

Franklin Legal, LLC

April 7, 2025

RE: [REDACTED]
Reference: #25-273

Dear Parties:

The independent investigator assigned by the Maryland State Department (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), has completed the investigation complaint regarding special education services for the above-referenced student. This correspondence is the report on the final results of the investigation.

The independent investigator investigated the following allegations:

1. MSDE has not ensured that proper procedures were followed when responding to a State complaint filed by the complainant on February 27, 2024. Specifically, MSDE did not include a Finding of Facts that included sufficient detail to support its conclusion and did not review all relevant evidence and make a determination as to whether an IDEA violation occurred, in accordance with 34 CFR § 300.152, and COMAR 13A.05.01.15.
2. MSDE has not ensured that the superintendent was adequately prepared and/or trained to correctly identify the dates of multiple allegations when responding to a State complaint filed by the complainant on February 27, 2024, in accordance with 34 CFR § 300.156.
3. MSDE has not followed proper monitoring procedures regarding implementation of 34 CFR § 300.152, in accordance with 34 CFR § 300.600, since February 27, 2024.
4. MSDE has not ensured that the Student was provided with toileting and hand washing services required in the student's Individualized Education Program (IEP) on February 26, 2024, in accordance with 34 CFR § 300.146.

BACKGROUND:

The student is 19 years old, is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education and related services. At the time of this complaint, the student was placed by the PGCPs at [REDACTED] School.

FINDINGS OF FACT:

1. Complaint 24-151 was filed on February 27, 2024 and the Letter of Findings was issued on April 5, 2024.
2. The Letter of Findings in complaint 24-151 provided information about what steps to take if there were concerns about the findings of the investigator.
3. The complainant did not submit additional information to MSDE after receipt of the Letter of Findings.
4. MSDE has a "Standard Operating Procedure" document for its investigators that includes steps to take from the outset of the investigation through its conclusion.
5. The complaint investigator followed the "Standard Operating Procedure" during the investigation of complaint 24-151.
6. In a solicitation posted by the Maryland State Department of Education, October 15, 2024, titled "Special Education Compliance Investigator," the qualifications included a background in special education, experience working with special education laws and regulations on a federal and state level (JD preferred), experience conducting investigations, excellent writing skills and the ability to write technical reports, and a proven ability to work independently and conduct legal research.
7. The superintendent designates complaint investigators to investigate complaints and draft letters of findings. Complaint 24-151 was investigated by Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE. Ms. Barmat is familiar with the Standard Operating Procedure document used by Maryland Complaint Investigators and followed these procedures during the investigation process. Ms. Barmat has worked in the field of special education since 1978 and is licensed to practice law in the District of Columbia as well as Maryland. She is well-versed in the legal requirements associated with state complaint investigations and IDEA compliance. Likewise, the superintendent is well-versed in special education laws and regulations at both the federal and state level.

DISCUSSION/CONCLUSIONS:

The complainant alleges that MSDE did not follow proper procedures while investigating complaint 24-151, and that MSDE did not ensure that the student was provided with toileting and hand washing services required in the student's IEP.

34 CFR § 300.152 requires that the state education agency (SEA) carry out an independent investigation, give the complainant the opportunity to submit additional information about the allegations in the complaint, provide the public agency an opportunity to respond, review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA, and issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions as well as the reasons for the SEA's final decision.

The Letter of Findings for complaint 24-151, while not as specific as the complainant would have preferred, does address each of the allegations made in the complaint and contains findings of fact and conclusions, as well as the reasons for the SEA's final decision. There is no evidence that MSDE failed to make an independent determination as to whether a violation occurred in this matter. The complainant alleges that there was "no documentation" in the student's daily communication log that the student's toileting and handwashing protocols were followed. However, the communication log itself states that these protocols were followed. It's unclear what additional documentation the complainant believes should or even could have been included.

In the Letter of Findings for complaint 24-151, it is clearly stated that these findings are considered final "new, previously unavailable documentation is submitted within 15 (15) days of the date of this correspondence." No additional documentation was submitted within that time frame. If the complainant believed that the findings in the complaint were inaccurate, the appropriate remedy for this would have been to submit additional information if such information existed, or, in the alternative, to file a due process complaint. Additionally, the language in the current complaint is evidence of disagreement with the outcome of the investigation rather than additional, previously unavailable documentation indicating that the complaint was not properly investigated.

Based on Findings of Fact #1 through #5, the independent investigator finds that MSDE has satisfied its requirements under 34 CFR § 300.151 and 34 CFR § 300.152. Therefore, there is no violation with respect to Allegations #1, #3, and #4.

Based on Findings of Fact #6 and #7, the independent investigator finds that MSDE satisfied the requirements of 34 CFR § 300.156 and 34 CFR § 300.160 and finds no violation with respect to Allegation #2. The IDEA does not include any specific requirements for individuals conducting state special education complaint investigations. All MSDE

employees involved in each stage of the investigation process hold appropriate Maryland licensure for their respective positions, have earned degrees relevant to this field of work, and are highly experienced in the implementation and review of IDEA requirements and state and federal regulations.

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 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,

Michael Franklin
Independent Investigator

c: Millard House, II, Superintendent, PGCPs
Trinell Bowman, Associate Superintendent, PGCPs
Darnell Henderson, General Counsel, PGCPs
William Fields, Associate General Counsel, PGCPs
Keith Marston, Supervisor, Special Education Compliance, PGCPs
Lois Jones-Smith, Liaison, Special Education Compliance, PGCPs
Dr. Antoine L. Hickman, Assistant State Superintendent, Division of Early Intervention and Special Education Services, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE

Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE

Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE