

March 8, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

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

RE: [REDACTED]  
Reference: #24-122

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 January 8, 2024, the MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of her daughter. 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 allegation that the MCPS did not follow proper procedures in the identification and evaluation of the student since August 2023, in accordance with 34 CFR §§300.301 - .311 and COMAR 13A.05.02.13(A).

**BACKGROUND:**

The student is 15 years old and is a student who is suspected of having a disability under the IDEA. She attends the [REDACTED] ([REDACTED]) and her service school is [REDACTED] ([REDACTED]). The student was found eligible for a 504 plan in December 2020 for post-concussive symptoms, musculoskeletal issues, vision issues, posterior vitreous separation in her left eye, and auditory processing learning disorder.

**FINDINGS OF FACTS:**

1. In July 2021, an auditory information processing and speech-language assessment report was developed for the student by a private audiologist and speech-language pathologist who was chosen by the family. Results from the private assessment reflect that the student was found to have an auditory processing disorder and deficits in her semantic language input/receptive abilities and social/pragmatic language

understanding and communication. The report stated that an emotional reaction could occur due to frustrations created by not understanding what is said or from providing an inappropriate response to something that is said due to misunderstanding the content. The report recommended that the student should receive extra time, a preview presented of material, and a speaker who speaks slowly, clearly, and without an accent or dialect when presenting academic material, directions, or instructions to the student. The report recommended providing the student with listening therapy, visualizing and verbalizing training, instruction in everyday speaking and social communication, and pragmatic language. According to the report, all of these therapies can be provided by a speech-language pathologist. Scores from the student's Comprehensive Assessment of Spoken Language - Second Edition (CASL-2) demonstrated that the student scored within the average range on more than half of the assessment subtests. In November 2022, the MCPS developed a speech-language assessment report for the student. Results from the MCPS speech-language assessment reflected that on the Oral Passage Understanding Scale (OPUS), Clinical Evaluation of Language Fundamentals - 5th Edition (CELF-5), and speech-language sample the student scored within the average range. The report also considered the student's grades and classroom observation. The report stated that the student's areas of strength included fluency, articulation, expressive language, sentence comprehension, grammar, nonliteral language, drawing inferences, recalling details, passage synthesis, mean-length utterance, conversational skills, maintaining a conversation, and asking/answering questions. The student's weaknesses included lexical semantics. The report reiterated the findings of the privately conducted assessment which stated that the student's weaknesses negatively impact educational performance in the areas of oral comprehension, reading comprehension, and solving math word problems. The report further stated that additional assessment data being gathered would reveal where other educational needs are present and the impact of those needs.

2. On August 16, 2023, the Individualized Education Program (IEP) team at [REDACTED] met to determine eligibility for the student to receive special education services. According to the prior written notice (PWN) from the meeting, the team reviewed the updated evaluations in speech and language and agreed that the student did not meet the eligibility criteria for special education services at that time. The team considered the OPUS, CELF-5, a speech sample, and a file review in making its determination. The team also revised the student's 504 plan and made updates. The PWN further reflects that the MCPS informed the family that the eligibility decision could be revisited once the family obtained the report from its privately conducted assessment and provided it to the district for review.
3. During September 2023, there was email communication between the complainant and MCPS staff regarding the policy and protocols for non-MCPS staff to observe the student in a virtual setting and the establishment of a home-school communication plan. Additionally, the complainant shared that the report for the privately conducted assessment of the student was pending.
4. By the end of the first marking period in October 2023, the student had been absent from at least one class period on five days of school totaling seven missed classes and had missed at least one class on ten school days due to illness, totaling twenty-five missed classes. Additionally, the student received an "A" in physical education, honors English, and honors US History; a "D" in art and honors biology; and an "E" in Algebra I and French.

5. On October 31, 2023, the school-based team at [REDACTED] sent the complainant an IEP team meeting notice for a meeting to be held on November 20, 2023, to review existing information to determine the need for additional data to determine whether the student may be eligible for special education services.
6. On November 2, 2023, the school-based team submitted a Child Find referral for the student. The reason for the referral was listed as social/emotional/behavioral with difficulties in beginning a task, maintaining attention, lateness to class, and difficulty completing tasks/assignments.
7. On November 13, 2023, the school-based team sent the complainant teacher reports that were to be considered at the November 20, 2023, IEP team meeting. The reports included documentation of student data that had been collected since September 2023. The complainant responded to this email by stating that she was working with an advocate and would follow up with new dates, but at that time she wanted to cancel the November 20, 2023, IEP team meeting.
8. On November 20, 2023, an IEP team meeting notice was generated for an IEP team meeting to be held on December 4, 2023.
9. On November 22, 2023, the complainant sent an email to MCPS staff, stating that she emailed the team on October 31, 2023, stating that she wanted to cancel the November 20, 2023, meeting until further notice and the December 4, 2023, meeting would have to be canceled because she did not have the finalized private assessment report to present to MCPS for the child find meeting, and she would follow up with the team when the report was ready to be presented to MCPS. The complainant also stated that no meeting would be needed to discuss amending the student's current 504 plan.
10. On November 28, 2023, the [REDACTED] staff sent an email to the complainant stating that the MCPS was interested in meeting with the complainant, and had offered several dates and times, and the complainant was welcome to bring her advocate to the meetings. The email also offered assistance with obtaining the privately conducted report that the complainant stated she was waiting for in September but stated that the team would still like to meet with the complainant on December 4, 2023, for further discussion.
11. On December 19, 2023, the complainant attended the third meeting that MCPS attempted to hold. The PWN states that there were attempts to hold Child Find meetings on November 20, 2023, December 4, 2023, and December 19, 2023. The PWN reflects that the team proposed to move forward with educational and psychological assessments for the student because the student showed "a pattern of academic struggles as she is failing the majority of her class[es]." Documentation reflects that the team considered waiting for the private assessment report that the family had completed in August 2023, but it had not been made available to the MCPS. The team reviewed the student's current 504 Plan, current grades, teacher input, and parent input. Other factors relevant to the proposed action state that the complainant would be refuting the 2022 speech-language report completed by the MCPS because she feels that it is inaccurate but refused to grant consent for assessment through the MCPS, although the team still sent the consent to assess form to the complainant.
12. The notice and consent for assessment form dated December 19, 2023, based on a referral by the MCPS received on November 8, 2023, identified concerns in academic performance, including math calculation, math problem solving, written expression, written language mechanics, and reading comprehension strategies. Based on this information the team recommended assessments in the areas of academic performance, including reading, mathematics, written language, and physical education;

intellectual/cognitive functioning; and emotional/social/behavior development. The basis for this decision states that the team determined that there was a need for formal assessments to determine if the student is eligible for special education services.

13. On December 21, 2023, the complainant sent an email to the MCPS stating that she would not sign the document from the December 19, 2023, meeting as she was awaiting her private assessment report and asked that the MCPS do the same. The complainant reiterated that she felt the 2022 MCPS speech-language assessment report must be refuted, and due to a year having passed since that assessment was completed, she requested to be provided with “the scope” so that testing could be completed.
14. The student ended the second marking period with an “A” in physical education; a “B” in honors English and honors US History; and an “E” in art, Algebra 1, honors biology, and French. Her final grades for the first semester were an “A” in physical education, honors English, and honors US History; a “D” in art; and an “E” in Algebra 1, honors biology, and French.
15. From November 3, 2023, to January 30, 2024, the student acquired 18 additional class period absences.
16. There is documentation that the MCPS has agreed to schedule an IEP team meeting once the complainant is in possession of her private assessment report.
17. To date, the complainant has refused to allow the MCPS to assess the student.

**CONCLUSION:**

The issue in this case is whether or not the MCPS has followed proper procedures when identifying and evaluating the student. As part of an initial evaluation, the IEP Team must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. (34 CFR § 300.301) Additionally, in conducting the evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability. The team should not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and should use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

In this case, at the August 16, 2023, meeting the team considered two speech-language assessment reports that had been completed for the student, one of which was privately obtained. Combined, both assessments provided the results from three different assessment tools. The MCPS report also included the review of a speech sample, a file review, and a classroom observation. The student was new to the school, and the team also considered the 504 Plan that she had in place to provide her with supports. Thus, the team's initial determination that the student was not eligible for special education services at that time appears based on the information that was available to the team at that time.

When the student began to have academic difficulties, the team continued its consideration regarding the student's need for special education services. The team determined additional information was needed and recommended assessments, however, the complainant declined to provide consent for MCPS to complete the recommended assessments and requested that they wait for a private assessment report for an assessment that was completed at some point in 2023. Because the complainant has not provided consent to complete the assessments, the IEP team is unable to gather the information they require to make the eligibility determination at this time.

Based on the Finding of Fact #1 to #17, MSDE finds that the MCPS followed proper procedures in the identification and evaluation of the student since August 2023, in accordance with 34 CFR §§300.301 - .311 and COMAR 13A.05.02.13(A). Therefore, this office finds that no violation occurred with respect to the allegation.

**TIMELINES:**

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. The 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/ebh

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