

April 4, 2024

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

RE: [REDACTED]
Reference: #24-148

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 February 6, 2024, MSDE received a complaint from Mr. [REDACTED] and Mrs. [REDACTED], hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants 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 has not developed and implemented an Individualized Education Program (IEP) that has addressed the student’s identified needs since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .324.¹

BACKGROUND:

The student is 13 years old and is identified as a student with multiple disabilities: specific learning disability and other health impairments under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

¹ In their written complaint, the complainants raised concerns regarding exclusion of the student’s service animal from the school building. The complainants alleged their child is entitled to the service animal under the Americans with Disabilities Act (ADA). The ADA is a federal anti-discrimination law that is enforced by the U.S. Office for Civil Rights. MSDE does not have authority to investigate ADA claims under the State Special Education Complaint process.

FINDINGS OF FACTS:

1. The student's IEP, in effect at the start of the 2023-2024 school year, was developed on August 18, 2023. The IEP reflects that the academic areas impacted by the student's disability are math calculation, reading comprehension, reading fluency, speech and language, and written language expression. The behavioral areas impacted by his disability are social/emotional/behavioral and self-management.

The IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) reflects areas of impact in reading fluency, reading comprehension, math calculation, written language expression, speech and language expressive language, social/emotional/behavioral, and self-management. Specifically, the social/emotional/behavioral and self-management skills PLAAFP reflects that the student "rarely demonstrates pragmatic skills typical of peers and [the student] is quiet and often does not speak up when spoken to by peers and/or teachers. He requires staff to gain his attention prior to giving Instructions. support with task initiation, redirections to tasks, repetition of directions, and check-ins to ensure sustained attention and effort."

The student's IEP includes goals in the areas of math calculation, written language expression, speech and language expressive language, reading fluency, reading comprehension, social/emotional/behavioral, and self-management. Specifically, the social/emotional/behavioral and self-management goals are:

- Social/Emotional/ Behavioral: Given anxiety-producing situations and up to 3 verbal/visual supports, [the student] will independently remain on task, exhibit positive learning behaviors, and manage (recognize and respond adaptively) feelings of anxiousness and stress 75% of the time by 8/17/24.
- Self-Management: Given up to 3 verbal/visual supports, [the student] will initiate interactions, participate in class discussions (small group), and use a clear speaking voice 75% of the time by 8/17/24.

The IEP requires the student to be provided with assistive technology devices to access the grade-level curriculum; specifically, he requires a word processor and calculator. In addition, the IEP requires the student to be provided with special considerations and accommodations, including instructional and testing accommodations, instructional supports, program modifications, social/behavioral accommodations, and physical environment accommodations.

- Social/Behavioral:
 - provide visual supports to reinforce calming strategies;
 - strategies to initiate and sustain attention; and
 - encourage the student to ask for assistance when needed.
- Physical Environment:
 - Preferential seating

The IEP further requires the student to be provided with seven 50-minute daily sessions of specialized instruction outside of the general education classroom, two 45-minute counseling sessions monthly, three 30-minute sessions monthly of speech and language services outside the

general education classroom, and transportation services. The student requires special education instruction outside the general education setting in the following classes: English, math, science, history, Physical Education/Health, elective, and resource. The student's placement is in the MCPS [REDACTED]. [REDACTED] is located in a [REDACTED] and offers services in a separate setting with behavioral and social/emotional support and small, separate classes designed to meet the needs of middle and high school students with disabilities who may have social-emotional challenges that impact their ability to access the general education curriculum in a general education setting.

2. The student's IEP does not reflect the requirement of a service animal.
3. The student's attendance record reflects that the student was absent from school for 98.5 school days from August 28, 2023, to March 20, 2024.
4. There is documentation that the student was provided with the specialized instruction, counseling services, speech/language services, special considerations, and accommodations since the start of the 2023- 2024 school year, as required by the IEP.
5. On September 14, 2023, and November 30, 2023, the IEP team met to discuss the student's attendance.
6. On February 7, 2024, the IEP team met to discuss the student's attendance. The IEP team proposed and accepted adding additional special considerations and accommodations to the student's IEP to address the student's anxiety, including:
 - Social/Behavioral:
 - visual menu of coping strategies;
 - provide manipulatives and/or sensory activities to promote listening and focusing skills;
 - adult support;
 - reinforce positive behavior through non-verbal/verbal communication;
 - implementation of behavior contract;
 - home-school communication system;
 - encourage/reinforce appropriate behavior in academic and non-academic settings; and
 - advance preparation for schedule changes.
 - Physical Environment:
 - allow extra time for movement between classes; and
 - access to alternate locations to complete academic tasks.

There is documentation that the student's IEP was amended to reflect the additional special considerations and accommodations.

CONCLUSION:

The complainants allege that the MCPS denied their child a free appropriate public education (FAPE) by failing "to follow and apply [the student's] IEP" and refusing the student use of his service animal. A review of the record shows that MCPS developed an IEP that addressed the student's academic and

social/emotional/behavioral needs, including special education and related services. The student was provided with the services and accommodations included in the IEP. At no time did the IEP require the use of a service animal in order for the student to access FAPE under the IDEA.

Based upon the Findings of Fact #1 through #6, MSDE finds that the MCPS has developed and implemented an IEP that addresses the student's identified needs since the start of the 2023-2024 school year, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTIONS/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. 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/sd

c: Dr. Monique Felder, Interim Superintendent, MCPS
Diana Wyles, Associate Superintendent, MCPS
Peggy Pugh, Chief Academic Officer, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
Maritza Macias, Paralegal, MCPS
Eve Janney, Compliance Specialist, MCPS
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Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
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