

February 16, 2024

Ms. Ronetta Stanley  
Loud Voices Together  
P.O. Box 1178  
Temple Hills, Maryland 20757

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

RE: [REDACTED]  
Reference: #24-106

Dear Parties:

The 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 18, 2023, MSDE received a complaint from 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. The MCPS has not developed an Individualized Education Program (IEP) that addresses the student's social, emotional needs since November 2023, in accordance with 34 CFR §§300.101 and .324.
2. The MCPS has not ensured that the IEP team addressed the parent's concerns regarding the student's progress, skill gaps and placement, since April 2023, in accordance with 34 CFR §300.324, or provided prior written notice of any disagreements with parent requests regarding progress, skill gaps, or placement, since April 2023, in accordance with 34 CFR §300.503.
3. The MCPS did not ensure that the parent was provided with quarterly reports of the student's progress toward achieving the annual IEP goals since April 2023, in accordance with 34 CFR §§300.320 and .323.

4. The MCPS did not provide the parent with a copy of the completed IEP document and prior written notice within five business days after the IEP team meeting on December 8, 2023, in accordance with COMAR 13A.05.01.07.
5. The MCPS did not ensure that a duly constituted IEP team was assembled, or that the invitations to the IEP team meetings correctly identified the participants of the IEP team meetings on August 14, 2023, and November 16, 2023, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.

**BACKGROUND:**

The student is 12 years old and is identified as a student with a specific learning disability under the IDEA. She attends [REDACTED] in the Learning and Academic Disabilities (LAD) program and has an IEP that requires the provision of special education services and related services.

**FINDINGS OF FACT:**

**ALLEGATIONS #1 and #2: Social Emotional Concerns and Addressing Parent Concerns Regarding Student's Skill Gaps, Progress, and Placement**

1. The student's current IEP was developed on April 24, 2023. In April the student was attending [REDACTED], a comprehensive elementary school, where she was in the 5th grade. The IEP identifies the areas affected by the student's disabilities as: math calculation, math number sense, math problem solving; reading comprehension, reading fluency, reading phonemic awareness; written language expression; and hearing.
2. The student's most recent psychological assessment was completed by MCPS in February 2023. Cognitive and executive functioning measures were completed. There was no suggestion of social/emotional difficulties, nor were any assessments completed to determine whether there were any concerns.
3. The student's present levels of academic achievement and functional performance (PLAAFP) on her April 24, 2023, IEP<sup>1</sup> identify her phonemic awareness as being at the pre-first grade level, her reading fluency at the first grade level, reading comprehension at the second grade level, math calculation and math problem-solving at the kindergarten to second grade level, written language expression at the first grade level, and math number sense at the second grade level. The student is also identified as having a unilateral hearing loss in her left ear. She has average fine motor precision, integration, and dexterity as compared to her same age peers.
4. The parental input on the April 24, 2023, IEP reflects concerns about the widening gap in the student's performance levels, her abilities, and her peers.

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<sup>1</sup> The student's 6/8/22 PLAAFP identifies her reading phonics level as 1st grade, reading fluency level as 1st grade, written expression levels as 1st grade, and math levels as "below grade level". She received grades of C's and D's on her report cards.

5. The student's April 24, 2023, IEP includes the implementation of accommodations and supplementary aids and services that allow the student to access grade level content. The student uses text to speech software, gets directions read aloud and repeated as needed, uses graphic organizers, gets frequent breaks, receives small group instruction, has closed captioning, calculation devices, scribe, constructed response speech to text, monitoring of test responses, and extended time. She also receives copies of notes, reteaching and small group instruction, use of a word bank, alternative ways to demonstrate learning, peer tutoring, monitoring of independent work, checking for understanding, use of word lists, sentence frame starters, resources to support spelling, math reference sheets, frequent and immediate feedback, repeat or paraphrase information, allow the use of manipulatives, weekly home school communication, chunking of texts, limit amount of reading, break down assignments into smaller units, daily checking of her hearing aid, preferential seating, audiologist consultation, and consultation from the itinerant teacher of the Deaf and Hard of Hearing.
6. The student was found eligible to participate in extended school year (ESY) services.
7. The student has goals in phonemic awareness, math problem solving, math calculation, and written language expression.
8. The student receives 3 hours and 45 minutes of specialized instruction weekly outside of the general education classroom for resource support. She receives 22 hours and 30 minutes of specialized instruction inside of the general education classroom each week for English, science, world studies, math, and reading intervention. The student was recommended to receive 15 hours of specialized instruction outside of the general education setting for ESY.
9. According to the prior written notice (PWN) from the April 24, 2023, IEP team meeting, when the student's April IEP was developed, the complainant and the parent were in disagreement with the school-based team about the proposed service hours. They felt that the student required specialized instruction for the entire reading/language arts block outside of the general education classroom. They were also concerned that there was no reading comprehension goal. The team agreed to add a reading comprehension goal.
10. The student's April 24, 2023, IEP does not include a reading comprehension goal.
11. The student's schedule is an A day/B day block schedule, with 90 minute classes that meet every other day, with the exception of math that meets daily. The student's instruction in math, English, science and social studies is in the general education classroom in a co-taught structure. All the student's co-taught classes have a general education teacher and a special education teacher as instructors.
12. The student participates in Developmental Reading HMH as her intervention for 90 minutes every other day. Data reflects that the student is making progress within the intervention.
13. The MCPS convened an IEP team meeting on August 14, 2023. The purpose of the meeting was to review the student's IEP, and if appropriate, make revisions. The purpose also notes that the meeting was to "review parental concerns and advocate observations." Participants were listed as the assistant principal of [REDACTED], the special education teacher from [REDACTED], the school psychologist, and the IEP chair from [REDACTED].

- ██████████. The complainant was also listed as a participant. There was no general education teacher of the student listed on the invitation.
14. The PWN from that meeting reflects the parent's continued concern about the gaps in the student's learning, the concern that reading intervention every other day is not enough, and concerns about the fidelity of service delivery. The team did not address these concerns in the PWN from that meeting but agreed to convene a 60-day review and added weekly home/school communication to the student's IEP.
  15. An IEP team meeting was convened on November 16, 2023. The purpose of the meeting was to review, and if appropriate, revise the IEP. Participants invited were the assistant principal of ██████████, the teacher of the Deaf and Hard of Hearing, the student's counselor, the student's case manager, and the IEP chair. The parent and the complainant were also listed on the invitation. There was no general education teacher of the student listed on the invitation.
  16. The PWN from the November 16, 2023, IEP team meeting reflects that the team proposed the following actions: reconvene with an area supervisor or instructional specialist to discuss whether the student's placement should be changed; continue placement in the LAD program; add the supplementary aid of speech to text to the student's IEP; and combine the math calculator and number sense goals. The parent expressed her concern that the area supervisor was not present to discuss a central IEP (CIEP) referral for a more restrictive placement. She also expressed concern about the student's grades and the work the student is able to do at home. The parent requested additional services outside of the general education setting. The recording from the meeting indicates that the team could not discuss additional services outside the general education setting without an area supervisor present. There is no documentation of a response to those concerns in the PWN or the recording from that meeting.
  17. In response to a conversation between the student's case manager and the parent about the student's increasing anxiety about her academic difficulties, the student's counselor "checked in" with her on November 16 and 21; December 1, 15, and 21; January 11 and 26; and February 2.
  18. The IEP team convened on December 8, 2023, to review and revise, if appropriate, the student's IEP. The invitation to that meeting lists participants as the assistant principal of ██████████, the teacher of the Deaf and Hard of Hearing, the school counselor, the IEP case manager, the special education supervisor, the instructional specialist, and the IEP chair. The parent and the complainant were also listed as invitees. There was no general education teacher of the student listed on the invitation.
  19. The PWN from the December 8, 2023, IEP team meeting reflects that the team proposed to revise the reading goals to make them achievable within the IEP cycle, reconvene in early January to review the student's progress, and request consultation from the specialized instruction team. The complainant and parent raised the concern that the student was not making progress and required more intensive support. The parent again requested a CIEP referral. They also requested compensatory recovery services and reimbursement for tutoring. The team did not agree and felt that the student was making progress based on teacher reports, grades, work samples, MAP scores, and intervention reports.

20. The audio recording from the December 8, 2023, IEP team meeting reflected that the team did not agree to send the case to the central IEP team as the [REDACTED] staff felt that the student was accessing grade level curriculum successfully with the accommodations provided. However, the team agreed that the student's reading goals were not appropriate and had not been appropriate since the student entered [REDACTED], which the complainant had raised during the August and November IEP team meetings but had not been addressed. The special education supervisor "charged" the team to revise the reading goals and objectives and meet again in January.
21. The IEP team convened on January 26, 2024. There is no purpose listed for the meeting. The following participants were invited: the assistant principal of [REDACTED]; the special education supervisor; the IEP chair; the general education teacher; the counselor; and the case manager. The complainant and the parent were also invited.
22. The PWN from the January 26, 2024, IEP team meeting reflects that the IEP team agreed to add "phonic" awareness, reading comprehension, reading fluency, reading vocabulary, and reading phonics; align all the PLAAFPs in the IEP to the goals; add a social emotional PLAAFP focusing on the impact of the student's struggle in reading; update the PLAAFPs with formal and informal assessment data, including without text to speech accommodation; and send home second quarter progress notes. The parent and complainant again requested a CIEP meeting.
23. The special education supervisor was present at the January 26, 2024, IEP team meeting. The recording from the meeting reflects supervisor directly addressed the complainant's and parent's concerns regarding the student's progress, her grade level in reading, and the services the student is receiving. The supervisor's recommendation was to complete informal assessments, revise the student's grade level in phonemic awareness on the IEP, and convene again following completion of the assessments.

## **CONCLUSIONS**

### **ALLEGATION #1: Addressing the Student's Social Emotional Needs**

A review of the student's psychological assessments and past IEPs reflects that there has been no basis to suspect social emotional concerns. The student's parent allegedly had an informal conversation with the student's case manager who immediately addressed the concern with the student's counselor. The IEP team scheduled a meeting to discuss the concern and consider adding supports to the student's IEP.

Based on Findings of Fact #2, #17, and #22, MSDE finds that the MCPS has appropriately addressed the student's social, emotional needs since November 2023, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did not occur with respect to this allegation.

### **ALLEGATION #2: Addressing Parent Concerns Regarding Student's Skill Gaps, Progress, and Placement**

The [REDACTED] IEP team met with the complainant and parent in August, November, December, and January. The parent consistently shared concerns about the student's gap in reading, her desire not to have the student solely reliant on assistive technology, and her concerns that the services the student is receiving are not intensive enough for the student to make progress and narrow the gap. The parent requested a referral to the CIEP and/or more time outside of the general education setting. She also shared concerns that

reading intervention every other day was not sufficient. The complainant shared concerns that the reading goals were not appropriate for the student's current level of performance months before it was acknowledged by the team.

Based on Findings of Fact #3, #4, #5, #8, and #9-#16, MSDE finds that the MCPS has not ensured that the IEP team addressed the parent's concerns regarding the student's progress, skill gaps and placement, since April 2023 through November 2023, in accordance with 34 CFR §300.324, or provided prior written notice documenting any disagreements with parent requests regarding progress, skill gaps, or placement, since April 2023 through November 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did occur with respect to the timeframe for this allegation.

Based on Findings of Fact #18-#23, MSDE finds that the MCPS has ensured that the IEP team addressed the parent's concerns regarding the student's progress, skill gaps and placement, since December 8, 2023, in accordance with 34 CFR §300.324, and provided prior written notice documenting any disagreements with parent requests regarding progress, skill gaps, or placement, since December 8, 2023, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did not occur with respect to the timeframe for this allegation.

#### **FINDINGS OF FACT:**

#### **ALLEGATIONS #3, #4 and #5: Quarterly Progress Reports, Documents 5 Days After the December 2023 IEP Team Meeting, and Duly Constituted IEP Team Meeting on August 14, 2023, and November 16, 2023**

24. There is no documentation that MCPS completed quarterly progress reports for the third or fourth quarter for all of her goals, and some of her goals only have one quarter of progress completed on her prior IEP.
25. There is documentation that the documents from the December 8, 2023, IEP team meeting were sent to the parents on December 22, 2023.
26. The following individuals were invited to the August 14, 2023, IEP team meeting: the assistant principal of [REDACTED], the special education teacher from [REDACTED], the school psychologist, and the IEP chair from [REDACTED]. The complainant was also listed as a participant. The meeting proceeded with the complainant, the parent, the IEP chair from [REDACTED], and the school psychologist.
27. The following individuals were invited to the November 16, 2023, IEP team meeting: the assistant principal of [REDACTED], the teacher of the Deaf and Hard of Hearing, the student's counselor, the student's case manager, and the IEP chair. The parent and the complainant were also listed on the invitation. The meeting proceeded with the assistant principal, the student's counselor, her science teacher, her reading intervention teacher, and the IEP chair.

#### **CONCLUSIONS:**

#### **ALLEGATION #3: Quarterly Progress Reports**

Based on Finding of Fact #24, there is no documentation that MCPS completed progress reports for quarters 3 and 4, and in some cases quarter 2. Accordingly, MCPS did not ensure that the parent was

provided with quarterly reports of the student's progress toward achieving the annual IEP goals since April 2023, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds a violation with respect to this allegation.

**ALLEGATION #4: 5 Day Documents Following the Meeting**

Documentation reflects that the parent was sent documents from the IEP team meeting held on December 8, 2023, on December 22, 2023. As such, MCPS did not provide the parent with a copy of the completed IEP document and prior written notice within five business days after the IEP team meeting on December 8, 2023, in accordance with COMAR 13A.05.01.07. MSDE finds a violation with respect to this allegation.

**ALLEGATION #5: Duly Constituted IEP Team**

Invitations to both the August 14, 2023, and the November 16, 2023, IEP team meetings do not include a general education teacher of the student. Public agencies must ensure that not less than one general education teacher of the student is a member of the IEP team, and the parent must be informed of who will be in attendance at the meeting. 34 CFR §§300.321 and 322.

In this case, the August 14, 2023, IEP team was not a duly constituted IEP team as it proceeded without a general education teacher. At the November 16, 2023, meeting, a general education teacher was present; however, the meeting invitation did not identify the general education teacher as a participant. Therefore, MCPS did not ensure that a duly constituted IEP team was assembled on August 14, 2023, nor did MCPS ensure that the November 16, 2023, IEP meeting invitation correctly identified the meeting participants, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. This office finds a violation with respect to this allegation.

**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.<sup>2</sup> 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 Sarah Denney, Complaint Investigator, Family Support and Dispute

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<sup>2</sup> 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.

Resolution Branch, MSDE, to ensure the effective implementation of the action<sup>3</sup>. Ms. Denney can be reached at (410) 767-7770 or by email at sarah.denney@maryland.gov.

### **Student-Specific**

MSDE requires the MCPS to provide documentation by March 30, 2024, that the IEP team has taken the following actions:

- a. Convened to consider the parent's concerns, ensure that individuals are present to address the parent's concerns, and that the team has the necessary resources and data to respond to the parent's concerns. The MCPS must ensure that the parent is provided with prior written notice (PWN) of the team's decisions. The PWN must include a description of the action taken or refused, the basis for their decision, the evaluation, information, or data relied on to make their decision.
- b. Ensure the student's IEP includes a reading comprehension goal as required by the PWN in April 2023.
- c. The IEP team determines whether the student requires social/emotional supports to address reported anxiety regarding her learning difficulties and includes those supports on the IEP.

The parent maintains 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 the MCPS to provide documentation by May 1, 2024, that staff at [REDACTED] and [REDACTED] receive professional learning on the following: required IEP team participants, generating proper IEP team invitations, generating proper PWN, responding to parent concerns during IEP team meetings, completing quarterly progress reports, analyzing data to determine meaningful progress, sending documents following the meeting.

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

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<sup>3</sup> 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 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/ab

c: Ms. Monique Felder, Interim Superintendent, MCPS  
[REDACTED], Principal [REDACTED], MCPS  
Mr. Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS  
Ms. Maritza Machias, Compliance Unit, MCPS  
Ms. Alison Barmat, Branch Chief, Family Dispute Resolution, MSDE  
Ms. Sarah Denney, Complaint Investigator, MSDE  
Dr. Paige Bradford, Section Chief, Program Support and Technical Assistance, MSDE  
Ms. Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE