



Mohammed Choudhury
State Superintendent of Schools

October 6, 2023



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

RE: 
Reference: #24- 019

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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.

ALLEGATIONS:

On August 8, 2023, MSDE received a complaint from Mr.  hereafter, “the complainant,” on behalf of his son, 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.

MSDE investigated the following allegations:

1. The CCPS has not developed an Individualized Education Program (IEP) and Behavior Intervention Plan (BIP) that addresses the student’s identified behavioral needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324.
2. The CCPS did not follow proper procedures in making the determination that the student would participate in the modified/alternative Maryland School Assessment Program and/or would pursue a Certificate of Program Completion instead of a high school diploma since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.320 and COMAR 13A.03.02.09.
3. The CCPS did not follow proper procedures when determining the student’s educational placement for the 2022- 2023 school year, in accordance with 34 CFR §§300.114 - .116.
4. The CCPS has not considered the student’s need for individualized Extended School Year (ESY) services since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2).

5. The CCPS has not ensured that the parent was provided with accurately measured quarterly progress reports toward achieving the annual IEP goals since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.320.

BACKGROUND:

The student is thirteen years old and is identified as a student with multiple disabilities (Autism, Speech/Language Impairment, and Other Health Impairment) under the IDEA. Since May 2023, he has attended [REDACTED] School and has an IEP that requires the provision of special education instruction and related services. Prior to the start of the 2022-2023 school year, the student received home school instruction.

FINDINGS OF FACTS:

1. The student's IEP, developed on April 23, 2021, required that the student be provided with supports to address his behavioral needs. The student's IEP further requires the student to be provided with five-thirty minutes weekly of classroom instruction outside the general education classroom (reading intervention), three hours and thirty minutes daily of classroom instruction outside the general education classroom (reading, written language, math, and self-management), four hours daily of special education instruction outside the general education classroom (reading, written language, math, and self-management), and 30 minutes per week of counseling services outside the general education classroom.
2. The student's IEP, developed on April 23, 2021, reflects that the student has two goals for self-management and one for social interaction skills. The goals address the student's ability to follow multi-step directions without additional prompts, ensuring the "safety" of personal and school property, self-advocacy, and interactions with peers.
3. On March 23, 2022, the IEP team met with the purpose of reviewing and revising the IEP and discussing the provision of FAPE (Free Appropriate Public Education). When the IEP team met, the student was receiving home school instruction. However, he had previously been eligible for special education and related services under the IDEA. During the March 2022 IEP team meeting, the IEP team determined that the student had been away from the traditional school setting for a year and a half and, as a result, proposed that an educational assessment be conducted. The IEP team recommended that the educational assessment include the areas of math, reading and written language, as well as an observation of the student during the assessments. At this meeting the complainants expressed their concerns about returning the student to school. The complainants shared that the IEP previously developed for the student did not address recent behaviors the student was showing at home. There is documentation that following the meeting, the complainants received a copy of the IEP dated April 23, 2021, and amended on May 3, 2021, for review at this IEP meeting on March 11, 2022. There is no documentation that the student's placement for the 2022-2023 school year was determined at this IEP team meeting.
4. On June 9, 2022, the IEP team met with the purpose of reviewing educational assessments in the areas of math, reading, and written language. The Prior Written Notice (PWN) generated following this IEP team meeting reflects that the complainant expressed his desire to discuss placement as he did not believe the CCPS could meet the student's needs. The CCPS staff explained that at the time, the IEP team did not have the information to indicate that the student's needs could not be met at his home school. It further

reflects that the CCPS staff could implement the student's April 2021 IEP with minor revisions regarding the student's age and grade level. The complainants disagreed with the IEP team. They referenced a report from the student's treating psychiatrist at the KKI, written on February 4, 2022, indicating the student's need for a "level 5" non-public placement and concerns related to the student's aggression towards his family members and service providers. In addition, the PWN reflects that the CCPS staff explained to the complainant that the referenced reports do not discuss the types of interventions the student would require, so it was unclear what the CCPS could not implement to support the student. The IEP team had completed an updated educational assessment for the student but did not consider the need for updated social/emotional assessments for the student. There is no documentation that the IEP team developed an IEP for the student or provided the complainants with an IEP following this IEP team meeting. There is documentation that they intended to implement the April 2021 IEP should he return to CCPS.

5. Following the IEP team meeting held on June 9, 2022, the complainants provided the CCPS with an "Intervention Plan" developed by the student's private behavioral support provider. This plan reflects that the student's behavior includes, but is not limited to, physical and verbal aggression, elopement, placing self in unsafe situations, and compulsive behaviors. The plan further reflects that as a result of escalated situations, emergency responders have had to be called, and the student has had to be hospitalized on multiple occasions. In addition, the complainants provided the CCPS staff with a copy of the Behavior Intervention Plan (BIP) that was being implemented during home school instruction. The BIP reflects possible student behaviors such as physical aggression, verbal aggression, elopement, and property destruction. The BIP further reflects that the student be provided with scheduled proactive movement breaks, staff pairing, timer, environmental modifications, preferential seating, sanitized environment, and positive reinforcement.
6. On July 6, 2022, the IEP team met with the purpose of reviewing and revising the IEP and discussing the provision of FAPE. The PWN generated following this meeting reflects that the CCPS "believed that [REDACTED] School would be the proper placement for the student." It further reflects that the IEP team expressed that the BIP (provided by the complainants) and IEP (from April 2021) could be implemented at [REDACTED] School; however, the IEP team did not document the consideration of the complainants' concerns and additional updated information related to the student's social/emotional needs.
7. Prior to the start of the 2022-2023 school year, the student was hospitalized for reasons related to his social/emotional needs.
8. On March 1, 2023, the IEP team met with the purpose of reviewing or revising the student's IEP. The PWN generated after this IEP team meeting reflects that as part of the student's return to school from in-patient treatment at the [REDACTED] [REDACTED]. The PWN reflects that the IEP team did not propose changes to the IEPs goals and objectives due to the "student being on parental instruction". The PWN reflects that the IEP team determined that the most appropriate and least restrictive environment was in the self-contained education classroom. Furthermore, the PWN reflects that ESY criteria were reviewed, and it was determined that, at the time, the IEP team would defer ESY until the student was back in school. This would allow the IEP team the ability to "gather information and data on goals and objectives to identify areas of need." The IEP team determined, without a provided rationale, that the student's services and goals on his April 2021 IEP remained appropriate. The IEP team did not document the consideration of the information provided by the complainant or his concerns related to the student's behavior.

9. The student's BIP dated May 5, 2023, was developed by the [REDACTED]. The BIP reflects the student's presenting behaviors as aggression, disruption, inappropriate sexual behaviors, elopement, inappropriate urination, violent gestures/comments, and wrapping items around his own neck. The BIP further reflects short-term and long-term objectives, treatment recommendations, emergency procedures, and the person(s) responsible for monitoring implementation, data collection, and recommendations.
10. There is documentation that the CCPS agreed to implement the BIP developed by the [REDACTED] and that CCPS staff received training on implementing the BIP from [REDACTED] staff. There is documentation starting on May 11, 2023, that reflects the implementation of the [REDACTED] BIP by the CCPS staff.
11. There is documentation that on May 11, 2023, the student was enrolled in the CCPS following in-patient treatment at the [REDACTED].
12. The IEP team met on May 30, 2023, with the purpose of conducting the student's annual review. The PWN generated following this meeting reflects that the student's IEP was reviewed, and the student's goals, objectives, accommodations, services, and transition plan were revised. In addition, the PWN reflects that a staff member from [REDACTED] was present and reviewed the BIP that [REDACTED] developed and that CCPS staff agreed to implement. The PWN further reflects that ESY criteria were reviewed and determined that the student would be provided with two hours and thirty minutes daily of ESY classroom instruction outside the general education classroom.
13. The PWN from the May 30, 2023, IEP team meeting reflects the complainants' concerns regarding the student being "diploma-bound and their thoughts that the non-diploma track was more appropriate at the time." While the IEP team determined that they did not have enough data available to make the determination, they did not determine what additional data was necessary to make an appropriate decision regarding the student's participation in the alternative curriculum and did not review the criteria for participation in the alternative curriculum.
14. The IEP developed on May 30, 2023, requires that the student be provided with additional special considerations and accommodations to address his behavioral needs: "time of day" for instruction, frequent breaks, reduced distractions to self and others, periodic social skills training, daily encouragement/reinforcement of appropriate behavior in academic and non-academic settings, and a monthly home-school behavior analytic consult. The student's IEP further requires the student to be provided with five thirty-minute sessions weekly of instruction outside the general education classroom (reading intervention), and twenty forty-five minute sessions weekly of instruction outside the general education classroom (self-contained ELA/English, self-contained math, self-contained science, and self-contained social studies). The IEP team did not, however, consider the parent's proposal that the student attend a non-public school and did not revise the rationale provided for the student's least restrictive environment from the April 2021 IEP.
15. There is documentation that the CCPS staff sent written correspondence to the complainants stating, "[T]he fourth marking period ended June 13th for secondary students. Since the student had an IEP meeting on May 30, 2023, and progress was reviewed and/or new goals and objectives were developed, there has not been enough data collection to report progress at this time."
16. There is documentation that the complainants were provided with the ESY 2022-2023 progress reports. The ESY 2022 progress report reported on August 3, 2023, reflects that for reading comprehension, the student had not met each of the seven objectives, but was making progress toward achieving the overall

goal. For reading fluency, the student had met objectives one and two, but objectives three and four were not addressed yet. The student was making progress toward achieving the overall goal. The ESY 2022 progress report data for reading comprehension and reading fluency was reported in the manner required by the student's IEP.

CONCLUSIONS:

Allegation #1: DEVELOPED AN IEP AND BIP THAT ADDRESS THE STUDENT'S IDENTIFIED BEHAVIORAL NEEDS

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

In this case, the complainant alleges that the CCPS did not develop an IEP that addressed the student's social/emotional and behavioral needs through the 2022-2023 school year. While the CCPS informed the parents that the IEP developed for the student when he last attended the CCPS in April 2021 could be implemented by his home school, the IEP team did not consider the additional information and concerns shared by the parents and did not seek additional data when necessary to address his needs. Although the CCPS adopted the BIP developed by the [REDACTED] and ensured that staff were trained in implementing it, the IEP for the student remained inappropriate.

Based on the Findings of Facts #1- #14, MSDE finds that the CCPS has not developed an IEP and BIP that addresses the student's identified behavioral needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation has occurred with respect to allegation #1.

Allegation #2: PARTICIPATION IN THE ALTERNATIVE CURRICULUM

Based on the Finding of Fact #13, MSDE finds that the CCPS did not follow proper procedures in making the determination that the student would participate in the modified/alternative Maryland School Assessment Program and/or would pursue a Certificate of Program Completion instead of a high school diploma, in accordance with 34 CFR §300.320 and COMAR 13A.03.02.09. When members of the team questioned whether the student should participate in the alternate academic achievement standards and alternate state assessments, the IEP team should have reviewed the eligibility criteria in Appendix A to the student's IEP to determine the student's eligibility to do so. Therefore, this office finds that a violation has occurred with respect to allegation #2.

Allegation #3: PROPER PROCEDURES WHEN DETERMINING THE STUDENT'S EDUCATIONAL PLACEMENT

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Based on the Findings of Facts #9, #12, and #14, MSDE finds that the CCPS did not follow proper procedures when determining the student's educational placement for the 2022- 2023 school year, in accordance with 34 CFR §§300.114 - .116. The team failed to consider the complainants concerns and consider the full continuum of placement options in light of the parent's concerns and did not update the considerations and rationale when determining the student's least restrictive environment. Therefore, this office finds that a violation has occurred with respect to allegation #3.

Allegation #4: CONSIDERED THE NEED FOR INDIVIDUALIZED ESY

Extended School Year (ESY) services are the individualized extension of specific special education and related services that are provided to a student beyond the normal school year. At least annually, each public agency must ensure that the IEP team determines whether a student requires ESY services in order to receive a FAPE (34 CFR §300.106 and COMAR 13A.05.01.03).

Based on the Findings of Facts #12 and #16, MSDE finds that the CCPS has considered the need for individualized ESY services since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2). Therefore, this office does not find that a violation has occurred with respect to allegation #4.

Allegation #5: PROVISION OF ACCURATELY MEASURED QUARTERLY PROGRESS REPORTS

Based on the Findings of Facts #15, and #16, MSDE finds that the CCPS has not ensured that the complainant was provided with accurately measured quarterly progress reports toward achieving the annual IEP goals during the time that he was enrolled in the CCPS from May 11, 2023, to the end of the 2022- 2023 school year, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation has occurred with respect to allegation #5.

CORRECTIVE ACTIONS/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. Diane Eisenstadt, Compliance Specialist, Family Support and

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.

Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

MSDE requires the CCPS to provide documentation, November 15, 2023, that the IEP team has taken the following action:

- a. Considered updated information and the parents' concerns regarding the student's social/emotional needs and developed an IEP that addressed the student's needs. If the IEP team determines that it does not have the information required to address the student's needs, it must determine what additional data is necessary to do so.
- b. Reviewed the determinations of the student's placement, considered the parents' proposals regarding placement, and made a decision regarding the student's placement that is consistent with the student's current needs and his ability to participate in the general education setting.
- c. Determined the need for the student to participate in the alternative framework, if appropriate. The IEP team must determine if additional information is required to complete this review, and seek that information, if appropriate.
- d. Provided the student's parents with a report of the student's progress towards achievement of IEP goals during the time that he was enrolled in the CCPS at the end of the 2022-2023 school year.
- e. Determined the compensatory services or other remedy necessary to address the violations described above. In doing so, the CCPS must ensure that the IEP team considers the difference between the student's present and expected levels of performance when determining the services needed to remediate the violations.

The CCPS must ensure that the parents are 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.

School Based

By January 1, 2024, the Special Education Staff at [REDACTED] School, and other staff involved in the decision-making process for this student must receive professional development and training on the proper procedures required to determine placement for a student, the proper procedures required to develop IEP, including the consideration of private information and concerns shared by the student's parents, and the proper consideration of the student's participation in the alternative framework.

Any and all materials used to present these trainings should be submitted to MSDE no later than 10 days after each training, in addition to attendance and participation sheets that staff should sign off on to demonstrate the receipt of these training sessions.

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.

Additionally, the CCPS must determine whether there are any other similarly situated students at [REDACTED] School (i.e. students with IEPs returning to school after withdrawing), during the 2022-2023 and 2023-2024 school years, and determine whether the requirements as outlined in the Letter of Findings were followed. If not, the IEP team must make the corrections required for each student, as appropriate.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC: sd

c: Andraé Townsel
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