




Mohammed Choudhury
State Superintendent of Schools

March 11, 2022




Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: 
Reference: #22-085

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 January 13, 2022, 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 Montgomery County Public Schools (MCPS) 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 MCPS has not ensured that the progress data reported on November 3, 2021 towards achieving the student’s behavioral self-management goal was consistent with the data, in accordance with 34 CFR §§300.320 and .323.
2. The MCPS has not ensured that the IEP developed for the student addresses the student’s identified behavioral self-management and social emotional behavioral needs, since June 11, 2021, in accordance with 34 CFR §300.324.

3. The MCPS has not ensured that the student was provided with required weekly check-ins with the student's counselor and teachers, written directions, and a copy of the teacher's notes, as required by the IEP since November 25, 2021, in accordance with 34 CFR §§ 300.101 and .323.
4. The MCPS has not ensured that the student was provided with a weekly schedule, written clarification of assignment dates and requirements, provision of organizational support, modified assignments, breaking down of assignments into smaller chunks, positive praise, and cues and monitoring during the steps for task completion, as required by the IEP since the start of school year 2021-2022, in accordance with 34 CFR §§ 300.101 and .323.
5. The MCPS has not ensured that the student has been provided with the amount of special education instruction required by the IEP since the start of school year 2021-2022, in accordance with 34 CFR §§300.101 and .323.
6. The MCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address parental concerns related to a traumatic brain injury (TBI) incurred on September 28, 2021, in accordance with 34 CFR §300.324.
7. The MCPS did not follow proper procedures when responding to a request to inspect and review the student's educational record in December 2021 and January 2022, in accordance with 34 CFR §300.613.
8. The MCPS did not follow proper procedures when responding to requests to amend the student's educational record on December 20, 2021 and December 22, 2021, in accordance with 34 CFR §300.618.

BACKGROUND:

The student is eighteen (18) years old and is identified as a student with an Other Health Impairment (OHI), based on Generalized Anxiety Disorder, Major Depressive Disorder, and Attention- Deficit/Hyperactivity Disorder-Combined Presentation, under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1:

NOVEMBER 3, 2021 IEP PROGRESS REPORT

FINDINGS OF FACTS:

1. The student's IEP, dated June 11, 2021, contains a self-management goal stating that the student will "demonstrate effective executive functioning skills across the school day by initiating and completing assignments."

2. The report showing progress towards achievement of the annual IEP self-management goal, dated November 3, 2021, states that the student was making sufficient progress towards that goal. The report states that the student met one (1) objective regarding using a calendar for planning purposes.
3. The report states that for the first quarter of school year 2021-2022, the student had no missing assignments in calculus, physical education, finance, AP literature and economics.
4. Interim weekly teacher reports issued from September 8, 2021 to November 3, 2021 reflect that the student was missing some assignments in a few classes, however, school staff report that some assignments were remediated and some were excused due to the student's altered/modified assignments accommodation.

CONCLUSION:

Based on the Findings of Facts #1 - #4, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation during this time period.

ALLEGATION #2:

ADDRESSING STUDENT NEEDS

FINDINGS OF FACTS:

5. The IEP, dated June 11, 2021, states that the areas affected by the student's Other Health Impairment are behavioral, including self-management and social emotional needs. His social emotional deficits are exhibited through low self-esteem, low frustration tolerance and cognitive fatigue. His self-management deficits are exhibited through a lack of organization, sustaining attention, task completion, impulsivity, time management, cognitive flexibility, problem solving and working memory.
6. In developing the IEP, the IEP team considered parent reports, student reports, teacher input, classroom based assessments and assignments, education history and transcripts, gradebook reports, attendance records, Section 504 Plan¹ data, and medical data provided by the parent, among other items.
7. The IEP in effect at the beginning of school year 2021-2022 includes a goal to address the student's self-management deficits which states that given his required supports, the student "will demonstrate effective executive functioning skills across the school day by initiating and completing assignments." Objectives include recording all assignments/assessments in a planner, setting priorities for completion of assignments, estimating the time necessary to complete tasks, utilizing a checklist, and submitting completed work on time.

¹ Section 504 of the Rehabilitation Act of 1973

8. The IEP also contains a social emotional goal that states that given his required supports, the student “will describe and utilize taught coping strategies in order to remain engaged in and complete his assignments/assessments across the school day.” Objectives include identifying and describing useful coping strategies, identifying and communicating early signs of stress and negative thoughts with trusted adults, and seeking adult support or implementing a coping strategy to remain engaged in schoolwork.
9. The IEP includes special education classroom instruction in the general education classroom, as well as supports including paper-based assessments, notes and outlines, extended time, speech to text technology, at home materials, study schedule, identified criteria for success, written instructions, assistance with organization, clear oral directions, altered/modified assignments, break down assignments into smaller units, use of positive reinforcers, counseling services, a home-school communication system, adult support, preferential seating, extended rest breaks, and a flash pass to the health room.
10. While the Prior Written Notice (PWN), dated July 9, 2021 reflects that the school based IEP team recommended that the student participate in a “resource period” to assist the student with achieving his IEP goals and objectives, based on parental input, the IEP team determined that this would not be a support required by the IEP.
11. The PWN dated October 1, 2021, reflects that the student was provided with a partial day schedule to assist with addressing his social emotional needs.
12. At the IEP team meeting held on January 26, 2022, based on parental input, the IEP team determined that the use of calculation devices would be added to the student’s IEP.
13. The student’s IEP progress reports, dated November 3, 2021 and January 28, 2022 reflect that the student was making sufficient progress towards achieving his self-management and social emotional IEP goals. The student’s report card grades reflect that the student was meeting with success in the general education curriculum.

CONCLUSION:

Based on the Findings of Facts #5 - #13, the MSDE finds that the MCPS has developed an IEP for the student that addresses his identified self-management and social emotional needs, since June 11, 2021, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #3: PROVISION OF IEP SUPPORTS FROM
NOVEMBER 25, 2021**

FINDINGS OF FACTS:

14. The IEP in effect on November 25, 2021 required the following supports:
 - Check-ins in the form of a student-chosen trusted adult as needed and initiated by the student in the form of a “flash-pass” to the trusted adult.
 - Adult support weekly to prepare for the “upcoming week and review any missing/outstanding assignments and assessments,” provided by the general education teacher.
 - Counseling services for fifteen (15) minutes weekly for an “overall check-in” and assistance with coping strategies, with the school counselor.
 - All directions presented in written form, provided daily by the general education teacher or instructional assistant.
 - A copy of the teacher’s notes prior to class, provided daily by the general education teacher or instructional assistant, if possible.
15. A tracking log maintained by school staff reflects contacts made with the student by school staff between August 31, 2021 and February 18, 2022. The log reflects multiple occasions in which school staff attempted to meet with the student for “check-ins.” It further reflects that the student met with staff on several occasions, according to his need.
16. Digital teacher report data recorded during school year 2021-2022 and IEP progress reports dated November 3, 2021 and January 28, 2022 reflect that the student utilized and benefitted from copies of class notes, as well as directions presented in written form.
17. While there is some documentation that adult support was provided weekly by the general education teachers to assist the student in preparing for the upcoming week and reviewing missing/outstanding assignments and assessments, there is not consistent documentation of this support.
18. While there is some documentation that counseling services were provided for fifteen (15) minutes weekly for an “overall check-in” and assistance with coping strategies, there is not consistent documentation of this support.

CONCLUSION:

Based on the Findings of Facts #14 - #18, the MSDE finds that while there is documentation that the student has been provided with some of the supports required by the IEP, there is inconsistent documentation with respect to weekly adult support by the general education teachers and counseling services required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to those supports during that time period.

ALLEGATION #4:

**PROVISION OF IEP SUPPORTS FROM THE
BEGINNING OF SCHOOL YEAR 2021-2022**

FINDINGS OF FACTS:

19. The IEP in effect during this time period required the following supports:
- Support creating a weekly schedule to include breaks and strategies for sustaining attention, provided by the general education teacher, instructional assistant, or special education classroom teacher.
 - Assistance with organization of the student's planner, materials and due dates and deadlines for assignments, provided daily by the general education teacher and the instructional assistant.
 - Altered assignments in the form of reduced workload, provided as needed by the general education teacher.
 - Breaking down of assignments into smaller units provided periodically by the general education teacher or instructional assistant.
 - Positive reinforcement provided daily by the general education teacher.
 - Cues and ongoing monitoring to ensure initiation and focus during a task, provided daily by the general education teacher.
20. Digital teacher report data recorded during school year 2021-2022 reflects that the student benefitted from and utilized altered/modified assignments, breaking down assignments into smaller units, positive reinforcement and cues/ongoing monitoring to ensure initiation and focus during tasks.
21. The progress report dated November 3, 2021, reflects that the student was successful in achieving his self-management goal objective of utilizing the student planner to record due dates and assignments.
22. There is no documentation that the student was provided with support creating a weekly schedule to include breaks and strategies for sustaining attention, provided by the general education teacher, instructional assistant, or special education classroom teacher.

CONCLUSION:

Based on the Findings of Facts #19 - #22, the MSDE finds that while most of the supports were provided by MCPS to the student as required by the IEP, there is no documentation that the student was provided with support creating a weekly schedule to include breaks and strategies for sustaining attention, required by the IEP during this time period, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to that support for this allegation.

ALLEGATION #5:

**PROVISION OF SPECIAL EDUCATION
INSTRUCTION**

FINDINGS OF FACTS:

23. The IEP in effect at the beginning of the 2021-2022 school year reflects that the student requires forty-five (45) minutes daily of special education classroom instruction in the general education classroom provided by the general education teacher, instructional assistant or special education classroom teacher. That instruction is to be provided in a “supported” English class.
24. The student’s schedule reflects that the student is enrolled in a supported English class, where he is provided with special education instruction by a general education teacher as well as a special education paraeducator.

CONCLUSION:

Based on Findings of Facts #23 and #24, the MSDE finds that the MCPS has ensured that the student was provided with the amount of special education instruction required by the IEP since the start of school year 2021-2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #6:

ADDRESSING PARENTAL CONCERNS

FINDINGS OF FACTS:

25. On October 1, 2021 the IEP team convened and discussed the complainant’s concerns regarding the student’s TBI as a result of a concussion which occurred on September 28, 2021 at the school.
26. The PWN, dated October 1, 2021, reflects that the complainant had concerns and requested that the school nurse be present at the IEP team meeting and that a health plan be included in the IEP. The school based team denied those requests after considering initial medical documentation regarding the student’s concussion provided by the student’s pediatrician, which stated that the student could return to school on October 4, 2021 with some limitations regarding use of computer screens, tablets, or phones until October 15, 2021. The PWN further reflects that the complainant agreed to provide more medical information as it became available.
27. On October 6, 2021, a parent and staff meeting was held which included the school nurse, the student, his parents, and school staff regarding the student’s TBI. After considering new medical information provided by the complainant, dated October 4, 2021, an email was sent by school administration to school staff which informed school staff of additional supports and accommodations required outside of the student’s IEP to assist the student with any side effects of the TBI. These were based on the additional medical information provided by the complainant.

CONCLUSION:

Based on the Findings of Facts #25 - #27, the MSDE finds that the MCPS ensured that the IEP team addressed parental concerns related to the student's TBI, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #7:

REQUEST TO INSPECT AND REVIEW THE STUDENT'S EDUCATIONAL RECORD

FINDINGS OF FACTS:

28. The complainant emailed staff on December 9, 2021, December 20, 2021, and December 21, 2021 requesting work samples and other records regarding the student.
29. School staff sent an email to the complainant on December 22, 2022, stating that all documents that MCPS considers education records were provided to the complainant, and denied requests for documents they did not consider educational records. While the complainant acknowledges receiving some educational records, she continued to send requests for the previously denied student records in January 2022.

CONCLUSION:

Based on the Findings of Facts #28 - #29, the MSDE finds that the MCPS followed proper procedures when responding to a request to inspect and review the student's educational record in December 2021, in accordance with 34 CFR §300.613. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #8:

REQUEST TO AMEND THE STUDENT'S RECORD

FINDINGS OF FACTS:

30. The emails dated December 22, 2021 and January 3, 2022, from the complainant to school staff reflect that the complainant requested to amend the student's quarter one progress report.
31. On January 5, 2022, the school staff sent email correspondence to the complainant and informed her of the process to initiate a hearing for administrative review of the progress report.

CONCLUSION:

Based on the Findings of Facts #30 - #31, the MSDE finds that the MCPS followed proper procedures when responding to requests to amend the student's educational record on December 22, 2021 and January 3, 2022, in accordance with 34 CFR §§300.618 - .620. Therefore, this office finds that there was no violation with respect to the allegation during this time period.

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.² 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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

The MSDE requires the MCPS to provide documentation that the school system team has:

1. Ensured that all supports and services are provided to the student as required by the IEP; and

² 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.

³ 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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2. Convened an IEP team meeting to determine whether there was an educational impact as a result of the violations identified in this Letter of Findings. If it is determined that there was an educational impact, the IEP team must convene to determine compensatory services or other remedy to remediate the violation.

School-Based

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violations identified in this Letter of Findings do not recur at [REDACTED]

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:dee

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