

February 5, 2024

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BGS Law
110 N. Washington Street, Suite 404
Rockville, Maryland, 20850

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

RE: [REDACTED]
Reference: #24-099

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 December 8, 2023, MSDE received a complaint from Ms. Jamie E. Seaton, 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 did not ensure that the IEP team considered the parent information and concerns at the IEP meeting since December 2022, in accordance with 34 CFR §300.324.
2. MCPS did not develop and implement an Individualized Education Program (IEP) that addresses the student's identified behavior, mathematics problem-solving, and reading needs since December 2022, in accordance with 34 CFR §300.324.
3. MCPS has not ensured that the student has been consistently provided with a dedicated aide required by the Individualized Education Program (IEP) since December 2022, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 12 years old and is parentally placed at [REDACTED]. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDING OF FACTS

1. The IEP in effect in December 2022 was developed on October 20, 2022. The IEP reflects the student's disability impacted the following areas: Math Calculation, Reading Comprehension, Reading Phonics, Speech and Language Expressive Language, Speech and Language Receptive Language, Written Language Content, Written Language Expression, Self-management, and Fine Motor. The IEP includes goals in Reading Phonics, Reading Comprehension, Math Calculation, Written Language Expression, Written Language Content, Self-management, Speech and Language Receptive Language, Speech and Language Expressive language and Fine Motor. The IEP required classroom instruction for twenty-two hours and thirty minutes per week outside of the general education setting. The IEP required classroom instruction for eight hours and twenty minutes per week inside the general education classroom. The IEP required Occupational Therapy (OT) as a related service outside of the general education classroom for one hour per month. The IEP required Speech as a related service for three hours per month outside of the general education setting. The IEP reflected the IEP team recommended placement in an MCPS Learning Center. The IEP required a Behavior Intervention Plan (BIP).
2. The IEP required the following instructional supports within the supplementary aids, services, and program modifications:
 - a. As needed - post it notes for writing; and
 - b. Daily - personal spelling journal, Adapted OT paper, check for understanding, break and schedule options for [the student] during his break, repetition of directions, monitor independent work, have student repeat and/or paraphrase information, frequent and/or immediate feedback, allow use of organizational aids, and allow use of manipulatives.
3. The IEP required the following program modifications within supports supplementary aids, within the services and program modifications:
 - a. Daily - break down assignments into smaller units, use pictures to support reading passages whenever possible.
4. The IEP required the following social/behavioral supports supplementary aids, within the services and program modifications:
 - a. As needed - use of small personal objects;
 - b. Daily - reinforce positive behavior through nonverbal verbal communication, provide manipulatives and or sensory activities to promote listening and focusing skills, encourage/reinforce appropriate behavior in academic and non academic settings, encourage student to ask for assistance when needed, adult support, use of language "let's look at that again", and behavior chart.

5. The IEP required the following physical/environmental supports within supplementary aids, services and program modifications to address:
 - a. As needed - flexible work location.
6. The IEP required goals in Reading Phonics, Reading Comprehension, Math Calculation, Written Language Expression, Written Language Content, Self-management, Speech and Language Receptive Language, Fine Motor, and Speech and Language Expressive Language.
7. There is documentation that the student was provided with daily adult support as required by the IEP from December 2022 through June 2023.
8. On February 10, 2023, the parent emailed MCPS confirming her participation in an IEP meeting scheduled to take place on March 2, 2023. The parent expressed concern with the Secondary Autism Resources Services (ARS) program at Gaithersburg Middle School and expressed that [REDACTED] is the most appropriate placement for the student.
9. On February 10, 2023, MCPS responded to the parent informing her that on March 2, 2023, the team will review evaluation results. The middle school placement meeting will occur later in the spring.
10. On February 20, 2023, the MCPS School Psychologist emailed the parent requesting that she share current medications and any outside support that the student receives.
11. On February 20, 2023, the parent emailed the MCPS School Psychologist the prescribed medication that the student was taking, Occupational Therapy twice per week, tutoring once per week, ABA services for ten hours per week, and Art/play therapy twice per month.
12. On February 23, 2023, MCPS emailed a copy of the school evaluation. The parent confirmed receipt of the report.
13. On March 2, 2023, the IEP team met for the purpose of reviewing the educational and psychological assessments. The team reviewed the Woodcock Johnson IV (WJ-IV).
 - a. Reading score average to low average range;
 - b. Math scores very low to low range;
 - c. Written Language scores very low to average range.
14. On March 2, 2023 the IEP team reviewed the Psychological - review of school records, Reynolds Intellectual Assessment Scales (RIAS-2), Adaptive Behavior Adaptive Systems - III (ABAS-3), Autism Spectrum Rating Scales (ASRS), Conners Comprehensive Behavior Rating Scales (CBRS)
 - a. RIAS- 2 reflects verbal and nonverbal skills low average range of development, memory skills low range, visual and verbal memory skills below average, processing skills in the low range, and visual and verbal processing speed in the below average range of development;
 - b. ABAS- 3 reflected a general adaptive composite (GAC) skill in the low average range in the school setting, and a low range in the home setting;

- c. ASRS reflected that Autism is the appropriate coding for education purposes;
 - d. CBRS reflected student has typical functioning with his ability to follow rules and his behavior, the parent's academic functioning scales reflects concerns with math and literacy, the teacher's academic functioning scale reflected mild concerns, social perspective was not identified as an area of concern in the home and in school, the student demonstrated some rigidity in the school setting, and the rating scales reflect typical function in the area of emotional distress.
15. The Psychological report reviewed on March 2, 2023 reflects the student would continue to benefit from close adult support and supervision. The report also states co-taught classes should be considered to ensure that an additional adult is available.
16. On May 26, 2023 met for the purpose of discussing placement. On May 26, 2023, the IEP team revised the IEP. The revised IEP requires:
 - a. Daily adult support: "[student] requires adult support to provide proximity control, frequent check-ins, verbal/visual supports, warnings before transitions and reminders of expectations in all classes from May 26, 2023 through October 19, 2023;
 - b. Four fifty-minute sessions of classroom instruction outside of the general education classroom per day to address Math, Reading, English, and Resource from August 28, 2023, through October 19, 2023;
 - c. Three forty- five minutes sessions per month of Speech and Language therapy, two thirty-minute sessions of Occupational Therapy per month outside of the general education setting, and transportation as a related service from August 28, 2023, through October 19, 2023; and
 - d. Implementation of the IEP within the ARS program at [REDACTED] for the 2023-2024 school year.
17. On June 6, 2023, the parent emailed MCPS inquiring why the one-to-one language is no longer included in the justification of the adult support. On June 6, 2023, the MCPS responded to the parent informing her that the wording was changed per the direction of the Special Education Supervisor.
18. In October 2023, the parent expressed concerns regarding the security of the student's educational file. MCPS responded to those concerns.
19. From December 2022 through August 2023, the IEP required placement in a Learning Center outside of the student's home school. The programming at the Learning Center is for diploma-bound students who receive instruction based on grade-level content. This programming ensured the student had access to non-disabled peers during specials, recess, and lunch. Built into the program are learning centers, sensory breaks, and the use of a sensory room.
20. There is no documentation that the MCPS was provided with information from the parents for the IEP team to consider since December 2022.
21. The student was withdrawn from MCPS on August 24, 2023, following receipt of a letter from the complainant that the student will be attending [REDACTED] for the 2023-2024 school year. The letter reflects the student is unenrolling from MCPS because the parents are not in agreement

with placement in the ARS program at [REDACTED] and with the removal of the one-to-one adult support from the student's IEP.

DISCUSSION/CONCLUSION:

Allegation #1: Consideration of parent information and concerns at IEP meetings since December 2022

Based on the findings of Facts #9 through #13 and #18 through #21, MSDE finds MCPS responded to questions asked by the parent, and there was no information presented to MCPS by the parent for the IEP team to consider or address at the IEP meeting since December 2022, in accordance with 34 CFR §300.324. In this case, MCPS provided responses to the parent's questions and concerns. The complainant alleges that during an IEP team meeting on May 26, 2023, the MCPS informed the parent that if the student makes progress with services, those services will be removed. The parent disagreed with the MCPS responses and left the meeting. Although one parent left the meeting, the second parent was still present and engaged further with the IEP team. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #2: Development and implementation of IEP

In this case the complainant alleges that the student's current independent level of performance is a reflection that MCPS did not develop or implement an IEP to ensure FAPE. There is no documentation that the IEP team was provided with information of areas of concern that were unaddressed or in which the student failed to make progress.

Based on Findings of Facts #1, #6, #13, #14 and #15, MSDE finds that MCPS developed and implemented an IEP that addresses the student's identified behavior, mathematics, and reading needs since December 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Allegation #3: Provision of Dedicated Aide

Based on Findings of Facts #4, #7 and #15, MSDE finds, MCPS provided the student with daily adult support as required by the IEP since December 2022, in accordance with 34 CFR §§300.101 and .323. The MCPS report reviewed on March 2, 2023 reflects the student would continue to benefit from adult support. Although the IEP team determined that the adult support services changed on May 26, 2023, the student continued to receive support from the one-to-one adult support through the end of the school year as required by the IEP. Therefore, this office finds that a violation did not occur with respect to this aspect of the 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.

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MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner. 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. Ms. Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

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 and 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], Principal, [REDACTED]
Ms. Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Ms. Diane Eisenstadt, Compliance Specialist, MSDE
Ms. Rabiātu Akinlolu, Complaint Investigator, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE