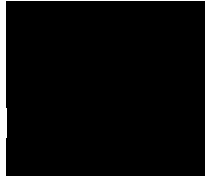




June 6, 2023



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

RE: [REDACTED]  
Reference: #23- 196

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 April 7, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of 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 ensured that the student was provided with the special education instruction and supports as required by the Individualized Education Program (IEP) from April 2022, through August 25, 2022, in accordance with 34 CFR §§ 300.101 and .323.

**BACKGROUND:**

The student is eighteen years old and is identified as a student with an emotional disability under the IDEA. She attends the [REDACTED] and has an IEP that requires the provision of special education instruction and related services. The student attended the [REDACTED] an MCPS special education school, during the timeframe of this investigation.

**FINDINGS OF FACTS:**

1. The student’s IEP, developed on December 21, 2021, requires the student be provided with five (5) six (6) hour sessions weekly of special education instruction outside of the general education classroom from December 21, 2021, to December 20, 2022, and four (4) four (4) hour daily special

education instruction sessions outside of the general education classroom from July 6, 2022, to July 29, 2022, during extended school year (ESY). Additionally, the IEP requires the student to be provided with transportation as a related service.

2. The student's December 2021 IEP requires the student be provided with the following instructional and testing accommodations: small group, separate or alternative location, frequent breaks, reduced distractions to self and others, change location within school, text to speech for ELA assessments, notes and outlines, calculation device, speech to text for ELA, monitor test response, answers recorded in the test book, extended time, unique timing, and scheduling accommodation. In addition, the IEP requires the student to be provided with as-needed supplementary aids and services and instructional supports: use of graph paper for math, use of highlighters during instruction and assignments, repetition of directions, oral and written instructions, provision of proofreading checklists, checks for understanding, testing over multiple days with advance notice, deletion of extraneous information on assignments and assessments when possible, visual cues on assignments, break down assignments into smaller units, and chunking of texts. Further, the IEP requires the student to be provided with daily and/or as-needed social/behavioral supports and physical/environmental supports: frequent supervised breaks, implementation of a behavior contract, advance preparation for schedule changes, access to a trusted adult, strategies to initiate and sustain attention, encourage/reinforce appropriate behavior in academic and non-academic settings, encourage the student to ask for assistance when needed, allow extra time for movement between classes, and preferential seating.
3. The student's IEP, developed on July 5, 2022, requires the student to be provided with one (1) twenty-nine (29) minute session weekly of special education instruction outside of the general education classroom from August 24, 2022, to December 20, 2022, and one (1), one (1) hour session weekly counseling services outside of the general education classroom from January 31, 2022, to December 20, 2022<sup>1</sup>.
4. The student's July 2022 IEP requires the student be provided with instructional and testing accommodations: small group, separate or alternative location, frequent breaks, reduced distractions to self and others, change location within school, text to speech for ELA assessments, notes and outlines, calculation device, speech to text for ELA, monitor test response, answers recorded in the test book, extended time, unique timing, and scheduling accommodation. In addition, the IEP requires the student to be provided with as-needed instructional supports: use of graph paper for math, use of highlighters during instruction and assignments, repetition of directions, delete extraneous information on assignments and assessments, when possible, visual cues on assignments, break down assignments into smaller units, and chunking of texts. Further, the IEP requires the student to be provided with daily and/or as-needed social/behavioral supports and physical/environmental supports: frequent supervised breaks, implementation of a behavior contract, advance preparation for schedule changes, access to a trusted adult, strategies to initiate and sustain attention, encourage/reinforce appropriate behavior in academic and non-academic settings, encourage the student to ask for assistance when needed, allow extra time for movement between classes, and preferential seating.
5. The student's July 2022 IEP reflects that the decision for ESY services during the summer of 2022 was "deferred." There is no documentation of the rationale for this decision.

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<sup>1</sup> On January 31, 2022, the IEP team determined the student required counseling services; however, the IEP was not amended to reflect this decision until July 5, 2022.

6. There is no documentation that the student was provided with special education instruction and supports as required by the IEP from April 2022 to August 2022.

### **CONCLUSIONS:**

Based upon Findings of Facts #1- #6, MSDE finds that the MCPS has not ensured that the student was provided with the special education instruction and supports as required by the IEP from April 2022 through August 2022, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds a violation occurred with respect to this allegation.

### **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.<sup>2</sup> 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.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

### **Student Specific**

MSDE requires the MCPS to provide documentation by July 1, 2023, that the student is receiving the special education instruction and supports as required by her IEP, and that the IEP team has convened and determined 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.

### **School Based**

MSDE requires the MCPS to provide documentation by July 7, 2023, of the steps taken to ensure that the violations regarding the lack of the provision of special education instruction and supports, as required by the student's IEP, do not recur at [REDACTED]. Those steps must include staff development, as well as tools created to

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<sup>2</sup> 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.

<sup>3</sup> MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

[REDACTED]  
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document and monitor the implementation of special education instruction and supports, a monitoring schedule, and provision of the completed monitoring tool to MSDE by July 7, 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

c: Monifa B. McKnight  
Diana K. Wyles  
Maritza Macias  
[REDACTED]  
Zvi Greismann  
Joann Hoffman  
Alison Barmat  
Gerald Loiacono  
Diane Eisenstadt  
Sarah Denney  
Paige Bradford  
Nicol Elliot  
Karla Marty