

June 25, 2024

[REDACTED]

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

RE: [REDACTED]
Reference: #24-207

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and 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.

ALLEGATION:

On April 26, 2024, the MSDE received a complaint from [REDACTED], “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.

On May 6, 2024, you were issued an abeyance letter due to your filing of a request for a due process hearing on behalf of the above-referenced student with the Maryland Office of Administrative Hearings (OAH). In your request to the OAH, you also alleged violations of the IDEA that are also the subject of a due process complaint. In your State complaint, you provided an additional allegation that was not raised in your OAH request. MSDE investigated the allegation that the MCPS did not convene a resolution meeting within the required timelines since April 12, 2024, in accordance with 34 CFR §300.510.

BACKGROUND:

The student is eight years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA. The student is parentally placed at [REDACTED] and has an IEP that requires the provision of special education instruction.

FINDINGS OF FACT:

1. On March 22, 2024, the complainant's attorney provided a request for mediation and a due process hearing to OAH and MCPS via email.
2. On April 3, 2024, the complainant's attorney provided OAH and MCPS with possible dates for a mediation meeting and requested confirmation if those dates worked for both parties. The complainant's attorney received a follow-up email from OAH stating that they "have not received the paperwork I need from MCPS" due to spring break. They also informed the complainant's attorney that the proposed dates did not work for them. The complainant's attorney responded, stating she would ask MCPS to provide some dates they are available.
3. On April 4, 2024, via email, OAH corresponded with the complainant and MCPS, requesting a date for a "virtual mediation and prehearing conference" for the above-referenced student.
4. On April 5, 2024, the complainant's attorney provided their availability "if the matter is not resolved during the mediation." MCPS responded with their availability for "mediation" on April 18, 2024, at 9:00 a.m., and the "prehearing conference" at 11:00 a.m. if needed. However, OAH was unavailable on that date, so a new date of April 30, 2024, was agreed upon by both parties.
5. On April 10, 2024, via email, MCPS provided the complainant's attorney with an "Acknowledgement Letter" regarding the complainant's request for mediation and due process.
6. On April 10, 2024, OAH documented that MCPS declined to mediate.
7. On April 12, 2024, the complainant's attorney received a follow-up email from MCPS containing a document requesting the complainant waive the resolution session. The complainant's attorney responded that they did not agree to waive the resolution session.
8. There is no documentation that MCPS held a resolution session in a timely manner.

CONCLUSION:

In this case, the complainant alleges that they filed a mediation and due process hearing request with MCPS in which MCPS initially agreed to a meeting and then rescinded their agreement. Pursuant to 34 CFR §300.510(a)(1), within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the local education agency (LEA) must convene a meeting with the parent and the relevant member(s) of the IEP Team, also known as the resolution meeting. The resolution meeting need not be held if: (1) the parent and the LEA agree in writing to waive the meeting; or (2) the parent and the LEA agree to use the mediation process. (34 CFR §300.510(a)(3)(i)-(ii)).

Based on Finding of Facts #1 to #8, MSDE finds that when the MCPS declined to mediate and failed to secure the complainant's agreement to a waiver, it was required to convene a resolution meeting, in

accordance with 34 CFR §300.510. Therefore, this office finds that a violation did occur concerning the allegation.

CORRECTIVE ACTIONS and 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.¹ 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.² Ms. Alison Barmat can be reached at (410) 767-7770 or by email at alison.barmat@maryland.gov.

Student Specific

By July 1, 2024, MSDE requires the MCPS to provide documentation that a resolution session has been scheduled, that the parties have waived a resolution session, or that there has been a judicial order addressing this issue.

The MCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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.

¹ 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.

² 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 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

AH/sj

c: Monique Felder, Interim Superintendent, MCPS
Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, MCPS
Eve Janney, Compliance Specialist, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE