

February 9, 2024

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

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

RE: [REDACTED]
Reference: #24-101

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.

ALLEGATION:

On December 12, 2023, MSDE received a complaint from Ms. Jessica Williams, the “complainant,” on behalf of her client, 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. The MCPS did not ensure that proper procedures were followed when responding to a request for an Independent Educational Evaluation (IEE) obtained at the public expense in October 2023, in accordance with 34 CFR §300.502 and Maryland Education Article § 8-405.
2. The MCPS did not ensure that proper procedures were followed when responding to and conducting an evaluation of the student since July 2023, in accordance with 34 CFR §§300.303 - .306 and COMAR 13A.05.01.06.
3. The MCPS did not provide the parent with prior written notice of the decision to reject her proposal for a reevaluation since July 2023, in accordance with 34 CFR §300.503.
4. The MCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the March 25, 2022, IEP team meeting at least five (5) business days before the scheduled meeting on October 20, 2023 and October 30, 2023 IEP meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010).

5. The MCPS did not ensure the proper procedures were followed when responding to requests to amend, inspect, and review the student's educational record during the October 20, 2023 and October 30, 2023, IEP meeting, in accordance with 34 CFR §§300.613.

BACKGROUND:

The student is 16 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 and related services.

FINDINGS OF FACT:

1. On July 18, 2023, the IEP team met to discuss the parent's concerns regarding programming and placement. The written summary of the IEP meeting reflects that during the meeting, the IEP team discussed the student's present level of performance and proposed to conduct an informal assessment to aid in modifying the student's present level of performance "if needed." Throughout the discussion, the IEP team agreed to conduct an updated educational assessment per the request of the complainant since the student's last educational assessment was "more than one year ago." At this meeting, there was no psychologist or occupational therapist present, and it was decided that they would reconvene to plan a reevaluation. The complainant also proposed a "psychological assessment," an "occupational assessment," a "full transition assessment," and a meeting to discuss the Change in School Assignment (COSA) process. Due to the absence of a psychologist and an occupational therapist, the IEP team decided to hold a reevaluation planning meeting to discuss the request for psychological testing, Occupational Therapy (OT) consult, and a transition assessment. The team proposed a meeting in September to review the IEP and to update the IEP following the educational assessment. It was determined that they would invite the psychologist to discuss the parents' concerns, an occupational therapist to discuss the need for an informal occupational assessment, a transition support teacher to discuss the transition process, and DORS ETS services (five pre-employment skills). A county representative would reach out to the parent to explain the criteria and application for COSA, as agreed upon during the meeting.
2. There is documentation that reflects that on July 25, 2023, the parent received a copy of the Prior Written Notice (PWN) from the IEP meeting held on July 18, 2023.
3. On July 18, 2023, the parent "electronically signed" a self-made consent form created by the complainant, providing "her informed written consent to evaluate her son to determine his educational needs in the following areas of suspected disability that may require special education services under the Individuals with Disabilities Improvement Act of 2004 or under Section 504 of the Americans with Disabilities Act" requesting assessments in the areas of:
 - a. OT inclusive of Fine Motor and Sensory Processing
 - b. Social Emotional
 - c. Educational
 - d. Age- Appropriate Transition Assessment
4. On August 18, 2023, the parent provided consent to MCPS for the educational assessment the IEP team agreed to during the July 18, 2023 meeting.

5. On October 4, 2023, the IEP team met as a follow up to the July 18, 2023 IEP team meeting, where it was determined a psychologist and OT would be in attendance. During the meeting, the psychologist reviewed the student's most recent psychological assessment, completed on June 15, 2022. They reviewed it "in depth" to ensure the parent "understood" the assessment previously administered to the student. The IEP team determined the student did not require another psychological assessment.
6. During the October 4, 2023 IEP team meeting, the parent and complainant expressed concern regarding the student's inability to tie his shoes. They proposed a new OT assessment since the student was dismissed from receiving OT services in February 2020. The OT reviewed the student's previous OT goals and dismissal report, noting that "services are provided when needed to help students access the curriculum." The IEP team denied the request for an OT assessment, stating that the school team did not have any concerns or data demonstrating a need regarding the student's fine motor abilities as they relate to his educational progress and stated that the student is able to access the Learning for Independence (LFI) curriculum without OT services. However, the parent and complainant disagreed. The IEP team determined they would collect additional data or conduct an informal observation to gather data for the OT.
7. During the October 4, 2023 IEP team meeting, the parent and complainant requested data from the transition teacher. The IEP team learned that paperwork was submitted to the Developmental Disabilities Administration (DDA) using the most recent data from a transition assessment completed in 2022.
8. On October 13, 2023, the parent received the PWN via email from the IEP meeting held on October 4, 2023, noting the IEP team's rejection of conducting an OT assessment.
9. On October 20, 2023, and October 30, 2023, the IEP team met to discuss a Letter of Findings issued on September 9, 2023, to the parent from MSDE. During the meeting, the IEP team reviewed and discussed the speech and language evaluation conducted in March 2023. Additionally, the team reviewed a "status report" that provided progress toward the student's IEP goals.
10. There is no documentation of the complainant requesting a copy of the "status report" or making requests to amend, inspect, and review the student's educational record during the October 20, 2023, and October 30, 2023 IEP meeting. On October 30, 2023, due to inconsistencies in the speech data, the parent received a "corrected report" from the speech pathologist via email, and a "hard copy" was sent home on November 5, 2023, due to the parent's inability to open the email.
11. The PWNs generated after the October 20, 2023, and October 30, 2023, IEP team meetings reflect, "the team determined that although parental consent was not obtained on Appendix A in January 2023, there was not a negative educational impact, since [the student] continued to receive instruction with Alternate Learning Outcomes (ALO).
12. The PWNs generated after the October 20, 2023 and October 30, 2023, IEP team meetings reflect the complainant requested an IEE in the area of OT.
13. On November 16, 2023, the IEP team convened to review the educational assessment that was recommended on July 18, 2023. During the meeting, the team reviewed the Woodcock-Johnson IV (WJ IV) assessment and student performance, considered the existing IEP, and determined they would update the student's IEP. Furthermore, during the meeting, the complainant requested additional

information on other programs available within MCPS, as she feels that the updated testing shows the student's current program is "not meeting his needs."

14. On November 30, 2023, the parent received MCPS' response regarding the request made during the October 20, 2023, and October 30, 2023, meeting for an IEE in the area of OT, where the IEP team refused to conduct an OT evaluation. The notice informed the parent of their right to request an IEE under 34 CFR §§300.502(b). Under COMAR 13A.05.01.14(B), the parent may request an IEE at the public's expense if they "disagree with an evaluation obtained by the public agency." Per the MCPS response, during the meetings held on October 20, 2023, and October 30, 2023, no OT evaluation was recently completed to provide a basis for a request for an IEE. The parent's request for an IEE was denied.
15. On December 6, 2023, the student received a Secondary Transition Picture Interview.
16. On December 14, 2023, the parent received a "Five-day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting" for a scheduled IEP meeting on December 21, 2023, which included a "draft IEP" and "Occupational Therapy Assessments or Assessment Summary."¹
17. On December 21, 2023, the IEP team met to review and revise the IEP as appropriate. The written summary of the meeting reflects that during the meeting, the team reviewed the informal OT observation conducted on November 15, 2023, which was requested during the July meeting. The data from the observation reflects the student has "developed the appropriate writing strategies needed to participate in the curriculum. Therefore, no concerns were noted in the area of fine motor skills." MCPS rejected the option to complete a formal OT assessment. The parent and complainant disagreed with the decision not to administer a formal assessment.
18. During the December 21, 2023, IEP meeting, the parent and complainant requested additional informal assessments for present levels in phonics, reading comprehension (retell), and written language. The IEP team agreed to gather more informal data in the requested areas. The PWN generated after this IEP team meeting reflects that the IEP team would meet to update the student's annual IEP after the winter break and would review the additional informal data.
19. On February 2, 2023, the IEP team met to update the student's annual IEP. During the meeting, MCPS reviewed classroom based phonic assessments, an informal reading comprehension (reading re-tell) assessment, and a dolch word assessment as requested in the initial meeting for the student's 2023 - 2024 IEP on December 21, 2023. Due to time constraints, the meeting was proposed to continue at a future date. The projected annual review date was January 25, 2024.

CONCLUSIONS

ALLEGATION #1

RESPONSE TO A REQUEST FOR AN IEE

Parents of a student with a disability have the right to obtain an independent educational evaluation (IEE) at public expense each time the public agency conducts an evaluation with which the parent disagrees in accordance with regulations adopted by the Department (34 CFR §300.502). The local school system shall

¹ In this case, the parent was provided with a copy of the informal OT observation report.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

In order to provide a student with a Free Appropriate Public Education (FAPE), a public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP, as appropriate. (34 CFR §300.324).

Based on Finding of Fact #19, MSDE finds that the MCPS did not ensure that the IEP team convened to review the student's IEP before January 25, 2024, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on Finding of Fact #19, MSDE finds that MCPS has convened an annual review IEP team meeting and is in the process of scheduling the continuation of the meeting. No further corrective action is warranted.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below. MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with the 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.³ Ms. Alison Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

School-Based

MSDE requires MCPS to provide documentation by May 31, 2024, of the steps taken to ensure that the violation does not recur at [REDACTED], specifically staff development, including tools to aid in the provision of providing accessible copies of each assessment, report, data chart, draft IEP, or other documents the IEP team plans to discuss at an IEP team five days before the meeting, proper evaluation procedures, and ensuring all IEPs are reviewed at least annually. Documentation of the professional development must be provided to the MSDE by June 15, 2024, including the participants of the session.

² 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.

³ 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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February 9, 2024
Page 7

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/sj

c: Dr. Monique Felder, Interim 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
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Ms. Stephanie James, Complaint Investigator, MSDE