


January 26, 2024




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

RE: 
Reference: #24-080

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 November 28, 2023, MSDE received a complaint from Ms. , 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 followed proper procedures when using physical restraint since October 2023, in accordance with COMAR 13A.08.04.05.
2. MCPS has not ensured that the student has been consistently provided with the specialized classroom instruction and supplementary aids, services, program modifications, and supports, as required by the Individualized Education Program (IEP) since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .323.
3. MCPS has not provided the student with emotional regulation supports required by the Individualized Education Program (IEP) since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.101.
4. MCPS has not provided the student with executive functioning supports required by the Individualized Education Program (IEP) since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.101.

ALLEGATION #1: PROPER PROCEDURES DURING RESTRAINT SINCE OCTOBER 2023

FINDINGS OF FACTS

1. On October 23, 2023, the complainant emailed the MCPS reminding them that student will be in attendance on October 24, 2023. The complainant expressed “before [teacher] returns to school, we will need to have a plan in place for [student] to not be in [teacher’s] class or under her supervision from this point forward.” On October 24, 2023, MCPS responded to the complainant informing her that “We look forward to connecting with you and [student] this morning.”
2. Undated documentation from MCPS concerning an incident resulting in the complainant’s request for a different teacher reflects:
 - Student spoke with an elevated voice.
 - Teacher attempted to engage the student verbally, “It’s not safe for you to run like that.”
 - Student started crying and with an elevated voice said, “Get off of me, you’re hurting me.”
 - Teacher immediately released the student’s wrist.
 - Student was provided with the option to go to her next class or go to the office to calm down. The student was not agreeable to either option. The student’s special education teacher intervened and offered to walk the student to class. The special educator and the student processed in another area of the building.
3. Documentation from student dated November 16, 2023, reflects:
 - As the student attempted to stand up, the teacher grabbed her wrist, and she (student) was unable to pull away.
 - Student walked to the door while the teacher continued to hold the student’s wrist.
 - Once in the hallway, the student yelled at the teacher “to let me go.” The student and the special educator walked to the next class. The student and the special educator left the class and processed in another area of the school building.

DISCUSSION/CONCLUSION

The use of physical restraint is prohibited in public agencies and nonpublic schools until there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate COMAR 13A.08.04.05.

"Physical restraint" means a personal restriction that immobilizes or reduces the ability of a student to move the student’s torso, arms, legs, or head freely. "Physical restraint" does not include: briefly holding a student to calm or comfort the student; holding a student’s hand or arm to escort the student safely from one area to another; moving a disruptive student who is unwilling to leave the area if other methods such as counseling have been unsuccessful; or breaking up in a fight in accordance with Education Article §7-307, Annotated Code of Maryland COMAR 13A.08.04.02.

Based on Findings of Facts #1- #3, MSDE finds that the student's wrist was held briefly in an attempt to calm her, and she was not immobilized. Accordingly, MCPS has not restrained the student since October 2023, in accordance with COMAR 13A.08.04.02 and .05. Therefore, this office finds that a violation did not occur with respect to this allegation.

ALLEGATIONS #2, #3, & #4: PROVISION OF SPECIALIZED CLASSROOM INSTRUCTION, AND SUPPLEMENTARY AIDS, SERVICES, PROGRAM MODIFICATIONS, AND SUPPORTS, PROVISION OF EMOTIONAL REGULATION SUPPORTS, AND PROVISION OF EXECUTIVE FUNCTION SUPPORTS

FINDINGS OF FACTS

4. The IEP in effect at the beginning of the 2023-2024 school year, reflects the student's disability impacts attention, written language expression, social emotional/behavioral, social interaction skills, and fine motor skills. The IEP requires supplementary aids, services, program modifications, and supports to address academic needs:

- As needed on a trial basis - speech to text;
- Daily - provide alternative ways for student to demonstrate learning and break down assignments into smaller units; and
- Daily - preferential seating.

The IEP requires supplementary aids, services, program modifications, and supports to address social/behavioral needs:

- Daily - provide frequent positive reinforcement;
- Daily - provide visual reminder or self-calming strategies that can be used;
- Daily - identify a trusted adult who can help student problem solve;
- Daily - provide student with a trusted adult to check-in with student at the beginning of the day and after lunch and recess;
- Daily - advance notice of unexpected transitions/schedule changes;
- As needed - provide student with flash pass to go see the person she has identified as a trusted adult; and
- As needed - provide student with alternate ways to demonstrate her learning.

5. The IEP requires daily special education classroom instruction for two hours and forty-five minutes inside the general education classroom each week. The student will receive forty-five minutes of instruction in ELA, science, social studies, and math daily. The student requires special education classroom instruction outside the general education setting for fifteen minutes per week. The student will receive fifteen minutes a week of specialized instruction for social skills instruction. The student requires two, thirty-minute sessions per month of Occupational Therapy (OT).

6. There is documentation that a special education teacher is assigned in the student's math, social studies, science, and reading classes from August 2023 through January 11, 2024. The documentation also reflects the student completed assignments following instruction.

7. The student's schedule in effect on January 12, 2024, reflects a special educator is available in math, and writing. The student is enrolled in Virtual Academy classes for social studies.

8. There is documentation of the provision of the following supplementary aids, services, program modifications, and supports:
 - speech to text;
 - alternate ways to demonstrate understanding;
 - breakdown of assignments;
 - extended time;
 - weekly social skills training;
 - positive reinforcement;
 - preferential seating;
 - visual reminder of calming techniques;
 - flash pass;
 - in class support;
 - access to trusted adult; and
 - enlarged keyboard.
9. There is no documentation that the student was provided with the following supplementary aids, services, program modifications, and supports: advance notice of unexpected transitions/schedule changes and check – ins at the beginning of the day and recess, as required by the IEP.
10. The social emotional/behavioral present levels discussion, reflects the student “has difficulty with self-regulation when she becomes frustrated.”
11. The IEP requires the following goal to address the student’s social emotional/behavioral needs: “By July 2024 when [student] becomes escalated, she will implement a taught coping strategy so that she is able to return to the general education lesson, per the expected behavioral norms of the classroom within 5 minutes on 90% of the opportunities.”
12. The first quarter progress report developed on October 31, 2023, the following information regarding the student’s progress towards achieving the social emotional/behavioral goal. The student “is making progress in her social emotional/behavioral goal. [Student] is aware of the areas of safety she is able to access when dysregulated and has been accessing them for breaks. [Student] is still working on being able to regulate herself back to being able to attend work after an elevated moment of frustration or anger.”
13. The present levels attention discussion reflects the student “has difficulty navigating day to day social problems without becoming dysregulated.”
14. The IEP requires the following goal to address attention needs: “when given visual supports and explicit instruction, by July 2024, [student] will implement a personal organization system in order to access her materials and she will begin working and work to completion in 4 out of 5 trials.”
15. The first quarter progress report developed on October 31, 2023, the following information regarding the student’s progress towards achieving the attention IEP goal. The student “is making consistent progress on her attention goal. [Student] will put her binder in her cubby or leave it at the assigned seat she knows she goes to each day. Where [student] needs more support is turning in or submitting

her assignments, primarily with them being fully completed, and this could be due to either forgetting to bring assignments to and from home or rushing through an assignment to get to a preferred activity.”

16. The present levels social interaction skills discussion reflects “the Conners 3 indicated very elevated scores in the area of executive functioning.”
17. The IEP requires the following goal to address the student’s social interaction skills: “During structured and unstructured social interactions with peers and/or structured or unstructured group work, [student] will demonstrate appropriate tone of voice, body language, and verbal language by July 2024 with 9 out of 10 trials.”
18. The first quarter progress report developed on October 31, 2023, the following information regarding the student’s progress towards achieving the social interaction skills IEP goal. “With the introduction of a weekly lunch bunch, [student] has progressed in her social skills. Being able to facilitate and organize conversation structure has been beneficial for [student]. She is still working on asking consistent thought out questions relative to a peers response/comment, as well as recognizing what is an appropriate vs. inappropriate response.”
19. The Prior Written Notice (PWN) developed on October 19, 2023, reflects the IEP team met for the purpose of reviewing and revising the IEP. The IEP team reviewed a report from the student’s private provider regarding the impact of a hypermobility diagnosis. The IEP team discussed the supports required in the school setting, creating a health service plan, modification of the student’s physical education curriculum, monitoring use of certain playground equipment, providing the student with an alternate keyboard, and the fact that parents would provide braces for the student.
20. [REDACTED] School utilizes a homework link that parents can access for the purpose of reviewing assigned homework as a tool to support students' executive function needs.
21. On December 14, 2023, the IEP was amended and reflects additional supplementary aids, services, program modifications, and supports: when needed - lined graph paper and enlarged keyboard extension. The IEP requires quarterly School Health Services as a related service outside of the general education classroom for fifteen minutes.
22. There is documentation of the provision of the following supplementary aids, services, program modifications, and supports:
 - lined graph paper
23. The PWN developed on December 21, 2023, reflects the IEP team met for the purpose of reviewing and revising the IEP. The PWN reflects the complainant shared ongoing concerns with current diagnosis and concerns within the social/science curriculum. The IEP team shared there have not been any levels of escalation that resulted in the need to restrain the student. The IEP team agreed that in the event that the student requires a physical restraint, the restraint will be completed by “trained crisis staff.”

The IEP team proposed and agreed to add:

- a request for a Student Transportation Action Request (STAR) form, and hold a High Incident Accessibility Training (HIAT) meeting to discuss what MCPS can provide in terms of technology;
- student will continue to receive OT services to support typing and speech to text skills;
- student will begin participation in the Virtual Academy; and
- daily planner to be signed by teacher and at home.

DISCUSSION/CONCLUSIONS

Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction. To address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR §300.39.

Based on the Findings of Facts #4 through #7, MSDE finds that the MCPS has ensured that the student has been consistently provided with the specialized classroom instruction, as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101,.323, and .39. Therefore, MSDE finds that a violation did not occur with respect to this aspect of the allegation.

Based on the Findings of Facts #4, #8, and #9, MSDE finds that the MCPS has not ensured that the student has been consistently provided with the supplementary aids, services, program modifications, and supports/emotional regulation support as required by the Individualized Education Program (IEP) since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101,.323, and .39. Therefore, MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #4, #8, #10 through #18, and #20, MSDE finds that the MCPS has provided the student with executive functioning support required by the Individualized Education Program (IEP) since the beginning of the 2023-2024 school year, in accordance with 34 CFR §300.101. The IEP team developed a goal based on the student's present levels, included executive functioning. The IEP also requires a goal in the attention domain to support personal organization. The progress reports reflect the student is making progress with these goals. Additionally, MCPS provided the complainant with a link that is utilized to communicate assigned homework. Therefore, MSDE finds that a violation did not occur with respect to this allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

Based on the Findings of Facts #12, #15, and #18, MSDE finds that the MCPS has not ensured that the progress reports developed on October 31, 2023, accurately measured the student's progress toward achieving the annual IEP goals as required by the IEP, in accordance with 34 CFR §300.320. Therefore, this office finds a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include 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 manner¹. 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 action². Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student- Based

MSDE requires the MCPS to provide documentation by May 1, 2024, of the steps taken to ensure that the IEP team has taken the following action:

- a. Ensured that the student is being provided with all supplementary aids, services, program modifications, and supports, as required by the IEP;
- b. Ensured that the student is being provided with the emotional regulation support required by the IEP;
- c. Ensured that IEP progress reports accurately measure the student's progress toward achieving the annual IEP goals by the IEP; and
- d. Convene an IEP meeting for the purpose of determining the impact of the violations. The IEP team must discuss if the violations related to the consistent implementation of supplementary aids and services, emotional regulation, and the lack of progress reports measured in the manner required by the IEP, had a negative impact on the student's ability to benefit from the educational 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.

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

MCPS must ensure that the parents are provided with prior 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.

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,

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

ALH/ra

c Dr. Monifa B. McKnight, Superintendent, MCPS
Ms. Diana K. Wyles, Associate Superintendent, Office of Special Education, MCPS
Mr. Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED]
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, MSDE
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