



August 25, 2023

Corrected Copy 9/5/2023



Ms. Kia Middleton- Murphy  
Acting Director of Special Education Services  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: [REDACTED]  
Reference: #23- 270

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 June 28, 2023, MSDE received a complaint from Mr. [REDACTED] and Ms. [REDACTED] hereafter, "the complainants," on behalf of their daughter, 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.

MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures since June 28, 2022<sup>1</sup>, to fulfill its Child Find obligation to ensure that the student was evaluated and identified as a student with a disability under the IDEA, in accordance with 34 CFR §§300.111, 300 -.311 and COMAR 13A.05.01.04 - .06.
2. The MCPS has not provided the parent with prior written notice with the description of the proposed actions since February 23, 2023, in accordance with 34 CFR §300.503.
3. The MCPS did not follow proper procedures when responding to a request to access the student's education records since June 9, 2023, specifically speech and language therapy logs, in accordance with 34 CFR §§300.501 and .613.

<sup>1</sup> While the complainants alleged that the violations began prior to this date, MSDE only has authority to investigate alleged violations of the IDEA occurring within one year of the date the complaint was received (34 CFR §300.153).

4. The MCPS has not ensured that the student has been provided with the special education instruction required by the Individualized Education Program (IEP), from a certified special education teacher, since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.156 and COMAR 13A.12.02.
5. The MCPS has not ensured that the student’s IEP addresses her identified needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.324.

**BACKGROUND:**

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

**ALLEGATION #1, #5, and #4:            PROPER PROCEDURES TO FULFILL CHILD FIND OBLIGATIONS, IEP THAT ADDRESSES THE STUDENT’S NEEDS, AND PROVISION OF SPECIAL EDUCATION INSTRUCTION**

**FINDINGS OF FACTS:**

1. The student was found eligible under the IDEA on February 3, 2022.
2. There is email documentation from the complainants to the MCPS staff dated August 10, 2022, reflecting the complainants’ request to “set up an IEP meeting to discuss the possibility of the student starting kindergarten in special education.” Furthermore, there is email documentation of a response from the MCPS staff to the complainants dated August 10, 2022, reflecting that the MCPS staff wanted to apologize for not having scheduled an IEP team meeting since their last communication with the parent. It further reflected that the MCPS staff requested the parent to enroll the student if they had not already done so.
3. There is documentation that on August 22, 2022, the student was enrolled in kindergarten at the student’s homeschool, [REDACTED] School, MCPS.
4. There is email documentation from the complainants to the MCPS staff dated August 17, 2022, reflecting their request for an IEP team meeting. There is email documentation dated August 18, 2022, reflecting the MCPS’ request that the complainants call them.
5. There is email documentation from the complainants to the MCPS staff dated September 2, 2022, reflecting that they had not heard from MCPS since enrolling the student. It further reflects the complainants requesting that an IEP team meeting be scheduled.
6. There is email documentation between the complainants and the MCPS staff dated September 7, 2022, reflecting that the MCPS was unable to “accept the update for the student.” The complainants inquired about what they needed to do to “get an IEP for the student.” There is further email documentation dated September 9, 2022, between the MCPS and the complainants agreeing to a Child Find meeting on September 19, 2022.

7. On September 19, 2022, the IEP team met to discuss evaluation and assessments. The IEP team agreed that additional assessments in the area of academics, speech/language, cognitive, adaptive skills, and occupational therapy were needed, due to the fact that the only data that was currently available at the time was speech/language and occupational therapy.
8. There is email documentation between the complainants and the MCPS dated October 31, 2022, reflecting the complainants' concern for "the accuracy and validity of the evaluation" conducted for the student based on the parent's uncertainty regarding the qualifications of the test administrator. It further reflects the complainants' request to postpone the upcoming IEP team meeting scheduled for November 3, 2022, until the student "has a legitimate evaluation by a trained" test administrator. The MCPS responded to the complainants on November 2, 2022, referring them to the Resolution and Compliance office.
9. On January 9, 2023, the IEP team met and determined that the student was eligible for special education services.
10. On February 23, 2023, the IEP team met with the purpose of creating an initial IEP and reviewing a private speech/language report. At this meeting, the IEP team agreed to the student receiving services at the [REDACTED] at [REDACTED] [REDACTED] School, with a start date of March 20, 2023.
11. The student's IEP was approved on March 9, 2023. The IEP reflects math calculation, math problem solving, reading comprehension, reading phonics, speech and language: articulation, expressive language, receptive language, written language expression, behavioral: self-management, and social interaction skills as areas that are affected by the student's disability.
12. The student's IEP, developed on March 9, 2023, reflects the Present Level of Academic Achievement and Functional Performance as the current instructional grade levels for phonics as Pre-K, reading comprehension as beginning kindergarten, math calculation as beginning kindergarten, math problem solving as beginning kindergarten, written language expression as Pre-K. In addition, it reflects social interaction skills, self-management, articulation, expressive language, and receptive language, all below grade and age expectations.
13. The student's IEP, developed on March 9, 2023, requires the student to be provided with special considerations and accommodations: assistive technology; instructional and assessment accessibility features; daily task analysis with visuals for common routines; daily picture schedule; daily provision of assistance with organization; daily pairing of verbal interactions with visuals and/or modeling; daily provision of wait time; daily gaining of the student's attention prior to directions and instructions; daily provision of alternate ways for the student to demonstrate learning; daily check for understanding, daily use of manipulatives; daily repetition of directions; daily frequent and immediate feedback; daily assessment of the student's learning using multiple choice format with a field of three; daily break down of assignments into smaller units; daily use of pictures to support reading passages whenever possible; weekly social skills training; daily use of positive/concrete reinforcers; daily strategies to initiate and sustain attention; daily frequent eye contact/proximity control; daily encouragement/reinforce appropriate behavior in academic and non-academic settings; extended time (2x), and AT consult (4x during the IEP cycle). The IEP further requires the student to be provided with five one-hour ten-minute sessions per week of special education

instruction in the general education classroom provided by the general education teacher, five five-hour fifteen-minute sessions per week of special education instruction outside the general education classroom provided by the special education teacher or the instructional assistant, and three thirty-minute sessions per week of speech/language therapy as a related service provided by the speech/language pathologist.

14. The student's IEP, developed on March 9, 2023, reflects the student has goals in the areas of speech and language: receptive language, expressive language, and articulation. In addition, it reflects goals in the areas of written language expression, reading comprehension, reading phonics, math calculation, self-management, and social interaction skills.
15. The student's IEP, amended on July 11, 2023, reflects physical: fine motor skills as an additional area affected by the student's disability. The Present Level of Academic Achievement and Functional Performance as the current instructional grade level for fine motor skills is below age expectations. The IEP reflects the addition of a goal in the area of fine motor skills and one thirty-minute weekly session of occupational therapy provided by an occupational therapist.
16. There is documentation that the student was provided special education instruction as required by the student's IEP.

#### **CONCLUSIONS:**

##### **Allegation #1:**

##### **PROPER PROCEDURES TO FULFILL CHILD FIND OBLIGATIONS**

Based upon Findings of Facts #1- #11, MSDE finds that during the time period in question, the MCPS had previously completed child find activities for the student, in accordance with 34 CFR §§300.111, 300 -311 and COMAR 13A.05.01.04 - .06. Therefore, this office finds a violation did not occur with respect to allegation #1.

##### **Allegation #5:**

##### **IEP THAT ADDRESSES THE STUDENT'S NEEDS**

Based upon Findings of Facts #11- #15, although the MCPS eventually ensured that the student's IEP addresses her identified needs on March 9, 2023, this IEP was not in place for the student by the start of the 2022-2023 school year. Accordingly, MCPS did not ensure that the student's IEP addressed her needs since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.324. Therefore, this office finds a violation occurred with respect to allegation #5.

##### **Allegation #4:**

##### **PROVISION OF SPECIAL EDUCATION INSTRUCTION**

In this case, although the development of the student's IEP was delayed, as described in allegation #5, once the IEP was developed for the student, the student received the services required by his IEP. Therefore, based upon Findings of Facts #13 and #16, MSDE finds that MCPS has ensured that the student has been provided with the special education instruction required by the IEP since the start of the 2022- 2023 school year, in accordance with 34 CFR §300.156 and COMAR 13A.12.02. Therefore, this office finds that a violation did not occur with respect to allegation #4.

**ALLEGATION #2: PROVISION OF PRIOR WRITTEN NOTICE**

**FINDINGS OF FACTS:**

17. The prior written notice generated following the February 23, 2023, IEP team meeting reflects the proposed actions as “submit an Occupational therapy evaluation request, move forward with consultation from interACT, the IEP team proposed that the student receive services in the [REDACTED] at [REDACTED] School, the IEP team proposed that the student receive speech and language services. The team proposed three sessions of thirty minutes each. The student’s parents would like the student to receive more speech therapy, and the student will start Burning Tree on March 20th.” There is email documentation from the MCPS staff to the complainant dated March 16, 2023, reflecting the provision of the documents from the February 23, 2023, IEP team meeting.
18. The prior written notice generated following the June 9, 2023, IEP team meeting reflects the proposed actions as “to provide occupational therapy services at a rate of one thirty-minute session per month and to provide extended school year services.” There is email documentation from the MCPS staff to the complaints reflecting that the prior written notice for the June 9, 2023, IEP team meeting was attached.

**CONCLUSIONS:**

**Provision Of February 23, 2023, Prior Written Notice**

Based upon the Finding of Fact #17, the MCPS did provide the parent with prior written notice with the description of the proposed actions for the IEP team meeting held on February 23, 2023, prior to implementing the changes to the student’s educational program in accordance with 34 CFR §300.503. Therefore, this office does not find a violation occurred with respect to this aspect of allegation #2.

**Provision Of June 9, 2023, Prior Written Notice**

Based upon the Finding of Fact #18, the MCPS has provided the parent with prior written notice with the description of the proposed actions since February 23, 2023, in accordance with 34 CFR §300.503. Therefore, this office does not find a violation occurred with respect to this aspect of allegation #2.

**ALLEGATION #3: REQUEST TO ACCESS THE STUDENT’S EDUCATION RECORDS**

**FINDINGS OF FACTS:**

19. There is email documentation between the complainants and the MCPS dated June 9, 2022, reflecting the complainants' request for the therapist’s “speech therapy logs/notes from the speech/language sessions for the year”. It further reflects the complainants’ interest in knowing what the Speech-Language Pathology has been working on with the student and how she is responding to therapy and any noted progress.
20. There is email documentation of the response from the MCPS staff to the complainants dated June 12, 2023, that reflects a narrative update on the student’s progress and the student’s interactions

with the service provider. The email reflects that the student “has transitioned well to her placement at the [REDACTED] at [REDACTED] School. She has improved in her ability to stay with the group in her assigned location during speech groups with minimal cues. The student is quiet and will respond when asked to say something. She is improving with her production of /p/ and /m/ in isolation. When initiating consonant-vowel (CV) sounds, she is more variable in her production of /p/ and /m/ and will say the correct sound in addition to returning to her usual production of the sound. An example of this was when she was asked to say /pih/ in /pig/, and she said /p-did/. With review, modeling, and visual support, she was able to produce the CV sounds of /pih/. She is improving in her ability to point to a picture or match an object to a pictured item with increased independence. When asked to follow positional directions, she benefits from models to improve her accuracy.”

### **CONCLUSIONS:**

Based upon the Findings of Facts #19 and #20, the MCPS did follow proper procedures when responding to a request to access the student’s education records since June 9, 2023, specifically speech and language therapy logs, in accordance with 34 CFR §§300.501 and .613. Therefore, this office does not find a violation 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.<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 October 27, 2023, that the IEP team has convened and determined the amount and nature of compensatory services or other remedies to redress the violations regarding the lack of proper procedures to ensure that the student’s IEP was developed prior to the start of

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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.

  
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the 2022-2023 school year 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 November 22, 2023, of the steps taken to ensure that the violations regarding the development of the student's IEP do not reoccur at   School. Those steps must include staff development.


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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