

October 29, 2024

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Kia Middleton-Murphy, Acting Director
Montgomery County Public Schools
15 W. Gude, Suite 400
Rockville, Maryland 20850

RE: [REDACTED]
Reference: #25-054

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 did not provide the student with special education services required by the Service Plan, in accordance with 34 CFR §§ 300.132 and .138¹.
2. The MCPS has not ensured that the parent was provided with a copy of the Service Plan since July 10, 2024, in accordance with 34 CFR § 300.322.

¹ The student is parentally placed in a private school and as such is not entitled to the provision of a free appropriate public education. Further, there is no individual right of action to receive any services. However, the Office of Special Education has advised that if a parentally placed student has not received some or any of the services identified on their Service Plan, they may file a State complaint. If there are any IDEA funds remaining from the proportionate share allocation at the end of the fiscal year, they may be used to provide compensatory services to address lapses in services, as appropriate. Accordingly, MSDE will investigate this allegation to determine whether the student may be entitled to compensatory services if there are funds available at the end of the fiscal year. [Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, United States Department of Education, February 2022.](#)

BACKGROUND:

The student is eight years old and is identified as a student with a Specific Learning Disability (SLD) under the IDEA. The student is parentally placed at [REDACTED] ([REDACTED])² and requires the provision of services through a Service Plan.

FINDINGS OF FACT:

1. On May 10, 2024, the IEP team reconvened to develop an initial Service Plan for the student. The Prior Written Notice (PWN) generated after the meeting reflects that MCPS proposed a Service Plan to support the student's reading and math needs, with services provided at [REDACTED] ([REDACTED]), and initiated the transportation form to facilitate services at [REDACTED].

The PWN reflects that the student would benefit from specially designed instruction in reading and math to address academic gaps. However, his parents did not agree to any changes at that time and requested additional data from his teachers. They also requested transportation to ensure services could be provided at the designated service school. The parents agreed to reconvene once the additional data was available to further discuss the Service Plan.

The MCPS considered delivering services through the Home School Model but rejected this option because the parents informed the IEP team that the student would continue attending the [REDACTED]. The IEP team's proposal was based on student work samples, academic and psychological evaluations, and input from teachers and parents. The complainant requested copies of the Service Plan and the PWN from MCPS' attorney.

2. On July 10, 2024, the IEP team reconvened to continue the meeting from May 10, 2024, and discuss changes to the student's Service Plan. The PWN generated after the meeting reflects that the MCPS proposed implementing a Service Plan to support the student's reading, writing, and math goals, with services provided at [REDACTED]. They also planned to arrange transportation to ensure the student could attend [REDACTED] for services during the summer and the upcoming school year.

During the IEP meeting, the team discussed and considered parent input and the teacher's report on the student's progress at [REDACTED]. They proposed adding additional writing goals to be targeted in his service plan. The PWN reflects that the MCPS considered providing services at the home school through the Home School Model; however, the parents informed the team that the student would not enroll in the MCPS and would continue to attend the [REDACTED]. The PWN also notes that the complainant requested the MCPS attorney send her a copy of the Service Plan and the PWN. Additionally, the team agreed that if any changes were needed, the complainant should contact the special education teacher with the requested adjustments.

² The student's home school is [REDACTED].

3. The July 10, 2024, Service Plan identifies the student's needs in math calculation, math problem-solving, reading phonemic awareness, written language content, and written language mechanics, with corresponding goals in each area. The plan requires three hours of daily specialized instruction outside the general education classroom for reading needs, and one hour per week of specialized instruction outside the general education classroom for math needs, both provided by a special education teacher. Additionally, the Service Plan requires transportation as the student is parentally placed in a private school () and would attend to receive special education services.
4. The July 10, 2024, Service Plan requires the student to be provided with instructional supports, program modifications, social/behavioral supports, and physical/environmental support, to access the general education curriculum.
5. On July 23, 2024, the parents received a copy of the PWN from the meeting held on July 10, 2024.
6. There is documentation of the complainant requesting a copy of the updated Service Plan in both July and August.
7. On September 24, 2024, the parents received a copy of the student's Service Plan.
8. There is no documentation indicating that the student received the services outlined in his service plan since July 10, 2024.

CONCLUSIONS:

ALLEGATION #1 PROVISION OF SPECIAL EDUCATION SERVICES

Based on Findings of Fact #1 through #4, and #8, MSDE finds that the MCPS did not provide the student special education services required by the Service Plan, in accordance with 34 CFR §§ 300.132 and .138. Therefore, this office finds that a violation occurred.

ALLEGATION #2 PROVISION OF THE SERVICE PLAN TO THE PARENT

Based on Finding of Fact #2, #6 and #7, MSDE finds that the MCPS has not ensured that the parent was provided a copy of the Service Plan until September 24, 2024. Therefore, this office finds that a violation did occur concerning the allegation. The student's Service Plan is an educational record pursuant to 34 CFR § 300.613. The student's Service Plan was not provided until September 24, 2024, more than 45 days after the original request.

Notwithstanding, a copy of the student's Service Plan was provided on September 24, 2024, and no further student specific corrective action is required.

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 manner³. 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 action⁴. Ms. Green can be reached at (410) 767-7770 or by email at nicole.green@maryland.gov.

Student-Based

As a parentally placed private school student, the student has no individual right to the services on their plan. Consequently, there are limited remedies available to address their concerns. In this case, this investigation reflected that the student has not received services pursuant to his services plan and compensatory services would be an appropriate remedy. However, these services are only available for parentally placed students if funds are available from the proportionate share set-aside in the MCPS to provide equitable services under 34 C.F.R. §§ 300.129 through 300.144 if funds have not been expended. If the proportionate share has been expended prior to the awarding of compensatory services, MSDE cannot require the MCPS to spend additional IDEA funds to pay for compensatory services for a parentally-placed private school child with a disability. Accordingly, MSDE requires that by July 1, 2025, that the MCPS determine whether they have expended their 2024-2025 proportionate share set-aside. If they have not, the [REDACTED] IEP team must convene to determine appropriate compensatory services for the violation identified above.

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.

³ 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.

⁴ 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 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
Kia Middleton Murphy, Acting Director, Special Education, MCPS
Eve Janney, Compliance Specialist, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], [REDACTED], [REDACTED] Director
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Monitoring and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Stephanie James, Complaint Investigator, MSDE