

January 12, 2024

Ms. Jessica Williams  
Education Due Process Solutions, LLC  
711 Bain Drive #205  
Hyattsville, Maryland 20785

Ms. Audrey Ellis  
Director of Special Education  
St. Mary's County Public Schools  
23160 Moakley Street  
Leonardtown, Maryland 20650

RE: [REDACTED]  
Reference: #24-070

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention/Special Education Services (DEI/SES), 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 13, 2023, MSDE received a complaint from Ms. Jessica Williams, hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the St. Mary's County Public Schools (SMCPS) 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 SMCPS did not follow proper procedures when identifying the student to determine if she is a student with a disability requiring special education and related services, since November 2022, in accordance with 34 CFR §§300.301-.311 and COMAR 13A.05.01.06.
2. The SMCPS did not follow proper procedures when disciplinarily removing the student from school since November 2022, in accordance with 34 CFR §§300.530 and .534, and COMAR 13A.08.03.10.

**BACKGROUND:**

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

**Allegation #1: IDENTIFICATION OF STUDENT AS A STUDENT WHO REQUIRES SPECIAL EDUCATION SERVICES AND RELATED SERVICES SINCE NOVEMBER 2022**

**FINDINGS OF FACTS:**

1. On May 5, 2023, the SMCPs emailed the parent following a telephone conversation regarding special education services. The email included the Individualized Education Program (IEP) point of contact at [REDACTED]. The parent was informed that the IEP chair will communicate additional information, and the parent should contact the IEP chair directly.
2. On May 12, 2023, the SMCPs emailed the parent following a telephone conversation that occurred on May 11, 2023, with the IEP facilitator, the Social Worker, and Assistant Principal. The SMCPs informed the parent that the Social Worker at [REDACTED] spoke with the Social Worker at [REDACTED], the student's previous school. The SMCPs informed the parent that the Assistant Principal would call her to discuss the Pupil Services Team(PST)/504 process.
3. There is documentation of a signed SMCPs parent/legal guardian and physician/prescriber authorization medication orders form. The form was signed by the provider on October 11, 2023, and reflects the medication prescribed to treat attention deficit hyperactivity disorder (ADHD) required a change in administration to be consistent with school hours due to issues with missing doses. The form also reflects the signature of the parent and the school nurse on October 12, 2023.
4. There is documentation of a telehealth visit with the student's private provider on October 11, 2023. The provider documents:
  - change in medication administration time to address missed dosing. The medication will be administered at school;
  - the private provider recommended counseling to address anxiety and depression and notes reflect "referral for therapy made with Caremind" to address therapy needs;
  - the private provider recommended a 504 plan or behavioral plan to assist with school behavior; and
  - the private provider indicated that a screening for obsessive-compulsive disorder (OCD) would occur during a follow up appointment.
5. On October 18, 2023, the SMCPs completed a PST Referral. The referral reflects Social/Emotional/Behavioral as the reason for the referral. Specifically, concerns with lack of self-control, sudden changes in mood throughout the day, interruptions and distractions to others, and not accepting responsibility for her own behavior. The form reflects the team is aware of the private diagnosis of ADHD and prescribed medication. The form reflects historical Maryland School Assessment Reading and Math data from fifth and sixth grades; and point sheet intervention started on May 23, 2023.

The meeting notes reflect the parent shared the student was diagnosed with ADHD at the end of the 2022-2023 school year. The parent expressed concerns with the current school counselor and Social Studies teacher. The parent was unable to provide examples of behavior concerns that occur at home to the team.

The student's teachers shared that there are no behavioral concerns when the student is in class. The teachers stated that the student's grades are impacted by her refusal to complete assignments when she is absent. At times, she also refuses to work because she prefers to complete the assignments at home. According to teacher reports, the student does not require support to complete her assignments and can work independently. She benefits from reminders to stay on task in all subjects. The student demonstrates problematic behavior during unstructured times or when she is redirected.

6. On November 3, 2023, an IEP team meeting notice was developed proposing to hold an IEP team meeting on November 21, 2023. The purpose of the meeting was to review existing information and to determine whether additional data was needed to determine the student's eligibility for special education services.
7. On November 9, 2023, a child find referral was completed. The Child Find documentation reflects the parent identified Social/Emotional Behavior as the area of concern. The referral also reflects the following intervention and strategies:
  - Schedule change - has already occurred flipping science and social studies
  - Instruction Resource Teacher (IRT) informal diagnostic discussed - collecting informal data on her English Language Arts and Math skills/ability
  - Check In Check Out
  - Data will be collected for Functional Behavioral Assessment (FBA)
  - Social Worker Support
  - FAST PASS provided
  - IEP meeting to be scheduled to consider testing
  - Restorative session - to be scheduled
  - Shared with staff-if student doesn't want to talk, leave her alone
  - Using advisory to attempt missing work
  - Consideration to leave class early to transition to the next class
8. On November 21, 2023, the IEP team met in response to the parent referral made on October 26, 2023. The IEP team agreed to evaluate the student in the following areas:
  - Academic performance - mathematics, reading, and written language
  - Intellectual/Cognitive Functioning
  - Emotional/ Social/Behavior Development
  - Observation
  - Other- Phonological processing, FBA, and Sensory Profile

The Prior Written Notice (PWN) developed following the meeting on November 21, 2023, reflects that the parent expressed concerns with the student's behavior in and out of school. The parent shared the student has a private diagnosis of attention deficit disorder and OCD. The parent is also concerned about the impact the student's behavior is having on her access to the curriculum.

9. While the student was enrolled at [REDACTED] and [REDACTED], there were no concerns with the student's attendance or grades resulting from an inability to access curriculum.

10. There is documentation that SMCPS has completed two of the required assessments.

**DISCUSSION/CONCLUSIONS:**

Public agencies must ensure that all children with disabilities residing within their jurisdiction, and who are in need of special education and related services, are identified, located, and evaluated, also known as “Child Find”. 34 CFR 300.111. Either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. The initial evaluation (1) must be conducted within 60 days of receiving parental consent for the evaluation; or if the State establishes a timeframe within which the evaluation must be conducted, within that time frame. 34 CFR §300.301. In Maryland, the IEP team has 90 days from the date of referral, and 60 days from the date of consent to complete the assessments, whichever is shorter. COMAR 13A.05.01.06.

In this case, the complainant alleges that the SMCPS failed to fulfill its Child Find obligations, failed to request consent to evaluate, and failed to comply with the referral and evaluation timeline. The complaint alleges that the student's scores on the standardized testing should have made it clear that the student required an evaluation. In order to find the SMCPS violated its Child Find obligation, there must be evidence that the public agency had a reason to suspect that the student was a child with a disability who required special education and related services. While the student's ADHD diagnosis was made known to the SMCPS in April of 2023, there wasn't sufficient evidence to support that the student required special education services. The school reported that the student had average grades and no attendance issues. While the student had some behavioral incidents during the 2022-2023 school year, they appeared to taper off with a change in schools, and the behavioral concerns did not re-emerge until after the parent requested a referral.

Based on Finding of Facts #1 through #10, the SMCPS is following proper procedures to identify the student to determine if she is a student with a disability requiring special education and related services, in accordance with 34 CFR §300.301-.311 and COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur with respect to this aspect of the violation.

As the SMCPS did not violate their Child Find obligation, the evaluation timelines run from the parent's referral (provided on October 26, 2023) and the date of consent November 21, 2023. The IEP team is currently within timelines for the purpose of completing the evaluation process pursuant to COMAR 13A.05.01.06. Therefore, this office finds that a violation did not occur with respect to this allegation.

**Allegation #2:                      Disciplinarily removing the student**

### **FINDINGS OF FACTS:**

11. The student served In School Intervention due to actions that violated the student code of conduct:
- December 1, 2022, served on December 2, 2022 - attack of student;
  - January 11, 2023, served on January 12, 2023- failure to follow directions, and inappropriate language towards staff;
  - January 30, 2023, for one day, the referral reflects the suspension was the result of insubordination- use of cell phone during class;

- February 17, 2023, one day attack on student;
  - February 21, 2023, one day – accumulated three tardies during the week; and
  - October 25, 2023, served on October 27, 2023, and October 30, 2023- attack on student.
12. The student served out of school suspension due to actions that violated the student code of conduct. The suspension letters include a statement informing of the right to appeal the decision by notifying the Director of Student Services in writing within 10 days. There is no documentation that the parent appealed any of the suspensions.
- February 15, 2023, one-day suspension on February 16, 2023;
  - May 4, 2023, one day suspension – inciting;
  - May 17, 2023, two-day suspension threatening a teacher, served on May 18, 2023, and May 19, 2023;
  - October 5, 2023, three-day suspension for an attack on student, served on October 6, October 9, 2023, and October 10, 2023; and
  - October 25, 2023, one day suspension.
13. The student had additional incidents that resulted in intervention/referrals:
- May 5, 2023, a referral was completed as a result of the student’s disruption to the classroom environment, non-compliance with staff redirection, and inappropriate language;
  - October 11, 2023, verbal reprimand as a result of cutting class; and
  - October 16, 2023, late to class, refused to comply with a request from the teacher, and left class without permission, a referral was completed.

### **DISCUSSION/CONCLUSIONS:**

A child who has not been determined to be eligible for special education and related services under the IDEA and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for under IDEA if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 34 CFR §300.534.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred: (1) the parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (2) the parent of the child requested an evaluation of the child; or (3) the teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. 34 CFR §300.534.

If a public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. 34 CFR §300.534. In this case, the parent did not refer the student for a special education evaluation until October 26, 2023, after the last out of school suspension.

Furthermore, school personnel may discipline a student with a disability (or suspected disability) for up to ten days in the same manner as their nondisabled peers before additional IDEA protections, such as a manifestation determination review, are required. In this case, the student was not removed for more than ten school days in either the 2022-2023 or the 2023-2024 school years. 34 CFR §300.530.

Based on the Findings of Facts #11 through #13, MSDE finds SMCPS followed proper procedures when disciplinarily removing the student from school since November 2022, in accordance with 34 CFR §§300.530 and .534, and COMAR 13A.08.03.10. Therefore, this office finds that a violation did not occur with respect to this aspect of the violation.

### **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.<sup>1</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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

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

---

<sup>1</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>2</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.

Ms. Jessica Williams  
Ms. Audrey Ellis  
January 12, 2024  
Page 7

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/Special Education Services

ALH/ra

c: Dr. J. Scott Smith, Superintendent of Schools, SMCPs  
Ms. Cynthia Kilcoyne, Supervisor of Special Education, SMCPs  
Ms. Carrie Smith, Compliance, Department of Special Education, SMCPs  
[REDACTED], Principal, [REDACTED], SMCPs  
[REDACTED], Principal, [REDACTED], SMCPs  
Ms. Alison Barmat, Branch Chief, Family Dispute Resolution, MSDE  
Ms. Diane Eisenstadt, Compliance Specialist, MSDE  
Ms. Rabiātu Akinlolu, Compliance Investigator, MSDE  
Dr. Paige Bradford, Chief, Programmatic Support and Technical Assistance, MSDE  
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE