



Mohammed Choudhury
State Superintendent of Schools

October 6, 2021



Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: [REDACTED]
Reference: #22-012

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 13, 2021, the MSDE received a complaint from Mr. [REDACTED] and Ms. [REDACTED] hereafter “the complainants,” on behalf of the above-referenced student, their son. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student. This correspondence is the report of the final results of our investigation.

The MSDE investigated the following allegations:

1. The MCPS did not ensure that the student’s progress towards achievement of the annual IEP goals, during the 2020-2021 school year, was measured as described in the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.

2. The MCPS has not ensured that the team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving the IEP goals, for the 2020 - 2021 school year, in accordance with 34 CFR §300.324.
3. The MCPS has not ensured that the IEP contains annual goals designed to meet the student's identified needs since October 2020, in accordance with 34 CFR §300.320. Specifically, the goals are not measurable, are not based on the student's present levels of performance, and are identical to goals that were not achieved in the prior year.
4. The MCPS has not developed an IEP that addresses the student's identified self-management needs since September 2020, in accordance with 34 CFR §300.324. Specifically, the IEP team did not review and revise the student's IEP to address behaviors that were interfering with instruction or provide one-to-one assistance to the student.
5. The MCPS did not follow proper procedures when the IEP team determined the placement in which the student would receive special education instruction since June 2021, in accordance with 34 CFR §§300.114 and .116.
6. The MCPS did not obtain informed parental consent, prior to conducting a reevaluation of the student on June 4, 2021, in accordance with 34 CFR §300.300.
7. The MCPS has not addressed the student's need for compensatory services as a result of not receiving a Free Appropriate Public Education (FAPE), since August 2020, in accordance with §300.101.

BACKGROUND:

The student, who attends [REDACTED] is twelve (12) years old and is identified as a student with Autism, under the IDEA. He has an IEP that requires the provision of special education and related services.

ALLEGATION #1

PROGRESS MEASURED AS REQUIRED BY THE IEP

FINDINGS OF FACTS:

1. The IEP in effect at the beginning of the investigation period contains goals in the following areas: math calculation, math problem solving, reading comprehension, written language expression, written language mechanics, receptive and expressive language, self-advocacy, self-management and social emotional/behavioral. Each IEP goal contains a description of how the student's progress toward meeting the annual goals will be measured.

2. The written reports of the student's progress towards achieving the annual goals issued on November 9, 2020, January 29, 2021, April 16, 2021 and June 16, 2021, do not reflect data that was collected based upon the measurement criteria described in the IEP.

CONCLUSION:

Based on Findings of Facts #1 and #2, the MSDE finds that the MCPS did not ensure that the student's progress towards achievement of the annual IEP goals during the 2020-2021 school year was measured as described in the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2

REVISION OF THE IEP TO ADDRESS LACK OF PROGRESS

FINDINGS OF FACTS:

3. The reports of the student's progress towards achieving the annual goals, dated November 9, 2020, in the areas of math problem solving, reading comprehension, written language expression, and self-management reflect that the student was not making sufficient progress, however, there is no documentation that the IEP team convened to address that lack of progress.
4. The reports of the student's progress towards achieving the annual goals, dated January 29, 2021, in the areas of math problem solving, written language expression, and self-management reflect that the student was not making sufficient progress, however, there is no documentation that the IEP team convened to address that lack of progress.
5. The reports of the student's progress towards achieving the annual goals, dated April 16, 2021, in the areas of math problem solving and self-advocacy reflect that the student was not making sufficient progress. The Prior Written Notice (PWN), dated June 4, 2021, reflects that the team convened on June 3, 2021 and addressed the student's lack of progress.
6. The reports of the student's progress towards achieving the annual goals, dated June 16, 2021, in the areas of math problem solving, self-advocacy, reading comprehension, written language expression, and self-management reflect that the student was not making sufficient progress. The PWN dated July 17, 2021 reflects that the team convened on that day and addressed the student's lack of progress.

CONCLUSION:

Based on Findings of Facts #3 - #6, the MSDE finds that, while the IEP team addressed the student's lack of progress towards achieving the annual goals in June and July 2021, the MCPS did not ensure that the team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving the IEP goals, in the areas of math problem solving, reading comprehension, written language expression and self-management, from November 9, 2020 to June 3, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation during that time period.

**ALLEGATION #3 IEP GOALS NOT DESIGNED TO MEET THE NEEDS OF
THE STUDENT SINCE OCTOBER 2020**

FINDINGS OF FACTS:

7. The IEP dated October 7, 2020 reflects that the student's math problem solving goal, math calculation goal, and reading comprehension goal were not developed based on the student's present levels of performance, and those goals remained the same as the student's prior IEP, with no explanation as to why the goal was not achieved during the year, or revised accordingly.
8. The IEP dated October 7, 2020 reflects that, while the student's written language mechanics goal and social emotional behavior goal were developed based on the student's reported present levels of performance, the goals remained the same as the prior IEP, with no explanation as to why the goal was not achieved during the year, or revised accordingly.
9. The IEP dated October 7, 2020 reflects that the student's written language expression goal was developed based on the student's present level of performance and while the goal remained the same as the previous IEP, the objectives were revised to reflect the student's present level of performance.
10. The IEP dated October 7, 2020 reflects that the student's expressive and receptive goals, as well as the visual motor goal, were measurable and based on the student's present levels of performance.
11. The IEP dated October 7, 2020 reflects that the student's self-management and self-advocacy goals were measurable and were based on the student's present levels of performance.
12. On May 27, 2021, the IEP was revised. The student's math problem solving goal, reading comprehension goal, and written language expression objectives were revised to reflect updated present levels of performance.

CONCLUSION:

Based on Findings of Facts #7 - #12, the MSDE finds that the MCPS has not ensured that the IEP contains annual goals designed to meet the student's identified needs since October 2020, in the areas of math calculation, written language mechanics, and social emotional behavior. Further, the MCPS did not ensure that the IEP contained annual goals designed to meet the student's identified needs from October 2020 to May 2021 in the areas of math problem solving, reading comprehension, and written language expression, in accordance with 34 CFR §300.320. Therefore, this office finds a violation with respect to this allegation during those time periods.

**ALLEGATION #4 IEP DEVELOPMENT RELATED TO
SELF-MANAGEMENT NEEDS**

FINDINGS OF FACTS:

13. The written summary of the IEP team meeting, dated July 27, 2021, reflects that the student's parent requested a one-to-one paraeducator to assist the student with his identified self-management needs.
14. While the school-based members of the IEP team considered the request, the team determined that the student receives frequent adult support and that "his inability to access the curriculum would not be changed by having one to one support."
15. While the IEP did include an annual goal to address the student's identified self-management need, as well as supports and services to assist the student with achieving that goal, the IEP team did not review and revise the student's IEP, as appropriate, when the student failed to make sufficient progress towards achieving the goal, as reported on the November 2020 and January 2021 annual goal reports.

CONCLUSION:

Based on Findings of Facts #13 - #15, the MSDE finds that, while the MCPS considered providing the student with a one-to-one paraeducator, they did not review and revise the student's self-management IEP goal to address interfering behaviors in that area, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATIONS #5 PLACEMENT DECISION

FINDINGS OF FACTS:

16. The written summary of the IEP team meeting held on June 3, 2021 reflects that the IEP team convened and considered an educational assessment, a psychological assessment, adaptive rating scales, classroom based data, and teacher observations. Based on the

information considered, the IEP team reviewed the Alternate Assessments and Instruction using Alternate Standards requirements and determined that the student qualifies for alternative assessments and instruction.

17. On July 27, 2021, the IEP team reconvened. The written summary of the IEP team meeting reflects that the school based members of the IEP team proposed a placement based on the student's eligibility for Alternate Assessments and Instruction using Alternate Standards, which was more restrictive than the student's current placement.
18. The report reflects that the complainants declined to consent to Alternate Assessments and Instruction using Alternate Standards, therefore, the IEP team determined that the student would remain in his current placement to receive a High School diploma, and would be required to complete grade level curriculum, given his required IEP supports.

CONCLUSION:

Based on Findings of Facts #16 - #18, the MSDE finds that the MCPS followed proper procedures when the IEP team determined the placement in which the student would receive special education instruction since June 2021, in accordance with 34 CFR §§300.114 and .116. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #6 PARENTAL CONSENT PRIOR TO
REEVALUATION**

FINDINGS OF FACTS:

19. On February 19, 2020, the student's parents provided written consent for assessments in the areas of academic performance, intellectual/cognitive functioning, and social emotional /behavioral development.
20. In May 2021, a Notice and Consent for Assessment for functional/adaptive performance was signed by the complainant.

CONCLUSION:

Based on the Findings of Facts #19 and #20, the MSDE finds that the MCPS obtained informed parental consent, prior to conducting a reevaluation of the student, which was initiated in February 2020, in accordance with 34 CFR §300.300. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #7

COMPENSATORY SERVICES

FINDINGS OF FACTS:

21. There is no documentation that the IEP team has convened to address the student's need for compensatory services as a result of not receiving a Free Appropriate Public Education (FAPE), since August 2020, in accordance with §300.101.

CONCLUSION:

Based on the Finding of Fact #21, the MSDE finds that the MCPS has not addressed the student's need for compensatory services as a result of not receiving a Free Appropriate Public Education (FAPE), since August 2020, in accordance with §300.101. Therefore, this office finds a violation with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties 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 or Nancy.birenbaum@maryland.gov.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

Student Specific

The MSDE requires the MCPS to provide documentation of the following:

1. The student's progress towards achieving the annual IEP goals is measured as described in the IEP.
2. The IEP includes goals that are measurable and developed based on the student's present levels of performance in the areas of math calculation, written language mechanics and social emotional behavior.
3. The IEP team has reviewed and revised the student's self-management IEP goal to address interfering behaviors.
4. The IEP team has determined the amount and nature of compensatory services or other remedy, as a result of not receiving a FAPE due to the violations identified in this Letter of Findings.


School-Based

The MSDE requires the MCPS to provide documentation of the steps taken at [REDACTED] to ensure the following:

1. Reports of students' progress towards achieving the annual IEP goals are measured as described in the students' IEP.
2. IEP teams review and revise, as appropriate, students' IEPs to address any lack of progress towards achieving the annual IEP goals.
3. IEP teams ensure that annual goals are measurable, based on present levels of performance and are reviewed and revised if not achieved within one year of the date of development.

The MSDE requires the MCPS to provide documentation of the steps it has taken to ensure violations do not recur at [REDACTED] and how the MCPS will monitor to ensure the effectiveness of those steps.

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.




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The parents and the school system 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/dee

c: Monifa McKnight
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