



October 11, 2022

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Philip Lynch
Director Special Education
580 Hungerford Drive
Rockville, Maryland 20850

RE: [REDACTED]
Reference: #23- 022

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 August 16, 2022, the MSDE received a complaint from Mr. [REDACTED] and Mrs. [REDACTED], hereafter, "the complainants," on behalf of their son, the above-referenced student. In that correspondence, the complainants 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 developed an Individualized Education Program (IEP) that addresses the student's identified academic, social-interaction, and self-management needs from the start of the 2021- 2022 school year, in accordance with 34 CFR §300.324.
2. The MCPS has not provided the parents with quarterly reports on the student's progress toward achieving his annual Individualized Education Program (IEP) goals from the 2021- 2022 school year, in accordance with 34 CFR §300.320.
3. The MCPS did not follow proper procedures when responding to a request for an IEP team meeting on April 19, 2022, in accordance with 34 CFR §§300.503.
4. The MCPS did not ensure that the IEP team convened to review the student's IEP prior to April 22, 2022, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.

5. The MCPS did not ensure that the IEP team considered the results of a private neuropsychological assessment provided to them by the parents on December 22, 2021, in accordance with 34 CFR §300.305.
6. The MCPS has not provided the parent with a copy of the completed IEP document within five (5) business days after the IEP team meeting on June 10, 2022, in accordance with COMAR 3A.05.01.07.

BACKGROUND:

The student is twelve (12) 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.

ALLEGATION #1: IEP that Addresses Academic, Social-Interaction, and Self-Management Needs

FINDINGS OF FACTS:

April 23, 2021, IEP

1. The Present Level of Academic Achievement and Functional Performance reported on the student's IEP that was developed on April 23, 2021, reflects the following areas that are affected by the student's disability: Academic- completion of difficult tasks, math problem solving, and written language content; Speech and language: articulation and receptive language; Behavioral- peer relationships, social interactions skills, and self-management; and physical- fine motor.
2. The student's IEP, developed on April 23, 2021, reflects that the student will receive a total of 3 hours and 45 minutes daily of classroom instruction in the general education classroom; the student will receive a total of 45 minutes of classroom instruction outside the general education classroom once a day; the student will receive a total of 45 minutes of occupational therapy for one session monthly; the student will receive a total of 2 hours and 45 minutes monthly of speech/ language therapy.
3. The student's IEP, developed on April 23, 2021, reflects goals in the area of Behavioral: self-management, social interaction skills, and peer relationships; Academic: completion of a difficult task, math problem solving, and written language content; Speech and Language: articulation and receptive language; and Physical: fine motor.
4. The student's IEP, developed on April 23, 2021, reflects supplementary aids, supports, modifications, special considerations, and accommodations that address the student's identified needs.

June 10, 2022, IEP

5. The Present Level of Academic Achievement and Functional Performance reported on the student's IEP developed on June 10, 2022, reflects the following areas are affected by the student's disability: Academic- executive functioning, math problem solving, and written language content; Speech and language: articulation, pragmatics, and receptive language; Behavioral- social-emotional, social interactions skills, and self-management; and Physical- fine motor.

6. The student's IEP, developed on June 10, 2022, reflects that the student will receive a total of 3 hours daily of classroom instruction in the general education classroom; the student will receive a total of 45 minutes of classroom instruction outside the general education classroom daily; the student will receive 45 minutes of occupational therapy for one session weekly; the student will receive 3 hours monthly of speech/ language therapy.
7. The student's IEP, developed on June 10, 2022, reflects goals in the area of Behavioral: social interaction skills, social-emotional/ behavioral; Academic: executive functioning, written language content, math problem solving; Speech and Language: receptive language, pragmatics, articulation; Physical: fine motor.
8. The student's IEP, developed on June 10, 2022, reflects supplementary aids, supports, modifications, special considerations, and accommodations that address all of the student's identified needs.

CONCLUSION:

Based upon the Findings of Facts #1- #8, the MSDE finds that the MCPS developed an IEP that addresses the student's identified academic, social-interaction, and self-management needs from the start of the 2021-2022 school year, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation has not occurred with respect to allegation #1.

ALLEGATION #2: Provision of Progress Reports

FINDING OF FACT:

9. The MCPS acknowledges that the student's parents were not provided with quarterly reports on the progress toward achieving the student's IEP goals from the 2021- 2022 school year.

CONCLUSION:

Based upon the Finding of Fact #9, the MSDE finds that the MCPS has not provided the parents with quarterly reports on the student's progress toward achieving his annual Individualized Education Program (IEP) goals from the 2021- 2022 school year, in accordance with 34 CFR §300.320. Therefore, the MSDE appreciates the MCPS' acknowledgment and concurs that a violation occurred with respect to allegation #2.

ALLEGATIONS #3, #4, and #6 Request for an IEP Team Meeting, Annual IEP Team Meeting, and Provision of Documents

FINDINGS OF FACTS:

10. On April 19, 2022, the student's parents contacted the MCPS staff via email requesting an IEP team meeting in order to conduct the student's annual review.
11. On May 9, 2022, the MCPS staff contacted the student's parents via email requesting to schedule an IEP team meeting on May 19, 2022. The student's parents agreed to this date.
12. There is no documentation of the Prior Written Notice (PWN) reflecting an IEP team meeting that was held on May 19, 2022.

13. There is documentation that on May 6, 2022, the MCPS staff produced an invitation for an IEP team meeting to be held on May 12, 2022.
14. There is no PWN reflecting an IEP team meeting that was held on May 12, 2022.
15. The PWN dated June 16, 2022, reflects an IEP team meeting was held. The purpose was an annual review of the student's IEP. There is no invitation to an IEP team meeting on June 16, 2022.
16. The student's current IEP reflects an IEP team meeting date of June 10, 2022.
17. The MCPS acknowledges that they did not ensure that the IEP team convened to review the student's IEP prior to April 22, 2022, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
18. The MCPS acknowledges that they did not provide the parent with a copy of the completed IEP document within five business days after the IEP team meeting on June 10, 2022.

CONCLUSION:

Based upon the Findings of Facts #11- #16, the MSDE finds that the MCPS did not follow proper procedures when responding to a request for an IEP team meeting on April 19, 2022, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to allegation #3.

Based upon the Finding of Fact #17, the MCPS did not ensure that the IEP team convened to review the student's IEP prior to April 22, 2022, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. The MSDE appreciates the MCPS' acknowledgment and concurs that a violation occurred with respect to allegation #4.

Based upon the Finding of Fact #24, the MCPS has not provided the parent with a copy of the completed IEP document within five business days after the IEP team meeting on June 10, 2022, in accordance with COMAR 13A.05.01.07. The MSDE appreciates the MCPS' acknowledgment and concurs that a violation occurred with respect to allegation #6.

ALLEGATION #5

Consideration of an Independent Evaluation

FINDINGS OF FACTS:

19. There is documentation, "Team Consideration of External Report" from the MCPS staff to the student's parents, reflecting that the Report of Neuropsychological Evaluation was received on December 22, 2022, and a team was scheduled on February 8, 2022.
20. While there is documentation of notice for an IEP team meeting scheduled for February 8, 2022, there was no PWN generated following this meeting.
21. The student's current IEP reflects an updated Present Level of Achievement and Functional Performance page, including an "Outside Psychological Report."

CONCLUSION:

Based upon the Findings of Facts #19 and #21, the MCPS has ensured that the IEP team considered the results of a private neuropsychological assessment provided to them by the parents on December 22, 2021, in accordance with 34 CFR §300.305. Therefore, this office does not find that a violation occurred with respect to allegation #5.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

In accordance with 34 CFR §300.503, The MCPS is required to generate and provide the parents of a child with a disability a copy of the PWN within five (5) days after the IEP team meeting.

Based upon Finding of Fact #20, the MCPS has not provided the parent with prior written notice following the February 8, 2022, IEP team meeting, in accordance with 34 CFR §300.503. 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, 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.¹ 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.² 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 parent has been provided with the IEP progress reports from the 2021- 2022 school year.

The MSDE requires the MCPS to provide documentation by December 1, 2022, that the IEP team has convened and determined whether the violation related to the lack of an IEP annual review in the required timeframe and the lack of the provision of the PWN following the February 8, 2022, IEP team meeting had a negative impact on the student's ability to benefit from the education program. If the team determines that

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, 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 public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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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.

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 MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violations regarding the lack of an IEP annual review in the required timeframe and the lack of the provision of the PWN do not recur at ██████████ School. Those steps must include staff development, as well as tools created to document and monitor responses to a request for an IEP team meeting, tools to monitor the scheduling of annual IEP team meetings, and tools to monitor the creation and provision of documents within five days after the IEP team meetings. The MSDE further requires the submission of the completed monitoring tool for a random sample of 10 students by December 1, 2022.

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: sd

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