




November 5, 2021




Mr. Scott Szczerbiak
Director of Special Education
Saint Mary's County Public Schools
23160 Moakley Street
Leonardtown, Maryland 20650

RE: 
Reference: #22-021

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 September 8, 2021, the MSDE received a complaint from Ms.  hereafter, "the complainant," on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Saint Mary's County Public Schools (SMCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The SMCPS did not ensure that the student was provided with the amount of speech and physical therapy, adaptive physical education, and classroom instruction required by his Individualized Education Program (IEP) from September 8, 2020 to the end of the 2020 - 2021 school year, in accordance with 34 CFR §§300.101 and .323.
2. The SMCPS did not ensure that the student's IEP addressed his behavioral needs from September 8, 2020 to the end of the 2020 - 2021 school year, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is eight (8) years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism and an Intellectual Disability. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

**ALLEGATION #1: PROVISION OF RELATED SERVICES AND
CLASSROOM INSTRUCTION**

FINDINGS OF FACTS:

1. The IEP in effect on September 8, 2020, reflects that the student is to be provided with speech and language therapy services once each week for thirty (30) minutes by the speech pathologist.
2. There is documentation that the student was provided with speech and language therapy services as required by the IEP in September 2020, October 2020, December 2020, and from January 2021 to June 2021. However there is no documentation reflecting that the student was provided with speech and language therapy services in November 2020.
3. The IEP reflects that the student is to be provided with physical therapy services once each month for thirty (30) minutes by the physical therapist.
4. There is documentation that the student was provided with physical therapy services in September 2020, October 2020, and November 2020. However, there is no documentation reflecting that the student was provided with physical therapy services from December 2020 to June 2021, as required by the IEP.
5. The IEP reflects that the student is to be provided with adaptive physical education once each week for thirty (30) minutes by the physical education teacher.
6. There is no documentation reflecting that the student was provided with adaptive physical education from September 8, 2020 to January 20, 2021, as required by the IEP.
7. On January 20, 2021, the IEP team convened for an annual review of the student's IEP. The student's teacher reported that the student had "only accessed adaptive physical education once or twice this year." The IEP meeting notice reflects that the complainant indicated that, "due to her current work schedule, she does not want [the student] to access this during the virtual instruction."

8. The IEP requires that the student be provided with specialized instruction for four (4) hours and forty (40) minutes each day in a separate, special education classroom provided by a special education teacher.
9. The student's 2020 - 2021 school year report card and the progress reported on his annual IEP goals during that school year reflect that he was provided with specialized instruction and was making sufficient progress toward achievement of the goals. However, there is no documentation reflecting that the student was provided with the amount of specialized instruction required by the IEP, since September 8, 2020.

CONCLUSIONS:

Allegation #1: The Provision of Related Services and Classroom Instruction

Speech and Language Therapy Services

Based on the Findings of Facts #1 and #2, the MSDE finds that the student was provided with speech and language therapy services in September 2020, October 2020, and December 2020, and from January 2021 to June 2021. However there is no documentation reflecting that the student was provided with speech and language therapy services in November 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation during this time period.

Physical Therapy Services

Based on the Findings of Facts #3 and #4, the MSDE finds that the student was provided with physical therapy services in September 2020, October 2020, and November 2020. However, there is no documentation reflecting that the student was provided with physical therapy services from December 2020 to June 2021, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation during this time period.

Adaptive Physical Education

Based on the Findings of Facts #5 - #7, the MSDE finds that there is no documentation reflecting that the student was provided with adaptive physical education services from September 8, 2020 to January 20, 2021, which is prior to the date when the complainant indicated that the student would not participate in adaptive physical education, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation during this time period.

Classroom Instruction

Based on the Findings of Facts #8 - #9, the MSDE finds that the documentation does not support the student being provided with the amount of classroom instruction required by the IEP, since September 8, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2: IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL NEEDS

FINDINGS OF FACTS:

10. The IEP in effect at the start of the 2020 - 2021 school year does not reflect that the student had identified needs in the areas of behavior and the IEP did not include annual goals to address behavior. The IEP did include supports to assist the student with managing his behavior, such as positive reinforcement through verbal and non-verbal communication and strategies to initiate and sustain attention.
11. There is electronic mail (email) dated March 9, 2021 and May 4, 2021, between the school staff and the complainant, reflecting that the student was either "cursing, yelling, or kicking people." However, there is no further documentation by school staff reflecting concerns about the student's behavior while in school from September 8, 2020 to the end of the 2020 - 2021 school year.

CONCLUSION:

Based on the Findings of Facts #10 and #11, the MSDE finds that there is no documentation to support the allegation that the SMCPS did not ensure that the student's IEP addressed his behavioral needs from September 8, 2020 to the end of the 2020 - 2021 school year, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The 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 the 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the SMCPS to provide documentation of the following action:

- a. The student is being provided with the amount of speech and language therapy, physical therapy, adaptive physical education, and classroom instruction required by the IEP.
- b. The IEP team has convened to determine the amount and nature of compensatory services to redress the violation of the lack of the provision of speech and language therapy, physical therapy, and adaptive physical education services.
- c. The IEP team has determined whether the violation related to the lack of the amount of classroom instruction provided to the student had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also 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.

School-Based

The MSDE requires the SMCPS to provide documentation of the steps taken to ensure that the violations do not recur at [REDACTED]

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

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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. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Early Intervention/Special Education Services

MEF:ac

c: James Scott Smith
Carrie Smith
[REDACTED]
Brian Morrison
Albert Chichester