

February 7, 2025

Ms. Megan Jones, Esquire  
Disabilities Rights Maryland  
1500 Union Avenue, Suite 2000  
Baltimore, Maryland 21211

Dr. Brandy Brady  
Supervisor of Special Education  
Somerset County Public Schools  
7982-A Tawes Campus Drive  
Westover, Maryland 21871

Re: [REDACTED]  
Reference: #25-176

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. This correspondence is the report on the final results of the investigation.

**ALLEGATIONS:**

On December 11, 2024, MSDE received a complaint from Ms. Megan Jones, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Somerset County Public Schools (SCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

**ALLEGATIONS:**

1. The SCPS did not ensure that the IDEA evaluation conducted was completed within the required timelines, since December 11, 2023, in accordance with 34 CFR §§ 300.301 and .303 and COMAR 13A.05.01.
2. The SCPS did not follow proper procedures when disciplinarily removing the student from school since December 11, 2023, in accordance with 34 CFR § 300.530, and COMAR 13A.08.03.

**BACKGROUND:**

The student is 12 years old and is not yet identified as a student with a disability under the IDEA. He attends [REDACTED].

**FINDING OF FACTS:**

1. On January 26, 2024, the parent emailed the school team to request an Individualized Education Program (IEP) meeting to discuss evaluations for the student. On January 29, 2024, the school responded to the parent via email, sharing that the initial IEP meeting was scheduled for February 21, 2024, at 1:45 pm.

There is documentation that on January 29, 2024, the parent emailed SCPS to confirm her availability for the February 21, 2024, IEP team meeting.

The parent did not attend the February 21, 2024, IEP team meeting.

2. There is documentation that on February 23, 2024, SCPS mailed a meeting invitation to the parent. The meeting invitation reflects that the IEP team meeting was scheduled for March 13, 2024, at 1:00 PM at [REDACTED].

The parent did not attend the March 13, 2024, IEP team meeting.

3. There is documentation that on September 6, 2024, the parent emailed the SCPS staff requesting an eligibility meeting for the student.
4. The Notice and Consent for Assessment form reflects:
  - Parent raised concerns on September 6, 2024, about: cognitive/intellectual, social/emotional/behavioral, academic performance in the areas of math calculation, math problem solving, written expression, and written language mechanics, reading fluency, oral reading skills, reading comprehension strategies.; and
  - On October 8, 2024, the IEP team determined that the student would be evaluated, and the following assessments would be conducted: reading, written language, mathematics, intellectual/cognitive, emotional/social/behavior.
5. There is documentation that on October 14, 2024, that the SCPS school psychologist called and left a voicemail for the parent. SCPS also emailed the parent to inform her that the student refused to participate in the testing session.
6. On October 21, 2024, the student was suspended for 10 days for violating the student code of conduct. The suspension letter, generated following the incident reflects the student was suspended for taking the following actions:
  - Threatening an administrator;
  - Physically assaulting an administrator; and
  - Destroying property.

The letter also reflects the following: a staff member was assigned to ensure the student could complete work missed by the suspension and information on how to collect work for the student.

The letter reflects the SCPS' point of contact to arrange a conference to address the student's behavior.

7. There is documentation that on October 23, 2024, school-based staff called the parent proposing to hold a manifestation determination meeting for October 28, 2024, at 9:30 am. The parent informed staff she is only available that week. The parent requested the suspension letters for the 2nd and 3rd incidents be placed at the desk for pick-up. The school-based staff informed the parent that the administration would be notified, and the team would contact her tomorrow to schedule the meeting.
8. The parent was contacted by the SCPS on the following dates to pick up work for the student:
  - October 25, 2024, no response, and unable to leave a message.
  - October 28, 2024, no response, and unable to leave a message.
  - November 1, 2024, no response initially, but the parent returned the phone call and said she would pick up the work on Monday. The work was to be left in the front office for pick up.
  - November 8, 2024, no response, and unable to leave a message. The purpose of the call was to inform the parent that the work was not picked up on November 1, 2024, and additional work was available.
9. On November 1, 2024, the SCPS Superintendent, generated a letter to the parent. The letter reflects a review of the October 21, 2024, incident had been completed. Based on the review, the student will be placed on an<sup>1</sup> pending the manifestation determination meeting.

The letter reflects that a point of contact has been identified to ensure the student can complete assignments. The letter also reflects information to make arrangements to receive the assignments and access to necessary material is included in the letter.

The letter reflects the parent's rights to appeal.

There is no documentation that the parent appealed the suspension.

10. On November 11, 2024, the IEP team convened for a manifestation determination meeting. The IEP team determined that the behaviors exhibited by the student during the October 21, 2024, incident were a manifestation of the student's disability.<sup>2</sup>
11. On November 13, 2024, the student was suspended for 3 days, with an additional 7 days requested. The student was verbally aggressive and threatened to cause physical harm to staff.

There is no documentation that IEP team convened a manifestation determination meeting, within 10 days of the November 13, 2024,<sup>3</sup>

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<sup>1</sup> The SCPS clarified that the student was not suspended for additional days. The suspension initiated on October 10, 2024, is considered to be an extended suspension, because of the number of days.

<sup>2</sup> The IEP team has not completed assessments, as of November 13, 2024, due to student refusal.

<sup>3</sup> The SCPS were closed on November 27, 2024, November 28, 2024, and November 29, 2024.

12. The parent was contacted by the SCPS on the following dates to pick up work for the student:
  - November 19, 2024, the SCPS offered to deliver the work, however the parent reported that she will pick up the work on November 20, 2024, in the morning.
  - On December 2, 2024, the SCPS called the parent to follow up the work that was not picked up on November 20, 2024, and additional work is available. The SCPS did not speak with the parent.
  - December 9, 2024, the SCPS called the parent to discuss plans to pick up work or for the SCPS to drop off the student's work. The parent declined the offer for the SCPS to drop off the student's work.
13. There is documentation that on December 16, 2024, the SCPS emailed the parent proposing to hold a manifestation determination meeting on December 19, 2024, to address the student's suspension.
14. There is documentation, that on December 18, 2024, the SCPS central office staff called the complainant to address the following concerns:
  - The need to speak with the student to complete a behavior threat assessment;
  - The SCPS offered to try to assess the student again either at the central office or another location; and
  - The parent expressed that she was not planning to attend a meeting scheduled for December 19th, she is not interested in a program or hospital for the student and wants the student to attend another school. The central office asked if they could call back to set up a time and speak with the student, the parent informed the staff that she is "not going to ask him to speak with" SCPS staff.
15. There is documentation that on January 17, 2025, the SCPS called the parent to pick up work for the student. The SCPS staff did not get a response.
16. There is no documentation that the student has been made available to the SCPS. The student's attendance records reflect the student did not return to school on December 2, 2024, and has not attended since that time.

#### **ALLEGATION #1**

#### **EVALUATION PROCEDURES**

In conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent that may assist in determining whether the student is a student with a disability, and the content of the student's IEP. The information that the IEP team considers must include information related to enabling the student to be involved in and progress in the general education curriculum. The public agency must not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability or for determining an appropriate educational program for the student (34 CFR § 300.304)

The public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 CFR § 300.304).

The IEP team shall complete an initial evaluation of a student within sixty days of parental consent for assessments and ninety days of public agency receiving a written referral (34 CFR §§ 300.301 and .303 and COMAR 13A.05.01.06(A)). The timeline for completion of the initial evaluation does not apply if the parent of the student repeatedly fails or refuses to produce the student for assessment or a student enrolls in a different public agency before completion of the initial evaluation started in the student's former public agency of enrollment (34 CFR §§ 300.301 and .303 and COMAR 13A.05.01.06(A)).

In this case the IEP team secured parental consent for an initial evaluation under IDEA on October 8, 2024. On October 14, 2024, the student refused to complete the assessment. The student stopped attending school on or about December 2, 2024. The SCPS offered to assess the student in alternative locations, however, the parent declined any offers to assess the student. Therefore, the SCPS did not have access to the student to conduct the IDEA evaluation.

Based on the Findings of Fact #1 through #5 and #16, MSDE finds that the SCPS did not have access to the student and as result was unable to ensure that the IDEA evaluation conducted was completed within the required timelines, since December 11, 2023, in accordance with 34 CFR §§ 300.301 and .303 and COMAR 13A.05.01. Therefore, MSDE does not find a violation.

## **ALLEGATION #2**

## **DISCIPLINARY PROCEDURES**

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten days during the school year (34 CFR §§ 300.530-.536). A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert the protections provided to students with disabilities if the public agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

The public agency must be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent expressed concern in writing to supervisory or administrative personnel of the public agency or a teacher of the student's that the student is in need of special education services;
2. The parent requested an evaluation of the student; or
3. The student's teacher or other public agency personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or other supervisory personnel of the public agency.

However, the public agency would not be deemed to have knowledge if, among other things, the student has been evaluated and determined to not be a student with a disability, the parent refused consent for evaluation or special education services, or if the parent has revoked consent for special education services. 34 CFR §§ 300.533-.534.

In scheduling a manifestation IEP team meeting it is critical that the meeting be convened within the required timelines. If the parent is unable or cannot be convinced to attend, the meeting must proceed prior to the 11<sup>th</sup> day of the student's removal. The parent must be provided with the documentation from the meeting and another meeting to discuss the outcome may be convened at the parent's request, but the manifestation determination cannot be delayed in order to ensure the student's rights are protected.

Based on the Findings of Fact #6 through #15, MSDE finds that the SCPS did not follow proper procedures when disciplinarily removing the student from school October 21, 2024, and November 13, 2024. Specifically, the IEP team did not conduct a manifestation determination meeting after the tenth day of a disciplinary removal, in accordance with 34 CFR §§ 300.530 and .531, COMAR 13A.08.03, and COMAR 13A.05.01.10. Therefore, MSDE finds a violation.

#### **CORRECTIVE ACTION 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 timeframes 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.<sup>5</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

#### **Student-Specific**

MSDE required the SCPS to provide documentation by February 20, 2025, that the IEP team has convened and determined whether the student's behavior that resulted in the November 13, 2024, suspension was a manifestation of the student's disability. If the parent is unavailable to attend the meeting, the meeting should proceed as scheduled, and the parent must be provided with the documentation from the meeting. The parent may participate virtually, in person or via telephone. The SCPS must ensure that the complainant is provided with written notice of the team's decisions.

The parent maintains 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

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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.

written request must include a compelling reason why the documentation was not made available during the investigation. Requests for reconsideration must be sent to Tracy Givens, Section Chief, Dispute Resolution Branch, at [Tracy.Givens@maryland.gov](mailto:Tracy.Givens@maryland.gov). 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/ra

c: Dr. Ava Tasker-Mitchell, Superintendent, SCPS  
Zeb Barlow, Coordinator of Special Education, SCPS  
[REDACTED], Principal, [REDACTED], SCPS  
[REDACTED], Principal, [REDACTED], SCPS  
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE  
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Rabiatu Akinlolu, Complaint Investigator, MSDE