




Mohammed Choudhury  
State Superintendent of Schools

January 13, 2023




Mr. Troy Keller  
Dr. Linda Chambers  
Co-Directors of Special Education  
Frederick County Public Schools  
191 South East Street  
Frederick, Maryland 21701

RE:   
Reference: #23-089

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 November 15, 2022, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) 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 FCPS has not ensured that the required person has provided the student with special education instruction as required by the Individualized Education Program (IEP), since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323.
2. The FCPS has not ensured that the IEP team reviewed and revised, as appropriate, the student’s IEP to address the lack of expected progress toward achieving the IEP goals, since November 15, 2021, in accordance with 34 CFR §300.324.
3. The FCPS has not ensured that the student has been consistently provided with the special education instruction, support, and related services as required by the IEP since November 15, 2021, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged the following:
  - a. The student was not provided with Extended School Year (ESY) for summer 2022.

- b. The student was not provided with social skills training, frequent changes in activities/opportunities for movement, and manipulatives/sensory activities.
  - c. The student was not provided with speech and language services.
  - d. The student was not provided with psychologist consult.
  - e. The student was not provided with specialized instruction.
4. The FCPS did not ensure that the student's Behavior Intervention Plan (BIP) was consistently implemented since November 15, 2021, in accordance with 34 CFR §§300.101 and 323.

**BACKGROUND:**

The student is nine (9) years old and is identified as a student with Other Health Impairment under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education services.

**FINDINGS OF FACTS:**

**ALLEGATION #1:**

**PROVIDER OF SPECIALIZED INSTRUCTION**

1. The student's IEP, in effect in November 2021, was developed on September 30, 2021. The IEP requires the provision of:
  - 2.5 hours per week of specialized instruction for written language expression;
  - 2.5 hours per week of specialized instruction for social emotional/behavioral<sup>1</sup>;
  - 2.5 hours per week of specialized instruction for math calculation;
  - five hours per week for reading comprehension and reading phonics;
  - thirty minutes per week for self-management;
  - thirty minutes twice per week of speech and language services;
  - daily "frequent changes in activities and opportunities for movement" that are "tracked so that they do not become excessive;" and
  - daily "manipulatives and/or sensory activities to promote listening and focusing skills."
2. The student's IEP in effect at the start of the 2022-2023 school year was developed on December 16, 2021. The student's IEP in effect at the start of the 2022-2023 school year was developed on December 16, 2021. The IEP requires the provision of:
  - 2.5 hours per week of specialized instruction for written expression provided by the classroom special education teacher;
  - 2.5 hours per week of specialized instruction for math calculation;
  - 2.5 hours per week of specialized instruction for self-management instruction provided by the classroom special education teacher or "IEP team";

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<sup>1</sup> For the purposes of this Letter of Finding, "self-management" will be used in reference to the social emotional/behavioral goal.

- one hour per week for reading comprehension provided by the classroom special education teacher or “IEP team”;
  - 1.5 hours per week of specialized instruction for reading phonics provided by the classroom special education teacher or “IEP team”;
  - thirty minutes per week for self-management provided by the classroom special education teacher or “IEP team”;
  - thirty minutes of speech and language services provided by the speech and language pathologist twice per week;
  - weekly social skills training;
  - daily “frequent changes in activities and opportunities for movement”, that are “tracked so that they do not become excessive;”
  - daily “manipulatives and/or sensory activities to promote listening and focusing skills;
  - consultation by the school psychologist with the educational team every other week; and
  - ESY services in the area of reading phonics, math, self-management, articulation, and expressive language.
3. There is documentation of the student’s support schedule dated December 15, 2022, that reflects his service providers. However, the documentation does not demonstrate that the identified person has consistently provided the student with special education instruction in written language expression, self-management, math, reading comprehension, and phonics since the start of the 2022-2023 school year, as required by the IEP.
4. There is documentation that from September 20, 2022, to December 13, 2022, the student was provided instruction in self-management by the school counselor for thirty minutes per week, as required by the IEP.
5. There is no documentation since December 13, 2022 that the student was provided instruction in self-management by the school counselor for thirty minutes per week, as required by the IEP.

**CONCLUSIONS:**

Based upon Findings of Facts #2 and #4, MSDE finds that the FCPS has ensured that the required person has provided the student with special education instruction in self-management outside the general education classroom as required by the IEP, from September 20, 2022, to December 13, 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based upon Findings of Facts #2, #3, and #5, MSDE finds that the FCPS has not ensured that the required person has provided the student with special education instruction in written language expression, math, self-management (within the general education classroom), reading comprehension and phonics as required by the IEP, since the start of the 2022-2023 school year, and self-management (outside the general education classroom) since December 13, 2022. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

**ALLEGATION #2**

**ADDRESSING THE LACK OF PROGRESS**

**FINDINGS OF FACTS:**

6. Reports of the student's progress towards achievement of IEP goals, reported on July 21, 2022, for the student's annual reading phonics, math calculation, self-management, and articulation goals reflects that the student was not making sufficient progress to achieve the goals.
7. There is documentation that the IEP team met to review and revise the student's IEP to address the lack of expected progress towards achievement of annual IEP goals.

**CONCLUSION:**

Based on Findings of Facts #6 and #7, MSDE finds that the FCPS has ensured that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the IEP goals, since November 15, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #3**

**PROVISION OF ESY, SPECIAL EDUCATION INSTRUCTION,  
SUPPORT AND RELATED SERVICES**

**FINDINGS OF FACTS:**

8. There is documentation that the student was not provided with ESY services for the summer of 2022 as required by his IEP, due to FCPS staffing shortages.
9. There is documentation that the IEP team met on August 16, 2022 to develop a compensatory education plan for the student's missed ESY services.
10. There is documentation of tools used for social skills. However, the documentation does not demonstrate that the student receives weekly social skills training as required by the IEP.
11. There is documentation regarding tools the student can use to express the need for frequent changes in activities/opportunities for movement. However, the documentation does not demonstrate that the student receives daily "frequent changes in activities and opportunities for movement;" specifically, regular breaks throughout the school day that should be tracked as required by the IEP.
12. There is documentation regarding tools the student can use to request manipulatives and/or sensory activities to promote listening and focusing skills. However, the documentation does not demonstrate that the student is provided daily manipulatives and/or sensory activities to promote listening and focusing skills as required by the IEP.
13. There is documentation that the student was provided speech and language services as required by the IEP.
14. There is no documentation that the educational team was provided with a psychological consult as required by the IEP.

15. There is no documentation that the student was consistently provided with specialized instruction in math, self-management, and written expression from November 19, 2021, to the close of the 2021-2022 school year.
16. There is no documentation that the student was consistently provided with specialized instruction in reading phonics and reading comprehension from November 19, 2021, to March 25, 2022.
17. There is documentation that the student was consistently provided with specialized instruction in reading phonics and reading comprehension from March 25, 2022, to November 14, 2022. However, there is no documentation that the required person has provided the student with the specialized instruction.
18. There is documentation that the student was consistently provided with specialized instruction in self-management outside of the general education classroom by the school counselor for thirty minutes per week from August 17, 2022, to December 13, 2022, as required by the IEP.
19. There is no documentation that the student was consistently provided with specialized instruction in math, self-management within the general education classroom, and written expression since the start of the 2022-2023 school year.

#### **CONCLUSIONS:**

##### **ESY**

Based on Findings of Facts #2 and #8, MSDE finds that the FCPS has not ensured that the student was provided with ESY services as required by the IEP for Summer 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Notwithstanding the violation, MSDE finds based upon Finding of Fact #9, that the IEP team has determined the appropriate compensatory education for the violation; therefore, no further student specific corrective action is required.

##### **Supports**

Based on Findings of Facts #2 and #10, MSDE finds that the FCPS has not ensured that the student has been consistently provided with weekly social skills training as required by the IEP since December 16, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Based on Findings of Facts #1, #2, #11, and #12, MSDE finds that the FCPS has not ensured that the student has been consistently provided with daily "frequent changes in activities and opportunities for movement" specifically, regular breaks throughout the school day that should be tracked, and daily "manipulatives and/or sensory activities to promote listening and focusing skills as required by the IEP from November 15, 2021, to December 20, 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

### **Speech and Language Services**

Based on Findings of Facts #1, #2, and #13, MSDE finds that the FCPS has ensured that the student has been consistently provided with speech and language services as required by the IEP since November 15, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

### **Psychological Consult**

Based on Findings of Facts #2 and #14, MSDE finds that the FCPS has not ensured that the student has been consistently provided with a psychological consult as required by the IEP since December 16, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

### **Specialized Instruction**

Based on Findings of Facts #1, #2, and #15, MSDE finds that the FCPS has not ensured that the student has been consistently provided with specialized instruction in math, self-management, and written expression as required by the IEP from November 19, 2021 to the close of school year 2021-2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Based on Findings of Facts #1, #2, #16, and #17, MSDE finds that the FCPS has not ensured that the student has been consistently provided with specialized instruction in reading phonics and as required by the IEP since November 19, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Based on Findings of Facts #1, #2, and #18, MSDE finds that the FCPS has ensured that the student has been consistently provided with specialized instruction in self-management outside of the general education classroom as required by the IEP since August 17, 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based on Findings of Facts #1, #2, and #19, MSDE finds that the FCPS has not ensured that the student has been consistently provided with specialized instruction in math, self-management within the general education classroom, and written expression as 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 that a violation has occurred with respect to this aspect of the allegation.

### **ALLEGATION #4:**

### **IMPLEMENTATION OF THE BIP**

20. The student's BIP developed on June 6, 2022, indicates the student will leave the learning area or demonstrate physical aggression when an academic demand occurs. The BIP requires the following interventions before behaviors of concern:

“Preferential seating - front of room toward the door, close to calming corner, close to teacher with access to leave when needed for breaks etc.;

Sensory items in classroom - fidgets, therapy band on chair, weighted objects (Snakey, the snake);

Flexible seating - traditional chair, carpet spot, cube chair, bean bag chair;  
Classroom cool-down area;  
Regulation Station - outside classroom sensory area;  
Timers to support transitions;  
Visual schedule;  
Visuals for "How is my engine running?" located in regulation station;  
Visuals for Zones of Regulation emotions;  
Calming activities in regulation station - body sock tunnel, breathing ball, puzzles, fidgets;  
Token board - the student should earn tokens for appropriate classroom behaviors;  
Leader bucks;  
Sensory room area - access to sensory tools;  
Alternate location for breaks; and  
Classroom jobs."

The BIP reinforcement strategies are verbal or gestural praise. The response strategies required for pacing, walking around the room, ignoring or arguing with staff directions, and elopement are redirecting or show [the student] a visual for the sensory room and prompt him to the area; once there, staff should do a check in on his feelings and set a five minute timer. A check out is performed at the conclusion of the five minute timer, and the student should be returned to class with increased support. The response strategies for unsafe behaviors in the alternative location are "staff should remain calm and neutral", with one person providing directions. If [the student] is unable to comply with directions, staff should remain quiet until the student is able to calm down. Physical behaviors should be blocked, and reduced attention given to them. The area should be free of harmful items. There should always be an observer. Ongoing data should be collected daily.

21. The student's BIP indicates it was "reviewed/revised" on August 17, 2022. The Prior Written Notice generated after the August 16, 2022, IEP team meeting, does not reflect that the IEP team made any revisions to the BIP.
22. There is documentation that the student's BIP was consistently implemented from August 17, 2022, to September 9, 2022.
23. The student's BIP indicates it was "reviewed/revised" on November 16, 2022. The revised BIP replaced the prior response strategy for pacing with when [the student] begins to verbally escalate, or refuses to engage in work tasks, staff are to "remind [the student] of what he is working for and shows him how close he is to earning a break on his token board to give him an opportunity to correct the behavior."

The response strategies required for eloping from the "learning space or regular station" are redirection to the sensory room and engage in activities to get in a better "physical and emotional state then return to learning space." If the student elopes from the "calming corner or sensory room", staff should call for support and transition to the sensory room for "more space to safely de-escalate then return to the learning space." If the student is unable to "be safe in the classroom, work may be brought to him to complete in this area. Tokens may be earned in the sensory room."

24. There is no documentation that the student's BIP was consistently implemented since September 9, 2022.
25. There is no documentation that a BIP was developed prior to June 6, 2022.

**CONCLUSION:**

Based on Findings of Facts #20 - #25, MSDE finds that the FCPS did not ensure that the student's BIP was consistently implemented since June 6, 2022, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation has occurred with respect to this 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. MSDE has established reasonable time frames below to ensure that non-compliance is corrected in a timely manner.<sup>2</sup> 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

**Student-Specific**

MSDE requires the FCPS to provide documentation by March 1, 2023, of the following actions:

- a. The student is being provided with specialized instruction by the individual required by the IEP, weekly social skills training, daily "frequent changes in activities and opportunities for movement" specifically, regular breaks throughout the school day that should be tracked, daily "manipulatives and/or sensory activities to promote listening and focusing skills, and the psychologist consult as required by the IEP; and
- b. The IEP team has determined the amount and nature of compensatory services or other remedy 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.

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<sup>2</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, 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>3</sup> 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 FCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

**School-Based**

MSDE requires the FCPS to provide documentation of professional development completed by April 1, 2023, to ensure that the staff at ██████████ School properly implements the requirements for the provision of specialized instruction by the required providers, the provision of specialized instruction and supports, and the implementation of BIPs under the IDEA. The FCPS must also develop a monitoring tool to ensure that proper procedures are followed for the provision of specialized instruction by the required providers, the provision of specialized instruction and supports, and the implementation of BIPs for students at ██████████ School, beginning no later than April 1, 2023.

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

c: Cheryl Dyson  
██████████  
Alison Barmat  
Gerald Loiacono  
Diane Eisenstadt  
Tracy Givens