




February 3, 2023




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

RE:   
Reference: #22-202

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services (DEI/SES), 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 June 17, 2022, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of the above-referenced student. The complaint was amended on August 25, 2022, and based on the amendment, the investigative timeline was extended as additional issues were added.

On September 9, 2022, the complainant filed a request for a due process hearing. Pursuant to federal regulations, the State complaint investigation was held in abeyance pending the outcome of the due process hearing. On October 21, 2022, the Office of Administrative Hearings (OAH) issued a default judgment. The complainant refiled a due process complaint, which was received by MSDE on November 7, 2022. The investigation into the State complaint was again held in abeyance. On December 21, 2022, OAH issued a dismissal ordered. On January 12, 2023, the complainant was notified that the State complaint investigation would commence.

In the June 2022 and August 2022, correspondences, 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 following allegations:

1. The MCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified orientation and mobility, vision (specifically related to CVI), occupational therapy, physical therapy, or speech/language therapy needs from the start of the 2021- 2022 school year, including during extended school year services, in accordance with 34 CFR §300.324.

2. The MCPS has not followed proper procedures in response to the parents request to review the student's educational record, in accordance with 34 CFR § 300.501.
3. The MCPS did not follow proper procedures when determining the student's placement and in considering the distance from the student's home, in accordance with 34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).
4. The MCPS did not follow proper procedures in including the required participants in an IEP team meeting, and convened an IEP team meeting to change the student's placement without the parent's participation, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07D.

**BACKGROUND:**

The student is 15 years old and attends the [REDACTED] School. She is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

**Allegation #1:**

**The Student's IEP**

**FINDINGS OF FACTS:**

1. The student's most recent IEP was drafted on June 16, 2022. It identifies needs in reading vocabulary, math problem solving, written language expression, communication, physical education, vision, orientation and mobility, mealtime activities, functional upper extremity/hand skills, gross motor, and secondary transition.
2. The student's needs in the identified areas are addressed by goals and objectives, supplementary aids and services, accommodations, and/or specially designed instruction. Specifically, as pertains to the allegations:
  - a. The student's orientation and mobility needs were assessed in July and August 2022. At that time, the results of the assessment concluded that the student was at a "pre-mobility" level, and direct services were not appropriate at that time. The student's IEP includes Orientation and Mobility consultation.
  - b. The student's IEP includes direct services from a teacher of the visually impaired and includes a vision goal. It also includes several supplementary aids and services supporting the student's visual needs, specifically Cortical Visual Impairment (CVI) (i.e. present materials with reduced complexity on plain background board with good contrast, leave a few inches of space between materials presented, and remove background from 2D images used).
  - c. The student's IEP includes a goal, as well as supplementary aids and services, addressing functional upper extremity/hand skills that are addressed during instruction and during weekly occupational therapy services.
  - d. The IEP includes a gross motor goal and a physical education goal addressing motor skills. The gross motor goal is addressed by classroom staff and the physical therapist, and the physical education goal is addressed by the physical education teacher. Adaptive equipment is also

included in the supplementary aids and services to address the student's gross motor needs, which are monitored by the physical therapist.

- e. The IEP includes significant supports and goals relating to the student's communication, including assistive technology devices, supplementary aids and services.
- f. The student's IEP includes the provision of Extended School Year (ESY) services, including classroom instruction from the IEP team, instruction from a teacher of the visually impaired, occupational and physical therapy services.

**DISCUSSION/CONCLUSION:**

In developing each student's IEP, the public agency must ensure that the IEP team considers: the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on Findings of Facts #1 and #2, MSDE finds that the student's IEP addresses her needs as identified in her present levels of academic achievement and functional performance. The student was given an orientation and mobility assessment, which reflected that direct services, were not appropriate at this time, but her IEP included consultative services from the specialist should the student's needs change. The IEP included many supports to address the student's vision, occupational therapy, physical therapy, and communication needs. In addition, the student was recommended to receive ESY services in order to receive a free appropriate public education (FAPE). The student's needs are addressed through goals, supplementary aids and services, accommodations, and specially designed instruction. Accordingly, MSDE finds no violation regarding the development of the student's IEP, in accordance with 34 CFR §300.324.

**ALLEGATION #2:**

**REVIEW OF THE STUDENT'S EDUCATIONAL RECORD**

**FINDING OF FACTS:**

- 3. There is documentation that the complainant requested a copy of the student's records on May 23, 2022 and again during an IEP team meeting on August 18, 2022.
- 4. There is documentation that the complainant did not receive what she expected was the complete student record as a result of her request in May; however, there is documentation that as a result of her request in August, the complainant received a link to access the student's entire student record electronically on August 30, 2022.

**DISCUSSION/CONCLUSION:**

The parents of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student (34 CFR § 300.501).

Based on the Findings of Facts #3 and #4, the complainant was provided with the opportunity to inspect and review the student's education records in accordance with 34 CFR § 300.501. Therefore, this office finds that a violation did not occur with respect to the allegation.

**ALLEGATION #3:**

**DETERMINING DISTANCE FROM STUDENT'S HOME**

**FINDING OF FACTS:**

5. There is documentation that the student moved from the [REDACTED] catchment area to the [REDACTED] catchment area prior to the start of the school year. On August 24, 2022, the complainant was informed that the student's new school would be the [REDACTED] based on her new residence.
6. There is no documentation that the IEP team changed the student's placement.

**DISCUSSION/CONCLUSION:**

The IEP team is required to consider the distance from the student's home when determining whether there is any harm to the student from the proposed placement if it is outside of the student's neighborhood school. In this case, however, the IEP team did not change the student's placement. The student's school was changed from [REDACTED] to the [REDACTED] based on the family's relocation, which is not a special education matter. Both schools were able to fully implement the student's IEP and offered identical services, learning environments, and staff support. Because the student's proposed change in schools was not a change in placement for special education purposes, but a change in location for other reasons, the IEP team was not required to meet and consider the student's distance from the [REDACTED]. Based on Findings of Fact #5 and #6, MSDE finds there is no violation of 34 CFR § 300.116 or COMAR 13A.05.01.10C(1)).

**ALLEGATION #4:**

**IEP TEAM MEMBERS**

**FINDING OF FACTS:**

7. The following individuals were in attendance to develop the student's June 16, 2022, IEP team: [REDACTED] Acting Principal; Daniel Martz, Case Manager and Special Educator; Diana Wyles, Supervisor of Compliance; [REDACTED], [REDACTED] Specialist; [REDACTED], Transition Coordinator; [REDACTED], School Health; [REDACTED], Occupational Therapist; [REDACTED], Adapted Physical Education Teacher; [REDACTED], Speech Language Pathologist; [REDACTED], Teacher of the Visually Impaired; [REDACTED], Physical Therapist; [REDACTED], Instructional Specialist; Maritza Macias, Paralegal; the complainant, and the student's REM case manager.
8. There was a duly constituted IEP team with the required team members present to develop the student's IEP. The IEP team participants included additional staff members invited at the discretion of the MCPS.
9. There is no documentation that the IEP team discussed changing the student's placement at the annual review meeting.

**DISCUSSION/CONCLUSION:**

The IEP team must include the student's parent; at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment; at least one (1) special education teacher of the student; a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education

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curriculum, and about the availability of resources of the public agency; an individual who can interpret the instructional implication of evaluation results; at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate; and the student when appropriate (34 CFR §300.321).

Parents may invite individuals who have knowledge or special expertise regarding the student, including public agency personnel. However, decisions as to which particular teachers or special education providers will participate on the IEP team are left to the public agency (34 CFR §300.321 and *Analysis of Comments and Changes*, 71 FR 46670 (August 14, 2006)).

Based on Findings of Fact #7 and #8, the MCPS members of the IEP team included individuals who were knowledgeable about, and were able to “interpret the instructional implications of evaluation results,” even if they had not specifically worked with the student, although the majority of the team members had worked with her in some capacity. Based on the documentation provided, all members of the IEP team were familiar with the student and had reviewed the case sufficiently enough to participate and provide input into the development of the student’s IEP. MCPS invited additional staff members to the meeting as a result of legal matters requiring specific compliance activities. Further, there is no documentation that the IEP team discussed a change to the student’s placement during this or any other IEP team meeting. Accordingly, MSDE does not find a violation in relation to 34 CFR § 300.322 and COMAR 13A.05.01.07D.

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

DC/abb

c: Monifa B. McKnight  
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