

October 22, 2024

Ms. Frances Shefter, Esq.  
8416 Dasher Court  
Gaithersburg, Maryland 20882

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: #25- 047

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 23, 2024, MSDE received a complaint from Ms. Frances Shefter, Esq., 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 developed an Individualized Education Program (IEP) that addresses the student’s identified executive functioning, written language expression, social emotional, attention needs and need for a one-on-one assistant since September 2023, in accordance with 34 CFR §§ 300.101 and .324.
2. The MCPS has not ensured that the student was provided with the special education services for science as required by the IEP since the start of the 2023-2024 school year, in accordance with 34 CFR §§ 00.101 and .323.
3. The MCPS did not provide the parents with prior written notice (PWN) of the team’s decision regarding the student’s special education services for science determined at the IEP team meeting on January 26, 2024, in accordance with 34 CFR § 300.503.
4. The MCPS has not followed proper procedures when responding to a request for an IEP team meeting since June 9, 2024, in accordance with 34 CFR § 300.503.

**BACKGROUND:**

The student is nine 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, #2, AND #3 IEP DEVELOPMENT, SPECIAL EDUCATION SERVICES FOR SCIENCE, PROVISION OF PWN**

**FINDINGS OF FACT:**

1. The student's IEP in effect during September 2023, was developed on February 17, 2023. The IEP reflects the areas affected by the student's disability as math problem solving, reading comprehension, reading phonemic awareness, speech-language expressive and receptive language, written language content, and visual motor.

The IEP requires the provision of supplementary aids, services, and accommodations that could support executive functioning, written language expression, social emotional, and attention needs including:

- Assistive technology (AT): high, medium, and low-tech assistive technology devices to support his access to the content and curriculum;
- Human reader for math, science, and government assessments;
- Human scribe for all subject areas;
- Small group;
- Frequent breaks;
- Redirect the student;
- Reduce distractions to self and others;
- Monitor test responses;
- Extended time (1.5x);
- Daily repetition of directions;
- Daily monitor independent work;
- Daily sentence frames/sentence starters;
- Daily frequent/or immediate feedback; and
- Daily check for understanding.

In addition, the IEP requires nine hours weekly inside the general education classroom provided by the general or special education teacher, or the instructional assistant for science, specials, lunch and recess.

2. On January 12, 2024, a private multi-disciplinary neuropsychological and language evaluation was provided to the MCPS. The report reflects recommendations for the school, including special educators, to support learning; teaching executive functioning, reading, and spelling skills; support weaknesses in the organization of information and materials; support difficulties with attention and working memory; support new learning; reduce and manage overload/disengagement; and develop social skills.
3. On January 26, 2024, the IEP team convened to discuss reevaluation assessments, review/revise the IEP, and discuss Functional Behavioral Assessment (FBA). The PWN generated following this meeting reflects that the parents requested the student receive a one-to-one aid for support during all academics based on the recommendation from the parent-provided private neuropsychological and language assessment reports, as well as goals in the areas of executive functioning, written language expression, social emotional, and attention needs.

The IEP team determined not to:

- Conduct additional assessments based on the “student’s IEP coding, educational placement, and services remaining the same”;
- Move forward with a Behavior Intervention Plan (BIP) due to “minimal data and lack of behaviors from the data collected on the FBA”;
- Move forward with a one-to-one aide due to the student’s “continued academic progress with his current supports and services”; and
- Move forward with goals in the areas of executive functioning, written language expression, social emotional, and attention needs because they felt the addition of supplementary aids would provide sufficient support to address the areas of concern.

The IEP team agreed to review the student’s “executive functioning needs after more inclusion opportunities” have occurred. The PWN reflects that the IEP team further agreed to “implement the student’s IEP developed on the same date with 21 hours and 45-minutes of academic instruction outside of the general education classroom within the learning center, 8 hours and 20-minutes weekly within general education for specials, lunch, and recess, and inclusion within the general education setting for science for 8- 30 minute sessions per quarter and 3 hours of speech-language therapy monthly” outside the general education classroom.

4. The student’s IEP developed on January 26, 2024, reflects the areas affected by the student’s disability as math problem solving, reading comprehension, reading phonics, speech-language: expressive and receptive, and written language mechanics.

The IEP requires the provision of supplementary aids, services, and accommodations that could support executive functioning, written language expression, social emotional, and attention needs including:

- Assistive technology (AT): high, medium, and low-tech assistive technology devices to support his access to the content and curriculum;
- Human reader for math, science, and government assessments;
- Human scribe for all subject areas;
- Small group;
- Frequent breaks;
- Redirect the student;
- Reduce distractions to self and others;
- Text-to-speech for English Language Arts (ELA);
- Monitor test responses;
- Extended time (1.5x);
- Daily use of a word bank to reinforce vocabulary and/or when extended writing is required;
- Daily repetition of directions;
- Daily monitor independent work;
- Daily sentence frames/sentence starters;
- Daily frequent/or immediate feedback;
- Daily check for understanding;
- Daily multi-sensory learning;
- Daily break down assignments into smaller units;
- Daily reduce number of answer choices; and
- As needed, social skills training.

In addition, the IEP requires one hour and 40-minutes weekly inside the general education classroom provided by the general or special education teacher, or the instructional assistant for science and social studies.

5. On February 1, 2024, the MCPS emailed the parents the PWN and the completed IEP document from the January 26, 2024, IEP team meeting. The email further reflects that science is taught four out of the nine weeks each quarter, twice a week for 30 minutes, and that general education will start science on March 4, 2024.
6. On May 6, 2024, the IEP team convened to conduct an annual review of the student's IEP. The PWN generated following this meeting reflects that the IEP team rejected the parent's request for the student to receive instruction for all the core academic classes in the general education setting. The IEP team determined that the student continued to require a reduced student to teacher ratio for math and reading.
7. There is no documentation that the student received science instruction for quarters one and two of the 2023-2024 school year in a special education classroom. There is documentation demonstrating that the student received special education services for science for quarters three and four in the general education classroom, and it demonstrates provision of special education instruction as required by the IEP.

#### **CONCLUSIONS:**

#### **Allegation #1                      IEP Development**

#### **Executive Functioning, Written Language Expression, Social Emotional, and Attention Needs**

In this case the complainant alleges that the student's required IEP goals in the areas of executive functioning, written language expression, social emotional, and attention. However, the IEP team determined that these areas of need could be addressed through supplementary aids, services, and accommodations.

Based upon the Findings of Fact #1 through #6, MSDE finds that the MCPS developed an IEP that addresses the student's identified executive functioning, written language expression, social emotional, and attention needs since September 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office does not find a violation occurred concerning the allegation.

#### **One-On-One Assistant**

In this case the complainant alleges that the student required a one-on-one assistant. However, the IEP team determined that the student was making progress with his current supports and did not require a one-on-one assistant.

Based upon the Findings of Fact #1 through #3, MSDE finds that the MCPS was not required to develop an IEP that addresses the student's identified need for a one-on-one assistant, since September 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office does not find a violation occurred concerning the allegation.

**Allegation #2                      Special Education Services for Science**

**Quarters One and Two of the 2023-2024 School Year**

Based upon the Findings of Fact #1, #4 through #7, MSDE finds that the MCPS has not ensured that the student was provided with the special education services for science in the general education setting, as required by the IEP for quarters one and two of the 2023-2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

**Quarters Three and Four of the 2023-2024 School Year**

Based upon the Findings of Fact #1, #4 through #7 MSDE finds that the MCPS has ensured that the student was provided with the special education services for science, as required by the IEP for quarters three and four of the 2023- 2024 school year, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office does not find violation occurred concerning this aspect of the allegation.

**Allegation #3                      Provision of PWN**

Based upon the Findings of Fact #4 and #5, MSDE finds that the MCPS did provide the parents with PWN of the team’s decision regarding the student’s special education services for science determined at the IEP team meeting on January 26, 2024, in accordance with 34 CFR § 300.503. Therefore, this office does not find that a violation occurred concerning the allegation.

**ALLEGATION #4                      REQUEST FOR AN IEP TEAM MEETING**

**FINDINGS OF FACT:**

8. On June 9, 2024, the complainant sent a Unilateral Placement Letter to the MCPS’ legal counsel. The letter reflects a request by the complainant to schedule an IEP team meeting in response to the unilateral placement request.
9. The MCPS generated Notices of an IEP meeting scheduled for August 29, 2024, September 6, 2024, and October 17, 2024. There is documentation that the meetings were rescheduled.
10. The MCPS generated a Notice of an IEP meeting, scheduled for October 28, 2024.

**CONCLUSION:**

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student’s program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of free appropriate public education (FAPE) (34 CFR §§ 300.324 and .503).

Based upon the Findings of Fact #8 through #10, MSDE finds that the MCPS has not followed proper procedures by not responding within a reasonable time to a request for an IEP team meeting since June 9, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation occurred concerning the 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.<sup>1</sup> 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.<sup>2</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

### **Student-Specific**

MSDE requires the MCPS to provide documentation, by December 13, 2024, that the IEP team has taken the following action:

- a. Provided the student with consistent science services as required by the IEP;
- b. Convened an IEP team meeting, to discuss the student's Least Restrictive Environment (LRE) and determine the amount and nature of compensatory services or other remedy to redress the violations identified in this Letter of Finding. The IEP team must consider:
  - i. The student's present levels of functioning and performance;
  - ii. The levels of functioning and performance that were expected to have demonstrated by the end of school year 2023-2024;
  - iii. The services needed to remediate the violations identified in this investigation; and
- c. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

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<sup>1</sup> 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.

<sup>2</sup> 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 parent is provided with prior written notice of the team's decisions. The parent maintains 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 December 13, 2024, of the steps it has taken to ensure that the [REDACTED] staff properly implements the provision of special education instruction, under the IDEA and responds to requests for IEP team meetings in a reasonable amount of time. These steps must include staff development, as well as tools developed to monitor compliance.

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 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 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. 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  
[REDACTED], Principal, [REDACTED], 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  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE