmother indicated that the student had triggers that come from yelling, abandonment, change and when he is bullied or attacked. People with loud voices can cause triggers and the sensory of the loud voices can cause him to go into not attending."

4. The Evaluation Report and Determination of Initial Eligibility, dated November 23, 2021, report reflects that the student received an initial evaluation for students ages 3- 21, which determined areas of need in written language, social-emotional/ behavioral, and fine motor skills. The report reflects outcomes of the BASC: Behavior Assessment System for Children.

“The student’s math teacher (...) rated the student in the “clinically significant” range on the Behavioral Symptoms Index. (...) A multi-rater comparison between the teacher and parent suggests the student is exhibiting significantly more internalizing behaviors and problems with adaptive skills in the school setting compared to the home. Both raters report that the student is “at risk” for behaviors related to withdrawal.”

5. The student’s IEP, developed on November 23, 2021, reflects parental input on page 2:

“The complainant is concerned with the student’s behavior and its impact on his current academic performance.”

The IEP also reflects a discussion to support the decision for the IEP on pages 2 and 3:

“The student has a diagnosis of ADHD and can be easily distracted and off task. He struggles with written language activities and often reports that he has no homework. Concerns are also noted with regards to depression.”

“The IEP team agrees that the student qualifies for special education services under the federal code of other health impairment due to this diagnosis of ADHD. This determination is based on a comprehensive evaluation, including his current classroom performance, parent and teacher input, and recent standardized assessment results. The student is easily distracted and has difficulty staying on task in the classroom. He frequently talks off topic and struggles to complete assignments. These behaviors adversely affect his academic progress in school. The IEP team agrees that the student also qualifies for occupational therapy.”

6. The student’s IEP, developed on November 23, 2021, includes Present Levels of Academic Achievement and Functional Performance, indicating that the student’s behavior and self-management skills are areas that impact his academic achievement and/ or functional performance. The behavior and self-management skills are addressed with accommodations, supplementary aids, services, and goals. The student’s social/ behavioral accommodations and supplementary aids include daily strategies to initiate and sustain attention, small group, and reduce distractions to self. The student has one behavioral self-management goal.

7. The PWN, dated November 23, 2021, reflects family input:

“The complainant indicates that he is currently diagnosed with ADHD. He is currently seeing a counselor through the Health Department. She also reported that his psychiatrist had indicated concerns in regards to depression. The complainant is concerned with the student’s behavior and its impact on his current academic performance. She reports that the student often indicates he does not have homework. The complainant would like the student to have additional supports and services in place beside his current 504 plan.”

8. The PWN, generated following the IEP meeting on March 21, 2022, reflects that the team proposed a “Tier II Behavioral Strategy- Check- In and Check- Out (CICO) that will include daily communication with the complainant as well and check-ins during the school day.” However, the Tier II Behavioral Strategy is not reflected in the student’s IEP. Furthermore, there is no documentation of the IEP team considering the need to develop a Behavior Intervention Plan (BIP).
9. The PWN, generated following the IEP meeting on May 17, 2022, reflects the team reviewed the student’s Tier II MTSS CICO plan to include positive reinforcers and consequences, strategies to build independence that include teacher prompts for CICO, communication between home and school, and an alternate plan for lunchtime that offers choices. The team recommended moving to a Tier III Integrated Support Plan that would include teacher/ adult prompts, a lunch plan, and strategies to address organization. However, the Tier III Behavioral Strategy is not reflected in the student’s IEP. Furthermore, there is no documentation of the IEP team considering a BIP.
10. The Tier III Integrated Support Plan, dated May 18, 2022, reflects problem behaviors.

“The student has an IEP. He has self-management goals that are being addressed through his IEP. Additionally, the student has been referred for a Tier III support plan to assist with behaviors consistent with his diagnosis of ADHD. The student has difficulty staying organized, completing work, remaining seated, and getting his CICO plan filled out. This plan is also designed to strengthen communication between home and school. This plan will specifically address Tier II CICO and a plan to address his inability to stay seated in the cafeteria.”

**CONCLUSION:**

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 team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based upon the Finding of Facts #3- #10, the MSDE finds that the ACPS did not ensure that the IEP team addressed the parent’s concerns regarding the student’s behavior, including the consideration of positive behavioral interventions and supports and other strategies when developing the student’s IEP, since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.324. While the ACPS did implement positive behavioral interventions and supports, there is no mention or inclusion of these supports, or data from the implementation of these supports, on the student’s IEP. Therefore, this office finds that a violation occurred with respect to allegation #2.

**ALLEGATION #3: OPPORTUNITY TO PARTICIPATE IN THE STUDENT’S IEP MEETING**

**FINDING OF FACT:**

11. The PWN, generated following the IEP meeting on May 17, 2022, reflects input from the complainant, the student, the student’s godmother, and representatives from the NAACP as follows:

The complainant: "stated she is "taking in" all of today's information and does not want anything additional in the minutes."

The student: "stated school has been alright."

The student's godmother: "stated she is working with the student to complete schoolwork. When he completes work at school, she takes him to a fast food restaurant."

The student's advocates from the NAACP: "stated it is necessary for the student's concerns to be addressed. They discussed the need to have accurate information from the ACHD and the importance of home-school communication to be strengthened and accurate."

### **CONCLUSION:**

Based upon finding of fact #11, the MSDE finds that the ACPS did ensure that the complainant was afforded the opportunity to participate in the student's IEP team meeting held on May 17, 2022, in accordance with 34 CFR §§300.501. Therefore, this office finds that no violation occurred with respect to allegation #3.

### **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 that the ACPS provide documentation by November 1, 2022, that the IEP team has convened to consider the student's need for positive behavioral interventions and supports and other

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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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strategies and determine whether there should be a behavior component included on the student's IEP, and if so, whether the above violation 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 ACPS 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 ACPS to provide documentation of the steps taken to ensure that the violation does not recur at ██████████ School, specifically staff development, including tools to aid in the provision of completed IEP documents five days after the IEP meeting at ██████████ School.

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: Jeffrey S. Blank  
██████████  
Alison Barmat  
Gerald Loiacono  
Diane Eisenstadt  
Sarah Denney