



December 8, 2023

Ms. Debrah Martin
1300 Mercantile Lane Ste 139-W
Largo, Maryland 20774

Ms. Kia Middleton-Murphy
Montgomery County Public Schools
Acting Director of Special Education
850 Hungerford Drive, Room 225
Rockville, MD 20850

RE: [REDACTED]
Reference: #24-047

Dear Parties:

Maryland State Department of Education (MSDE), Division of Early Intervention 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 October 10, 2023, MSDE received a complaint from Ms. Debrah Martin, 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 following allegations:

1. MCPS has not ensured that the student is being provided with the special education classroom instruction, counseling services, and occupational therapy consultation required by the IEP, since October 2022, in accordance with 34 CFR §§ 300.101 and .323.
2. MCPS did not ensure that an occupational therapy assessment was conducted within required timelines since October 2022, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
3. MCPS has not ensured that the student’s occupational therapy and audiological needs have been met since October 2022, in accordance with 34 CFR §300.323.
4. MCPS has not ensured that the student was provided with counseling services as required by the IEP, since October 2022, in accordance with 34 CFR §§ 300.101 and .323.
5. MCPS has not ensured that the IEP developed for the student reflects the decisions of the IEP team to include check-ins for social emotional well-being, visits to the [REDACTED] [REDACTED] zones of regulations cards, self-talk, and check-ins in the IEP, since October 2022, in accordance with 34 CFR §300.324.

6. MCPS did not provide timely prior written notice of the IEP team's decisions from the IEP team meetings held since October 2022, in accordance with 34 CFR §300.503.
7. MCPS did not ensure that Individualized Education Program (IEP) team meetings convened on January 17, 2023, and May 30, 2023, included the required participants, in accordance with 34 CFR §300.321.
8. MCPS did not ensure that the student was provided with a service plan following placement at [REDACTED] School since September 2023, in accordance with 34 CFR §300.132.

BACKGROUND:

The student is 9 years old and attends [REDACTED] School. He is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The Prior Written Notice (PWN) developed following an IEP team meeting on June 7, 2022,¹ reflects the IEP team proposed and agreed to:
 - Check-ins with members of the IEP team to support social emotional wellbeing will be addressed in the supplementary aids and services, and provided as needed;
 - Administration of an educational evaluation using the Woodcock Johnson Form B to update present levels in the spring of 2023; and
 - 45-day review in late September/early October 2023.

The PWN also reflects the student is on the waitlist for an Occupational Therapy (OT) evaluation by MCPS.

2. On July 30, 2022, MCPS completed an OT evaluation, but did not review it at this time. The report states, "Based on the data of this evaluation, the IEP committee should consider that the expertise of an occupational therapist is not required for [student] to access and participate in his educational program. The related service of occupational therapy is not recommended at this time."
3. The IEP in effect at the beginning of the 2022-2023 school year was developed in June 2022. The IEP reflects the student requires support in Math Calculation, Math Problem Solving, Reading Comprehension, Reading Phonemic Awareness, Reading Phonics, Written Language Expression, Executive Functioning, Self-Management, and Social Emotional/Behavioral. The IEP requires fifteen hours of specialized instruction inside of the general education classroom, and four hours thirty minutes of special education classroom instruction outside of the general education classroom per week. The IEP requires the following supplementary aids, services, program modifications and social/behavioral support(s):
 - As needed - access to staff members for emotional support, including breaks and access to the "Dolphin Den" to be provided by the general education teacher, school counselor, special education classroom teacher, and IEP team;

¹ Findings of Facts #1 and #2 predate the one-year limitation on filing State complaints. However, they are included as context for a reference made to the Occupational Therapy assessments in a Prior Written Notice developed on February 15, 2023.

- Weekly - check-ins with the school counselor, IEP team, and special education classroom teacher;
- Daily - provide manipulatives and/or sensory activities to promote listening and focusing skills;
- Daily - strategies to initiate and sustain attention; and
- Daily - Provide frequent changes in activities or opportunities for movement.

The IEP required supplementary aids, services, program modifications and instructional supports:

- Daily - allow for supports to maintain focus to be provided by the general education teacher, school counselor, and special education classroom teacher.
4. On January 17, 2023, the IEP team met to review the student's progress. The PWN reflects the IEP team proposed and agreed to, a continuation of the same services on the previous IEP since the student was making progress. The team proposed and agreed to complete a new educational evaluation in the spring of 2023 for the purpose of updating the student's present levels in preparation of matriculating to the third grade. The IEP team reported that the Occupational Therapy (OT) evaluation is complete and would be discussed in a follow up meeting. The team also agreed that the "school counselor will be in the next meeting for updates."
 5. There is no documentation that the PWN developed as a result of the IEP team meeting on January 17, 2023, was provided to the parent.
 6. The IEP team met again on February 14, 2023. The PWN developed on February 14, 2023, reflects the IEP team met for the purpose of reviewing the student's OT evaluation. The IEP team proposed and agreed to the addition of instructional supports to the IEP to support the student's writing needs. The IEP team determined OT as a related service is not recommended at this time. The team proposed and agreed that the student would receive support from teachers and interventions through supplementary aids and services.
 7. The IEP was amended on February 15, 2023, and reflects two thirty minute sessions of OT per quarter in the general education classroom as a related service.
 8. There is no documentation that the PWN developed as a result of the IEP team meeting on February 14, 2023, was provided to the parent.
 9. The PWN reflects the student does not have needs "requiring school based occupational therapy." However, on February 15, 2023, the IEP was amended to reflect that the student's disability also impacts the area of Visual Motor. The IEP required one hour of occupational therapy outside of the general education classroom each quarter provided as direct related services and additional supplementary aids and services provided to the student and staff. There is no basis or data that reflects what the team relied on to add these services in the school setting.
 10. Visual Motor present levels on the IEP reflects a review of the MCPS OT Assessment on February 14, 2023. The IEP Team determined the IEP requires an occupational therapist to monitor progression with accessing instruction through training, modifications, adaptations and strategies while using manuscript and/or assistive technology. It is not clear what the OT will work with the student on during direct services. The IEP required additional supplementary aids, services, program modifications and supports:
 - Instructional Support(s) - daily use of word bank to reinforce vocabulary and/or when extended writing is required;
 - Quarterly - staff and student support to provide professional recommendations and training on the use of modifications, strategies and adaptations to facilitate accessing instruction; and

- Program modifications - daily modified paper, use of writing tools such as graphic organizers, prewriting conference, and sentence starters.
11. On March 21, 2023, the IEP team met to review/revise the student's IEP to address concerns with social emotional challenges, school avoidance, and anxiety. The IEP team proposed and agreed to reduce the outside of general education services to reduce the overwhelming amount of transitions to new spaces/teachers. The team agreed that writing support will be provided in the general education classroom, math intervention will occur in the general education classroom, and reading intervention will continue outside of the general education classroom. The PWN reflects the team discussed MCPS resources for "outside therapy", noise blocking headphones, zones of regulation cards, positive self-talk and confidence boosting support from counselors, immediate feedback, and daily check ins.
 12. There is no documentation that the PWN developed as a result of the IEP team meeting on March 20, 2023, was provided to the parent.
 13. On March 27, 2023, the IEP was revised to include an additional forty minutes of weekly specialized instruction inside the general education setting to be provided by the IEP team, and/or the General Education teacher.
 14. There is no documentation that the PWN developed as a result of the IEP team meeting on March 27, 2023, was provided to the parent.
 15. The OT log reflects services provided to the student's teachers on:
 - February 22, 2023
 - March 21, 2023
 - April 25, 2023
 - April 26, 2023
 - May 23, 2023
 16. The OT log reflects the service provided to the student on February 28, 2023.
 17. There is no documentation that the student was provided with OT services in the fourth quarter of the 2022-2023 school year.
 18. On May 30, 2023, the IEP team convened. The parents provided an audiological assessment at this meeting. The IEP team completed the MCPS Team Consideration of External Report form reflecting that the team considered the information provided by the parents. The PWN developed following an IEP team meeting on May 30, 2023, reflects the IEP team met to discuss concerns regarding school attendance and school avoidance. The complainant requested that the team consider completing a sensory assessment.
 19. There is no documentation that the PWN developed as a result of the IEP team meeting on May 30, 2023, was provided to the parent.
 20. The team met again on June 14, 2023, to consider a neuropsychological evaluation provided by the parents on May 25, 2023. The IEP team completed the MCPS Team Consideration of External Report form reflecting that the team considered the information provided by the parents.
 21. The private Audiological report reflects the student "may experience difficulty understanding rapid or accented speakers and may have difficulty filling in missing pieces of the message when the listening environment is not ideal." The report also reflects the student may "experience difficulty

- in the classroom when required to ignore linguistic information from one source while focusing attention on a primary message (ex. Listening to the teacher provide instructions while a student next to him is talking to him or to another student).” The student’s “results are consistent with normal hearing sensitivity from 250-8000 Hz bilaterally. Auditory sensitivity is judged to be adequate for educational and communicative purposes.” The report included recommendations for the purpose of planning classroom instruction, many of which were on the student’s current IEP.
22. The PWN developed on June 14, 2023, reflects the team met for the purpose of continuing the annual review meeting started on May 30, 2023. The PWN reflects the IEP team’s proposed and agreed upon a Sensory Assessment for the purpose of identifying how the student copes with sensory information at school. The IEP team agreed the assessment would be completed in the fall of 2023, to allow time for the student’s new teachers to familiarize themselves with the student.
 23. There is documentation that the MCPS Audiologist participated in the IEP team meeting on June 14, 2023.
 24. There is no documentation that a PWN developed as a result of the IEP team meeting on June 14, 2023, was provided to the parent.
 25. The school counselor’s logs reflect some check-ins for social emotional well-being with the student between January 2023 through May 2023.
 26. There is no documentation of specialized classroom instruction from October 2022 through June 2023.
 27. There is no documentation of the implementation of visits to the [REDACTED] zones of regulations cards, self-talk, and check-ins since October 2022.
 28. The PWN developed on August 3, 2023, reflects the IEP team discussed Home School Model and Learning Center. The team determined the student would be placed at the Learning Center, located at [REDACTED] School, in a self-contained classroom for part of his day. The student would receive instruction in the self-contained environment for reading, writing, and mathematics. The student would receive instruction with non-disabled peers in social studies, science, lunch, recess, and general arts. The team proposed to include information from the audiology report to the IEP, request specialized transportation to [REDACTED] forty-five day review to discuss his progress at [REDACTED] and request sensory diet profile assessment. Consent for the assessment was to be provided in the fall of 2023.
 29. There is no documentation that the PWN developed as a result of the IEP team meeting on August 3, 2023, was provided to the parent.
 30. On August 24, 2023, MCPS was provided with an email informing them that the student will not be returning to MCPS and would be attending [REDACTED] School for the 2023-2024 school year. The parents requested that MCPS develop a Services Plan for the student for the 2023-2024 school year. The parents also requested reimbursement for private assessments provided to MCPS.

DISCUSSION/CONCLUSIONS:

Allegations #1 and #4

Provision of special education classroom instruction, occupational therapy consultation and counseling services

Based on Findings of Facts #3 and #26, MSDE finds the MCPS has not ensured that the student was consistently provided with the special education classroom instruction from October 2022 through June 2023, as required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the findings of Facts #1, #2, and #3, MSDE finds that the IEP did not require occupational therapy consultation or services between October 2022 and February 15, 2023. Based on the Findings of Facts #6 through #8, #13 through #15, MSDE finds that since February 15, 2023, IEP required OT services. Although MCPS provided service to the student in February 2023, MCPS did not ensure the student was provided with the occupational therapy services required by the IEP during the fourth quarter of the 2022-2023 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Find of Facts #3 and #25, MSDE finds that the IEP did not require services that were provided only by the school counselor. The IEP required a weekly fifteen minute check in with the school counselor. The IEP reflects the service would be provided by the school counselor, IEP team, and special education classroom teacher. Although there is some documentation of the provision of check-ins from the school counselor, there is no documentation of consistent implementation of check-ins from the counselor or other members of the IEP team as required by the IEP in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation. In addition, based on the Finding of Facts #25, and #27, MSDE finds that the MCPS has not ensured that the student was consistently provided with visits to the [REDACTED] zones of regulations cards, self-talk, and check-ins, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2 and #3

Occupational therapy assessment since October 2022, Occupational therapy needs, and Audiological needs

A reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 CFR § 300.303.

In this case, the complainant alleges that there were two OT evaluations that impacted the student's ability to access FAPE. The first occupational therapy evaluation was requested at the end of the 2021-2022 school year. The second occupational therapy evaluation was requested in June 2023 for the purpose of addressing sensory needs.

Based on Finding of Facts #1, #2, #4, and #6, MSDE finds that the timelines in which the OT assessment was completed was not in compliance with state requirements. Therefore, this office finds that a violation did occur with respect to this aspect of this allegation.

Based on Finding of Facts #18, #22, and #28, MSDE finds that the complainant made a recommendation for a sensory assessment on May 30, 2023. MCPS proposed and agreed to obtain consent in the fall of 2023 for a sensory assessment, to be conducted in the fall of 2023, in accordance with 34 CFR §§ 300.101 and .323. However, the student was no longer enrolled in MCPS in August 2023. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based on the findings of Facts #7 and #8, MSDE finds that the MCPS added direct services and supplementary aids and services in an area of need to the IEP that is not supported by data, in accordance with 34 CFR §§ 300.101. The IEP team determined the student had an additional area of need that required services, while ignoring the assessment results and their own findings and recommendations. It is unclear why the team added OT services. PWN offers no support or explanation. Therefore, this office finds that a violation occurred with respect to the provision of PWN.

Based on the findings of Facts #18 and #21, MSDE finds that the IEP did not require audiological services since October 2022. On May 30, 2023, the IEP team was provided with a private audiological assessment. The private assessment includes recommendations to consider when “planning classroom placement and activities for a student with a central auditory processing weakness/attention deficit disorder.” MCPS reviewed the assessment on June 14, 2023, and considered the recommendations made by the report in its discussion, in accordance with 34 CFR §§ 300.101 and .323. Based on the Findings of Fact #21, MSDE did address the student’s audiological needs. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #5 **Development of IEP that reflects check-ins for social emotional well-being, visits to the [REDACTED] zones of regulation cards, self-talk, and check-ins**

Based on Finding of Facts #3, #11 MSDE finds that the MCPS has ensured that the IEP developed for the student reflects the decisions of the IEP team to include check-ins for social emotional well-being, visits to the [REDACTED] zones of regulations cards, self-talk, and check-ins, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #6 **Provision of timely prior written notice since October 2022**

Based on the Findings of Facts #5, #8, #12, #14, #19, #24, and #29, MSDE finds that the MCPS did not provide timely prior written notice of the IEP team's decisions to the parents from the IEP team meetings held since October 2022, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #7 **IEP meeting participants on January 17, 2023, and May 30, 2023**

The public agency must ensure that the IEP Team for each child with a disability includes: the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency. 34 CFR §300.321.

In this case, the complainant alleges that the school counselor should have been present at the January 17, 2023 meeting, and an Audiologist or representative should have been present at the May 30, 2023 meeting. Although the school counselor was not present at the January 17, 2023 meeting, qualified members of the IEP team who shared the responsibilities with the school counselor to provide supplementary aides and services were present at the relevant meetings. Furthermore, while an Audiologist was not present at the May 30, 2023 meeting when the private Audiologist report was shared with the IEP team, the MCPS ensured that an Audiologist was present at the June 14, 2023 meeting to review the private Audiology report.

Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ 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 by January 26, 2024, that the IEP team has taken the following action:

- a. Convened an IEP team meeting to determine services needed to remediate the violations identified in the investigation. The IEP team must discuss if the violations had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy 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; and
- b. Provide parents with copies of the prior written notices for IEP team meetings since October 2022.

MCPS must also ensure that the IEP team considers the difference between the student's present and expected levels of performance when determining the services needed to remediate the violations.

MCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

MSDE requires MCPS to provide documentation by March 15, 2024, of the steps taken to ensure that the violation does not recur at [REDACTED] School.

- a. Provide professional development on documenting the provision of specialized classroom instruction, documenting the provision of supplementary aids, provision of prior written notice, timelines for annual reviews and evaluations for the purpose of instruction, evaluations for the purpose of determining eligibility;
- b. Development of tools or documents to monitor the implementation of supplementary aids and services; and
- c. Provide MSDE with a completed monitoring tool for 15 students reflecting consistent implementation of supplementary aids and services, documentation that PWN is being provided to families, and that evaluations review meetings are held on a timely basis, by March 30, 2024.

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.

³ 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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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,

Antoine Hickman Ed.D
Assistant State Superintendent
Division of Early Intervention/Special Education Services

AH/ra

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