



Mohammed Choudhury
State Superintendent of Schools

May 12, 2023



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

RE: [REDACTED]
Reference: #23-171

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.

ALLEGATION:

On March 14, 2023, MSDE received a complaint from Mr. and Mrs. [REDACTED] hereafter, “the complainants,” on behalf of their 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.

MSDE investigated the allegation that the MCPS has not developed an Individualized Education Program (IEP) that has addressed the student’s identified social-emotional and behavioral needs, including making adjustments to the student’s IEP as a response to alleged bullying, since December 2022, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

The student is sixteen years old and is identified as a student with autism under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP, developed on October 3, 2022, reflects that "written language expression, speech and language pragmatics, social/emotional/behavioral, and learning skills are areas that impact the student's academic achievement and/or functional performance.
2. The student's Present Levels of Academic Achievement and Functional Performance section, developed on October 3, 2022, reflects that when the student is given fading reminders and frequent and immediate feedback, the student will use a pre-arranged non-verbal strategy and no longer discuss the same topic/issue. Furthermore, it reflects that the student contributes during class discussions, socializes at appropriate times, requests accommodations, focuses on instruction/activity, works collaboratively with team members, interacts with staff/students, problem-solves when stressed, and raises hand/waits to be called on.
3. The student's IEP, developed on October 3, 2022, includes goals in the areas of social emotional/behavioral, speech and language expressive language, and written language expression. In addition, the student has social/behavioral supports and accommodations including periodic adult support, daily fading teacher reports, and as available, social skills training.
4. On January 4, 2023, the IEP team convened to review and revise the student's IEP. During the IEP team meeting, the team discussed and agreed to the addition of IEP goals for self-advocacy and peer interactions. In addition, they discussed: the alleged bullying, the bullying reporting process, restorative justice solutions, administrative reporting process, and follow-up; the general educator input; both the MCPS and private speech and language pathologist's input; the general record review and updated assessments; and the High Incidence Accessible Technology (HIAT) referral from October 2022 and case manager follow-up. The IEP team agreed on updated assessments for speech for pragmatics and psychological, and the IEP team rejected updated academic testing due to the student's anxiety.
5. The student's parents submitted an "Incident of Bullying and Harassment" form to the MCPS on January 24, 2023. The form alleges the student has been the victim of bullying.
6. On January 26, 2023, the student's parents submitted a request for a "Change of School Assignment (COSA)". On February 8, 2023, the MCPS granted the request.
7. On February 9, 2023, the IEP team met and determined that the student continued to be eligible as a student with Autism under the IDEA. The IEP team identified needs in the following areas: Academic - Speech and Language Receptive Language, Behavioral - Social Interaction Skills, Behavioral - Social Emotional/Behavioral, Academic - Speech and Language Expressive Language, Academic - Speech and Language Pragmatics, Academic - Written Language Expression, emotional regulation (anxiety and depression), peer interactions, social communication, advocacy, and self-management (organization, assignment completion, initiation). At this IEP team meeting, the team further agreed to a change in the student's placement to the "Connections Support Autism Program (Aspergers)," which was available at the student's current school, [REDACTED] School.

8. The student's IEP, developed on October 3, 2022, and amended on February 13, 2023, reflects that "written language expression, speech and language receptive language, speech and language expressive language, speech and language pragmatics, social/emotional/behavioral, social interaction skills, self-management, and learning skills are areas that impact the student's academic achievement and/or functional performance".
9. The student's Present Levels of Academic Achievement and Functional Performance section, developed on October 3, 2022, and amended on February 13, 2023, reflects that the student "demonstrates difficulty with responding to inferential questions and holding a reciprocal conversation about a less preferred topic for 2-3 exchanges." In addition, the student's "social-emotional and behavioral functioning was evaluated by parent, teacher, and student input on behavior rating scales, classroom and testing session observations, a sentence completion task, and interviews with the student and school staff." These evaluations indicate that the student is presenting with "very elevated levels of obsessive/compulsive behaviors," "elevated feelings of panic and tense/restlessness," "elevated to very elevated levels of separation anxiety/phobias," and "significant amount of anxiety about academic performance." Furthermore, it reflects that the student's parents shared that making friends and connections with his peers is difficult for the student. Parent reports indicated that the student was "facing a troubling situation with peers, but he doesn't see the danger, and this puts him in a very vulnerable situation." The student's private therapist reiterated the parent's concerns, indicating that the student has shared "several encounters with peers that involve bullying, cyberbullying, harassment, and intimidation."
10. The student's IEP, developed on October 3, 2022, and amended on February 13, 2023, reflects that the student has goals in the areas of "behavioral: self-management," "behavioral: social interaction skills" goal one, "behavioral: social interaction skills" goal two, "behavioral: social-emotional/behavioral" goal one, and "behavioral: social-emotional/behavioral" goal two. In addition, the student has social/behavioral supports and accommodations: daily strategies to initiate and sustain attention, daily encourage student to ask for assistance when needed, periodic adult support, and, as available, provide student menu of social-emotional coping strategies.
11. There is email documentation dated February 24, 2023, from the MCPS staff to the student's parents reflecting that transportation would not be provided as part of the COSA. It further reflects that because the student is able to receive special education at [REDACTED] school transportation would not be provided.

CONCLUSIONS:

Based upon the Findings of Facts #1- #11, MSDE finds that the MCPS has developed an Individualized Education Program (IEP) that has addressed the student's identified social-emotional and behavioral needs, including making adjustments to the student's IEP as a response to alleged bullying, since December 2022, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find a violation occurred with respect to this allegation.

ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

When developing or revising an IEP, a precise and accurate description of the frequency of a service should be utilized to provide families and service providers with a clear understanding of how often and under what circumstances a service is to be provided. The use of “as available” as a frequency description does not provide a clear understanding of the frequency at which the service will be provided. In addition, the manner in which the supplementary aids and services for the student will be implemented is not clarified.

Based upon the Findings of Facts #3 and #10, MSDE finds that the IEP is not clearly written to accurately describe the frequency of social skills training and the student menu of social-emotional coping strategies and the manner in which the student’s supplementary aids and services will be implemented. Therefore, this office finds that a violation occurred.

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.¹ 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.² 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 that the IEP team has convened, reviewed and revised the student’s IEP to reflect the requirement of an accurate description of the frequency of which the student’s menu of social- emotional coping strategies should be utilized and the manner in which all of his supplementary aids and services will be implemented must be clearly described.

School Based

MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violation regarding the unclear description of the frequency and the manner of implementation of student’s supplementary aids

¹ 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.

² 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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and services do not recur at [REDACTED] School. Those steps must include the development and implementation of a monitoring tool to review whether current students' IEPs specify the frequency for which supplementary aids and services should be provided with clarity so that the student, family, and service providers are able to properly implement the IEP. The submission of the completed monitoring tool for a random sample of twenty-five students at [REDACTED] School is to be submitted by July 21, 2023.

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

DMC: sd

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