

June 26, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Mr. Kevin Smith  
Director of Special Education  
Wicomico County Public Schools  
2424 Northgate Drive Suite 100  
P.O. Box 1538  
Salisbury, Maryland 21801

RE: [REDACTED]  
Reference: #24-212

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 May 2, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Wicomico County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE is investigating the allegation that WCPS did not follow the proper procedures when identifying and conducting an initial evaluation to determine if the student is a student with a disability requiring special education and related services since May 2023, in accordance with 34 CFR §§300.111 and 301-.311 and COMAR 13A.05.01.06.

**BACKGROUND:**

The student is 12 years old and receives support through a 504 plan<sup>1</sup>. He attends [REDACTED].

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<sup>1</sup> “Section 504” refers to Section 504 of the Rehabilitation Act of 1973, which requires 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).

**FINDINGS OF FACT:**

1. On May 1, 2023, WCPS completed a Special Education Screening Form<sup>2</sup> that included data from the student's private psychological evaluation from [REDACTED]. The student received the assessment on June 11, 2019<sup>3</sup>. The Special Education Screening Form also included data from a psychological assessment completed by WCPS on November 14, 2019. The Special Education Screening form was completed following the complainant's email request for an IEP team meeting made on April 27, 2024, due to concerns about the student's academic struggles.
2. On May 4, 2023, the complainant provided WCPS with the student's private psychological assessment from [REDACTED].
3. On May 5, 2023, the complainant requested via email, that the student receive an evaluation under Child Find after receiving private diagnoses of Autism, Attention Deficit Hyperactivity Disorder (ADHD) and a Specific Learning Disability (SLD), as well as his declining grades and behavior incidents. The complainant requested an evaluation to assess his academics, cognitive ability, executive functioning skills, adaptive functioning, social-emotional-behavioral skills, and speech-language under the suspected disabilities of Other Health Impairment (OHI), SLD, and Autism.
4. There is documentation that as of May 5, 2023, the student had one discipline referral dated October 10, 2023, for "disrespectful behavior" and was absent from school for 5.5 days since September 5, 2023.
5. On May 8, 2023, the IEP team convened to consider the referral for special education and related services for the student. The Prior Written Notice (PWN) generated after the meeting reflects the IEP team's review of the student's screening packet, which included data on all academic areas, gross and fine motor skills, behavior concerns, health concerns, conduct history, attendance, and parent concerns. The IEP team also reviewed data from informal sources, teacher reports, student reports, and parent reports. The team also considered the private assessment reports provided by the parents. The IEP team determined that no additional assessments were needed to determine that there was no suspicion of an educational disability requiring specialized instruction and related services. The PWN reflects that the IEP team did not identify any areas of academic or functional need; therefore, the IEP team did not suspect the student had a disability that required special education and related services. There is no documentation that the IEP team discussed the student's communication needs. The team proposed that the 504 team meet to add additional accommodations for the student through his 504 plan.

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<sup>2</sup> The WCPS screening refers to gathering formal and or informal information regarding a specific student to determine whether an educational disability is suspected. The screening information must be gathered from a variety of sources.

<sup>3</sup> On May 1, 2023, WCPS did not have a copy of the full evaluation conducted on the student in 2019 from the complainant.

6. On May 31, 2023, the 504 team met to update the student's accommodations.
7. On October 5, 2023, WCPS completed a Special Education Screening Form for the student which included data on all academic areas, gross and fine motor skills, behavior concerns, health concerns, conduct history, attendance, and parent concerns, based on another referral by the complainant.
8. On October 26, 2023, the team met to consider the referral for special education services made by the complainant due to concerns in reading. The PWN reflects that the complainant expressed concerns due to the student's "below grade level" scores on his iReady<sup>4</sup> assessment. The teacher reports that his low scores are comparable to peers his age, although they are low, and that he is capable of completing his assigned work. The complainant also expressed concern regarding the student's current grades and behavior incidents. A WCPS staff member shared that "the student's grades dropped when he was out with his hand injury but have improved since his return. A WCPS staff member also expressed that the student often and often has difficulty focusing and must be redirected frequently, is not always motivated to do his work, and will walk out of the classroom without permission, stating he "needs a break" and not utilizing his "flash pass<sup>5</sup>." The PWN reflects that the student previously received a psychological assessment which indicated that "the student possessed all the necessary cognitive abilities to succeed within the general education curriculum" and that the student was "not suspected of having a disability that reaches the level to require specialized instruction through an IEP to receive Free Appropriate Public Education (FAPE)."
9. There is documentation that, as of October 26, 2023, the student received In-School Intervention (ISI) on October 12, 2023, for two periods of the day for disrespect towards a peer and had a "conference with the student" on October 23, 2023, for cutting class.
10. During the month of December, a WCPS staff member informed the complainant of the student's behavior of task avoidance and disruptive behavior.
11. On April 26, 2024, the 504 Team met to consider the need for a Functional Behavioral Assessment (FBA) based on a suspension that resulted in the student having a total of seven days of out-of-school suspensions for the 2023- 2024 school year.
12. On May 2, 2024, via email, the complainant requested the student to be evaluated under Child Find.

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<sup>4</sup> i-Ready is a combination of an online instruction program and a diagnostic test for students in kindergarten through eighth grade designed to help teachers understand a student's strengths and weaknesses, and to personalize their learning.

<sup>5</sup> An accommodation provided to the student through his 504 plan that allows him to take a break from class when needed to cool down or complete assignments for no more than five minutes, however the student must seek permission first.

13. On May 3, 2024, the complainant received an "Invitation" for a meeting to be held on May 15, 2024.
14. On May 15, 2024, the IEP team met to review existing data, gather information, and determine the need for assessments; or if sufficient data exists, determine eligibility for special education and related services. The PWN reflects that the IEP team considered all data presented and determined there was not sufficient data to determine eligibility, therefore the IEP team proposed the student receive additional assessments. The complainant provided consent for the student to receive an Educational, Psychological, Speech-Language assessment, and an observation. The PWN reflects the IEP team will convene within 60 days to make a final decision regarding eligibility for special education and related services.
15. On June 3, 2024, the WCPS conducted an Educational Assessment and a Psychological assessment.
16. On May 20, 2024, the WCPS conducted an Observation Report.
17. On May 29, 2024, the WCPS conducted a Speech-Language Assessment Report.
18. On June 11, 2024, 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. During the meeting, the IEP team reviewed the current formal assessment data, district data (MAP, iReady), parent input, and data provided by the general education teacher, special education teacher, speech-language pathologist, and the school psychologist. The PWN reflects that the student's "academic and behavioral needs do not reach the threshold to require specially designed instruction provided through an IEP"; therefore, the student "does not meet the criteria to qualify for special education and related services through an IEP." The IEP team discussed, "While the student had lower performance on District assessments and failing grades, the data supported that the student is capable of completing grade-level work with the provision of the accommodations provided through the 504 plan. Any relative weaknesses identified through the assessments were not observed to be consistent with what is observed in the classroom when [the student] is willing to participate and complete assignments. The IEP team considered "ADHD and language impairment as a category of disability" and determined the identified areas of impact do not reach the level to require specially designed instruction through an IEP but do require accommodations. The PWN reflects the complainant "requested some time to think about her decision before signing" and was reminded of her right to disagree with the proposed action and was referred to the Parental Rights in the Maryland Procedural Safeguards.
19. During the 2023-2024 school year, the student had 27 incident referrals which included 12 days of ISI and 10 days of out-of-school suspension (OSS).
20. During the first semester, the student failed three out of eight classes and during the third marking period, the student failed six out of eight classes.

21. Throughout the 2023-2024 school year, there is documentation of the student's teachers and the complainant communicating about the student's lack of work completion, elopement from class, and disruptive behaviors.

#### **DISCUSSIONS AND CONCLUSIONS:**

#### **ALLEGATION# 1                      PROPER PROCEDURES IDENTIFYING A STUDENT WITH A DISABILITY**

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 needing special education and related services (34 CFR §300.111). 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.

The IEP team must complete an initial evaluation of a student 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).

The public agency is responsible for conducting a full and individual initial evaluation that includes using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability (34 CFR §300.304). Upon completion of the assessments and other evaluation measures, a group of qualified professionals and the parent of the child determine whether the child is a child with a disability (34 CFR §300.306).

#### **Child Find**

In this case, the complainant alleges that she made several requests for the student to be evaluated due to a private diagnosis of multiple disabilities, poor academic grades, and social-emotional needs.

Based on Findings of Fact #1 through #22, MSDE finds that WCPS did follow the proper procedures when identifying and conducting an initial evaluation to determine if the student is a student with a disability requiring special education and related services, since May 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.

#### **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

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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/sj

c: Micah Stauffer, Superintendent, WCPS  
██████████, ██████████, Principal, WCPS  
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Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
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