

October 25, 2024

Ms. Francis Shefter, Esquire
Shefter Law, P.A.
110 N. Washington Street
Suite 350
Rockville, Maryland 20850

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

Re: [REDACTED]
Reference: # 25-048

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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 28, 2024, MSDE received a complaint from Ms. Francis Shefter, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public School (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS did not ensure that the IDEA evaluation conducted since September 2023 was completed within the required timelines, in accordance with 34 CFR §§ 300.301 - .306 and COMAR 13A.05.01.06.
2. The MCPS did not follow proper procedures when disciplinarily removing the student from school since September 2023, in accordance with 34 CFR § 300.530 and COMAR 13A.08.03.
3. The MCPS did not address the student's behavioral needs in accordance with 34 CFR § 300.301 - .306, and .324. Specifically, the complainant alleges the following:
 - a. The MCPS did not ensure that a Functional Behavior Assessment (FBA) was completed within the required timelines since October 5, 2023; and
 - b. The MCPS did not develop a Behavior Intervention Plan (BIP).

BACKGROUND:

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

ALLEGATION #1

EVALUATION PROCEDURES

FINDINGS OF FACT:

1. On October 26, the IEP team convened to address the Child Find referral. The prior written notice (PWN) generated following the meeting reflects:
 - the school-based staff determined the student's "behavioral challenges are impacting his ability to access the instruction within the classroom and more data is needed to determine if he qualifies as a student with a disability requiring special education services.";
 - the attorney for the parents expressed disagreement with the school-based determination that the team required additional data in order to determine if the student is eligible for special education services; and
 - the attorney for the parents also requested for the team to "note that the parents are requesting an informal observation/consult with the [Occupational Therapist]."
2. On October 26, 2023, a child find referral was completed by the parents, and a notice and consent for assessment was generated based on a referral from the parent. The notice reflects:
 - the IEP team recommended academic performance (reading, mathematics, and written language), intellectual/cognitive functioning, and observation; and
 - written parental consent to assess the student was provided on October 26, 2023.
3. On December 6, 2023, the IEP team convened for the purpose of reviewing evaluation data to determine if the student qualifies for special education services. The team determined that the student was eligible for special education services and required specially designed instruction.
4. The PWN generated following the December 6, 2023, IEP team meeting reflects:
 - the IEP team reviewed educational assessments, psychological assessments, FBA/BIP data, observational data, parent report, 504 plan data, and teacher report;
 - the IEP team determined that the student qualifies as a student "with an educational disability under the code of emotional disability (ED), development delay (DD), other health impairment (OHI);
 - the IEP team considered Autism; however, the student did not qualify and the team determine DD is not the primary disability; and
 - the team agreed that the [Student's] primary disability affecting him within the classroom is ED.

CONCLUSION:

Based on Findings of Fact # 1 through #4, MSDE finds that the MCPS did ensure that the IDEA evaluation conducted since September 2023 was completed within the required timelines, in accordance with 34 CFR §§ 300.301 - .306 and COMAR 13A.05.01.06. Therefore, MSDE finds that a violation did not occur.

ALLEGATION #2

DISCIPLINARY REMOVAL OF KINDERGARTEN STUDENT

FINDING OF FACT:

1. On October 23, 2023, the school staff called the student's parents and requested that they pick the student up from school.
2. There is no documentation that the student was disciplinarily removed from school for more than one day since September 2023.

CONCLUSION:

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct. (34 CFR § 300.530)

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this part if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (34 CFR § 300.534)

The student was removed from school for one day since September 2023. Procedural safeguards pursuant to the IDEA do not apply until there are over 10 days of removal in the same school year.

Based on Finding of Fact #5, MSDE finds that MCPS disciplinarily removed the student for only one day, therefore, there was no change in placement triggering the additional protections for students with disabilities under 34 CFR § 300.530 and COMAR 13A.08.03. Therefore, MSDE finds that a violation did not occur.¹

ALLEGATION #3

AN IEP THAT ADDRESS THE STUDENT'S EMOTIONAL NEEDS

FINDINGS OF FACT:

3. There is documentation that the FBA was requested on October 5, 2023, and completed on November 3, 2023.
4. There is documentation that the BIP was developed on November 7, 2023.
5. The student's IEP developed on January 9, 2024, requires the use of a BIP.

¹ MSDE's findings are limited to the application of IDEA and corresponding State law on disciplinary removals of eligible students with disabilities. Nothing in this Letter of Findings precludes the complainant from exercising any rights under local board policy to appeal general school disciplinary actions related to COMAR 13A.08.01.11.

CONCLUSIONS:

Based on Finding of Fact #4 and #6, MSDE finds that the MCPS did ensure that the FBA was completed within the required timelines, since October 5, 2023, in accordance with 34 CFR § 300.301 - .306. Therefore, this office finds that violation did not occur concerning this aspect of the allegation.

Based on Findings of Fact #4, #7 and #8, MSDE finds that the MCPS addressed the student's behavioral needs by developing a BIP on November 7, 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that violation did not occur concerning this aspect of the allegation.

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 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/ra

c: Thomas Taylor, Superintendent, MCPS
Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, Office of Special Education, MCPS
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