

January 4, 2024

[REDACTED]

Ms. Rebecca Miller
Director for Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 21921

RE: [REDACTED]
Reference: #24-065

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 November 7, 2023, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Cecil 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) that addresses the student’s transportation needs since September 26, 2023, in accordance with 34 CFR §§300.101 and .324.
2. The CCPS did not provide proper written notice of the team’s decisions from the IEP team meeting held on September 26, 2023, in accordance with 34 CFR §300.503.
3. The CCPS did not ensure that accessible copies of each document the IEP team planned to discuss at the IEP team meeting on November 6, 2023, were provided at least five business days before the scheduled meeting, in accordance with 13A.05.01.07.
4. The CCPS has not ensured that the student has been consistently provided with adult support and toileting training, as required by the IEP, since the start of the 2023-2024 school year, in accordance with 34 CFR §300.101 and .323.

5. The CCPS did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting on September 26, 2023, in accordance with COMAR 13A.05.01.07.

BACKGROUND:

The student is nine years old and is identified as a student with Autism under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of special education services.

FINDINGS OF FACTS:

1. The student's IEP in effect at the start of the 2023-2024 school year was developed on August 17, 2023. The IEP requires:
 - dedicated adult support (daily) provided by the special educator or instructional assistant. The student requires adult support upon "Entrance and dismissal with hand holding to transition to and from the classroom/ bus including unpacking/ packing up her materials", to take her on the sensory breaks, to be in her location within the classroom when engaging in her instruction and activities, support meal routines, and model and assist her use of "total communication strategies". The student requires monitoring while on the playground for her safety, to make sure she is safe and to transition from recess to avoid "self-injurious behaviors in a tantrum;"
 - toilet training (every half hour) with data tracking, the use of visuals, social stories, and a bathroom card on her desk to initiate the need to use the bathroom. The student requires adult support while using the bathroom to ensure that she is following the directions on the visual cues. Adult support is needed to assist with changing and wiping the student; and keeping track of data and safety in the restroom; and
 - special transportation to include a safety device and seat belt lock to ensure that the student does not unbuckle during transportation.
2. On September 26, 2023, the IEP team convened to discuss a reevaluation of the student. The prior written notice (PWN) developed after the meeting reflects that the IEP team reviewed a classroom observation, parent and team member input, and determined that additional information is needed to determine the student's present levels of performance. The parent shared concerns regarding the current model of adult support and expressed that the student would thrive with a 2:1 model to support the student during instructional times and across all content areas. The parent expressed concerns regarding the student's safety, self-injurious behaviors, and access to materials that the student may ingest. The parent also shared that the private daycare ratio is 15:2 and that the student does not require an intense level of supervision at the daycare. Additionally, the parent shared concerns about the student's private daycare being responsible for placing the student in the safety device for transport and requested a bus aide be provided. The CCPS transportation staff responded that all licensed daycare providers are formally trained by the CCPS transportation department on securing students on the bus using a safety device. The IEP team determined that a bus aide was not required. The parent disagreed and elected to transport the student requesting mileage reimbursement. The CCPS legal counsel responded that it is the responsibility of CCPS to provide transportation and if transportation is declined reimbursement would not be provided. The IEP team determined the student requires a five-point safety device and that the CCPS transportation department would immediately train the private daycare staff on the use of the device. The CCPS school team proposed a 1:1 needs assessment be conducted through observations

in the instructional setting and during transportation. The parents requested to review the parameters of the assessment prior to administering it. The IEP team determined that a Functional Behavior Assessment (FBA) would be completed and that the Orientation and Mobility Specialist would participate in the next IEP team meeting to determine if additional assessments are warranted. The completed IEP was provided to the parent at the meeting.

3. There is documentation that the transportation “safety device” was added to the student’s IEP on September 26, 2023.
4. On September 27, 2023, the private daycare staff was trained by the CCPS transportation department on use of the five-point safety device.
5. On October 6, 2023, the parent emailed the CCPS to express concerns about inconsistencies with the “notes” (prior written notice) and what was shared at the September 26, 2023, IEP team meeting. The parent requested that the email be considered a formal complaint and be added to the student’s “file/notes.”
6. There is documentation that the CCPS agreed to the complainant’s request to amend the record and has added the parent’s email to the student’s record.
7. On October 30, 2023, the CCPS school staff emailed the parent the following documents to be reviewed at the November 6, 2023, IEP team meeting:
 - Needs Assessment;
 - Behavior Intervention Plan (BIP);
 - Baseline Data;
 - FBA 2023; and
 - “CHAR 5 Day Rule.”
8. On November 6, 2023, the IEP team convened to conduct a reevaluation of the student, review the IEP, and revise as appropriate. The IEP team reviewed the FBA, 1:1 assessment, and a BIP. The IEP team determined that the student requires adult support during transportation to ensure she does not place non-edible items in her mouth, and the IEP would be amended to reflect the additional service. There is no documentation that the IEP team reviewed an Orientation and Mobility assessment. There is documentation that the IEP was amended to require a bus aide during transportation.
9. There is documentation of the provision of adult support as required by the IEP.
10. While there is some documentation of the provision of toilet training, it was not provided as required by the IEP.

DISCUSSION/CONCLUSIONS:

Allegation #1 and #5: An IEP That Addresses the Student’s Transportation Needs and Provision of IEP Document

Based upon the Findings of Facts #1 to #4, and #8, MSDE finds that the CCPS has developed an IEP that addresses the

student's transportation needs since September 26, 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did not occur with respect to the allegation.

Based upon the Findings of Fact #2, MSDE finds that the CCPS did provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting on September 26, 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #2: Provision of Prior Written Notice of the IEP Team Decisions

Based upon the Findings of Facts #2, #5, and #6, MSDE finds that the CCPS did provide prior written notice of the team's decisions from the IEP team meeting held on September 26, 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur with respect to the allegation.

Allegation #3: Provision of IEP Document Five Days Prior to IEP Meeting

Business days are Monday through Friday, except for federal and State holidays, when a public agency is open for business, whether or not students are required to be in attendance for instruction. The first of the five business days begins the day after the parent receives the documents. In this case the documents were provided to the complainant on October 30, 2023; therefore, the first of the five business days was October 31, 2023.

Based upon the Findings of Facts #7 and #8, MSDE finds that the CCPS did not ensure that accessible copies of each document the IEP team planned to discuss at the IEP team meeting on November 6, 2023, were provided at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #4: Provision of Adult Support and Toilet Training

Based upon the Findings of Fact #9, MSDE finds that the CCPS has ensured that the student has been consistently provided with adult support, as required by the IEP, since the start of the 2023-2024 school year, in accordance with 34 CFR §300.101 and .323. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based upon the Findings of Fact #1 and #10, MSDE finds that the CCPS has not ensured that the student has been consistently provided with toilet training, as required by the IEP, since the start of the 2023-2024 school year, in accordance with 34 CFR §300.101 and .323. Therefore, this office finds that a violation did occur with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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 non-compliance 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 Diane Eisenstadt, Compliance Specialist, Family Support and 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 by March 15, 2024, that the school system has convened an IEP team meeting to determine whether the violations identified in this Letter of Findings regarding the provision of IEP documents and the provision of toilet training had a negative impact on the student's ability to benefit from the education program. If the IEP 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 one year of the date of this Letter of Findings.

The CCPS must ensure that the parent 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.

School-Based

MSDE requires the CCPS to provide documentation by March 15, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of IEP meeting documents and implementation of all supplementary aids, and services (including toileting activities) under the IDEA. These steps must include staff development, as well as tools developed to monitor compliance.

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.

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.


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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/tg

c: Dr. Jeffrey A. Lawson, Superintendent, CCPS
Ms. Rebecca Miller, Director of Special Education, CCPS
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, Dispute Resolution, MSDE
Ms. Nicole Elliott, Section Chief, Monitoring and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Ms. Tracy Givens, Complaint Investigator, Dispute Resolution, MSDE