



Mohammed Choudhury
State Superintendent of Schools

August 11, 2023



Ms. Audrey Ellis
Director, Special Education Services
St. Mary's County Public Schools
23160 Moakley Street
Leonardtown, Maryland 20650

RE: [REDACTED]
Reference: #23-265

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 June 13, 2023, MSDE received a complaint from Mr. [REDACTED] hereafter, "the complainant," on behalf of 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 above-referenced student.

MSDE investigated the following allegation:

The SMCPS did not ensure that the student has been provided with the special education services and supports required by his Individualized Education Program (IEP) since June 2022, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 19 years old and is identified as a student with autism under the IDEA. He attends [REDACTED] school located in Baltimore County. The student has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's legal residence is in St. Mary's County; however, he resides in a [REDACTED] located in Baltimore County.

2. During the 2022-2023 school year, the student's IEP, dated August 9, 2022, indicates that he was placed by SMCPs at the [REDACTED] in Prince George's County. His IEP from that date indicates that transporting the student is a safety concern, and the SMCPs is seeking appropriate residential placements. The student attended [REDACTED] until February 3, 2023.
3. The student missed a significant amount of school due to unsafe behavior during transportation to and from school. SMCPs determined that compensatory services were warranted.
4. During the 2022-2023 school year, SMCPs made referrals for residential placements to: [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. The student was not accepted at any of these schools.
5. At the end of the 2022-2023 school year, from May through July, SMCPs again sent referrals to [REDACTED] [REDACTED] [REDACTED] and added the [REDACTED]. The student was not accepted at any of these residential schools.
6. The student was placed [REDACTED] in Baltimore County by the Developmental Disabilities Administration (DDA) during the winter 2023. SMCPs applied to separate special education day schools on the student's behalf from May through June 2023, until an appropriate residential setting could be located.
7. From May through August 2023, SMCPs sent referrals to [REDACTED] [REDACTED] [REDACTED] and the [REDACTED]. The student was not accepted at any of these schools.
8. SMCPs sent a referral to [REDACTED] on or around February 2023. He was accepted to that program and began attending on February 16, 2023. However, due to the intensity of his needs, [REDACTED] notified SMCPs on or around April 20, 2023, that they were unable to program for the student. Since that time, the student has only been able to attend school for 2-3 hours each day.
9. The IEP team convened on August 2, 2023, to develop the student's IEP for the 2023-2024 school year. The team again determined that a residential placement was required.
10. In August 2023, SMCPs submitted referrals to out of state residential schools, [REDACTED] and the [REDACTED]. To date, there has been no response from these schools.

CONCLUSIONS:

A Free Appropriate Public Education (FAPE) must be available to all children residing in the State between the ages of 3 and 21, including children with disabilities. The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday. Each State must also ensure that FAPE is available to any individual child with a disability who needs special education and related services. (34 CFR §300.101).

Based on Finding of Facts #1 through #10, MSDE finds that the SMCPs did not ensure that the student has been provided with the special education services and supports required by his Individualized Education Program (IEP) since June 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, MSDE finds that there is a violation 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.¹ 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.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

The IEP team must meet one month after an appropriate placement is secured in order to determine the compensatory services or other remedy that will be provided to the student in order to compensate for the time period that the student was unable to receive the specialized instruction and related services that were mandated by his IEP.

Additionally, SMCPS must continue to report to MSDE on the status of their efforts to secure a placement for the student bimonthly and continue collaboration with the MSDE nonpublic placement unit to assist with securing a placement for the student.

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

¹ 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.

² 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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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/abb

c: Scott Smith
Carrie Smith
Alison Barmat
Gerald Loiacono
Nicole Elliott
Paige Bradford
Diane Eisenstadt