




December 22, 2023




Dr. Tia McKinnon
Director of Special Education
Charles County Public School System
5980 Radio Station Road P.O. Box 2770
La Plata, MD 20646

RE: 
Reference: #24-062

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 October 16, 2023¹, MSDE received a complaint from Ms. , hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public School System 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 CCPS did not ensure that an Individualized Education Program (IEP) was in place for the student, when required, since the start of the 2022-2023 school year, in accordance with §34 CFR 300.323(c) and COMAR 13a.05.01.08.
2. The CCPS did not ensure that the student was provided with the specialized instruction, related services, and support required by IEP since the start of the 2022-2023 school year in accordance with 34 CFR §§ 300.101 and 323.

¹ The complainant shared the complaint with the CCPS and MSDE on February 22, 2023; however, she emailed the complaint to MSDE at a non-working email address. The allegations in the complaint reference time periods at the start of the 2022-2023 school year. While MSDE only has the authority to investigate matters alleged to have occurred within one year, MSDE has determined that in this case, the timeframe for investigation should begin at the start of the 2022-2023 school year. The complainant made a good faith effort to provide it to MSDE, and the CCPS had notice of the issues raised within one year of the date the complaint was first sent.

3. The CCPS did not ensure that the student's IEP contained annual goals designed to meet the student's social- emotional and safety needs since the 2022-2023 school year, in accordance with 34 CFR §300.324.
4. The CCPS did not ensure that the student was provided with the transportation services required by his IEP during extended school year services during the summer of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and 323.

BACKGROUND:

The student is 16 years old and is identified as a student with an Other Health Impairment under the IDEA. He attends ██████████ School. He has an IEP that requires the provision of specially designed instruction and related services.

FINDINGS OF FACTS:

Allegation #1

1. On September 15, 2022, the IEP team convened to review the assessments needed based on a parent referral submitted on August 16, 2022². This meeting was rescheduled from its initial date on August 31, 2022. The team discussed the student's academic progress and needs, incorporating parental input to determine support during the eligibility determination process. The complainant informed the team that the student required a scribe and assistance with reading. The student demonstrated skills in sentence formation but needed close proximity support for reinforcement. Social interaction remained a challenge for the student, with safety concerns expressed due to being in a school environment. The complainant emphasized the need for routines and assistance in learning. The complainant explained that she is "aware that the general education curriculum is far above [the student's] instructional level at this time" and wants the student to be in a classroom where the instruction is based on his needs and was appropriate to his instructional level.
2. During the meeting, the school team updated the complainant on the student's progress since the beginning of the school year. The student was noted to be missing assignments, not recording information, and failing to respond to questions. He sat apart from the 13-student class and was not passing any current classes. There were significant concerns about the student's ability to access the grade-level curriculum. The IEP team discussed the student's Student Support Team plan in the general education setting and HERD schedule (lunch time intervention schedule).
3. At the September 15, 2022, meeting the IEP team proposed conducting evaluations and recommended utilizing information from assessments, along with all available data, to determine the student's continued eligibility for special education and to determine his present levels of performance. The team suggested conducting a comprehensive educational assessment, cognitive/processing evaluation, assessment of adaptive skills, speech and language assessment (for receptive and expressive language skills, as well as programmatic language), and an occupational therapy assessment. A follow-up meeting on October 20, 2022, was agreed upon to review the assessments.

² The student enrolled in CCPS on August 29, 2023. The student was homeschooled for the 2022-2023 school year.

4. On September 19, 2022, the complainant provided consent for the assessments to be conducted.
5. On October 20, 2022, the IEP team met to complete the evaluation of the student, determine eligibility under the IDEA, and if appropriate, develop an IEP for the student. The IEP team reviewed and discussed all available data, which included parent and teacher input, formal/informal assessments, and student performance. The IEP team determined that the student is eligible for special education services under the educational disability of Other Health Impairment (OHI) and Intellectual Disability (ID).
6. The student has a rare genetic condition that causes developmental and speech delays, behavioral problems, and a weakened ability to feel pain or sweat. The IEP team determined the student's disability affects him in the areas of reading phonics; reading comprehension; math calculation; written language mechanics; speech and language: receptive, expressive, and pragmatics; social interaction skills; and self-management.
7. During the meeting on October 20, 2022, the complainant and her counsel expressed concerns about the student requiring substantial support and shared her apprehensions about whether he was receiving it adequately. Specifically, the complainant raised concerns about the student's daily meals, marking of absences during excused doctor's appointments, and clarification on whether the student is escorted to each class or only to the door.
8. The complainant outlined some of the student's needs and inquired about the process following the receipt of a report from The National Institute of Health (NIH) containing educational recommendations. The IEP team discussed that upon receiving the report, a meeting would be convened to review, consider, and discuss the recommendations, with the possibility of incorporating them into the student's IEP.
9. The recommended speech and language assessment was not completed prior to the IEP meeting on October 20, 2022, as the assessment was to be conducted virtually, and the complainant expressed disagreement with this approach.
10. On October 20, 2022, the complainant received a letter regarding the student's attendance. The student had been absent from school for a total of five days since the start of the 2022- 2023 school year.
11. On November 3, 2022, CCPS completed the recommended speech and language assessment from the September 15, 2022, IEP meeting.
12. On November 15, 2022, the IEP team convened to review the speech and language assessment as part of the eligibility determination, and to review the student's initial IEP. The team proposed to identify the student with a speech or language impairment and as a student with Multiple Disabilities (MD). However, there was disagreement among IEP members regarding the MD classification. Due to time constraints and an extended discussion on determining the appropriate disability classification, the team agreed to reconvene on November 21, 2023, to review the initial IEP.
13. On November 28, 2022, the IEP team met to continue the discussion of the student's disability classification and review the IEP. The IEP team concluded that the student was classified as a student with OHI under IDEA. Throughout the meeting, the IEP team examined all available data, including current and past evaluation reports, current grades, progress on annual goals, and input from both

complainant and teachers. Appendix A for the student was reviewed, leading to the determination that the student was not eligible for alternative assessment or alternate academic achievement standards (AAAS). The IEP outlined that the student would receive specialized instruction for all core classes in a self-contained classroom setting, along with a supplementary reading class and direct speech and language therapy.

14. The parent's counsel expressed concern regarding the safety of the student navigating the hallways. The school-based team member informed the IEP team that the student receives adult 1:1 support during transition in the hallways. The IEP team agreed that a daily hallways transition documentation log would be emailed or sent home with the student. He also received a transition schedule.
15. The IEP created on November 28, 2022, reflects identified needs in the areas of math calculation, reading comprehension, reading phonics, speech and language: expressive language, speech and language: pragmatics, speech and language: receptive language, Written Language Mechanics, Behavioral - self-management, behavioral - social interaction skills, and health - health/medical. The IEP reflects the student's IEP goals in the areas of reading phonics; reading comprehension; math calculation; written language mechanics; speech and language: receptive, expressive, and pragmatics; social interaction skills; and self-management. The IEP team determined that the student required three hours and 45 minutes a day of specialized instruction outside of the general education classroom in a self-contained classroom setting, 45 minutes a day of specialized instruction for supplemental reading inside general education in the inclusion classroom setting, and 45 minutes weekly of speech and language as a related service. The IEP team proposed the student is eligible for ESY services.
16. The IEP reflects that the student required supplementary aids and services to meet his needs, such as a picture schedule to navigate the building throughout the school day, pictures of classrooms, a schedule for early dismissals, home-school communication, social skills training, adult support for transitions in the hallway, extra time for movement between classes, daily check-out, scribe for longer written assignments, and phonics-based and math-based intervention.
17. On December 1, 2022, the complainant received a letter addressing the student's attendance. The student has been absent from school for a total of 11 days since the beginning of the 2022-2023 school year.
18. On December 19, 2022, the complainant provided written consent for special education services.
19. On December 22, 2022, the complainant received a letter addressing the student's attendance. The student has been absent from school for a total of 16 days since the start of school year 2022- 2023.
20. On February 2, 2023, the complainant received a letter addressing the student's attendance. The student has been absent from school for a total of 21 days since the start of school year 2022- 2023.
21. On March 21, 2023, the IEP team met to review and revise the IEP, as appropriate, and discuss placement. During the meeting, the IEP team discussed the existing data for the student, and reviewed accommodations, supplementary aids, and services. The school-based IEP team members discussed the student's current grades, noting that the student was in a self- contained class and failing in all of the subjects, other than art. The student received a classroom observation in English class that reflects the student required modified assignments and additional support that is not available for "diploma bound" students. During the meeting, the complainant inquired about speech

and language services, and CCPS acknowledged the student missed 12 sessions for 45 minutes each session, due to a lack of providers. The complainant and parent counsel requested that the student be placed in a non-public setting due to lack of data on the student and “shortfalls” in the student’s program. The school- based IEP team proposed the student transition into the ACHIEVE regional special education program for student kindergarten through the age of 21 with significant cognitive abilities.

22. There is documentation that all missed speech and language services have been provided.
23. During the March 21, 2023, meeting, the IEP team completed Appendix A and determined the student was eligible for participation in the alternate state assessments and AAAS. Although the complainant provided consent, the IEP team noted her disagreement as she feels there is not enough data to make a decision at that time. The complainant also disagreed with the placement recommendation. The IEP team proposed the student be placed in ACHIEVE for 45-60 days starting on April 11, 2023, and determined that another meeting would be convened to determine the appropriateness.
24. The student began his placement in the ACHIEVE classroom on April 21, 2023, and was absent 10 out of the remaining 40 days of the 2022-2023 school year.
25. There is documentation indicating that the student received the required services during the days he attended the ACHIEVE program.
26. On May 25, 2023, the IEP team met to review and revise the IEP, as appropriate, and discuss ESY. The IEP team reviewed, discussed, and considered all available data, which included parent and teacher input, formal/informal assessments, and student performance and determined the student required ESY services during the summer of 2023. The IEP team determined that the student would receive one three-hour session per week to address goals in reading, math, and written language and one 45-minute session per week for speech and language therapy via teletherapy. The complainant expressed concerns regarding inconsistencies in speech and language services, uncertainty about service providers, and noted a lack of the required speech and language services according to the IEP.
27. During the meeting, the IEP team discussed the necessity of a follow-up meeting to assess the student's progress in ACHIEVE. The school team suggested reconvening for a program review on either September 21, 2023, or September 28, 2023. However, the parent’s counsel proposed an earlier meeting, suggesting the team convene before the start of the school year, as soon as teachers return to school.
28. There is no documentation the IEP team discussed or determined the student required transportation services during ESY.
29. There is documentation that the student received the six required speech and language ESY services from July 11, 2023, to July 17, 2023; July 31, 2023; and August 1, 2023 to August 8, 2023.
30. On August 24, 2023, the complainant spoke with the Home and Hospital Office about applying for Home and Hospital Instruction, and she was given an application. An application was submitted and denied by the Home and Hospital Instruction Office due to the need for a doctor to sign the application as opposed to a nurse practitioner.

31. On September 2, 2023, the complainant sent an email to a school staff member, requesting the scheduling of an IEP meeting to discuss returning the student to the "diploma track."
32. On September 5, 2023, a school-based staff member contacted the complainant inquiring about the student's lack of attendance. The complainant informed the school-based member that the student was "pending an appointment."
33. On September 7, 2023, a school staff member reached out to the complainant to arrange an IEP meeting per the request of the complainant. Following this communication, the complainant expressed a desire for an Intra County Individualized Education Plan (ICIEP) meeting to reassess the student's placement, suggesting that she believed the SOAR program (a regionalized initiative for students with autism or autistic-like behaviors) would be a suitable placement for the student. The meeting was scheduled for September 26, 2023.
34. On September 13, 2023, the school team provided the complainant with a "Notice of Individualized Education Program (IEP) Team Meeting" for September 26, 2023; however, the complainant subsequently canceled the meeting.
35. On September 14, 2023, the complainant received a letter addressing the student's attendance. The student has been absent from school for a total of 9 days since the beginning of the 2023-2024 school year.
36. On September 15, 2023, a school-based member corresponded with the complainant, informing her that the "class misses [the student]" due to his lack of attendance.
37. On September 19, 2023, a school-based member provided the complainant with "login" information for reading resources while the student was not in attendance.
38. On September 21, 2023, the complainant received a letter addressing the student's attendance. The student has been absent from school for a total of 13 days since the beginning of the 2023-2024 school year.
39. On September 28, 2023, the complainant received a letter addressing the student's attendance. The student has been absent from school for a total of 18 days since the beginning of the 2023-2024 school year.
40. On September 28, 2023, the Pupil Personnel Worker (PPW) for the current school conducted a home visit in response to the student's frequent absences. During the visit, the staff member discussed options with the complainant regarding the student's current 'no-show' status.
41. The student did not receive special education services during his absence from school.
42. On September 29, 2023, the student was withdrawn from CCPS due to his lack of attendance. From the beginning of the 2023-2023 school year, the student did not attend school.
43. On October 2, 2023, the school team attempted to reschedule the IEP meeting that had been canceled by the parent. The complainant requested the meeting to be held at a different location, other than the current school building, and also requested an ICIEP meeting.
44. On October 6, 2023, the complainant re-enrolled the student in Charles County Public Schools.

45. On November 1, 2023, the IEP team convened at the request of the complainant to discuss a transportation request. The IEP team determined that the student required transportation due to the student's disability.
46. On November 7, 2023, the IEP team convened to review and revise the IEP as appropriate, discuss the complainant's concerns, and discuss placement. The IEP team discussed the student's current data since enrolled in his current school. The school base team discussed the student's current level in ACHIEVE and the number of students in his current class. The complainant expressed concern about the level of academic achievement the student was receiving and noted she wanted the student removed from the alternate achievement standards. The complainant revoked consent for the student's participation in alternate achievement standards. The IEP team recommended that the student remain in the ACHIEVE program as the regionalized program was meeting his needs. The IEP team determined the student will transition back to the diploma track, and his placement will revert to self-contained classes within the general education curriculum as a diploma-bound student.
47. On November 13, 2023, the IEP team convened to review the student's new schedule, address transportation logistics, and discuss concerns raised by the pediatrician regarding the student's anxiety. Due to the complainant's concern, a CCPS Behavior Specialist attended the meeting. The IEP team discussed the needs of the student and determined that the student "would not need a behavior plan." During the IEP meeting, the team discussed that the complainant would be provided with daily documentation of accommodations and modifications, the complainant declining English 1 for the student, and the transition of the student from his classes to the school bus.
48. Since the date of re-enrollment on October 6, 2023, the student has been absent six days excused and two days unexcused.
49. The student's current IEP has a projected annual review date of December 18, 2023. The scheduled IEP meeting to update his current IEP is set for January 9, 2024.

CONCLUSIONS

ALLEGATION #1: DEVELOPMENT OF AN IEP FOR THE STUDENT SINCE THE START OF THE SCHOOL YEAR

A public agency shall ensure that a reevaluation of each student with a disability is conducted in accordance with 34 CFR §§ 300.303 and 300.305 and COMAR 13A.05.01.05: (a) if the public agency determines that the educational and related services needs, including improved academic achievement and functional performance of the student, warrant reevaluation; (b) if the student's parent or teacher requests a reevaluation; or (c) before determining a student is no longer a student with a disability.

In accordance with 34 CFR § 300.303(b), a reevaluation shall occur: (a) not more frequently than once a year, unless the parent and public agency agree otherwise; and (b) at least once every 3 years, unless the parent and public agency agree that a reevaluation is not necessary.

The results of assessment procedures shall be used by the IEP team in reviewing, and, as appropriate, revising the student's IEP within 90 days of the IEP team meeting (COMAR 13A.05.01.06).

In this case, there was a delay in completing the speech/language assessment for the student, which resulted in a delay in determining the student's eligibility and completing the student's initial IEP. While it may not

have been possible to complete new assessments and develop a new IEP prior to the start of the school year, it was unnecessarily delayed due to the delay in completing all the required assessments.

Based on the Findings of Facts #1-#16, #23, #26, #27, #46, #47, and #49, MSDE finds that the CCPS did not ensure that an IEP was in place for the student, when required, since the start of the 2022-2023 school year, in accordance with §34 CFR 300.323(c) and COMAR 13A.05.01.08. Therefore, this office finds that a violation did occur with respect to the allegation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION, SUPPORTS, AND RELATED SERVICES

Based on the Findings of Facts #1-#2, #13-#16, #21, #26, #29, #32, #37, #41, and #46- #48, MSDE finds that the CCPS did ensure that the student was provided with the specialized instruction, related services, and support required by IEP while the student was present in school 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 did not occur with respect to the allegation.

ALLEGATION #3: AN IEP THAT ADDRESS THE STUDENT'S EMOTIONAL NEEDS AND SAFETY NEEDS

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 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).

In this complaint, the complainant alleges that the student suffers with anxiety due to the fear of feeling unsafe as he had difficulty transitioning throughout the hallways and from the school bus to his classrooms.

Based on the Findings of Facts #1, #14, #16, and #47, MSDE finds that the CCPS did ensure that the student's IEP contained annual goals designed to meet the student's social- emotional and safety needs as well as addressed his behavioral and safety needs by the appropriate use of behavioral supports and other strategies since the 2022-2023 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

ALLEGATION #4: PROVISION OF TRANSPORTATION

Transportation is a related service that includes: "(i) Travel to and from school and between schools; (ii) Travel in and around school buildings; and (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability." (34 CFR §300.34(c)(16)).

"In all instances, each student's need for transportation as a related service and the type of transportation to be provided are issues to be discussed and decided during the evaluation process and individualized education program (IEP) meeting, and the transportation arrangements agreed upon should be included in the disabled student's IEP. If the IEP team determines that transportation is a related service, including it in the IEP for a particular student because it is required to assist that student to benefit from special education, the public agency must provide transportation to the student at public expense." (*Letter to Smith*, Office of Special Education Programs July 12, 1995).

Based on the Findings of Facts #15, #26, #28, and #29, MSDE finds that the CCPS did not discuss the provision of transportation services during ESY for the student, in accordance with 34 CFR §§300.101 and 323. 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.³ 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.⁴ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires the CCPS to provide documentation by February 15, 2024, that the IEP team has convened and determined whether the violation related to a delay in completing the student's IEP in a timely manner, and the lack of discussion and determination of transportation services for ESY, 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 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.

The CCPS must ensure that the complainants are provided with written notice of the team's decisions. The complainants maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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

³ 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.

⁴ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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,

Antoine L. Hickman, Ed.D.
Assistant State Superintendent
Division of Early Intervention/Special Education Services

ALH/sj

c: Dr. Maria V. Navarro, Superintendent, CCPS
Ms. Tia McKinnon, Director of Special Education, CCPS
Ms. LeWan Jones, Director of Special Education, Compliance, CCPS
[REDACTED]
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Ms. Stephanie James, Complaint Investigator, MSDE