

February 13, 2024

Ms. Alyssa Fieo
Maryland Office of the Public Defender
6 Street Paul Street, Suite 1400
Baltimore, Maryland 21202

Ms. Debra Metheny
Director of Special Education Services
Allegany County Public School
108 Washington Street, P.O. Box 1724
Cumberland, MD 21502-1724

RE: [REDACTED]
Reference: #24- 115

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 October 12, 2023¹, MSDE received a complaint from Ms. Alyssa Fieo, the “complainant,” on behalf of her client, the above referenced student. In that correspondence, the complainant alleged that the Allegany County Public Schools (ACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the allegation that the ACPS did not follow proper procedures when conducting an evaluation of the student, since October 2022, in accordance with 34 CFR§§300.111 and .301-.311 and COMAR 13A.05.01.06.

BACKGROUND:

The student is 18 years old and is identified as a student with [REDACTED] Disorder under Section 504 Plan². The student is enrolled at [REDACTED] School ([REDACTED]) and attends [REDACTED].

¹ There was a delay on the part of MSDE initiating the investigation. Accordingly, we will use the date of receipt of the complaint as the date from which MSDE will begin the investigation.

² “Section 504” refers to Section 504 of the Rehabilitation Act of 1973, a federal law that prohibits organizations that receive federal money from discriminating against a person on the basis of a disability. Section 504 requires schools to make a “reasonable accommodation” for students with disabilities to allow them to participate in school and school-related activities.

through a voluntary enrollment.

FINDINGS OF FACTS

1. At the start of school year 2022- 2023, the student was enrolled in the 11th grade at [REDACTED] School ([REDACTED]) and had a total of 5.5 high school credits towards graduation. The student was referred to the Pupil Service Team (PST) on November 11, 2021, due to his behavior in school.
2. The student disciplinary records reflect the student displayed behaviors such as disrespect, cutting class, fighting and disruption.
3. On October 13, 2022, the student received an office referral for “off task behavior” in the cafeteria. The student was referred to the Intervention Center.
4. On October 20, 2022, the student received a “Notice of Action Taken” for “Class Cutting” and was referred to In School Intervention (ISI).
5. On October 31, 2022, the student received a “Notice of Action Taken” for “Disrespect” and was referred to Time Out (of class).
6. On November 4, 2022, the student’s guardian withdrew him from ACPS and placed him on homeschooling. While on homeschooling, the student did not receive any high school credits because the classes he was taking while enrolled were not aligned with the classes he was taking while at [REDACTED] for the first term.
7. On January 20, 2023, the student re-enrolled in ACPS at [REDACTED]. Upon re- enrollment, the student completed an “Opt- In” application to attend an alternative educational program - [REDACTED] [REDACTED] Located at [REDACTED] for the second semester.
8. On January 23, 2023, the student began a voluntary placement at the [REDACTED] at [REDACTED].
9. On April 19, 2023, the student received an office referral for “threat towards another student.” As an intervention, the student’s schedule was changed to separate him and the student.
10. On April 24, 2023, the student received an office referral for “disruptive behavior” and “threat towards another student.” As an intervention, the student’s schedule was changed again to separate him and the other student.
11. On April 24, 2023, the student received an office referral for “threatening remarks” in the classroom. A threat assessment was completed on the student.
12. During the 2022-2023 school year, the student received interventions including monitoring of the student's behavior by the behavior specialist, conferences between the guardian and student regarding the student’s grades, attendance, and behavior, as well as meetings between school staff, including the school counselor, principal, pupil personnel worker, and guardian, to discuss behavior issues and grades.
13. During the 2022- 2023 school year, the student was absent 67 days (61.5 days unexcused) (5.5 days excused absence), and tardy 26 days (25 days unexcused).

14. On September 14, 2023, a meeting was held with member of the school staff, the student, the student's guardian and parent counsel to discuss whether the presence of the student at [REDACTED] would present an imminent threat of serious harm to other students and staff based on multiple reportable offenses charges received by ACPS. During the discussion, the team reviewed the student's conduct history, attendance, and academic progress.
15. September 14, 2023, a written referral was made by the guardian to ACPS for the student to be evaluated for special education services. The referral reflected concerns due to the "student struggling in school."
16. On September 20, 2023, a child find form was created to reflect the IEP teams concerns in the area of academics, cognitive, and social/emotional/behavioral.
17. On September 22, 2023, the guardian of the student received a letter from a school staff member removing the student from the regular school program and placing him in the alternative educational program - [REDACTED] Located at [REDACTED]. The student was removed from the school due to the student exhibiting increasing violent and threatening behaviors towards peers and staff, physical altercations with students, poor attendance, struggling academically, earning no high school credits and a reportable offense for alleged crimes of violence in the community. The school based staff member determined that the student's "trajectory towards violent behaviors indicates that the student's attendance in a regular school program will place the student, faculty, and staff in imminent threat of serious harm" and is unable to design a safety plan that would address the "types of behaviors the [student] is exhibiting."
18. On October 13, 2023, the IEP team met for a "screening meeting" to address the concerns of the guardian and to review existing information to determine the need for additional data. The guardian expressed that the student's "reading is slow and he gets frustrated when he is doing his reading assignments," "gets confused with math problems and will become frustrated," and "has a hard time sitting still and often takes breaks when working on school work on the virtual platform." Members of the school-based team reported that during the school year 2022-2023, the student had low attendance and refused to participate; however, his participation during the school year 2023-2024 increased, but the student "still gets mad and refuses to work at times." The IEP team reviewed the student's current failing grades, noting that when assignments are complete, they are "average and above-average grades"; it is his "missing assignments that bring his grades down." During the meeting, the guardian's counsel proposed the student "having a support person to manage how he is navigating the hybrid process" as the student reported to the counsel that he "can read but cannot recall what he has read" and needs assignments broken down into smaller portions."
19. The student was scheduled to return to in-person school at the [REDACTED] on October 16, 2023. A member of the school staff shared that the student could receive support from the Special Education Teacher and Social Emotional Learning Coach to help navigate Schoology and provide academic support, including reminders and refreshers on how to use all features of Schoology, the learning platform. The student's classes are smaller, and individual help will be available."
20. On October 13, 2023, the guardian provided consent for the student to be evaluated.
21. On November 1, 2023, an educational evaluation was completed by ACPS to make determinations regarding eligibility for special education services and to assist with educational planning.

22. On November 1, 2023, a psychological assessment was completed by ACPS to make determinations regarding eligibility for special education services and to assist with educational planning.
23. On November 13, 2023, a classroom observation was completed by ACPS to make determinations regarding eligibility for special education services and to assist with educational planning.
24. On November 17, 2023, the IEP team met to conduct an evaluation of the student, determine eligibility under the IDEA, and, if appropriate, develop an IEP for the student. During the meeting, the IEP team reviewed the cognitive assessment, academic assessment, behavior rating scales, formal classroom observation, attendance, grades, work samples, staff input, informal observations, and family and counsel statements. A discussion of eligibility was held to include criteria for Specific Learning Disability, Other Health Impairment (ADHD), and Emotional Disability. The IEP Team determined that the student does not require specially designed instruction to gain access to the general education curriculum; therefore, he did not qualify for special education services. The guardian counsel and the student's guardians made a referral to the 504 team for the development of an accommodation plan.
25. During the November 17, 2023, IEP meeting, members of the team noted improvements in social and academic areas during the current school year while the student is in the [REDACTED] and some of his grades were improving. The student shared that he has trouble sleeping at night, therefore he does his work in the middle of the night, does better on synchronous days, but is often tardy. The guardian shared that he feels the student is getting a lot of help at the [REDACTED]. During the meeting, the student reviewed the "struggles of his life" that caused him to make "bad choices"; however, he states his "situation has improved since moving in with his current guardian." The guardian's counsel shared that the student is in a "very therapeutic environment and is working hard." Due to the student's reportable offenses being resolved, the student is allowed to return to [REDACTED]. However, the team has elected for the student to finish out the remainder of the school year at the [REDACTED] and will evaluate his placement for the following school year."

CONCLUSIONS:

Allegation #1 CHILD FIND DETERMINATION

The "child find" requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services. It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. However, the public agency must ensure that this process does not delay or deny a student's access to special education services under the IDEA (34 CFR §300.111).

Based on the review, the IEP team must determine whether additional data is needed to determine if the student is suspected of being a student with a disability. The IEP team must complete the evaluation process within sixty (60) days of parental consent for assessments and no more than ninety (90) days from receipt of a written referral (COMAR 13A.05.01.06).

Based on Finding of Fact #1- #25 MSDE finds, the ACPS did follow proper procedures when conducting an evaluation of the student, since October 2022, in accordance with 34 CFR §§300.111 and .301-.311 and COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur with respect to the allegation.

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TIMELINE:

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,

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

AH/sj

c: Mr. Jeffrey Blank, Superintendent, ACPS
Ms. Debra Metheny, Director of Special Education, ACPS
[REDACTED]
Dr. Antoine Hickman, Assistant State Superintendent, Division of Early Intervention/Special Education Services, MSDE
Ms. Alison Barmat, Branch Chief, Family Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Ms. Stephanie James, Complaint Investigator, MSDE