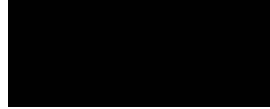




April 4, 2023



Mr. Philip Lynch
Director of Special Education Services
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: [REDACTED]
Reference: #23-143

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 February 3, 2023, MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public School System (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations¹:

1. The MCPS has not ensured that the student has been provided with the special education instruction and accommodations required by the Individualized Education Program (IEP) since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323.
2. The MCPS has not considered the student’s need for Extended School Year (ESY) services since June 16, 2022, in accordance with 34 CFR §300.106.
3. The MCPS has not developed an IEP that addresses the student’s identified hearing impairment needs since June 2022, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is ten years old and is identified as a student with Other Health Impairment under the IDEA. She attends [REDACTED] School and has an IEP that requires the provision of special education

¹ In correspondence to the parent on February 9, 2023, MSDE identified allegation #1. The parent provided additional information to MSDE on February 9, 2023 identifying allegations #2 and #3.

instruction and related services.

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND ACCOMMODATIONS

FINDINGS OF FACTS:

1. The student's IEP, developed on June 16, 2022, requires that the student be provided with special education instruction consisting of "5 sessions of one hour a week for support in math and 5 sessions of one hour per week for support in reading comprehension within the general education classroom." It further requires this to be provided by the general education teacher, instructional assistant, and/or special education classroom teacher.
2. On December 2, 2022, there is documentation in the prior written notice (PWN) to the meeting that the IEP team determined that the student required fifteen hours per week of special education instruction due to "the student's needs not being met with ten hours a week, and an increase in service hours will provide the classroom teacher, special educator, and student with the opportunity to close some of the academic gaps." According to the PWN, the IEP team also agreed to add a writing goal to the student's IEP. There is no documentation that these changes were made to the student's IEP.
3. There is documentation that the student has been provided with the required special education instruction since the start of the 2022- 2023 school year, as required by the student's IEP. ²
4. The student's IEP, developed on June 16, 2022, requires the student to be provided with daily instructional and testing accommodations: "blank scratch paper, general administration directions clarified, general administration directions read aloud and repeated as needed, highlight tool, line reader mask tool, redirect student, small group, frequent breaks, reduce distractions to self, calculator device (on calculation and non- calculation sections of the math assessments), monitor test response, extended time (2x), pair all information present orally with a virtual representation, teacher modeling, check for understanding, allow use of manipulatives, and preferential seating."
5. While there is documentation that the student has been provided with some of their accommodations since the start of the 2022- 2023 school year, there is no documentation that they have been provided with all of their accommodations as required by the student's IEP.
6. In its written response to the complainant, the MCPS acknowledges that the student has not been consistently provided with the accommodations required by the IEP. The MCPS further proposes in its response that it will provide a mandatory professional development opportunity for staff members of the special education department of [REDACTED] School who are responsible for the monitoring and recording of accommodations.

CONCLUSIONS:

Provision of Specialized Instruction

Based upon the Finding of Facts #1 - #3, MSDE finds that the MCPS has ensured that the student has been provided with the special education instruction required by the Individualized Education Program (IEP) since the start of the

² While the student's IEP was not revised to reflect the increase in services following the December 2, 2023, there is documentation that the student was provided with the services recommended by the IEP team.

2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation has occurred with respect to this aspect of allegation #1.

Provision of Accommodations and Supports

Based upon the Finding of Facts #4 - #6, MSDE finds that the MCPS has not ensured that the student has been provided with the accommodations required by the Individualized Education Program (IEP) since the start of the 2022-2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this aspect of allegation #1.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The public agency must ensure that the changes to a student's IEP that are agreed upon by the IEP team are reflected in the IEP. (34 CFR § 300.324).

Based upon the Finding of Fact #2, MSDE finds that the IEP team did not revise the student's IEP to reflect the agreed upon changes from the December 2, 2022, IEP team meeting. Therefore, this office finds that a violation occurred.

ALLEGATION #2: STUDENT'S NEED FOR EXTENDED SCHOOL YEAR SERVICES

FINDINGS OF FACTS:

7. The student's initial IEP, developed on June 16, 2022, reflects that the "nature and severity" of the student's disability does not warrant ESY services. It further reflects that the student's IEP does not include annual goals related to critical life skills and that the student does not have a likely chance of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time. In addition, it reflects that the student is not demonstrating a degree of progress toward mastery of IEP goals related to critical life skills and that the student has not demonstrated a presence of emerging skills or breakthrough opportunities. The basis for these decisions is reflected as "the student's initial IEP was locked on 6/16/22, and there was only one day of school left preventing the ability to collect data." The team also determined that there were no special circumstances, no interfering behaviors, and that the nature and severity of the student's disability did not require ESY services.
8. The last day of the 2021- 2022 school year for the MCPS was June 16, 2022.

CONCLUSION:

Based upon the Finding of Facts #7 and #8, MSDE finds that the MCPS has considered the student's need for Extended School Year (ESY) services since June 16, 2022, in accordance with 34 CFR §300.106. Therefore, this office does not find that a violation has occurred with respect to allegation #2.

ALLEGATION #3: DEVELOPED AN IEP THAT ADDRESSES THE STUDENT'S HEARING IMPAIRMENT NEEDS

FINDINGS OF FACTS:

9. The MCPS Educational Assessment Report that was reviewed on June 10, 2022, reflects that the student's native languages are English and American Sign Language. It further reflects that the "student failed her newborn hearing screening but has passed subsequent hearing screenings."

10. The MCPS Report of School Psychologist Initial Assessment that was reviewed on June 10, 2022, reflects that the “student failed her newborn hearing screening but has passed subsequent hearing screenings.”
11. The student’s IEP, developed on June 16, 2022, does not reflect that the student has an identified hearing impairment need.

CONCLUSION:

Based upon the Finding of Facts #9- #11, MSDE finds that the MCPS has no documentation or evidence that the student has identified hearing impairment needs since June 2022, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation has occurred with respect to allegation #3.

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.³ 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.⁴ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

MSDE requires the MCPS to provide documentation by May 1, 2023, that the student’s IEP is revised to reflect the decisions of the IEP team made on December 2, 2022. MSDE further requires the MCPS to provide documentation by the end of the 2022- 2023 school year that the IEP team has convened and determined whether the violation related to the lack of consistent accommodations had a negative impact on the student’s ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

³ 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.

⁴ MSDE will notify the public agency’s Director of Special Education of any corrective action that has not been completed within the established timeframe.

The MCPS 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

The MCPS has proposed a mandatory professional development opportunity for staff members of the special education department at the student's school who are responsible for the monitoring and recording of accommodations MSDE concurs with this corrective action. MSDE requires the MCPS to provide documentation of their completed proposed remedy by the end of the 2022-2023 school year.

MSDE also requires MCPS to monitor IEPs amended at [REDACTED] School during the 2022-2023 school year to determine whether the IEPs reflect the amended changes.

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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMF: sd

c: Monifa B. McKnight
Eve Janney
Diana K. Wyles
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Alison Barmat
Gerald Loiacono
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Sarah Denney