

August 5, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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: # 24-263

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 June 7, 2024, MSDE received a complaint from [REDACTED], hereafter, “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 followed proper procedures in the identification and evaluation of the student, specifically acknowledging the diagnosis of autism, since June 2023, in accordance with 34 CFR §§ 300.111 and .301-.311.
2. The MCPS has not developed an Individualized Education Program (IEP) that addressed the student’s identified behavioral needs since June 2023, in accordance with 34 CFR §§ 300.101 and .324.
3. The MCPS did not provide a copy of the IEP document in the parent’s native language within thirty days after the request was made on May 7, 2024, in accordance with COMAR 13A.05.01.07 and 34 CFR § 300.29.
4. The MCPS did not provide the student’s parent with an interpreter at the IEP team meeting held on May 7, 2024, in accordance with COMAR 13A.05.01.12 and 34 CFR § 300.503.
5. The MCPS did not provide the student’s parent with prior written notice (PWN) of the IEP team's decisions in the parent’s native language from the IEP team meetings held on May 7, 2024, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.12.

6. The MCPS has not ensured that the IEP team addressed the parental concerns regarding bullying since June 2023 in accordance with 34 CFR § 300.324.

BACKGROUND:

The student is 14 years old and is identified as a student with Autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATIONS #1 and #2

PROPER PROCEDURES IN THE IDENTIFICATION AND EVALUATION OF THE STUDENT AND IEP THAT ADDRESSES THE STUDENT'S IDENTIFIED BEHAVIORAL NEEDS

FINDINGS OF FACT:

1. The student is enrolled in the MCPS' Social Emotional Special Education Services (SESES) program.
2. There is no documentation to support the complainant's allegation that the student was not considered to be autistic. The student's IEPs developed on May 25, 2023, and May 7, 2024, reflects the student's primary disability as autism.
3. The student's IEP developed on May 25, 2023, and May 7, 2024, reflect the student's Present Levels of Academic Achievement and Functional Performance (PLAAFP) for social emotional/behavioral, social interaction, and self-management skills as below grade level expectations. It further reflects that the student has difficulties regulating his emotions, appropriately interacting with others, and sustaining attention.

The IEPs require a Behavior Intervention Plan (BIP).

The IEPs require that the student be provided with three 15-minute monthly of counseling services to address his emotional needs.

The IEPs require the provision of supplementary aids, services, and accommodations to address the student's behavioral needs:

- Redirect student;
- Small group;
- Reduced distractions to self and others;
- Strategies to initiate and sustain attention;
- Use of positive/concrete reinforcers;
- Frequent reminder of the rules;
- Provide frequent changes in activities or opportunities for movement;
- Reinforce positive behavior through verbal/non-verbal communication;

The May 7, 2024, IEP includes the addition of a daily one-to-one escort in the hallway as an accommodation.

The May 25, 2023, IEP requires the provision of behavior goals.

- Social Emotional/Behavioral: “By May 2024, given positive reinforcement, clear expectations, counseling, non-verbal and verbal cues, problem solving strategies, and strategies from his BIP/Functional Behavioral Assessment (FBA), [the student] will demonstrate on task behavior throughout the school day as measured by at least 6 out of 10 observation records.”
- Behavioral Self-Management: “By May 2024, given behavioral supports, a menu of coping strategies, and explicit strategy instruction in self-regulation, [the student] will apply coping strategies to manage unsafe feelings and behaviors (eg. absence of violent comments) in at least 4 out of 5 instances of unsafe feelings/behaviors.”
- Behavioral Social Interaction Skills: “By May 2024, given skills and menu of options, [the student] will demonstrate appropriate peer & adult interactions (eg. absence of violent comments) across a variety of settings in at least 5 out of 5 observed trials.”

The May 7, 2024, IEP requires the provision of behavior goals.

- Behavioral Self-Management: “By May 2025, given behavioral supports, a menu of coping strategies, and explicit strategy instruction in self-regulation, [the student] will apply coping strategies to manage unsafe feelings and behaviors (e.g. absence of violent comments) in at least 4 out of 5 instances of unsafe feelings/behaviors.”
- Behavioral Social Interaction Skills: By May 2025, given social interaction skills modeling, fading staff support, and reinforcement for expected behavior and communication, [the student] will use prosocial problem-solving skills (including perspective-taking and inferencing skills) to engage in socially expected interactions with peers and staff on 3 out of 5 observable opportunities across 4 consecutive weeks as measured by teacher observation.”
- Social Emotional/Behavioral: By May 2025, given staff support, positive feedback, regular check-ins, self-monitoring techniques, and a menu of coping strategies, [the student] will identify uncomfortable situations and choose an appropriate coping strategy when feeling stressed and anxious in 3 out of 5 trials by the end of the IEP cycle.”

4. The BIP in effect during the 2023- 2024 school year was developed on April 3, 2023. The BIP reflects reasons for the FBA that was used to develop the BIP, including “bullying”. The BIP further reflects target behaviors:

- Aggression towards others;
- Disrespect towards staff and students; and
- Class disruption.

In addition, the BIP reflects prevention strategies, teaching strategies, response strategies, data collection and implementation methods, progress monitoring methods, and a crisis plan.

5. On May 7, 2024, the IEP team convened virtually to conduct an annual review of the IEP and discuss the student’s transition to high school. The PWN generated after this meeting reflects that the IEP team agreed to continue the meeting to May 9, 2024. There is documentation that the IEP team meeting used the language line for interpretation.

The IEP developed on May 7, 2024, reflects that the parent requested a native language translation.

6. On May 9, 2024, the IEP team convened virtually to conclude the annual review of the IEP and discuss the student's transition to high school. The PWN generated after this meeting reflects that the IEP team discussed the complainant's concerns regarding school bullying incidents and agreed to conduct a Functional Behavioral Assessment (FBA). There is documentation that the IEP team meeting used the language line for interpretation.
7. On May 9, 2024, MCPS developed a Notice and Consent for Assessment to update the FBA and BIP.
8. There is no documentation that the parent was provided with the IEP document and PWNs in the parent's native language from the May 7, 2024, and May 9, 2024, IEP team meetings.

DISCUSSIONS AND CONCLUSIONS:

Allegation #1

Proper Procedures in the Identification and Evaluation of the Student

In this case, the complainant alleged that the MCPS did not acknowledge that the student was autistic in the identification and evaluation of student. There is no documentation to support that the MCPS does not acknowledge the identification of autism, as it is the disability reflected on the student's IEPs in effect during the 2023- 2024 school year.

Based upon the Finding of Fact #2, MSDE finds that the MCPS has followed proper procedures in the identification and evaluation of the student, specifically acknowledging the diagnosis of autism, since June 2023, in accordance with 34 CFR §§ 300.111 and .301-.311. Therefore, this office does not find a violation occurred concerning this allegation.

Allegation #2

IEP That Addresses the Student's Identified Behavioral Needs

Based upon the Findings of Fact #1, #3, and #4, MSDE finds that the MCPS has developed an IEP that addressed the student's identified behavioral needs since June 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office does not find a violation occurred concerning this allegation.

Allegation #3

Provision of the IEP Document in the Parent's Native Language

Maryland law requires that the completed IEP document be translated into the parent's native language if the native language spoken by the parents is spoken by more than one percent of the total population residing in the jurisdiction. Appropriate school personnel must provide the parents with the translated document within thirty calendar days after the date of the request. The parent must request the translation, although the request need not be in writing. (Md. Code, Education § 8-405(f)(4); *MSDE Technical Assistance Bulletin 17-04: Translations/Native Language/Multilingual Learners* (revised April 2023)).

In this case, the student's parent alleges that they made the request for the translation at the May 7, 2024, IEP team meeting. The IEP reflects the request, and the language line was used to facilitate the IEP team meeting; therefore, the IEP team was on notice that the parent required the document in their native language.

Based upon the Findings of Fact #5 and #8, MSDE finds that the MCPS was required to provide a copy of the IEP document in the parent's native language, within thirty days of the request made on May 7, 2024, in accordance with 34 CFR§ 300.29 and COMAR 13A.05.01.07. Therefore, this office finds a violation occurred concerning this allegation.

Allegation #4

Provision of an Interpreter

Based upon Findings of Fact #5 and #6, MSDE finds that the MCPS did provide the student's parent with an interpreter at the IEP team meeting held on May 7, 2024, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12. Therefore, this office does not find a violation occurred concerning this allegation.

Allegation #5

Provision of the PWN in the Parent's Native Language

The Local Educational Agency (LEA) must provide the PWN written in language understandable to the general public and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so (34 CFR § 300.503(c)).

Based upon Finding of Fact # 8, MSDE finds that the MCPS did not provide the student's parent with PWN of the IEP team's decisions in the parent's native language from the IEP team meetings held on May 7 and 9, 2024, in accordance with 34 CFR § 300.503 and COMAR 13A.05.01.12. Therefore, this office finds a violation occurred concerning this allegation.

Allegation #6

Addressing Parent Concerns

Based upon Finding of Fact #6, MSDE finds that the MCPS has ensured that the IEP team addressed the parental concerns regarding bullying since June 2023 in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred concerning this allegation.

CORRECTIVE ACTIONS AND TIMELINES:

The IDEA requires that State complaint procedures include 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 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. Nicole Green, Compliance Specialist, Family Support and Dispute Resolution, MSDE, to ensure the effective implementation of the action.² Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

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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Student Based

MSDE requires the MCPS to provide documentation by September 30, 2024, that the parents have been provided with the IEP and PWNs in their native language from the May 7, 2024, and May 9, 2024, IEP team meetings.

School Based

MSDE requires the MCPS to provide documentation by September 30, 2024, of the steps it has taken to ensure that the staff at ██████████ properly implements the requirements for providing IEPs and PWNs in the family's native languages. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 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: Thomas Taylor, Superintendent, MCPS
- Peggy Pugh, Chief Academic Officer, MCPS
- Diana K. Wyles, Associate Superintendent, MCPS
- Gerald Loiacono, Supervision, Resolution and Compliance Unit, MCPS
- Maritza Macias, Paralegal, MCPS
- ██████████, Principal, ██████████, MCPS
- Nicol Elliott, Section Chief, Monitoring and Accountability, MSDE
- Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
- Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
- Tracy Givens, Section Chief, Dispute Resolution, MSDE
- Nicole Green, Compliance Specialist, MSDE
- Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE