



July 14, 2023



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

RE: [REDACTED]
Reference: #23- 225

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 May 15, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Somerset County Public Schools (SCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The SCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified behavioral and medical needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324.
2. The SCPS did not ensure that the complainant was provided with accessible copies of each document the IEP team planned to discuss at the May 5, 2023, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
3. The SCPS did not provide the complainant with a copy of the IEP documents within five business days after the IEP team meeting on May 5, 2023, in accordance with COMAR 13A.05.01.07.
4. The SCPS did not ensure that the IEP team addressed the complainant’s concerns about the student’s behavior and recommendations for the student’s IEP, since April 1, 2023, in accordance with 34 CFR §300.324.

5. The SCPS did not follow proper procedures when disciplinarily removing the first-grade student from school, since April 1, 2023, in accordance with COMAR 13A.08.01.11(C)(1)(b).

BACKGROUND:

The student is six years old and is identified as a student with a speech or language impairment under the IDEA. She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1, #4, and #5: IEP THAT ADDRESSES STUDENT'S IDENTIFIED BEHAVIOR AND MEDICAL NEEDS, IEP TEAM ADDRESSING THE PARENT'S CONCERNS ABOUT BEHAVIOR, AND DISCIPLINARY REMOVAL OF FIRST-GRADE STUDENT

FINDINGS OF FACTS:

1. The student's IEPs, developed on May 19, 2022, and March 1, 2023, reflect that behavior: social/emotional is not an area that impacts the student's academic achievement and/or functional performance. The March 1, 2023, IEP further reflects that the student's social/emotional/behavioral level of performance, based on the Behavior Assessment System for Children (BASC-3), is first-grade.
2. The student's IEP, developed on May 19, 2022, requires that the student be provided with in-class accommodations and support to address her behavioral needs. The student's IEP includes supplementary aids and services, program modification, and supports including the following:
 - a. Instructional Support: a picture schedule, use of organizational aids, preferred morning instruction, repetition of directions.
 - b. Behavioral Supports: encourage/reinforce appropriate behavior in academic and non-academic settings through visual and verbal support, provide manipulatives and/or sensory activities to promote listening and focusing skills, and provide frequent changes (frequent breaks) in activities or opportunities for movement.
 - c. Physical/Environmental Support: preferential seating.
3. On December 7, 2022, the IEP team met to consider the need for behavioral data collection and an evaluation (social/emotional/behavioral, cognitive, and educational) of the student in response to parental concerns regarding the student's behavior. It was discussed that the student has Attention Deficit/Hyperactive Disorder (ADHD). The IEP team agreed to collect behavioral data for the student.
4. On February 14, 2023, the IEP team met in response to a request from the complainant. The complainant raised concerns regarding the student's behavior. The complainant wanted to know what strategies were being used to promote positive behaviors for the student in the school setting. The complainant was informed that the following strategies were being used: a daily behavior chart, involvement in the "Girls Club", frequent breaks, fidgets at her desk, "cozy corner" in the classroom, Positive Behavior Intervention and Supports (PBIS) monthly incentive, the opportunity of being 1st-grade "star student", and opportunity for being the student of the week.
5. On March 1, 2023, the IEP team met to review assessments and review and revise the student's IEP. The IEP team reviewed the social/emotional and behavioral data collected for the student, which concluded that: "The teacher ratings basically indicated that the student does not exhibit any consistent significant behavioral difficulties in the school setting." The IEP team discussed if the coding "04 Speech/Language Impairment" continued to be the most appropriate. The school psychologist stated that there are no

disabilities that would require the student to receive direct instruction required for special education services. The complainant proposed that the student's identified disability be changed to "08 Other Health Impairment (OHI)" for ADHD. Although the IEP team agreed to add behavioral supports to the student's IEP, the team documented the determination that "ADHD could be handled through a 504 plan which will provide the student with all of the accommodations that they need since classroom services are not needed." The student's IEP, developed on March 1, 2023, requires the student to be provided with four thirty-minute sessions per month of speech and language services outside the general education classroom. The IEP further requires that the student be provided with in-class accommodations and support to address her behavioral needs. The student's IEP includes supplementary aids and services, program modification, and supports, including:

- a. Instructional Support: small group at a table in the classroom for assessments, monitor independent work, check for understanding, repetition of directions, and allow the use of organizational aids.
 - b. Social/Behavioral Supports: frequent check-ins to check for possible frustration, provide frequent changes in activities or opportunities for movement, provide manipulatives and/or sensory activities to promote listening and focusing skills, and encourage/reinforce appropriate behavior in academic and non-academic settings.
 - c. Physical/Environmental Support: preferential seating.
6. On March 22, 2023, the IEP team met to review and accept the eligibility of the student under Section 504 of the Rehabilitation Act of 1973. The IEP team then reviewed and accepted the "IEP and 504 accommodations."
 7. On May 5, 2023, the IEP team met to discuss MSDE state complaint #23-136 findings and to discuss the complainant's concerns: "As for considering the complainant's concerns related to the student's behavior and determined the behavioral supports required for the student to receive Free and Appropriate Education (FAPE), daily supports have been provided to the student, and the Behavioral Specialist is in the process of completing the Functional Behavior Assessment (FBA) and the Behavior Intervention Plan (BIP), as requested by the complainant."
 8. On June 5, 2023, the IEP team met to review the FBA and the proposed BIP. The IEP team considered the proposed BIP and agreed to reconvene after the complainant had time to review the BIP. The IEP team further decided they needed to calculate the daily data for inclusion in the BIP. THE FBA indicated that the student "displays a pattern of repeated and frequent challenging behaviors (i.e. property destruction, not following directions, being disrespectful to staff and throwing items. In addition, the FBA indicated that the "student's behavior has the potential for imminent, serious physical harm to self and/or others, and/or significantly interferes with the learning environment." The IEP team also considered the complainant's proposal that the student qualified under the IDEA as a student with an OHI. The IEP team rejected this proposal but indicated that there were outstanding independent education and psychological evaluations to be completed, and the reports reviewed by the IEP team. The complainant requested that it be noted that "the IEP team would like to wait until after the Independent Education Evaluation (IEE) data is received and reviewed before considering changing the student's identification" code. The IEP team again determined that behavior is not an area that impacts the student's academic achievement and/or functional performance.
 9. There is documentation that the student's BIP was finalized by the IEP team on June 20, 2023. The IEP team agreed to implement the BIP on the first day of the 2023- 2024 school year.

10. During the 2022- 2023 school year, the student was disciplinarly removed from class and placed in an In School Intervention (ISI)¹ in response to the student's behaviors on the following dates:
 - Half day on January 5, 2023; unsafe behaviors;
 - Full day on January 12, 2023; unsafe behaviors;
 - Full day on January 17, 2023; unsafe behaviors;
 - Half day on January 18, 2023; disruptive behaviors;
 - Full day on January 20, 2023; unsafe behaviors;
 - Half day on January 25, 2023; unsafe behaviors;
 - Half day on March 8, 2023; unsafe behaviors; and
 - Half day on April 25, 2023; unsafe and aggressive behaviors.
11. There is documentation that while in the ISI on April 25, 2023, the student received academic instruction in a form commensurate with that provided by the classroom teacher, and that the work provided to the student allowed her to progress in the curriculum. There is documentation that the student's accommodations were implemented when the student was in the ISI on this date.
12. The student was not scheduled to receive speech and language services while in the ISI on April 25, 2023. There is documentation of a speech and language service log for the month of April 2023 reflecting that the student received the four thirty minutes session per month as required by the student's IEP.
13. While there is no documentation that the student has a health plan, there is documentation that the student's physician and complainant granted permission to the student's school to administer daily medication for ADHD. The school nurse's log reflects medication administration daily, with the exception of the days she was absent from school, out of medication, or was not sent by the school staff in time to receive the medication (April 6, 2023, and April 27, 2023).

CONCLUSIONS:

Allegation #1: An IEP That Addresses the Student's Identified Behavior and Medical Needs

The Student's Behavioral Needs

Based upon Findings of Facts #1- #9, MSDE finds that the SCPS determination that behavior is not an area that impacts the student is inconsistent with the data collected by the IEP team, and that the SCPS has not ensured that the IEP team has appropriately identified and addressed the student's behavioral needs since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation occurred with respect to this aspect of allegation #1.

The Student's Medical Needs

Based on the Findings of Facts #3, #5- #6, and #13 MSDE finds that the SCPS has ensured that the IEP team identified and addressed the student's medical needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of allegation #1.

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

IEP Team Addressing the Parent's Concerns About Behavior

Based upon Findings of Facts #4- #5, and #7- #8, MSDE finds that the SCPS did ensure that the IEP team addressed the complainant's concerns about the student's behavior and recommendations for the student's IEP since April 1, 2023, in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred with respect to allegation #2.

Disciplinary Removal of First-Grade Student

With few exceptions, Maryland law prohibits the suspension or expulsion of a child enrolled in a public prekindergarten program or in kindergarten, first, or second grade without first consulting with a school psychologist or other mental health professional to determine that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions and supports (COMAR 13A.08.01.11).

Based upon Findings of Facts #11- #13, MSDE finds that the student's placement in the ISI did not constitute a day of suspension and that the SCPS was not required to follow the procedures required by COMAR 13A.08.01.11(C)(1)(b) since April 1, 2023. Therefore, this office does not find a violation occurred with respect to allegation #5.

ALLEGATION #2: PROVISION OF DOCUMENTS 5 DAYS BEFORE THE MAY 5, 2023, IEP TEAM MEETING

FINDINGS OF FACTS:

14. There is documentation that an IEP team meeting was scheduled for May 5, 2023, with the intent to review MSDE state complaint #23- 136 findings.
15. During the May 5, 2023, IEP team meeting, the student's teacher shared results from an informal assessment completed for the student the day prior to the meeting. The IEP team did not consider any documents related to this assessment.
16. There is documentation that the complainant was provided with accessible copies of each required document the IEP team planned to discuss at the May 5, 2023, IEP team meeting on April 27, 2023.

CONCLUSIONS:

Based upon Findings of Facts #14- #16, MSDE finds that the SCPS did ensure that the complainant was provided with accessible copies of each document the IEP team planned to discuss at the May 5, 2023, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find a violation occurred with respect to allegation #2.

ALLEGATION #3: PROVISION OF DOCUMENTS 5 DAYS AFTER THE MAY 5, 2023, IEP TEAM MEETING

FINDINGS OF FACTS:

17. While there is documentation that the student's complainant was provided with a copy of the prior written notice on May 15, 2023, there is no documentation of the complainant being provided a copy of

the completed IEP within five business days after the IEP team meeting on May 5, 2023.

CONCLUSIONS:

Based upon Findings of Fact #18, MSDE finds that the SCPS did not provide the complainant with a copy of the IEP documents within five business days after the IEP team meeting on May 5, 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office finds a 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, 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.² 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.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

MSDE requires the SCPS to provide documentation by August 31, 2023, that the completed IEP from the May 5, 2023, IEP team meeting has been provided to the student's complainant.

MSDE further requires the SCPS to provide documentation by September 29, 2023, that the IEP team has convened and determined the amount and nature of compensatory services or other remedies to redress the violations regarding the lack of appropriately identifying and addressing the student's behavioral needs in the student's IEP and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

School Based

MSDE requires the SCPS to provide documentation by November 1, 2023, of the steps taken to ensure that the violations regarding the lack of the provision of the completed IEP and the lack of appropriately identifying and addressed the student's behavioral needs in the student's IEP do not recur at [REDACTED] School. Those steps must include a tool created to document and monitor the provision of IEP documents following IEP team meetings and the provision of a completed monitoring tool to MSDE by November 1, 2023.

² 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.

³ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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

DMC: sd

c: John B. Gaddis
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Sarah Denney
Paige Bradford
Nicol Elliott