

September 30, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #25-009

Dear Parties

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, has completed the investigation of the complaint regarding special education services for the above-referenced student. The correspondence is the report on the final results of the investigation.

ALLEGATIONS:

On July 16, 2024, MSDE received a complaint from [REDACTED], hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complaints alleged that the Saint Mary's County Public Schools (SMCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The SMCPS did not ensure that the student was provided with the transportation services required by the IEP from August 2023 through September 2023, in accordance with 34 CFR §§ 300.101 and .323.
2. The SMCPS has not provided the student with a free appropriate public education (FAPE) in the educational placement required by the Individualized Education Program (IEP), since November 2023 in accordance with 34 CFR §§ 300.101, .114, .116.

BACKGROUND:

The student is 11 years old and is a student with multiple disabilities under the IDEA. He attends [REDACTED] [REDACTED] and has an IEP that requires special education instruction and related services.

ALLEGATION #1

PROVISION OF TRANSPORTATION

FINDINGS OF FACT:

1. The IEP in effect in August 2023 requires specialized transportation.
2. There is documentation that the student was removed from the bus as a result of behavioral concerns until a new type of safety harness was ordered.
3. There is documentation that the complainant agreed to transport the student during this time and that the SMCPs would reimburse the parent for transportation services.
4. There is documentation that the complainant was reimbursed for transporting the student to school.
5. There is documentation that the SMCPs resumed transporting the student to school on September 23, 2023, as required by the IEP.

Based on the Findings of Fact #1 through #5, MSDE finds that the SMCPs did not ensure that the student was provided with the transportation services required by the IEP from August 2023 through September 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

Notwithstanding, based on the Findings of Facts #3 through #5, MSDE finds that the SMCPs has remedied the violation and ensured that the student is provided with transportation as required by the IEP. Therefore, no additional corrective action is required.

ALLEGATION #2

EDUCATION PLACEMENT

FINDINGS OF FACT:

6. The IEP in effect in August 2023 reflects, “[Student’s] IEP cannot be implemented in his/her local school at this time. [Student] will receive services from a private separate day school situated as close to home as possible.”
7. On December 8, 2023, the IEP team met for the purpose of holding the student's annual review. The PWN reflects, “[Student] will continue placement in the private separate day school setting, specifically the [REDACTED].”
8. On January 31, 2024, the [REDACTED] school system, developed a letter reflecting the following:
 - The student’s last day of attendance at [REDACTED] was January 8, 2024, and he was withdrawn on January 9, 2024, from [REDACTED], following admission to the [REDACTED];
 - “If/when [Student] can return to a school environment, if rereferred, he will be considered for re-enrollment to the [REDACTED].”; and
 - The complainant was copied on the letter.

9. There is documentation that the SMCPS contacted the complainant on the following dates:
- February 14, 2024, SMCPS staff spoke with the complainant in informed her that Home and Hospital teaching, is an option for the student;
 - March 6, 2024, SMCPS staff informed the complainant that they are available to assist with HHT, if the student requires it now or when he is ready to return to school;
 - March 15, 2024, SMCPS emailed the complainant a follow-up regarding private day placement, and the need for HHT; and
 - March 22, 2024, SMCPS spoke with the complainant and received verbal consent to move forward with the placement process for [REDACTED], and the P [REDACTED]. The complaint informed SMCPS that she signed the release.
10. On April 30, 2024, a meeting occurred to discuss school placement options for the student. The PWN reflects the following:
- The SMCPS referred the student to three private separate day schools – [REDACTED], [REDACTED], and [REDACTED];
 - The SMCPS will follow up with [REDACTED] to determine if a placement is possible;
 - The social worker from [REDACTED] will seek information from his medical team regarding hospital teaching at the [REDACTED] through Baltimore County Public Schools;
 - The student is in a Behavioral Unit at [REDACTED]; and
 - The SMCPS identified the SMCPS teacher who can support with Assistive Technology if the student returns home and requires home instruction.

The team mutually agreed to reconvene on May 14, 2024, at 9:00 a.m. to review placement updates.

11. On May 2, 2024, the [REDACTED] program staff provided the SMCPS with a letter reflecting the student was discharged from the program on January 9, 2024. The letter also reflects that “per the dismissal letter,”:
- Student’s last day of attendance at [REDACTED], was November 27, 2023;
 - Student was dismissed on January 9, 2024, for non-attendance per guidance from SMCPS;
 - Student is eligible for referral for potential reentry; and
 - [REDACTED] program does not currently have space in age-appropriate classroom.
12. The PWN developed on May 14, 2024, states: “The purpose of this notice is to summarize a parent conference to discuss updates regarding school placement options.” The PWN reflects the following:
- Student has been referred to three additional schools: [REDACTED], [REDACTED] and the [REDACTED]. At this time, [the Student] was denied admittance into [REDACTED]. He was accepted into the local [REDACTED] with a start date of July 1, 2024;
 - The complainant will be offered three additional records releases to continue exploring placement options. The identified schools are [REDACTED], [REDACTED], and [REDACTED];

- An additional referral will be shared with [REDACTED] to determine if a 2024-2025 admittance is possible; and
- SMCPS offered to consider residential options for [the Student] if the travel distance to some schools could be more than 2 hours to get to and from school.

Parent input on May 14, 2024:

- The complainant will be participating in an intake meeting at [REDACTED] on May 15, 2024;
- The complainant disagreed with placement at [REDACTED];
- The complainant disagreed with seeking a residential placement; and
- The complainant shared she has provided [REDACTED] with consent to seek Home and Hospital Teaching while he is there.

13. On June 6, 2024, [REDACTED] developed a letter informing the SMCPS that [REDACTED] “is an appropriate referral for [Student] program” and the student can begin on July 1, 2024. The letter also reflects:

- [REDACTED] has not received confirmation from the parent and the school system that enrollment is accepted;
- [REDACTED] will rescind the enrollment offer, effective June 11, 2024, if written confirmation of acceptance is not received from the parent;
- If the offer is rescinded [REDACTED] will reconsider enrollment, if SMCPS is re-referred by SMCPS; and
- The complainant was copied in the letter.

14. There is documentation that on June 12, 2024, the complainant emailed the SMCPS informing them that the “[Student] is home.”

15. There is documentation that on June 13, 2024, the SMCPS emailed the complainant to inform her that the student can receive a transition plan to reintroduce school behaviors at [REDACTED].

16. There is documentation that in August 2024 the complainant was informed of the following:

- Student is on the waitlist at the [REDACTED];
- [REDACTED] is unable to meet the student's needs;
- [REDACTED] is unable to support the student;
- Student is on the waitlist for [REDACTED]; and
- [REDACTED] requested additional information to complete the reconsideration process.

DISCUSSION AND CONCLUSIONS:

In determining the educational placement of a child with a disability, each public agency must ensure that the placement decision: (a) is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (b) is determined at least annually; is based on the child’s IEP; and is as close as possible to the child’s home. 34 CFR § 300.116.

FAPE in placement November 27, 2023, through January 31, 2023

Based on the Findings of Fact #6, through #8, MSDE finds that the SMCPS provided the student with FAPE in the educational placement required by the IEP, from November 27, 2023, through January 31, 2024, in accordance with 34 CFR §§ 300.101, .114, .116. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

FAPE in placement since January 31, 2024, through May 14, 2024

Based on the Findings of Fact #8, #9, and #12, MSDE finds the student was unavailable for instruction from January 31, 2024, through May 14, 2024. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

FAPE in placement since June 12, 2024

Based on the Findings of Fact #12 through #16, the student was accepted into a placement that was able to implement the student's IEP in the least restrictive environment. The SMCPS determined it was an appropriate placement when it sent out the referral. The student was accepted, although the parent did not agree with the location of the placement. Rather than ensure the student's IEP was implemented at the placement where the student was accepted and where a free appropriate placement could be provided, the student was home and receiving limited services from the SMCPS. Therefore, MSDE finds that the SMCPS did not ensure the student was enrolled in the LRE as required by the IEP since June 12, 2024, in accordance with 34 CFR §§ 300.114 and .116. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

CORECTIVE ACTIONS AND 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.¹ 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.² Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

¹ 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.

² MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Student- Based

MSDE requires the SMCPS to provide documentation by December 1, 2024, of the steps taken to ensure that the IEP team has taken the following actions:

- a. The student is provided with special education and related services in the placement required by the IEP; and
- b. Convened an IEP meeting for the purpose of determining the impact of the lapse in services and 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.

SMCPS must ensure that the parents are provided with written notice of the team's decisions. The parents 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 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 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/ra

- c: J. Scott Smith, Superintendent, SMCPS
Carrie Smith, Compliance, Department of Special Education, SMCPS
[REDACTED], [REDACTED]
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support Dispute Resolution, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
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