

Franklin Legal, LLC

February 11, 2025

RE: [REDACTED]
Reference: #25-172

Dear Parties:

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

The independent investigator investigated the following allegations:

1. MSDE has not ensured that proper procedures were followed when responding to a State complaint filed by the complainant on September 27, 2024. Specifically, MSDE did not include procedures for implementing corrective action related to non-compliance with the IDEA, did not review all relevant evidence and make a determination as to whether an IDEA violation occurred, and did not address the future provision of services for all children with disabilities, and did not issue a Letter of Findings within 60 days in accordance with 34 CFR § 300.151, 300.152, and COMAR 13A.05.01.15.
2. MSDE has not ensured that the superintendent was adequately prepared and/or trained to correctly identify the dates of multiple allegations when responding to a State complaint filed by the complainant on July 31, 2023, in accordance with 34 CFR § 300.156.
3. MSDE has not followed proper monitoring procedures regarding implementation of 34 CFR § 300.152, in accordance with 34 CFR § 300.600, since September 26, 2023.

BACKGROUND:

The student is 19 years old, is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education and related services. At the time of this complaint, the student was placed by the PGCPs at [REDACTED].

FINDINGS OF FACT:

1. Complaint 25-081 was filed on September 27, 2024 and the Letter of Findings was issued on November 26, 2024.
2. The Letter of Findings in complaint 25-081 provided information about what steps to take if there were concerns about the findings of the investigator.
3. The complainant did not submit additional information to MSDE after receipt of the Letter of Findings.
4. MSDE has a “Standard Operating Procedure” document for its investigators that includes steps to take from the outset of the investigation through its conclusion.
5. The complaint investigator followed the “Standard Operating Procedure” during the investigation of complaint 25-081.
6. In a solicitation posted by the Maryland State Department of Education, October 15, 2024, titled “Special Education Compliance Investigator,” the qualifications included a background in special education, experience working with special education laws and regulations on a federal and state level (JD preferred), experience conducting investigations, excellent writing skills and the ability to write technical reports, and a proven ability to work independently and conduct legal research.
7. The superintendent designates complaint investigators to investigate complaints and draft letters of findings. Complaint 25-081 was investigated by Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE. Ms. Barmat is familiar with the Standard Operating Procedure document used by Maryland Complaint Investigators and followed these procedures during the investigation process. Ms. Barmat has worked in the field of special education since 1978 and is licensed to practice law in the District of Columbia as well as Maryland. She is well-versed in the legal requirements associated with state complaint investigations and IDEA compliance. Likewise, the superintendent is well-versed in special education laws and regulations at both the federal and state level.

DISCUSSION/CONCLUSIONS:

The complainant alleges that MSDE did not follow proper procedures while investigating complaint 25-081.

34 CFR § 300.152 requires that the state education agency (SEA) carry out an independent investigation, give the complainant the opportunity to submit additional information about the allegations in the complaint, provide the public agency an opportunity to respond, review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA, and issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions as well as the reasons for the SEA's final decision.

The Letter of Findings for complaint 25-081, while not as specific as the complainant would have preferred, does address each of the allegations made in the complaint. In the Letter of Findings for complaint 25-081, it is clearly stated that these findings are considered final "new, previously unavailable documentation is submitted within 15 (15) days of the date of this correspondence." No additional documentation was submitted within that time frame. If the complainant believed that the findings in the complaint were inaccurate, the appropriate remedy for this would have been to submit additional information if such information existed. Additionally, the language in the current complaint is evidence of disagreement with the outcome of the investigation rather than additional, previously unavailable documentation indicating that the complaint was not properly investigated.

Based on Findings of Fact #1 through #5, the independent investigator finds that MSDE has satisfied its requirements under 34 CFR § 300.151 and 34 CFR § 300.152. Therefore, there is no violation with respect to Allegations #1 and #3.

Based on Findings of Fact #6 and #7, the independent investigator finds that MSDE satisfied the requirements of 34 CFR § 300.156 and 34 CFR § 300.160 and finds no violation with respect to Allegation #2. The IDEA does not include any specific requirements for individuals conducting state special education complaint investigations. All MSDE employees involved in each stage of the investigation process hold appropriate Maryland licensure for their respective positions, have earned degrees relevant to this field of work, and are highly experienced in the implementation and review of IDEA requirements and state and federal regulations.

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 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,

Michael Franklin
Independent Investigator

c: Millard House, II, Superintendent, PGCPs
Trinell Bowman, Associate Superintendent, PGCPs
Darnell Henderson, General Counsel, PGCPs
William Fields, Associate General Counsel, PGCPs
Keith Marston, Supervisor, Special Education Compliance, PGCPs
Lois Jones-Smith, Liaison, Special Education Compliance, PGCPs
Dr. Antoine L. Hickman, Assistant State Superintendent, Division of Early Intervention and Special Education Services, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE