

January 30, 2024

Mr. Levi Bradford  
Public Justice Center  
201 N. Charles Street, Suite 1200  
Baltimore, Maryland 21201

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

RE: [REDACTED]  
Reference: #24-095

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 December 1, 2023, the MSDE received a complaint from Mr. Levi Bradford, hereafter, "the complainant," on behalf of the 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 allegations:

1. The SMCPS did not provide the student with a free and appropriate public education (FAPE) when it disciplinarily removed him from his regularly scheduled classes and placed him in "in-school intervention" (ISI) for more than 10 days during the 2022-2023 school year, in accordance with 34 CFR §§ 300.101, 300.530 - .536, and COMAR 13A.08.03.05.
2. The SMCPS did not follow proper procedures when disciplinarily removing the student from school on May 25, 2023, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.08.03.07.
3. The SMCPS has not developed and implemented an Individualized Education Program (IEP) that addresses the student's identified social, emotional, and behavioral needs since April 19, 2023, in accordance with 34 CFR §§300.101 and .324.
4. The SMCPS did not ensure that the IEP team convened to review the student's IEP before December 14, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.

## **BACKGROUND:**

The student is thirteen years old and is identified as a student with Specific Learning Disability in reading and written expression and Dyslexia under the IDEA. He attends [REDACTED] ([REDACTED]). The student has an IEP that requires the provision of special education instruction and related services.

## **FINDINGS OF FACTS:**

1. The IEP team at [REDACTED] ([REDACTED]) met on November 15, 2022, to review and revise the student's IEP, and to review assessments to make a continued eligibility determination as a part of the student's reevaluation process. At that meeting, it was determined that the student continued to be eligible for special education services as a student with a Specific Learning Disability with a condition of Dyslexia. The prior written notice (PWN) also states that during the psychological testing, the student shared that "...he takes medication for attention deficit hyperactivity disorder (ADHD)." The parent asked the school-based team how the medication was faring for the student toward the end of the day, and in response, the team shared that the student was demonstrating similar behavior throughout the day and did not appear to be more distracted. It was decided that the student's IEP would reflect his continued eligibility, and the team would meet again in thirty days to review a proposed IEP and complete the student's annual review.
2. The IEP team at [REDACTED] met again on December 15, 2022, to conduct the student's annual review and to determine Extended School Year (ESY) eligibility. According to the PWN, it was determined that the student would have goals in the areas of reading fluency and written language, and the student's designated classroom accommodations would be text-to-speech in math, science, and government, small group, reduced distractions to self, notes and outlines, and extended time. The team determined that the student's supplementary aids, services, and program modifications and supports would include: monitoring independent work, repetition of directions, frequent and/or immediate feedback, home-school communication, break card/pass, preferential seating, and reading of math word problems to the student. The team decided that the student would receive thirty minutes of specialized instruction for reading fluency outside of general education five times per week, and forty-five minutes of support in written language and reading comprehension inside general education five times per week. The PWN reflects that it was shared that the student had started to exhibit avoidant behaviors with regard to writing assignments. At that time the parent stated that she was happy with the student's progress in school thus far, as he had only received one teacher phone call to date, although she was concerned about the student's reading and comprehension skills. It was also shared that the student had made progress on his IEP goals and was reading at a faster rate.
3. The student's IEP developed from this meeting, dated December 15, 2022, states that the student was to receive five thirty-minute sessions of specialized classroom instruction outside of the general education setting, totaling two hours and thirty minutes, to work toward his IEP goals in the area of reading fluency; and five forty-five minute sessions of classroom instruction with supports inside general education, totaling three hours and forty-five minutes, to address difficulties in writing and reading comprehension. The IEP reflected that the student was on a fourth-grade instructional level in reading fluency and below grade level in written language content. The supplementary aids, services, program modifications, and supports remained the same as those that were determined at the previous IEP meeting. The IEP states "Due to [the student] having ADHD, he will receive preferential seating in close proximity to instruction to ensure he is on task and attentive to instruction." The

student's least restrictive environment was determined to be inside general education 80% or more. The IEP states that the student would not be able to remain in the general education classroom for his reading intervention as he required specialized instruction to make progress in the general education environment. The IEP also reflects that the student was determined not eligible for ESY services.

4. At the end of the second marking period the student received a "C" in math, science, and English Language Arts; a "D" in physical education; and an "F" in music and social studies.
5. The student's progress report dated February 2, 2023, stated that he was making sufficient progress to achieve his goals in reading fluency and written language content.
6. The parent contact log reflects that on February 16, 2023, [REDACTED] staff sent an email to the parent expressing concerns that the student had stopped participating in class and he stated that he did not have any interest in completing assignments in certain classes. The parent shared that she was having the same problem at home and she would speak with the student about what had been told to her.
7. According to the student's disciplinary records, in October of 2022, he began to receive In-School Intervention (ISI) due to disciplinary referrals. Documentation reflects that by the end of the first semester of the 2022-2023 school year, he had been placed in In-School Intervention (ISI) one time for one full school day, he had received "other" consequences for disrespectful behavior, and a "student conference" for disruption in December of 2022. At the beginning of the second semester, the student received two lunch detentions for disruption and one full day of ISI on the following days<sup>1</sup>:
  - January 19, 2023 - Referral for cutting class on January 17, 2023;
  - February 24, 2023 - Referral for inciting on February 16, 2023;
  - March 15, 2023 - A grouped referral for class cutting and disruption on March 13, 2023; and
  - March 31, 2023 - A grouped referral for disruption and inciting on March 21, 2023, disruption on March 28, 2023, and disrespect and disruption on March 29, 2023.
8. In an email dated March 29, 2023, the parent shared with MCPS staff that the student was not taking his medication at the time and would be "[trying] something new" during spring break.
9. The parent contact log reflects that on April 13, 2023, [REDACTED] staff contacted the parent to discuss the parent's concerns regarding the student's music and physical education/health class accommodations, communication with teachers, and the student's failing grades. The contact log reflects that it was shared with the parent that all of the student's teachers had reviewed his IEP and were fully aware of the supports in place for him. The staff member also discussed scheduling a meeting to review the student's behavioral data to consider and discuss any "potential strategies and supports." The parent agreed to expedite the meeting.
10. On April 19, 2023, the IEP team met to review and revise the student's IEP. According to the PWN, the team recommended adding "check in/check out" and a behavior contract to the student's supplemental aids to collect data on the student's behaviors. The PWN reflects that the team was

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<sup>1</sup> The student was also placed in ISI on October 24, 2022, for a disruption that occurred on October 21, 2022; however, this incident is out of the one-year range for MSDE investigations based on the date of the complaint.

“...reviewing the supports in place due to some behavior concerns in the classroom and a decline in [the student’s] grades.” At that time, teachers shared that the student was struggling with keeping his hands to himself and required redirection when that behavior occurred and to complete his classroom tasks. It was stated that these behaviors were impacting his grades. The team suggested that the student’s case manager should provide him with hard copies of his assignments daily. The team reviewed the expectations of attending the high school program that the student was interested in, including attendance, behaviors, and academic grades. It was determined that the team would collect behavior data for the student. The parent expressed her concerns about the student’s music and health classes. The meeting was adjourned.

11. The student’s progress report dated April 19, 2023, reflects he was making sufficient progress to achieve his goals in reading fluency and written language content.
12. The student’s behavior contract, dated April 26, 2023, included the following behavior goals: initiating and completing tasks (while seated) with 65% accuracy; refraining from distracting others; and coming to class prepared with paper, pencil, and laptop. The behavior contract included ways the student would meet his goals, consequences if he did not meet his goals, and the reward for achieving his goals as determined by the student.
13. The team collected behavior data and the parent contact log reflects that this information was shared with the student’s parent on May 9, 2023, and May 23, 2023, in the form of a teacher behavior survey/chart.
14. At the end of the third making period the student received a “C” in science and health, a “D” in social studies and English Language Arts, and an “F” in math and music.
15. Toward the end of the second semester, the student received five more days of ISI.
  - May 17, 2023, May 18, 2023, and May 19, 2023- A grouped referral for disruption on April 19, 2023, and inciting/disruption on May 11, 2023 (2 days, these dates include a makeup day);
  - May 30, 2023, May 31, 2023, and June 1, 2023- A referral for fighting. (3 days).
16. The documented time that the student engaged with MBMS staff while in ISI is as follows:
  - January 19, 2023 - 20 minutes.
  - February 24, 2023 - 42 minutes.
  - March 15, 2023 - 35 minutes.
  - March 31, 2023 (Early Dismissal Day) - 58 minutes.
  
  - May 17, 2023, May 18, 2023, and May 19, 2023 - (5/17) 24 minutes, (5/18) 1 hour 51 minutes (student left school early), (5/19) 1st period through 3rd period (make up for missed time on 5/18).
  - May 30, 2023, May 31, 2023, and June 1, 2023 - (5/30) 1st period through 5<sup>th</sup> period, (5/31) 2 hours 12 minutes, (6/1) 1 hour and 24 minutes.
17. During the second semester of the 2022-2023 school year, the student received a total of 10 full school days in ISI. ISI data provided by MBMS reflects that of those 10 days the student served 9.875 days.

18. On March 20, 2023, the student was suspended from school for three days for attacking another student. On April 17, 2023, the student was suspended from the bus for one day for bus misbehavior. On April 20, 2023, the student was suspended from school for two days for fighting. The student's IEP includes specialized transportation as a related service.
19. During the second semester of the 2022-2023 school year, the student also received a total of six days of out-of-school suspension, in addition to the 10 full days of ISI.
20. At the end of the fourth marking period, the student had earned a "B" in social studies; a "C" in science; and a "D" in math, physical education, music, and English Language Arts. The student's final grades included a "C" in science and health, a "D" in math, physical education, social studies, and English Language Arts; and an "F" in music.
21. The student's final progress report dated June 9, 2023, reflected that he was making sufficient progress to achieve his goal in reading fluency and written language content.
22. On September 1, 2023, the team at [REDACTED] initiated a new behavior contract for the student during the 2023-2024 school year. The behavior contract included the same information as the behavior contract dated April 26, 2023.
23. Shortly after renewing the behavior contract, the student began to receive disciplinary consequences in ISI:
  - September 8, 2023- Referral for insubordination on September 5, 2023. (2 days).
  - September 20, 2023- Grouped referral for insubordination, disruption, and disrespect on September 7, 2023; and disruption on September 15, 2023.
  - September 21, 2023- Grouped referral for disruption and tardiness on September 18, 2023.
24. According to the parent contact log, on September 19, 2023, the parent called [REDACTED] staff and inquired about the number of days the student is allowed to be in ISI as a student with an IEP. The parent also asked about the 10-day rule and what it entails. [REDACTED] staff stated that they would reach out to the director of special education to confirm that information, in addition to having other MBMS staff speak with the student regarding his tardies. On September 20, 2023, the director of special education responded to the parent's question about the number of days ISI can be instituted for a student with an IEP. In the response, the staff member stated, "Because students in ISI continue to receive their instruction, including specialized instruction that pertains to his/her IEP, there is no established limit to the number of ISI days that can be assigned." On September 25, 2023, [REDACTED] staff responded to the parent's inquiry and stated "In the case that [the student] does receive ISI, he is receiving FAPE (Free Appropriate Public Education) by having a certified teacher in the location with him who can provide him with the educational support that he needs, as well as having [the special education teacher] work with him on his intervention and any other things that may need to be addressed. In the event that [the student] becomes suspended for 10 days or more, he will then require what is called a manifestation meeting in which the IEP Team determines if his behavior is caused by his disability."

25. On September 26, 2023, the parent contacted [REDACTED] staff and requested that a Functional Behavior Assessment be conducted for the student. On September 28, 2023, [REDACTED] staff responded to this request providing for an October 9, 2023, meeting date with the waiver of 10 days' notice of the IEP meeting from the parent. The parent agreed to the waiver.
26. On September 29, 2023, the director of special education also responded to the parent's concerns with the following information, "Both federal and state laws state that In-School Suspension is not considered a day of suspension when a student receives access to the general education curriculum, receives services as noted in their IEP, and is able to participate with peers as appropriate. In-School Intervention is a tool that St. Mary's County Public School uses as an intervention. During that time, students are with a certified teacher and if he/she has an IEP, receive their services through their case manager. SMCPS uses In-School Intervention (ISI) versus In-School Suspension as our Student Code of Conduct has a strong focus on intervention. At [REDACTED] ([REDACTED]), while in ISI, students receive access to the general education curriculum, facilitated by the certified ISI teacher throughout the day. The ISI teacher also has students work through reflections about positive choices and strategies. In the ISI Class, there are both general education and special education students. Special education students continue to receive specialized instruction and services as appropriate for the individual's plan. This is managed by the student's special education teacher. The school counselor also meets with students during their time in ISI as a way to encourage positive school connections."
27. On September 26, 2023, and October 2, 2023, the student was referred for "additional services" for disrespect and disruption.
28. On October 9, 2023, the IEP team met to request a Functional Behavior Assessment for the student. According to the PWN, "the IEP team reviewed the behavior data that had been collected for the student from the beginning of the 2023-2024 school year[,] as well as academic achievement, and academic assessments." At this meeting, the parent shared the following concerns:
  - "The IEP Team [was] not implementing [the student's] current IEP.
  - The amount of time a student with an IEP can be placed in In-School Intervention.
  - [The student] is not receiving support in his Science and Social Studies classes.
  - The special education teachers who support [the student] in Math and English Language Arts (ELA) are not supporting him when he is placed in ISI.
  - The ISI teacher requested the ELA Special Education teacher to come to ISI and they never came to assist [the student].
  - The pencil issue that took place in ELA class.
  - [The student] being reprimanded for wearing both a hat and hood at the same time when it should not be a school rule and receiving ISI for it.
  - The 7th Assistant Principal follows [the student] around when he goes to the restroom.
  - The Resource Officer [followed] the family around during the Open House.
  - The IEP Team knew about the behaviors back in April 2023 and a Functional Behavior Assessment (FBA) should have been requested then.
  - The ISI teacher did not provide assistance when [the student] requested it."<sup>2</sup>

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<sup>2</sup> These concerns were also shared by the parent during a conversation with [REDACTED] staff on September 20, 2023. During that call, the parent stated that the student deals with "hyperactivity".

The PWN states that after the parent expressed her concerns, the IEP team reviewed the student's current behavior discipline record. The team determined to schedule a meeting within 90 days to review the FBA.

29. The student's progress dated October 27, 2023, reflected that he was making sufficient progress to meet his goal in reading fluency, and he had achieved his goal in written language content.
30. The Functional Behavior Assessment (FBA) developed for this student was uploaded into Student Compass on November 27, 2023. Student background information in the FBA reflects that at the time of its development, the student had "...four absences and fifteen tardies [to date]. He [has also] had ten behavior incidents so far this year." It is also stated in the FBA that the student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and "...is most successful in one-on-one settings with a teacher." The listed interventions that had been tried with the student included "frequent breaks, a break card, rewards with 'paw tickets', rewards of candy, small group instruction, proximity to instruction, frequent check-ins, sending papers home to be completed, positive emails sent home, home communication, new seating, and extended time." The targeted behaviors listed in the FBA were non-compliance, disrupted behaviors, and verbal aggression. Data collected from teachers regarding his behaviors reflected that the student struggled with completing assignments that involved reading or writing but did not engage in physically aggressive or elopement behaviors. Student instruction was listed as taking place in whole group, small group, and one-on-one settings. The student reported that he understands when he is redirected for talking during inappropriate times in the day, is late to class, or avoids work. Discipline information in the FBA reflects that the student received "suspensions and referrals for the following behaviors: bus misbehavior, disruption, inappropriate use of personal electronics, disrespect, class cutting, inciting, attack on student, fighting, insubordination, and tardiness. He received In School Intervention on the following days: 9-12-2023, 9-21-2023, and 9-25-2023."<sup>3</sup> Analysis of the student's observed behaviors reflected that non-compliance was the most frequently exhibited behavior and could occur for long durations, but this behavior was not deemed to be intense because it did not impact the safety of the student or others although it did impact his learning and grades because he did not always finish his assignments. Disruptive behaviors were deemed to occur less frequently than non-compliant behaviors; however, they impacted the learning of others around him. It was determined that these behaviors occurred to gain attention from peers and sometimes teachers. Verbal aggression was observed on two occasions; however, it was stated that this behavior did not occur frequently and was not long in duration. It was also stated that this behavior was not intense because the safety of the student and others was not put at risk. FBA records state that this behavior usually occurred towards peers by way of a rude comment, and usually did not escalate. The antecedents to his designated behaviors were determined to be "being given a demand/request from a teacher" and verbally aggressive behaviors occurred during a peer interaction and free time. Most of the student's behaviors occurred during math, computer science, science, and social studies. Other behaviors were reported to have occurred during art and gym, with less occurring in the morning during English class and lunch. No behaviors were observed during his other specials classes. The consequences that were utilized during these behaviors were warnings, redirection, planned ignoring, and ISI. It was also stated that it is helpful to leave the student alone to cool off when he shuts down. It was determined that a Behavior Intervention Plan should be developed for the student.

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<sup>3</sup> ISI days on 9/12/2023 and 9/25/2023 are not reflected in the student's behavioral history.

31. On December 12, 2023, the IEP team at ██████ met to conduct the student’s annual review and to review the completed FBA. It was also stated that the purpose of the meeting was to “determine if [the student] qualifies for a Behavioral Intervention Plan (BIP)”. According to the PWN, the team determined that the student did qualify for a BIP due to his behaviors impacting his learning. The team reviewed the FBA, proposed goals, and objectives, and it was determined that the student would continue to have goals in reading fluency and written language content. The team also reviewed the student’s classroom and statewide testing accommodations/modifications and determined to continue with the ones that had already been designated in the student’s previous IEP. The team made the following changes to the student’s supplementary aids, services, program modifications, and supports: break pass was removed to allow the student to work on independently signing out of class and indicate the time he leaves (also being utilized as a work readiness skill); the student will continue to have recess, but that supplementary aid would terminate at the end of the school year; and the student’s behavior contract was removed. The student’s instructional services remained the same, with the addition of one twenty-minute session weekly to review grades and assignments outside of the general education setting. The continuum of placement options and services were discussed, and it was determined that the student would receive special education services inside of the general education setting for reading fluency and written language content, and outside of the general education setting for reading fluency and to review grades and assignments. The information from the student’s transition interview was reviewed, and it was determined to defer the extended school year discussion until a later time. The PWN reflects that the parent and the school-based IEP team agreed to the draft IEP and the changes that were discussed, and that the student qualified for a BIP. FBA and intervention data were reviewed. The parent, her attorney, and the school-based team determined that the next IEP meeting would be held on January 29, 2024, to review and discuss the BIP and any other changes that needed to be made to the IEP.
  
32. The IEP developed from this meeting, dated December 12, 2023, states that the student is on a 5th-grade instructional level in reading fluency and below grade level in written language content. The student’s secondary transition performance level is also listed as age-appropriate. The IEP reflects that the student does not require an AT device or services; and the special consideration and accommodations for instruction and assessment accessibility include text-to-speech for math, science, and government assessments, small group, reduce distractions to self, and extended time (1.5x). The supplementary aids, services, and program modifications and supports include read word problems to student (as needed), monitor independent work (daily), repetition of directions (daily), frequent and /or immediate feedback (daily), home-school communication system (daily), provide break opportunities (daily), recess (daily), preferential seating (daily, “Due to [the student] having ADHD”). The ESY decision is listed as deferred. The student’s IEP also provides goals in the areas of reading fluency and written language content. Special education services include five thirty-minute sessions outside general education to work for IEP goals in reading fluency; five forty-five minute sessions inside general education to address difficulties in writing and reading comprehension; and one twenty-minute session outside general education to meet with his case manager to review his grades, discuss missing assignments, and ensure that the student is aware of what assignments he has and has not completed. The least restrictive environment for the student was determined to be inside general education for 80% or more of the school day.
  
33. On December 13, 2023, the parent contact log reflects that ██████ staff contacted the parent to inform her that the student was refusing his accommodation of having assignments read to him in his health class.



34. On January 23, 2024, [REDACTED] staff informed the parent that they "...still have not been able to place anyone in [the student's] science and social studies class. [We] will ask [the student's case manager] to work with [him] on advocating for himself more for when he needs something read to him."
35. At the end of the first marking period for the 2023-2024 school year, the student garnered a "C" in math and science; "a "D" in English Language Arts, computer science, and science; and an "F" in physical education and art.
36. During the first semester of the 2023-2024 school year, the student received a total of 4 full school days in ISI. ISI data provided by MBMS reflects that of those 4 days the student served 3.75 days.
37. The documented time that the student engaged with [REDACTED] staff while in ISI is as follows:
  - September 8, 2023 - 1 hour 12 minutes
  - September 20, 2023- 1st thru 5th period (made up on 9/25/23)
  - September 21, 2023- 13 minutes
38. As of January 16, 2024, the student's grades are as follows:
  - Computer Science - 48.57%
  - Math - 59.37%
  - ELA - 77.45%
  - Music - 44.49%
  - Health - 73.91%
  - Science - 72.54%
  - Social Studies - 53.69%
39. The parent contact log reflects that behavioral information was shared consistently with the student's parent during the first semester of the 2023-2024 school year.

#### **DISCUSSION/CONCLUSIONS:**

#### **ALLEGATION #2                      Proper Procedures When Removing The Student From School**

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 school days unless the removals do not constitute a change in placement pursuant to 34 CFR §300.536. (See 34 CFR §300.530.) A change of placement occurs if the removal is for more than 10 consecutive school days, or the child has been subjected to a series of removals that constitute a pattern: (1) because the series of removals totals more than 10 school days in a school year; (2) because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and (3) because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (34 CFR §300.536(a)).

The Office for Special Education and Rehabilitative Services issued guidance in 2022 that states:

The calculation of the 10 school days of suspension addressed in 34 C.F.R. § 300.530 could include exclusions that take place outside of IDEA's discipline provisions which occur because of a child's behavior. Actions that result in denials of access to, and significant changes in, a child's educational program could

all be considered as part of the 10 days of suspension and also could constitute an improper change in placement... These types of actions are generally considered disciplinary removals unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement.

*(Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (July 19, 2022)).*

In this case, the complainant alleges that the use of in-school intervention (ISI) constitutes a removal subject to requirements of 34 CFR §§300.530 through 300.535. However, the policies and documentation provided by, and interviews conducted with, SMCPS demonstrate that the student was provided with instruction with the general education curriculum. The student was also provided with some special education services, as discussed below in Allegation #1. Finally, the student had access to his nondisabled peers in the ISI classroom, consistent with his IEP. As such, these removals do not factor into the calculation of days under 34 CFR §300.536(a). Thus, there were only five days of out-of-school removals, and the student did not experience a change in placement.

Based on Findings of Facts #7, #15, and #17, MSDE finds the SMCPS did follow proper procedures when removing the student from his regular classroom during the 2022-2023 school year, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.08.03.07. Therefore, this office finds that a violation did not occur with respect to the allegation.

### **ALLEGATION #1                      Provision Of FAPE When Placed In In-School Intervention (ISI)**

It is the position of SMCPS that students with an IEP will receive their special education services in ISI, such that use of ISI does not constitute a removal subject to 34 CFR §§300.530 through 300.535. The student's IEP required that he receive five thirty-minute weekly sessions of specialized instruction to address his IEP goals in reading fluency, as well as five forty-five-minute weekly sessions of support to address his difficulties in writing and reading comprehension. Except for January 19, 2023, May 17, 2023, and September 21, 2023, the student received at least thirty minutes of interaction with special education teachers or the IEP chair while in ISI. However, no documentation reflects what these interactions entailed; thus the SMCPS has not provided sufficient documentation that the student received all of his specialized instruction and supports while in ISI.

Based on the Finding of Facts #2 to #3, #7, #9 to #10, #15 to #17, #19, #23 to #24, #26, #28, #33, and #36 to #37, MSDE finds that the SMCPS did not provide the student with a free appropriate public education (FAPE) while in ISI during the 2022-2023 school year, in accordance with 34 CFR §§ 300.101. Therefore, this office finds that a violation did occur with respect to the allegation.

### **ALLEGATION #3                      An IEP That Address The Student's Social/Emotional/Behavioral 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 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. (34 CFR §300.324)

During the 2022-2023 school year, the student received 23 disciplinary referrals and was assigned 10 days of ISI. Except for three incidents, all of the occurrences that caused the student to receive ISI occurred during the second semester of the school year, between January and May of 2023. In addition to the days that the student received ISI during that time, he also received 3 days of out-of-school suspension on March 20, 2023, for attacking a student; 1 day of bus suspension for bus misbehavior on April 17, 2023; and 2 days of out-of-school suspension on April 20, 2023, for fighting. The student had also been “referred for additional services” for fighting on April 11, 2023. However, when the IEP team met on April 19, 2023, it was not recommended that a Functional Behavior Assessment should be conducted for the student at that time. Instead, the team chose to add two additional supplemental aids of “check in/check out” and put a behavior contract in place. Neither of these additional supports provided the full consideration needed to address what accommodations, modifications, and services the student required to access the curriculum. In this case, the student’s behavior was serving as a major obstacle to his progress. Moreover, a behavior contract is not a means through which the IEP team can determine the function of a student’s problematic behavior to address it from the root; and in this case, despite the display of violent behaviors against others, physical aggression and/or fighting were not even considered in the behavior contract.

During the first semester of the 2023-2024 school year, the student incurred 10 behavior incidents, and by the end of September, the student had been assigned four more days of ISI. On September 26, 2023, it was the parent who requested that an FBA be conducted for the student, and not the school-based IEP team. When the team did conduct the FBA, despite the student having previously received nine days of disciplinary consequences for fighting earlier in the calendar year, the team did not consider including physical aggression as a target behavior. Instead, the team included verbal aggression during which the student would make rude or unfriendly remarks to, and yell at, his peers. Although the “Data Analysis” section of the FBA states that the student does not engage in physically aggressive behaviors and that his verbal aggression does not put the safety of himself or others at risk, the information in the discipline referrals and/or records portion of the FBA states that the student had received suspensions and referrals for “attack on student” and “fighting” among other things. The data is not consistent with the team’s decisions and responses.

Based on the Findings of Facts #1 to #4, #6 to #10, #12 to #21, #33 to #28, #30 to #33, and #35 to #38, MSDE finds that the SMCPSS has not developed and implemented an Individualized Education Program (IEP) that addresses the student’s identified social, emotional, and behavioral needs since April 19, 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did occur with respect to the allegation.

#### **CONCLUSIONS:**

#### **ALLEGATION #4                      Annual Review**

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. (34 CFR §300.324)

The student’s IEP dated December 15, 2022, states that the student’s IEP annual review date was December 14, 2023. There is documentation demonstrating that the IEP team at [REDACTED] met on December 12, 2023, to conduct the student’s annual review.

Based on the Findings of Facts #31 to #32, MSDE finds that the SMCPSS did ensure that the IEP team convened to review the student’s IEP before December 14, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to the allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include 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. Accordingly, the 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.<sup>4</sup> 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 the Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>5</sup> The Family Support and Dispute Resolution Branch, MSDE can be reached at (410) 767-7770. or by email at alison.barmat@maryland.gov

### **Student-Specific**

MSDE requires that no later than April 30, 2024, the SMCPS convene an IEP team meeting in order to determine the amount of compensatory services or other remedy the student should receive to address the lack of provision of services when the student was in ISI and the failure to address the students behavioral/emotional/social needs during the 2022-2023 school year. The team should also obtain documentation concerning the student's diagnosis of ADHD and include this information in the development of an updated IEP. Additionally, the team should review the FBA and BIP developed for the student and ensure that those documents include and consider all of the interfering behaviors that the student has exhibited, including physical aggression.

### **School-Based:**

MSDE requires that no later than March 30, 2024, the IEP team at ████████ develop a system in which teachers and staff who interact with students who are placed in ISI are provided with a tool that allows them to document and sign off on what services they provide to special education students during their interactions. Additionally, by September 30, 2024, the SMPS should ensure that the staff at ████████ has received professional development on the development of FBAs and BIPs for special education students to ensure that all the student's needs are addressed.

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 submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of

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<sup>4</sup> 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.

<sup>5</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.

this report, the 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. The 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 and Special Education Services

ALH/ebh

c: Mr. James Scott Smith, Superintendent, SMCP  
Ms. Cynthia K. Kilcoyne, Supervisor of Special Education, SMCP  
Ms. Carrie Smith, Supervisor, Department of Special Education, SMCP  
[REDACTED] Principal, [REDACTED], SMCP  
Ms. Elizabeth B. Hendricks, Complaint Investigator, MSDE  
Ms. Nicol Elliot, Section Chief, Monitoring and Accountability, MSDE  
Dr. Paige Bradford, Section Chief, Programmatic Support and Technical Assistance, MSDE