

May 20, 2024

Ms. Frances Shefter, Esq.  
110 North Washington Street, Suite 350  
Rockville, Maryland 20850

Dr. Kendy Anderson  
Director of Special Education  
Calvert County Public Schools  
1305 Dares Beach Road  
Prince Frederick, Maryland 20678

RE: [REDACTED]  
Reference: #24-176

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), 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 March 21, 2024, MSDE received a complaint from Ms. Frances Shefter, hereafter, “the complainant,” on behalf of her client, the above-referenced student. In that correspondence, the complainant alleged that the Calvert County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The CCPS did not follow the proper procedures when identifying and conducting an initial evaluation of the student under IDEA, since October 2023, in accordance with 34 CFR §§300.111 and 301-.311 and COMAR 13A.05.01.06.
2. The CCPS did not follow the proper procedures when identifying and conducting a reevaluation of the student under IDEA, since February 2024, in accordance with 34 CFR §§300.111 and 301-.311 and COMAR 13A.05.01.06.
3. The CCPS did not follow proper procedures when responding to a request to amend the student’s education record on December 22, 2023, in accordance with 34 CFR §300.618.

**BACKGROUND:**

The student is six years old and is supported by a 504<sup>1</sup> Plan. The student is currently attending [REDACTED] School.

<sup>1</sup> “Section 504” refers to Section 504 of the Rehabilitation Act of 1973, requiring schools to provide a free appropriate public education (FAPE) to each eligible student, including the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student as adequately as the needs of a student without a disability are met. (34 CFR § 104.33).

**FINDING OF FACTS:**

1. On January 11, 2023, CCPS completed a Child Find Referral due to social/ emotional/behavioral concerns and conducted an Individualized Education Program (IEP) team meeting to review existing data pertaining to the student’s academic and functional performance. During the meeting, the IEP team determined that no additional information was needed to determine whether there was an educational disability pursuant to the Individuals with Disabilities Education Act (IDEA), and the IEP team determined there was no evidence of educational impact for which the student would require specially designed instruction. The IEP team referred the student to the Section 504 Team to determine eligibility for supports under the Rehabilitation Act of 1973.
2. During the month of September 2023, the parents received three notes from the classroom teacher informing them of the student's behaviors, which included cutting his hair, putting items in his mouth, and noncompliance.
3. On September 14, 2023, the student completed an iReady<sup>2</sup> assessment that reflects that he is “approaching Kindergarten” level in the areas of phonemic awareness, phonics, high-frequency words, and vocabulary, scoring in the 71st percentile on a nationally normed assessment.
4. During the month of December 2023, the parents received two notes from the classroom teacher informing them of the student’s behaviors, which included spitting on another student and spitting on his desk.
5. On October 2, 2023, the parent requested an IEP team meeting due to his teacher reporting difficulties during the first month of school, in addition to having a diagnosis of autism<sup>3</sup>. The parent reported that the student received private Applied Behavior Analysis (ABA), speech and language, and occupational therapy at home.
6. On October 3, 2023, the parent received a Notice of IEP Team Meeting scheduled for October 25, 2023, to review existing information to determine the need for additional data to consider the student’s eligibility for special education services.
7. On October 25, 2023, the IEP team convened and reviewed the existing data from the student’s records, Child Find referral, Student Longitudinal Profile, and input from all team members and determined additional assessments were needed in the areas of communication, emotional development, and sensory processing. During the meeting, the parent expressed concerns that he had a diagnosis of Autism and she was concerned about his behavior and social skills, specifically about the student “having friends, being able to talk to peers, treating people nicely, and developing relationships.” The parent signed consent for the evaluations.

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<sup>2</sup> An assessment suite providing actionable data for Mathematics and Reading instruction.

<sup>3</sup> On December 23, 2022, the student received a Neurodevelopment/ Neurogenetic Clinic Note from [REDACTED] that diagnosed him with Autism Spectrum Disorder.

8. On November 1, 2023, CCPS conducted an occupational therapy (OT) assessment. A summary of the assessment states the student scored in the “more than others” range for auditory processing, visual processing, tactile processing, movement processing, and behavior processing. “As it relates to academic performance and impact, [the student] may require additional support to improve his ability to participate in whole-group instruction, task initiation and completion, and in-seat behavior.”
9. On November 3, 2024, via email, the parent received an updated Prior Written Notice (PWN) per the request of the parent from the meeting held on October 25, 2023.
10. On November 20, 2023, the parent received a Notice of IEP Team Meeting for December 20, 2023, to review existing data and information and determine the student’s eligibility under the IDEA.
11. On December 1, 2023, CCPS conducted a speech-language assessment. A summary of the assessment states “based on the results of the assessment, the student’s general language skills will not negatively impact his performance in the classroom.”
12. On December 12, 2023, CCPS conducted a psychological assessment. A summary of the assessment states “[the student’s] teacher indicated that she no longer has academic concerns; however, she also indicated that he struggles with interaction with his peers.” The report also states “based on the reports by the parents and the teacher and the Autism Spectrum Rating Scales (ASRS), [the student’s] behavior is similar to that of children diagnosed with ASD. The impact statement from the assessment states “There appears to be little impact on [the student’s] academic behaviors and academic progress. He attends to the teacher and completes assignments despite appearing to be inattentive or focused elsewhere.”
13. On December 19, 2023, the student received a discipline incident for “disrespect.” The student received an “administrative warning and conference with the student.”
14. On December 21, 2023, the IEP team convened to conduct the initial evaluation of the student, determine eligibility under the IDEA, and, if appropriate, develop an IEP for the student. The IEP team reviewed the psychological, communication, and sensory processing assessments conducted by CCPS, teacher feedback, parent input, and the “Eligibility Criteria worksheet for a student with Autism”. The PWN generated after the meeting reflects that the IEP team determined “[the student] did not require specialized instruction and is not eligible for special education and related services.” Members of the IEP team shared the information from their assessments and expressed how his disability “does not impact his access to the general education curriculum.” The classroom teacher reported that the student was doing well academically, demonstrating age-appropriate handwriting, pre-reading, and math abilities and skills. Although she had concerns regarding his impulsiveness, the structure and classroom routines put in place have shown improvement in the student. The PWN reflects that while [the student demonstrates overactivity, lack of body control, and social awkwardness with peers, “his behaviors are not impacting him academically and he is performing and progressing within grade-level expectations in reading, writing, and written language.” “[The student’s] characteristics of Autism do not significantly affect his verbal and nonverbal communication or overall social interactions at school, and he does not require specially designed instruction to make adequate progress in the educational program.” The CCPS team proposed conducting a Functional Behavior Assessment (FBA) to determine target behaviors and

develop a written plan with proactive and reactive strategies for dealing with targeted behavior. Additionally, the IEP team proposed referring the student for consideration of a 504 plan. However, the parent disagreed with the eligibility decision. The PWN reflects that she was provided with an oral explanation of her "right to request mediation."

15. The student's CCPS report card indicates that for marking period one, the majority of grades were "emerging," with several grades categorized as "progressing." However, for marking period two, the majority of grades were classified as "progressing," with several grades categorized as "emerging."
16. On December 22, 2023, via email, the parent expressed concerns regarding the student's education and the IEP process. The parent provided "corrections" she wanted to be made to the PWN from the December 21, 2023, IEP meeting as she felt it left out information.
17. There is no documentation that the parent was provided with an updated PWN or that a response was provided to her December 22, 2023, request.
18. On January 23, 2024, the parent received a Notice of IEP Team Meeting for February 14, 2024, to review the existing data and information, and if appropriate, determine eligibility and address FBA and/or Behavioral Intervention Plan (BIP). However, she mutually agreed upon a meeting date of February 28, 2024.
19. On February 5, 2024, CCPS conducted an FBA Summary Report.
20. On February 28, 2024, the IEP team convened to review the FBA, and to review existing data to determine eligibility. During the IEP meeting, the team reviewed the FBA and proposed that a BIP was required for the student. The IEP team also reviewed existing data and information, proposing that the student "does not meet all IDEA criteria as a student with Autism" and suggested the student be referred for a 504 plan. The IEP team further proposed that a meeting be held on March 20, 2024, to address the BIP and consider a 504 plan. During this meeting, the IEP team discussed and considered the parent's concerns regarding the student's "characteristics of Autism significantly affecting his verbal communication," "his educational performance is impacted by his behavior... His monthly calendar indicates he is not available for learning 47% of the time," and the "student requiring specially designed instruction for pragmatic language, self-management, and social interaction skills."

## **CONCLUSION:**

### **ALLEGATION #1: PROPER IDENTIFICATION OF STUDENT UNDER IDEA**

In this case, the complainant alleges that CCPS violated IDEA and denied the student FAPE by failing to identify him as a student with a disability under IDEA.

Based on Finding of Facts #1, #4 through #8, #11 through #15, #18 through #20, MSDE finds that the CCPS did follow the proper procedures when identifying and conducting an initial evaluation of the student under IDEA, since October 2023, 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 concerning the allegation.

**ALLEGATION #2: PROPER PROCEDURES FOR CONDUCTING A REEVALUATION OF THE STUDENT**

Based on Findings of Fact #18 through #20, MSDE finds that the CCPS did follow the proper procedures when identifying and conducting a reevaluation of the student under IDEA, since February 2024, 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 concerning the allegation.

**ALLEGATION #3: REQUEST TO AMEND STUDENT RECORDS**

A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information 34 CFR § 300.618.

The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619.

Based on Finding of Facts #9, #16, and #17, MSDE finds that the CCPS did not follow proper procedures when responding to a request to amend the student's education record on December 22, 2023, in accordance with 34 CFR §300.618. Therefore, this office finds that a violation occurred concerning 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.

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 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>5</sup> Ms. Alison Barmat can be reached at (410) 767-7770 or by email at [alison.barmat@maryland.gov](mailto:alison.barmat@maryland.gov).

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<sup>4</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct 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.

**School-Based**

MSDE requires that the CCPS provide documentation that professional development was provided to the staff at [REDACTED] School on the proper procedures for responding to a request to amend the student's education record by the start of the school year 2024- 2025.

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 and Special Education Services

ALH/sj

c: Dr. Andrae Townsel, Superintendent, CCPS  
[REDACTED], [REDACTED] School, Principal, CCPS  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Stephanie James, Complaint Investigator, MSDE