




July 7, 2023





Mr. Kevin Smith
Director, Special Education
Wicomico County Board of Education
P.O. Box 1538
Salisbury, Maryland 21802-1538

RE: 
Reference: #23-226

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.

ALLEGATION:

On May 10, 2023, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of her son, . In that correspondence, the complainant alleged that the Wicomico County Public Schools violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the allegation that the WCPS did not develop an Individualized Education Program (IEP) that addressed the student’s identified social/emotional/behavioral and speech/language needs from May 2022 to December 2022, in accordance with 34 CFR §300.324¹.

BACKGROUND:

The student is seven years old and is identified as a student with developmental delay under the IDEA, with areas of concerned impact identified to include self-management, fine motor skills, and receptive and expressive language. He currently attends  School. Prior to the 2022-2023 school year, the student attended  School. The student has an IEP that requires the provision of special education instruction and related services.

¹ MSDE initially identified an allegation related to the student’s eligibility for IDEA services. Upon receiving additional documentation from the WCPS, this allegation was revised to reflect the student’s ongoing eligibility under the IDEA.

FINDINGS OF FACT:

1. On February 2, 2022, during the student's kindergarten year, the IEP team met to review and revise the student's annual IEP. At that time, the student had goals in communication, fine motor, and self-management. During this IEP team meeting, the IEP team determined that the student no longer required speech and language services.
2. The IEP team met again on May 20, 2022, to address the complainant's concerns regarding behaviors that the student had begun to exhibit in the spring of the 2021-2022 school year. The agenda for that meeting was to discuss and consider the student's behavioral issues, and to review the student's Behavior Intervention Plan (BIP).
3. According to the Prior Written Notice (PWN) from that meeting, "It was the action of the IEP team, after reviewing data and hearing concerns...to make no changes to the behavior intervention plan."
4. The student's BIP, dated February 2, 2022, targeted two behaviors: noncompliance and physical aggression toward self or others. It was determined that non-compliance was triggered by being given a non-preferred direction in order to avoid completing a non-preferred activity or task. This behavior was determined to occur when the student is asked to level a preferred activity, is overstimulated, or additional adult support is not present. It was determined that physical aggression to self or others was triggered by being asked to follow a non-preferred direction, complete a non-preferred activity, when upset, frustrated, or unable to verbally express himself and when told "no" in order to avoid completing the non-preferred activity/direction, or in attempt to get his way. It was determined that this behavior was more likely to occur when completing non-preferred activities, or when told "no".
5. The teaching strategies listed in the BIP in order to cultivate alternative or replacement behaviors include:
 - a. Use of a first/then chart
 - b. Use of a timer
 - c. Clear verbal directions
 - d. One-step directions
 - e. Reminders/Redirections before the behavior occurs
 - f. Rephased directions as needed
 - g. Repeated directions throughout activities
 - h. Use of a break pass
 - i. Discussions about feelings and other ways to express feelings
6. The response strategies listed in the BIP, to be used when the problem behavior occurs include:
 - a. Eye contact with student
 - b. Discussion about his feelings
 - c. Reminders about appropriate ways to express feelings
 - d. Breaks within the classroom to calm down
 - e. Break outside the classroom to calm down

7. The student's behavior continued to escalate throughout the spring of the 2021-2022 school year and into the fall of the 2022-2023 school year.
8. On September 7, 2022, the IEP team met to review a letter the complainant received from the [REDACTED] [REDACTED] regarding the results of an evaluation that had been conducted for her son and to consider amending the student's IEP accommodations and services. The letter from [REDACTED] dated June 27, 2022, stated that the student had been diagnosed with Autism Spectrum Disorder, and recommended that the student receive accommodations for ADHD including movement breaks, extended time on assignments, and a one-on-one aide, in addition to sensory tools and a behavioral intervention plan. During the meeting the school staff reported that the student was struggling with transitions during the school day, and when getting off the bus. The IEP team decided to provide the student with more supports, which included a behavior log to be sent home daily. The complainant also asked about restraint if her child runs, and a WCPS administrator explained to her that restraint is not used, however, if it were required in an extreme case she would be notified in writing. The prior written notice states, "There were no other relevant factors indicated related to the proposed action of the IEP team."
9. On September 9, 2022, the complainant sent an email to WCPS administrative staff stating that "[She was] concerned that all of [her son's] needs [relating] to his disability [had] not been assessed and therefore are not being addressed." In this email, she expressed concerns related to the spring of the previous school year (2021-2022), as well as the current school year (2022-2023). The complainant stated, "It appears that my son was dismissed from direct speech and language services last year without a formal re-evaluation. We had an IEP meeting to discuss that this week and the speech therapist was supposed to be in attendance. However, at the time of the meeting I was told that she had another meeting and would not be there...I talked to the speech therapist via phone the next day and she stated that she did not formally re-evaluate before dismissal from services. When I asked her to send me a copy of the re-evaluation to dismiss from services she only sent me a copy of the initial evaluation. [The student] may be owed compensatory speech therapy services because of this but more importantly, he has been denied an appropriate service that is going to result in him falling further and further behind instead of catching up." The complainant further stated that at the September 7, 2022, IEP meeting, she was told that her son had "eloped from the school several times and...[he had even] eloped and [gotten] into a van..." The complainant stated that she was "so worried for [her son's] safety," and that although the BIP had been discussed at the previous meeting "...there was no data presented or discussed [and she had] not seen any data since the latest BIP developed in 2/22." The complainant further stated that if her son was eloping every day, "...that is sufficient data that the current BIP is not working and needs to be amended. No one offered that as a solution at the [September 7, 2022] meeting...[and the] solution offered was restraint or for the police to take him to the emergency room at the hospital."
10. In the September 9, 2022, email complainant also addressed her concerns regarding whether or not the IEP team had ensured that all of her son's issues had been identified. The complainant wrote, "At the IEP meeting this week, I requested a complete re-evaluation in the areas of academics, cognition, speech and language, social-emotional behavioral, OT, and ST, as well as evaluation for eligibility under Autism. The team said that they would consider it in November. This is...[very concerning because] there is abundant data that [the student] cannot access his education...I don't understand why a school team would not

think a full evaluation would be an appropriate next step to determine all of [the student's] needs related to his disability and develop a more appropriate IEP....I am worried that his disability related to understanding what is going on around him is impacting behavior and the proper supports are not in place." The complainant ended this email by stating that she had received a note on Thursday, September 8, 2022, that her son had kicked a teacher at school, of which "the principal wrote [in the note] that we talked about this at the IEP meeting and I do not agree...We discussed his elopement at the meeting but it was not mentioned to me that he kicked a teacher and was going to be given a disciplinary notice."

11. The parent's request for reevaluation was not included in the prior written notice from the September 7, 2022, IEP meeting.
12. In response to the complainant's September 9th email, as reflected by the meeting invitation, the IEP team held an expedited meeting on September 16, 2022, to "consider amendments to the student's current IEP to include a consideration of a change of placement to ensure the provision of FAPE." The prior written notice from this meeting states that the meeting was "...expedited due to the school-based members of the IEP Team's concern that the student was not receiving a Free Appropriate Public Education (FAPE) due to frequent elopement impacting the student's ability to access his education. The student's safety was also an immediate area of concern. The parent also expressed concerns in writing related to the reevaluation of all academic areas and speech-language. The parent shared she does not believe he is processing what he is told."
13. According to the prior written notice from this meeting, "The following amendments to the IEP are proposed: an increase in specialized instruction outside the general education setting for 29.50 hours per week except for when he is participating in Physical Education with adult support. Counseling will continue as a related service and counseling was amended to include services to be fully outside the general education setting. There were no other related service changes."
14. The prior written notice further states, "The IEP team proposed the placement for the student be changed to a special education setting within a public school for the majority of the school day. The proposed placement for the student is not provided in the student's home school; therefore, the student will receive the proposed special education and related services in a public school that is closest to the home school. It was proposed that [REDACTED] would be the closest public school that could implement the IEP as written. The IEP team proposed all other areas of the IEP remained appropriate. The parent was in agreement with the proposed action."
15. At this meeting, the IEP team also considered the reevaluation process. The discussion, as reflected in the prior written notice, was as follows: "It was also the action of the IEP team to consider the need to begin the re-evaluation process as requested by parent. After considering the parent request, the school-based members of the IEP team agreed with the parents request to obtain assessments. It was the action of the IEP team, after considering all areas of concern, to propose the following assessments be completed: educational, psychological, language (to include social/pragmatic language and occupational

therapy. The parent...verbally agreed to complete the requested assessments and will provide written consent upon receipt of the Consent for Assessment Form.”

16. The prior written notice from this meeting also captures the concern of both the complainant and the school team with regard to the student’s safety and ability to access the general education curriculum. The notice states, “The actions of the IEP team are proposed because the school-based members of the IEP team and the parent shared concerns regarding the student's ability to access his general education due to significant periods of elopement which impacts his time in the general education classroom. In addition, the parent expressed concerns regarding the students' language skills, academic skills, and social-emotional functioning and requested that the school-based members of the IEP team complete assessments to determine if additional services were needed.”
17. The prior written notice also reflects the discussion the team had regarding the student’s behavior. “The student's mother indicated concerns regarding the number of times that she has been contacted by the school regarding her son's behavior. In addition, she shared concerns regarding his dismissal from speech/language services in February of 2022. She also shared concerns regarding the BIP and if it is being followed as well as concerns regarding her student's academic skills...The parent reported she wants her son to be safe, not elope, not be called to come and get him. Additionally, the parent requested reports on his reading scores and she wants to be informed if staff are injured. The school-based members of the IEP team shared a summary of the student's frequent elopement from the classroom to the outside of the school grounds. Some behaviors included climbing fences, jumping off railings and window ledges, crawling under parked cars, as well as running throughout the building and outside on school grounds. These behaviors create a concern for the safety of the student and indicate that the student is not accessing his education...The special educator and general educator stated that the student is eloping when content work is presented to him, regardless of how challenging. In addition, the school psychologist indicated that the student is eloping during times of transition although there are times where there is no trigger noted... Data reviewed from last school year and this school year's reading and math screenings (iReady and Do the Math) were shared by the classroom teacher. Based on this information, the student is performing at a Kindergarten level. The parent indicated that school is overwhelming for the student and that he has difficulty communicating his frustration and needs. Due to this, as well as academic concerns expressed by the parent, the team requested that the re-evaluation process be initiated.”
18. On September 20, 2022, the student began attending [REDACTED]. The team at [REDACTED] conducted the requested re-evaluation assessments on the student in the areas of Education, Occupational Therapy, and Speech-Language, in addition to a Psychological evaluation from October 6, 2022, through October 17, 2022.
19. The Education assessment completed for the student found that the student had needs in reading, written language, and mathematics. The occupational therapy assessments indicate that the student had relative strengths in “manual dexterity, pencil grasp, scissors grasp, forming pre-writing strokes, and following a visual schedule for sessions” and relative difficulties in “fine motor, visual-motor, visual perceptual, and sensory processing skills.” The report indicated that the difficulties may be impacting his

performance in the classroom environment and school environment. The speech and language assessment found that the student's oral language, language content, language structure, receptive language and expressive language functioning scores were in the "very low/severe" range and his pragmatic skills were in the "below average" range. The report also noted that the student had difficulty referencing his physical setting, audience, or intended purpose, when formulating responses. The psychological assessment completed for the student indicated that the student meets the criteria for Autism Spectrum Disorder. The report noted deficits in both verbal and nonverbal communication impact his ability to engage with others, but also impact his ability to use language to express himself. The report noted that the student has low levels of sustained attention, becomes easily distracted, and is often disorganized and has deficits in executive functioning.

20. The IEP team at [REDACTED] School met on November 29, 2022, to "review existing data, gather information..., redetermine the need for assessments or if sufficient data exists, redetermine eligibility for special education and related services." During the IEP team meeting, the team determined that the student was eligible under the IDEA as a student with autism and that the student was impacted in basic reading skills, reading comprehension, written expression content, math calculation, math reasoning, receptive and expressive language skills, pragmatic social skills, fine motor skills, sensory processing, visual spatial skills, and self-management. The complainant shared that she was concerned that the student continued to require speech services and should not have been dismissed from services at his previous school. The complainant also stated she would like the team to consider compensatory services at the next IEP meeting.
21. On December 13, 2022, the IEP team at [REDACTED] School met to "Review and revise, as appropriate, the IEP." The prior written notice from the December 13, 2022, IEP meeting reflects that the team determined the student would receive three 45-minute sessions of specialized instruction outside of the general education setting per day, two 30-minute sessions of specialized instruction inside of the general education setting per day, and to address IEP goals as well as - two 20 minutes per week of counseling services, three 30 minute sessions of occupational therapy sessions, and four 30 minute sessions of Speech / Language services per month outside of the general education setting to address IEP goals.
22. The student's IEP, dated December 13, 2022, requires that the student be provided with the following supports:
 - a. Behavioral Intervention: 12/13/22 The Team reviewed the BIP and agreed to take out aggression to others and leave it as just aggression per parent request. The remainder of the plan will stay in effect. Targeted behaviors: Non-compliance and Aggression Steps for Intervention: alternate activities, use of timer, first/then chart, breaks, social stories, eye contact with student, discussion about his feelings, reminders about appropriate ways to express feelings, breaks within the classroom to calm down, break outside of the classroom to calm down, contact with parent via talking points, email and/or phone call.

- b. Instructional and Testing Accommodations:
 - i. Separate or alternate location
 - ii. Reduce distractions to self
 - iii. Reduce distractions to others
 - iv. Eliminate Answer Choice
 - v. Highlight Tool
 - vi. Redirect Student
 - vii. Monitor Test Response
 - viii. Extended Time - Time-and-a-Half

- c. Supplementary Aids and Services
 - ix. Picture schedule Daily
 - x. Repetition of directions Daily
 - xi. Break down assignments into smaller units Daily
 - xii. Home-school communication system Daily
 - xiii. Speech/lang pathologist consult Weekly
 - xiv. Adjustments to sensory input (i.e. light, sound) Daily
 - xv. Adult Support Daily
 - xvi. Encourage/reinforce appropriate behavior in academic and nonacademic settings Daily

23. The student's IEP, dated December 13, 2022, includes goals in the following areas:

- a. Fine Motor
- b. Math Problem Solving
- c. Reading Comprehension
- d. Reading Fluency
- e. Reading Phonics
- f. Self-management
- g. Speech and Language Receptive Language
- h. Speech and Lang. Expressive Language
- i. Written Language Expression

DISCUSSION/CONCLUSIONS:

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. The IEP Team must also consider the communication needs of the child; and supplementary aids and services, program modifications, and support for school personnel. (34 CFR §300.324)

Based on the Finding of Facts #3, 6, #7, #8, #9, #10, #12, #15, #16, and #19, MSDE finds the WCPS did not develop an Individualized Education Program (IEP) that addressed the student's identified social/emotional/behavioral and speech/language needs from May 2022 to December 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did occur with respect to the 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 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 WCPS to provide documentation by December 31, 2023, that it has offered the student compensatory services or another remedy to redress failure to develop an Individualized Education Program (IEP) that addressed the student's identified social/emotional/behavioral and speech/language needs from May 2022 to December 2022. The documentation must reflect that the remedy was developed after consultation and in collaboration with the school system in which the student is placed. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the remedy offered.

School Based:

MSDE requires [REDACTED] School to provide documentation by July 8, 2024, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the school. Specifically, a review of 10 randomly selected student records for students receiving speech/language services, social emotional and behavioral supports must be conducted in order to determine if the regulatory requirements are being implemented with regard to the evaluation and dismissal of services and related services, implementation of behavioral, social/emotional supports, and documentation of the results of this review must be provided to MSDE. If compliance with the requirements is reported, MSDE staff will verify compliance with the determinations found in the initial report. Full compliance is required for correction.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be

² 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.

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.

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submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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/ebh

c: Micah Stauffer
Kevin Smith
Nicole A. Twilley
Alison Barmat
Gerald Loiacono
Nicole Elliott
Paige Bradford
Diane Eisenstadt
Elizabeth B. Hendricks