

October 25, 2024

[REDACTED]
[REDACTED]
[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: #25-046

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 on the final results of the investigation.

ALLEGATIONS:

On August 30, 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) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS has not ensured that the student has been provided with the special education instruction as required by the Individualized Education Program (IEP) during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323.
2. The MCPS did not ensure that the parent was provided with the data the IEP team planned to discuss at the June 6, 2024, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
3. The MCPS did not ensure that the IEP team meeting convened on June 6, 2024, included the required participants, in accordance with 34 CFR § 300.321.
4. The MCPS did not provide Prior Written Notice (PWN) of the IEP team decisions (specifically, the basis of the decision regarding the student’s reading services) from the IEP team meetings on June 6, 2024, in accordance with 34 CFR § 300.503.
5. The MCPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student’s educational record since March 2024, in accordance with 34 CFR § 300.613.

BACKGROUND:

The student is seven years old and is identified as a student with Developmental Disabilities (DD) under the IDEA. The student attends [REDACTED] and has an IEP that requires related services.

FINDINGS OF FACT

1. On September 14, 2023, the IEP team met for the initial IEP meeting of the student. The PWN generated after the meeting includes IEP goals in the area of reading comprehension, reading phonemic awareness, and speech and language based on the recent assessment results and the student's areas of weakness. During the IEP meeting, the complainant expressed concerns regarding "when the special education teacher would be providing the services." The IEP team revised the proposed delivery of services and hours to reflect:
 - Four, 30-minute sessions per week of specialized instruction inside the general education setting provided by the Special Education Teacher and paraeducator in a small group to focus on reading comprehension and reading phonemic awareness needs;
 - Five, 40-minute sessions per week of specialized instruction inside the general education setting provided by the general education teacher, special education teacher, and the paraeducator during the reading block to support the student's areas in reading comprehension and reading phonemic awareness; and
 - Six sessions per month for 30 minutes of Speech and language therapy, outside of the general education classroom.

The IEP team discussed progress monitoring and informed the IEP team that progress on goals would be quarterly and at the end of each marking period. The IEP team stated that the student "may not require a phonemic awareness goal after it is achieved, but to continue with reading comprehension."

The September 14, 2023, IEP reflects the student being provided with instructional support, program modifications, social/behavioral support, and physical/environmental accommodations to access the general education curriculum.

The student was determined eligible for special education and related services based on the results of a Wechsler Preschool and Primary Scale of Intelligence - 4th Edition (WPPSI-IV) cognitive assessment. The student performed below the 25th percentile for his age in verbal comprehension, visual-spatial reasoning, fluid reasoning, and working memory. The IEP also reflects that while his test scores are considered to underestimate his true abilities, they represent his performance at the time of the evaluation.

The Present Levels of Academic Achievement and Functional Performance (PLAAFP) reflect that due to his disability, he has difficulties with recalling orally stated sentences, comprehending oral statements that correspond with pictures, and identifying the appropriate part of speech to complete a sentence based on a picture, which impacts his involvement in the general education curriculum.

2. The September 14, 2023, IEP speech and language-expressive language goal states: "Given a model, as well as fading visual and verbal cues, [the student] will sequence and describe 3-4 events using grammatically correct 5-7-word sentences in 4 out of 5 attempts by September 13, 2024."

3. The report of the student's progress dated October 31, 2023, January 26, 2024, and April 9, 2024, towards the achievement of the annual speech and language expressive language goal, reflects that the student is "making sufficient progress to meet the goal."
4. The September 14, 2023, IEP speech and language- receptive language goal states: "Given models, verbal and visual cues, [the student] will answer WH questions with appropriate answer type responses (e.g. "who" answered with a person) from pictures and orally presented information in 4 out of 5 opportunities by September 13, 2024."
5. The report of the student's progress dated October 31, 2023, January 26, 2024, and April 9, 2024, towards the achievement of the annual speech and language-receptive language goal, reflects that the student is "making sufficient progress to meet the goal."
6. The September 14, 2023, IEP reading phonemic awareness goal states: "Given small group instruction, modeling, visual and verbal cues, opportunities to practice, repetition of directions, [the student] will demonstrate understanding of spoken words and sounds (phonemes) by comparing two words with 4 out of 5 trials by September 13, 2024."
7. The report of the student's progress dated October 31, 2023, towards the achievement of the annual reading phonemic awareness goal, reflects that the student is "Making sufficient progress to meet goal" and "achieved" the goal on January 26, 2024. However, the progress report reflects the goals were not measured in the manner required by the IEP.
8. The September 14, 2023, IEP Reading Comprehension goal states: "Given small group instruction, modeling, opportunities for practice, repetition of directions, [the student] will be able to describe characters, settings, and major events in a story, using text evidence with 4 out of 5 trials by September 13, 2024."
9. The report of the student's progress dated October 31, 2023, towards the achievement of the annual Reading Comprehension goal, reflects that the student is "making sufficient progress to meet goal" and "achieved" the goal on January 26, 2024. However, the progress report reflects the goals were not measured in the manner required by the IEP.
10. There is documentation that the student was provided with special education instruction as required by the IEP.
11. On March 07, 2024, the IEP team met per the request of the complainant to review and revise the IEP as appropriate. During the meeting, the IEP team reviewed the student's IEP and academics. The parents expressed concerns about the Progress Report and the student's comprehension and requested the progress report, data points, and next goals.
12. On April 5, 2024, via email, an IEP team member provided the complainant with the requested information. The information included the student's IEP, DIBELS data for the 2023-2024 school year, and an IEP goal data sheet. The IEP goal sheet contained the student's IEP goals, along with the dates and assessment percentages indicating when the student achieved 90-100% mastery.
13. On May 8, 2024, MCPS generated a notice of the IEP team meeting for an IEP meeting to be held on June 6, 2024. The notice included the required participants who were expected to attend the IEP meeting. The notice reflects that the "special education teacher of the student" is titled as the "IEP Case Manager."

14. On May 30, 2024, the complainant via email received a "Five-day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting" for an IEP meeting scheduled for June 6, 2024, with the Draft IEP and the Report Summary.
15. There is documentation that the draft IEP reflects in the area of reading phonemic awareness, the PLAAFP provided minimal data from a DIBELS report and a teacher report. In the area of reading comprehension, the PLAAFP provided minimal data from a DIBELS report and a teacher report on reading and written language. In the area of math problem-solving, the PLAAFP provided data from MAP and a teacher report. The "Elementary Teacher Report" provided the complainant with minimal data on reading, written language, math, oral communication, organization, participation, and social-emotional development. The complainant did not receive each assessment, report, data chart, or other document the IEP team planned to discuss at that IEP meeting.
16. On June 6, 2024, the IEP team convened for the student's annual review. The PWN generated after the meeting indicates that the required IEP participants were listed by their "titles." including a special education teacher.

The PWN from the IEP meeting reflects that the IEP team proposed updating the supplementary aids and services to support the student's weaknesses in listening comprehension. The student did not require Extended School Year (ESY) services. Expressive and receptive language were identified as areas that continue to impact the student's academic achievement and/or functional performance, and therefore goals were proposed. The IEP team determined that reading phonemic awareness, comprehension, mathematics, and written language were not areas of impact, so no goals or services were recommended. The student's prior reading goals in phonemic awareness and comprehension were achieved.

The PWN reflects the parent and parent advocate disagreed with the recommendation to discontinue the specially designed reading instruction provided by a special education teacher. They disagreed with the fact that the IEP did not propose new reading goals related to comprehension and that direct special education services would be removed. The parent provided input regarding the student's educational progress noting progress and growth at home. However, she expressed concerns about the student's communication, specifically with word order, sentence structure, and sequencing of his ideas. The IEP team reviewed detailed data from the teacher's report, classroom performance, report card, DIBELS, Fountas & Pinnell data, and present levels, and used this information to propose speech and language goals instead of academic goals like reading comprehension or phonemic awareness. The data indicated that the student is performing at or above grade level, as he is able to independently comprehend text and respond to questions either in writing or orally. In addition, the PWN reflects the teacher's report recorded that he is above grade level in reading which is also reflected in his report card - receiving proficient grades in all areas of reading comprehension (literature and informational, foundational skills, and language/vocabulary).

The family was informed of their parental rights, procedural safeguards, and available options, including contact information for the Resolution and Compliance Unit. The parent advocate also informed the IEP team that the family plans to file a state complaint due to the team's recommendations.

17. While there is documentation that a special educator participated in the IEP meeting, the special educator of the student did not participate. There is no documentation of the complainant excusing the special education teacher of the student from the meeting or that the student's special educator provided a written report to be discussed at the meeting.

On June 12, 2024, the complainant received an email from an IEP team member that included a copy of the June 6, 2024, IEP, PWN, parental safeguards, and additional documents from the meeting.

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION #1

PROVISION OF SPECIAL EDUCATION INSTRUCTION

Based on Findings of Fact #1 through #10, MSDE finds that the MCPS has ensured that the student has been provided with the special education instruction as required by the IEP during the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur.

ALLEGATION #2

PROVISION OF DATA USED IN IEP MEETING

School personnel must provide parents of students with disabilities an accessible copy of all assessments, reports, data charts, draft IEPs, or other documents the IEP team plans to discuss, at least 5 business days before the meeting (COMAR 13A.05.01.07).

In this case, the complainant alleges that the IEP team did not provide her with all the pertinent documents and data they intended to discuss in the June 6, 2024, IEP meeting, particularly regarding the data supporting the proposed removal of reading support. This lack of information hindered the complainant's ability to participate meaningfully in the decision-making process.

Based on Findings of Fact #14, #15, and #16, MSDE finds that the MCPS did not ensure that the parent was provided with the data the IEP team planned to discuss at the June 6, 2024, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred.

ALLEGATION #3

PROPER PARTICIPANTS AT THE JUNE 6, 2024, IEP TEAM MEETING

The IEP team must include the student's parent, at least one regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

The specific members of the IEP team may be excused from attending an IEP team meeting, in whole or in part when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent and the public agency consent to the excusal in writing and the member submits written input into the development of the IEP to both the parent and the IEP Team prior to the meeting (34 CFR §300.321).

In this case, the complainant alleges that although a special education teacher was present at the IEP meeting held on June 6, 2024, it was not the teacher who provided special education instruction to the student and had greater knowledge of the student's abilities. The complainant further contends that this teacher was the one who proposed the removal of reading support.

Based on Findings of Fact #16 and #17, MSDE finds that the MCPS did not ensure that an IEP team meeting convened on June 6, 2024, included the required participants, in accordance with 34 CFR § 300.321. Therefore, this office finds that a violation occurred.

ALLEGATION #4 **PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP DECISIONS**

Based on Finding of Fact #18, MSDE finds that the MCPS did provide a prior written notice of the IEP team decisions from the IEP team meetings on June 6, 2024, in accordance with 34 CFR § 300.503. Specifically, the basis of the decision regarding the student’s reading services. Therefore, this office finds that a violation did not occur concerning the allegation.

ALLEGATION #5 **RESPONDING TO A REQUEST TO INSPECT AND REVIEW STUDENT’S EDUCATIONAL RECORD**

Based on Findings of Fact #11 and #12, MSDE finds that the MCPS did ensure the proper procedures were followed when responding to a request to inspect and review the student’s educational record since March 2024, in accordance with 34 CFR § 300.613. Therefore, this office finds that a violation did not occur concerning the allegation.

CORRECTIVE ACTION AND TIMELINE:

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 manner¹. 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.

Student-Based

MSDE requires the MCPS to provide documentation by January 15, 2025, that the IEP team has convened and determined whether the violations in this Letter of Findings had a negative impact on the student’s ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of 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.

The MCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainants maintain 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 January 31, 2025, of the steps taken to ensure that the violation does not recur at [REDACTED]. Steps must include professional development and monitoring.

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/sj

c: Dr. Thomas Taylor, Superintendent, MCPS
Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, MCPS
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