

February 15, 2024

[REDACTED]

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

RE: [REDACTED]
Reference: #24-098

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 December 5, 2023, MSDE received a complaint from [REDACTED], “the complainant,” on behalf of his son, 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. On December 19, 2023, an Abeyance letter was issued to the complainant until the conclusion of a due process hearing (34 §CFR 300.152(c)(1)). On December 21, 2023, the complainant withdrew his due process complaint without prejudice. The State investigation timeline commenced on December 21, 2023.

MSDE investigated the following allegations:

1. The MCPS has not ensured that the student has been provided with the special education instruction and the use of his accommodations as required by the Individualized Education Program (IEP) since March 28, 2023, in accordance with 34 CFR §§300.101 and .323(d).¹ Specifically, the complainant alleges:
 - a. The student was not allowed the use of a personal assistive technology device;
 - b. The student was removed from classroom-based instruction due to the use of a personal assistive technology device; and
 - c. The student’s grades were reduced due to a denial of the use of the accommodations.

¹ The complainant refers to a mediation agreement that specifically permits the student to use his personal laptop as his assistive technology device in the school setting.

2. The MCPS did not ensure that the IEP team addressed the parent's concerns about the student's use of assistive technology and violation of civil rights under 34 CFR §100.7(e) since October 31, 2023, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is 15 years old and is identified as a student with Other Health Impairment under the IDEA. The student currently attends [REDACTED] and has an IEP that requires the provision of special education instruction.

FINDINGS OF FACTS

1. On September 1, 2023, the complainant requested an "immediate meeting of the IEP team" to express his concerns regarding the school staff not allowing the student to use his accommodations in his IEP and disciplining him due to wanting to use them, as well as not identifying who the case manager assigned to the student is. The complainant requested notification of who would be in attendance.
2. On September 6, 2023, the complainant's request was acknowledged by a school staff member.
3. On September 15, 2023, the complainant received email correspondence from a school staff member "apologizing for the delay" in scheduling the IEP team meeting and informing the complainant that the school team was working on scheduling a meeting but was experiencing some difficulty due to the time of the year and having the requested staff present. The complainant was informed that the school team was able to meet on September 19, 2023, and was working on staffing. Additionally, the complainant was informed of the student's case manager.
4. On September 15, 2023, the complainant responded, stating that there was "no need to set a date for the meeting. We have filed for mediation with the State and a due process violation."
5. On September 18, 2023, an IEP team member emailed the complainant, requesting an IEP meeting to hear his concerns per the advice of the MCPS Resolution and Compliance Office.
6. On September 18, 2023, the complainant responded to the IEP team member, stating that he requested mediation through the State and filed a due process complaint, and stated that he will follow that process per the MCPS policy and Maryland Department of Education regulations.

On September 20, 2023, the complainant received an email correspondence from a school staff member informing the complainant that the student expressed "frustration" about not being able to use his "AirPods" in class as a part of his accommodations. The email states the staff member informed the student that the school team and his parents were currently working on the issue but at this time "[the student] is not allowed to use them." The email also informed the complainant that he understood the student's frustration and would follow up with his case manager so they can "discuss other strategies and ways to get noise-canceling equipment, as discussed in prior meetings, to support the student while they were going through the process."

7. On September 20, 2023, the complainant responded to the school staff member stating, "[the student] will be instructed to continue using his "AirPods" in accordance with the accommodation in

his IEP unless you can present documentation in his IEP, a specific MCPS policy, Maryland Department of Education policy, or a Maryland or Federal law that prohibits him from using these. MCPS policy specifically allows for him to use his personally supplied assistive technology. He will continue to use them, and if you discipline him or remove him from class for using accommodations specifically spelled out in his IEP, we will take appropriate actions. Additional discipline or removal from class for using approved assistive technologies in accordance with MCPS policy and his IEP will be construed as retaliatory behavior for filing mediation and a due process violation, in violation of state and federal law."

8. The MCPS Personal Mobile Devices (PMD) Policy COG-RA states: Students may possess PMDs on MCPS property and at MCPS-sponsored activities. Students are allowed to turn on/use PMDs only as described below:
 - a. All schools: Students with special needs, learning differences, or disabilities, including but not limited to students with an IEP or 504 Plan, when the PMD is used to support or provide an accommodation, service, or support for the student's special need(s), learning difference, or disability. When addressing the use of a PMD to provide an accommodation for a student who does not have an IEP or 504 Plan, such use will be determined by the principal, in coordination with school staff.
9. The student's IEP in effect at the start of the 2023-2024 school year was developed on March 28, 2023. The IEP reflects identified needs in the areas of math problem solving, reading comprehension, written language expression, and behavioral self-management. The IEP includes goals designed to target and address these identified needs within the same areas, as well as instructional support, program modifications, social/behavioral supports, and physical/environmental supports. Additionally, the accommodations are outlined to ensure access to the general education curriculum. The IEP specifies that the student is to receive two hours and 15 minutes of daily specialized instruction inside the general education classroom and 45 minutes of daily specialized instruction outside of the general education classroom.
10. The March 28, 2023, IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) reflects in the area of written language, the student is performing on the "eighth-grade level." The student "has strong ideas, able to identify and select relevant evidence for his claim." However, he needs support in connecting evidence identified back to the claim and in proofreading and revising written work to check for errors in sentence structure, capitalization, and punctuation, which impact the clarity of [the student's] ideas.
11. The March 28, 2023, IEP reflects the student's academic goal in the area of written language. The goal states: "By March 2024, given a writing prompt, electronic word processor, graphic organizer, and rubric, [the student] will write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence with 80% accuracy."
12. The report of the student's progress dated October 2023, for the annual written language goal, reflects that the student made sufficient progress to meet the goal.
13. The March 28, 2023, IEP's PLAAFP reflects in the area of reading comprehension, the student is performing on the "eighth-grade level." The student is "able to identify the main idea of a text, as well as some supporting details." However, the student needs support in "keeping up with longer

readings is difficult for [the student]. He also misses some key details/words when reading, which impact his ability to analyze/make inferences effectively.

14. The March 28, 2023, IEP reflects the student's academic goal in the area of reading comprehension. The goal states: "By March 2024, given access to audiobooks, direct instruction, and graphic organizers, [the student] will cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text with 80% accuracy."
15. The report of the student's progress dated October 2023, for the annual reading comprehension goal, reflects that the student made sufficient progress to meet the goal.
16. The March 28, 2023, IEP's PLAAFP reflects in the area of math problem-solving, the student is performing on the "eighth-grade level." The student is "able to use the formula sheet, calculator, and extended time to solve problems when engaged in class." However, he needs support in selecting and applying appropriate strategies to solve problems, especially on assessments.
17. The March 28, 2023, IEP reflects the student's academic goal in the area of math problem-solving. The goal states: "By March 2024, given curriculum tasks, direct instruction, repeated practice, calculator, and supports, [the student] will solve real-world and mathematical problems by applying the appropriate strategy/method learned in class with 80% accuracy."
18. The report of the student's progress dated October 2023, for the annual math problem-solving goal, reflects that the student did not make sufficient progress to meet the goal. However, there is no documentation that the school team met to address the lack of progress towards this goal.
19. The March 28, 2023, IEP's PLAAFP reflects in the area of self-management, the student is performing "below age expectations." He is "motivated to utilize his time in school for task completion. [The student] is able to identify the distractors in class, as well as how they affect his learning." However, he has "difficulty focusing on independent tasks, including reading, writing, and math. [The student] is easily distracted by visual or auditory stimuli. He is also prone to being distracted by his peers."
20. The March 28, 2023, IEP reflects the student's academic goal in the area of self-management. The goal states: "By March 2024, given strategies, rubrics, checklists, and time to review his work, the student will demonstrate improved attention to his assignments in 4/5 trials."
21. The report of the student's progress dated October 2023, for the annual self-management goal, reflects that the student made sufficient progress to meet the goal.
22. The March 28, 2023, IEP reflects that the student "requires AT device(s) but does not require AT service(s)." The student specifically requires the "use of a word processor" for written language needs and a calculator for basic math skills.
23. The March 28, 2023, IEP reflects that the student requires program modifications, specifically being "provided access to a word processor" on an "as needed" basis during writing to allow the student to type written responses when applicable.
24. The March 28, 2023, IEP reflects that, as an instructional and assessment accessibility feature, the student requires "spell check" due to his disability in encoding (spelling).

25. On October 4, 2023, the complainant received a message from the parent portal of the student's new case manager introducing themselves and outlining their responsibilities. One of the responsibilities mentioned is to "make sure your child's teachers are aware of accommodations, supplementary aids and services, and goals, and supporting implementation."
26. On October 11, 2023, the complainant participated in a special education mediation agreement that states the "student is permitted to use a personally provided assistive technology device as set forth in the student's IEP dated March 28, 2023, consistent with MCPS Personal Mobile Device Policy and the MCPS Assistive Technology Guide."
27. On October 12, 2023, there was email correspondence provided from an IEP team member to the student's classroom teachers, informing them that MCPS has made a "decision to allow [the student] to utilize his "AirPod Pros" during the school day, as his family has advocated for since the fall." The email specifies that the student is allowed to use his "AirPod Pros during independent work time, and not during instruction/directions." The email informs the staff that the student may need "support recognizing this distinction." The email correspondence also informs the staff that while using the "AirPod Pros, [the student] will be disconnected from his iPhone/music." The IEP team member instructs the school staff to "follow the guidelines" and "re-familiarize" themselves with the student's IEP accommodations and supports listed on his Snapshot. The IEP team member also reminds the student's teachers to "ensure [they] are providing all of [the student's] accommodations and supports."
28. On October 31, 2023, via email, the complainant requested an "immediate meeting of the IEP team" to address the "failure to provide accommodations outlined in IEP, including the use of Assistive Technology" and the "violation of Civil Rights under 34 CFR 100.7(e)." The complainant provided a list of requested IEP meeting participants and confirmed receipt of his request. The email correspondence also stated, "Per MCPS policy, [the complainant] requested an expedited meeting to address 'Meeting other needs of the student to ensure the provision of a free and appropriate education (FAPE).'"
29. On October 21, 2023, the complainant received acknowledgement of his request and was informed that the school team would work on scheduling an IEP meeting. Additionally, the complainant was told that he could request a meeting with specific staff members.
30. On October 31, 2023, the school staff member informed the complainant that the school team was available on November 20, 2023, November 21, 2023, November 27, 2023, and November 28, 2023.
31. On October 31, 2023, the complainant responded, expressing that none of the proposed dates worked for him. He also conveyed concern, stating that he had requested an "immediate" meeting, and the proposed dates were "three weeks away."
32. On October 31, 2023, the school staff member asked for a day and time that worked for the complainant's family and informed him that the school has "30 days to schedule IEP meetings when requested."
33. On October 31, 2023, the complainant received an email from a school staff member inviting him and the student to an IEP meeting on November 16, 2023. The purpose of the meeting was stated as "to consider post-secondary goals and transition services" and an "IEP Amendment Meeting."

34. On October 31, 2023, the complainant stated that he waived the "10 calendar day advance notice" requirement due to an expedited meeting to address urgent needs related to the provision of a free and appropriate public education, as allowed by "8-405,b,2,iii of Maryland code."
35. The complainant and the school team determined the meeting would take place on November 16, 2023.
36. On November 9, 2023, the complainant received email correspondence titled "Draft Amendment IEP" from an IEP team member. The email provided him with a copy of the meeting invitation for the scheduled meeting on November 16, 2023, along with a draft amendment IEP, quarterly teacher reports, and additional links that the complainant is required to review for the upcoming IEP meeting.
37. On November 9, 2023, the complainant replied to the email correspondence he received from the school staff member, reiterating that he had requested an IEP on October 31, 2023, "solely to address his concerns." The complainant informed the staff member, "Anything other than the above items are not to be on the agenda, and our waiver of 8-405,b,2,iii of Maryland code does not apply since the items MCPS wishes to address are not 'to address urgent needs to address the provision of a free appropriate public education.'" The complainant emphasized that if the IEP team wanted to update the IEP, they would need to schedule another meeting. He also stated that he would not participate in any meeting until the meeting he requested on October 31, 2023, took place.
38. On November 9, 2023, the complainant received a response to the rebuttal email from an IEP team member. The team member informed the complainant that the present levels of performance and draft IEP had been updated, along with the progress reports. Furthermore, the team member stated, "the IEP team will be happy to address the concerns outlined: 1. Failure to provide accommodations outlined in IEP, including the use of Assistive Technology 2. Violation of Civil Rights under 34 CFR 100.7(e)."
39. On December 1, 2023, the complainant received an email from a school staff member inviting him and the student to an IEP meeting scheduled for December 20, 2023. The purpose of the meeting is to "review existing information to determine the need for additional data," "review and if appropriate, revise the IEP," "consider reevaluation to determine need for additional data, determine services, and/or determine continued eligibility," and "consider postsecondary goals and transition services."
40. On December 1, 2023, the complainant responded to the school staff, stating, "At this time, we will not be participating in any IEP meeting and request that any requests for IEP meetings be delayed until the current issues are adjudicated for the Due Process Violation that is in Progress. Continuing to move forward with this meeting will be treated as an attempt to bypass the State mandated process for handling Due Process complaints."
41. On December 14, 2023, the complainant received email correspondence titled "Draft IEP" from an IEP team member. The email provided him with a copy of the meeting invitation for the scheduled meeting on December 20, 2023, along with a draft IEP, secondary teacher reports, and additional links that the complainant is required to review for the upcoming IEP meeting.
42. On December 14, 2023, the complainant responded, stating that he would not participate in any meeting until the "current Due Process violation" was settled.

43. On December 14, 2023, an IEP team member responded to the complainant, encouraging him to still meet at the requested time. The complainant was informed that the school team had assembled the IEP team members he requested and would hold the meeting to “address his concerns.”
44. On December 14, 2023, the complainant responded to the IEP team member, stating, "If you are holding this meeting to comply with our request, then the notice meeting must show under the 'purpose of this meeting' must list and show the request reason in our request to legally comply with our request." He informed the IEP team member that he would await an updated email and notice to respond to.
45. On December 21, 2023, the complainant withdrew his Due Process complaint.
46. On December 21, 2023, there was email correspondence between the complainant and a school staff member. The communication was prompted by the student informing the complainant that the teacher did not allow the use of a calculator on his phone during a test, as well as threatening to give a “zero” for the test. The student communicated that the calculator use was specified in their IEP. The email highlighted the student required the use of PMD following a “special education Mediation Agreement, MCPS Assistive Technology Guide, and MCPS Regulation COG-RA.”
47. On December 21, 2023, an email correspondence was provided from an IEP team member to the student’s teaching and supporting staff. The email informed the school team that "as a result of an MCPS special education mediated agreement, [the student] is permitted to use PMD to provide his accommodations and supplementary aids and services. This includes his “AirPods, Apple computer, cell phone, and Apple Watch.” This agreement supersedes the school’s PMD policy." The email emphasized that the use of his PMD meets his accommodations of a “word processor, spell check, calculator, audiobooks, and noise-canceling headphones.” Furthermore, the email conveyed to the teaching staff that the student “may not use PMD for non-instructional purposes during class.”
48. On January 3, 2024, the complainant received an email from a school staff member inviting him and the student to an IEP meeting scheduled for January 25, 2024, and January 30, 2024. The purpose of the meeting is to "review existing information to determine the need for additional data," "review and, if appropriate, revise the IEP," "consider reevaluation to determine the need for additional data, determine services, and/or determine continued eligibility," and "consider postsecondary goals and transition services."
49. MCPS follows the "Regulation COG-RA Personal Mobile Devices" Policy, which defines technology as "Any non-MCPS issued device used to send or receive data via voice, video, or text," encompassing items such as tablets, laptops, headphones, smartwatches, phones, and E-readers. The policy includes exceptions, specifying that "students with an IEP or 504 Plan special needs, learning differences, or disabilities may use the PMD to support or provide an accommodation service for the student’s special need."
50. On January 4, 2023, the MCPS submitted to MSDE an “Unique Accommodation Request Form” requesting testing accommodations for the Maryland Comprehensive Assessment Program (MCAP assessment) in English Language Arts for the Spring 2024. The requested accommodations include "Use of a personally provided cell phone to meet calculator accommodations, the use of a personally provided “MacBook”, and the use of personally provided “AirPods” to meet noise-canceling headphones accommodation." The request form states the data or evidence used to support the need for accommodation is “the IEP identifies the need for [the student] to have access to a calculator and

noise canceling headphones. The use of the personally provided devices to meet the needs is the request of the parent/student". In addition, the request form states the student is "permitted the use of personally provided technological devices to meet his academic needs" during instruction, classroom assessments, benchmark assessments, and or other district assessments.

51. There is no documentation of the student being disciplinary removed from classroom-based instruction due to the use of a personal assistive technology device.

CONCLUSIONS

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND ACCOMMODATIONS

The MCPS' position that the terms of the mediation agreement did not impact the student's IEP are inconsistent with the IEP team's actions. In this case, there was a mediation agreement that clarified certain terms of the student's IEP and enforced MCPS policy. MCPS staff informed the student's teachers of the changes to the student's IEP through multiple email communications and made multiple attempts to convene an IEP team meeting to amend the student's IEP. The MCPS also submitted a form documenting the terms of the mediation agreement into the Maryland On-Line IEP system requesting a Unique Accommodation for the student. The team, through their actions, communicated the IEP changes to the student's teachers; and they submitted the changes so the student would be able to use the revised accommodations on state and county assessments. They attempted to convene an IEP team meeting to document the changes on the IEP. Unfortunately, the meeting did not occur. Also unfortunately, MCPS did not inform the parent of any possible impact that failing to meet to document the changes on the student's IEP may have, and MCPS failed to meet to make the necessary changes without the parent when they could not convince him to attend (34 CFR §300.322(d)).

Based on Findings of Fact #27 through #30, #34, #37 through #39, #42 through #51, MCPS has not ensured that the student has been provided with the use of his accommodations as required by the Individualized Education Program (IEP) since March 28, 2023, in accordance with 34 CFR §§300.101 and .323(d). Therefore, this office finds a violation with respect to this aspect of the allegation.

ALLEGATION #2: ADDRESSING PARENT CONCERN

Based on the Finding of Fact #1-#6, #29- #46, MSDE finds that the MCPS attempted to ensure that the IEP team addressed the parent's concerns about the student's use of assistive technology and violation of civil rights under 34 CFR §100.7(e) since October 31, 2023, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur.

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 assistance² activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, MSDE

²The complainant also alleges that MCPS failed to address his concerns related to violations of his civil rights under 34 CFR §100.7(e). MSDE does not have authority under the IDEA to investigate allegations of discrimination and retaliation. The complainant may file a complaint with the U.S. Office for Civil Rights.

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.³ 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. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.⁴ Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student-Specific

MSDE requires the MCPS to provide documentation, by April 30, 2024, that the IEP team has convened to update the IEP to reflect the student's use of PMD.

MSDE requires the MCPS to provide documentation by May 31, 2024, that the IEP team has convened and determined whether the violation related to not updating the student's IEP 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.

The MCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains 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.

³ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

⁴ MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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 and Special Education Services

AH/sj

c: Ms. Monifa B. McKnight, Superintendent, MCPS
Ms. Diana K. Wyles, Associate Superintendent, MCPS
Ms. Eve Janney, Compliance Specialist, MCPS
Mr. Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], Principal, MCPS
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Ms. Stephanie James, Complaint Investigator, MSDE