

December 6, 2024

[REDACTED]
[REDACTED]
[REDACTED]

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

Re: [REDACTED]
Reference: #25-090

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.

On October 8, 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 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 has not developed and implemented an Individualized Education Program (IEP) that addresses the student's identified academic, related services, and social/behavioral needs since October 8, 2023, in accordance with 34 CFR §§ 300.323 and 324.
2. The MCPS has not ensured that the student has consistently been provided with the accommodations, and supplementary aids, supports, and services required by the IEP since October 8, 2023, in accordance with 34 CFR §§ 300.101 and .323.
3. The MCPS has not ensured that the student has been provided with special education services in the educational placement required by the IEP, since October 8, 2023, in accordance with 34 CFR §§ 300.101 and .323.
4. The MCPS did not ensure that accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meetings, were provided at least five business days before each scheduled meeting, since October 8, 2023, in accordance with COMAR 13A.05.01.03B.
5. The MCPS has not ensured that the student's progress towards achievement of the annual IEP goals was measured as required by the IEP, since October 8, 2023, in accordance with 34 CFR §§ 300.101 and .324.

6. The MCPS did not follow proper procedures when revising the IEP, without convening an IEP team meeting, or obtaining parental agreement to amend the IEP without convening an IEP team meeting, since October 8, 2023, in accordance with 34 CFR § 300.324.
7. The MCPS did not ensure that the IEP team considered the parent information and concerns at the IEP meeting held since October 8, 2023, in accordance with 34 CFR § 300.324.

BACKGROUND:

The student is 15 years old and is a student with autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education.

ALLEGATIONS #1, #2, and #6

DEVELOPMENT AND IMPLEMENTATION OF THE IEP, PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS, AND AMENDMENTS TO IEP

FINDINGS OF FACT:

1. The IEP, in effect on October 3, 2023, was developed on December 2, 2022, and amended on September 9, 2023. The IEP reflects that the following areas are impacted by the student's disability: communication, math calculation, math problem solving, reading comprehension, written language content, on-site work-based learning, self-management, and independent living skills. The IEP requires goals in the following areas: math problems solving, independent living skills, written language content, communication, reading comprehension, on-site work-based learning, and math calculation.

The IEP requires assistive technology (AT) services and devices. The IEP reflects a functional behavior assessment (FBA) was completed on January 30, 2022, and a behavior intervention plan (BIP) was developed on December 2, 2022.

The IEP requires the following instructional and assessment accommodation features: closed captioning of multimedia passages, calculation device and mathematics tools (on calculation and NON-calculation sections of the mathematics assessments), monitor test response, and extended time (1.5X).

The IEP requires the following supplementary aids, services, program modifications and supports:

- daily - classroom instructional supports, access to sensory strategies, classroom program modifications, positive behavioral supports;
- as needed – social skills training; and
- quarterly - occupational therapist consult

The IEP requires five hours and fifteen minutes per week of special education instruction outside the general education setting to be provided by the special education teacher, and/or instructional assistant. The IEP also requires thirty minutes per week of speech-language services outside of the general education setting.

The IEP requires placement in a self-contained program within a comprehensive high school.

2. The MCPS five-day disclosure notice generated on October 19, 2023, for the October 26, 2023, IEP team meeting indicates that the following documents were emailed to the complainant: the draft IEP, work samples or a work samples summary, a progress summary, and transition-related documents.
3. The prior written notice (PWN) generated following an IEP team meeting on November 13, 2023, reflects that the IEP team convened for the purpose of reviewing and revising the IEP and to address transition. The PWN reflects the IEP team meeting was a continuation meeting of an IEP team meeting held on October 26, 2023. The IEP team proposed and agreed to implement the IEP developed on November 13, 2023 “based upon the review of [Student’s] progress and revisions to his present level of academic achievement and functional performance, development/review of appropriate goals, and supplementary aids and supports.”

The PWN further reflects the IEP team agreed to continue the meeting on December 11, 2023.

4. On December 5, 2023, in preparation for the December 11, 2023, IEP team meeting, the MCPS school-based staff emailed the following to the complainant: the draft IEP, teacher report, reading assessment, transition planning guide, and five-day disclosure of documents.
5. The IEP developed on December 19, 2023, reflects the following areas of need: math calculation, math problem solving, reading comprehension, speech-language: expressive pragmatics, and receptive language, task completion, written language content, social emotional/behavioral, sensory processing strategies. The IEP requires goals in the following areas: task completion, social emotional/behavioral, speech-language pragmatics, and expressive language, math calculation, math calculation, math problem solving, written language content and reading comprehension.

The IEP requires the following instructional and assessment accommodation features: closed-captioning of multimedia passages, notes and outlines, assistive technology, calculation device and mathematics tools (on calculation and NON calculation sections of the mathematics assessments), English language arts (ELA)/Literacy selected response speech-to-text, mathematics, science, government response speech-to-text, ELA/L constructed response speech-to-text, monitor test response, and extended time (2.0X).

The IEP requires the following supplementary aids, services, program modifications and supports:

- for longer writing assignments – provide proof reading checklist;
- as needed – noise canceling headphones, speech to text, separate long paragraph questions into bullets whenever possible, use pictures to support reading passages whenever possible, advance preparation for schedule changes;
- daily- self advocacy card, use of word bank to reinforce vocabulary and/or when extended writing is required, repetition of directions, provide alternative ways for students to demonstrate learning, monitor independent work, have student repeat and/or paraphrase information, frequent and/or immediate feedback, check for understanding, allow use of organizational aids, allow use of highlighters during instruction and assignments, reduce number of answer choices, chunking of text(s), break down assignments into smaller units, provide frequent changes in activities or opportunities for movement, frequent reminder of rules, reinforce positive behavior through non-verbal /verbal communication, strategies to initiate and sustain attention, encourage student to ask for assistance when needed, access to sensory strategies (i.e.: fidgets, movement opportunities, visual timer, quieter work place, sensor sand box);

- weekly - home-school communication system; and
- quarterly - occupational therapist will consult with the school team

The IEP requires:

- three hours and forty-five minutes daily of special education instruction outside the general education setting to be provided by the special education teacher, and/or instructional assistant;
- one-hour and thirty minutes of instruction inside the general education setting per week to be provided by the general education teacher, special education teacher, and/or instructional assistant;
- one hour and thirty minutes per month of special education instruction outside of the general education setting to be provided by a social worker and psychologist;
- thirty minutes per week of speech-language services outside of the general education setting; and
- thirty minutes per quarter of occupational therapy inside of the general education setting

The IEP requires placement in a self-contained program within a comprehensive high school.

The MCPS five-day verification notice of documents provided after an IEP meeting, reflects that the complainant was provided with the five-day documents following the December 11, 2023, IEP team meeting, on January 3, 2024.

6. There is no documentation of additional areas of concern to be addressed by the IEP.

There is no documentation that the IEP requires a change in placement.

7. While there is some documentation of the provision of instruction, there is no documentation that the student's IEP was consistently implemented to include instruction as required by the IEP since October 8, 2023.

There is no documentation that the student was consistently provided with accommodations, and supplementary aids, supports, and services, academic and social/emotional instruction, and related services as required by the IEP since October 8, 2023.

8. The PWN generated following an IEP team meeting on December 11, 2023, reflects that the IEP team reconvened for the purpose to review/revise the IEP and to address transition. The PWN reflects the IEP team proposed to reconvene in February for a 45-day review/amendment.
9. The MCPS five-day disclosure notice generated on February 2, 2024, for the February 9, 2024, IEP team meeting indicates that the following documents were emailed to the complainant: the draft IEP, work samples or a work samples summary, a progress summary, and artifacts sent home with student from teacher.
10. The PWN generated following an IEP team meeting on February 9, 2024, reflects that the IEP team convened for a 45-day review meeting to review/revise the IEP, and review the student's progress with his goals. The PWN reflects the IEP team proposed and agreed to reconvene on February 14, 2024.

The PWN further reflects the IEP team will reconvene to discuss the student's functional behavior assessment (FBA) and behavior intervention plan (BIP).

The PWN reflects the complainant inquired about "compensatory services for the reading and math intervention programs that were not implemented by the second marking period." The complainant also inquired about a 1:1 and for data related to the student's classes.

The IEP team informed the complainant that the intervention program would take the place of one resource class and the impact on the student's schedule.

There is no documentation that the IEP team addressed the complainant's concerns raised during the IEP team meeting. The PWN does not reflect that the school-based team addressed concerns raised by the complainant.

11. The PWN generated following an IEP team meeting on February 14, 2024, reflects:
 - The IEP team proposed and agreed to amend the reading comprehension and written language goals and objectives were revised and in effect as of March 12, 2024; and
 - The complainant provided input regarding the student's progress with reading comprehension.
12. On February 20, 2024 the present levels of academic achievement and functional performance (PLAAFP), narratives were amended for the following domains: reading comprehension, math calculation, math problem solving, written language content, task competition, social emotional/behavioral, speech and language expressive language, speech and language pragmatics, fine motor, sensory processing, to include progress made during the second quarter of the 2023-2024 school year.
13. There is documentation that the MCPS school-based staff collaborated with the complainant and the advocate, from February 26, 2024, through March 13, 2024, through emails, to revise the student's reading comprehension and written expression goals and objectives.

There is documentation that the MCPS school based SLP collaborated in November 2023, with the complainant to revise the student's speech-language goals.
14. On March 22, 2024, the MCPS school-based staff emailed the amended IEP, the PWN developed on February 14, 2024, and the procedural safeguards, to the complainant.
15. The PWN generated on May 13, 2024, reflects that the IEP team convened to review/revise the IEP and update the FBA and BIP. The PWN reflects:
 - The team proposed and agreed to update the FBA and BIP;
 - The complainant was present and;
 - The private Applied Behavior Analysis (ABA) therapist completed an in school observation of the student and participated in the IEP team meeting.
16. There is no documentation that the complainant was provided with the documents that the IEP team planned on reviewing five days before the IEP team meeting on May 13, 2024.

17. On May 13, 2024, the IEP was amended. The updated IEP reflects amendments to the PLAAFP narratives, providing updated information on the student's performance in the following areas: speech-language (expressive and pragmatic language), fine motor skills, and sensory processing strategies.

There is no documentation in the PWN that the IEP team agreed to revise or amend the student's IEP.
18. On September 13, 2024, in preparation for the September 20, 2024, IEP team meeting the MCPS school-based team emailed the complainant the following documents: a five-day notice, the IEP, a parental input form, and the parent's guide to habilitative services.
19. The PWN generated after the IEP team meeting on September 20, 2024, indicates the meeting's purpose was to review and revise the IEP and discuss an amendment. The PWN shows that the IEP team proposed and agreed to re-evaluate the student in the following areas: educational, psychological, speech-language, and functional behavior assessment. Additionally, the PWN reflects that the complainant agreed to provide consent for the student's re-evaluation.
20. The September 2024, IEP reflects that the PLAAFP narratives, were amended to update the student's present levels of performance in the following domains: reading comprehension, math calculation, math problem solving, written language content, task completion, social emotional/behavioral, speech-language pragmatics, fine motor, sensory processing, to include progress made during the third and fourth quarters of the 2023-2024 school year and first quarter of the 2024-2025 school year.

CONCLUSIONS:

Development of IEP

Based on the Findings of Fact #1, and #5, the MCPS has developed an IEP that addresses the student's identified academic, related services, and social/behavioral needs since October 8, 2023, in accordance with 34 CFR § 300. 324. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Implementation of IEP

Based on the Findings of Fact #1, #5, and #7, the MCPS has not consistently implemented the IEP to address the student's identified academic, related services, and social/behavioral needs since October 8, 2023, in accordance with 34 CFR § 300. 324. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.

Accommodations, and Supplementary aids, supports, and services

Based on the Findings of Fact #1, #5, and #7, MSDE finds that the MCPS has not ensured that the student has consistently been provided with the accommodations, and supplementary aids, supports, and services required by the IEP since October 8, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

Amended IEP

In this case, the complainant alleges that the student's IEP was amended outside of an IEP team meeting. On May 13, 2024, the IEP team convened. The PWN generated after the IEP team meeting is not clear as to the decisions of the IEP team concerning revisions or amendments to the student's IEP. However, revisions were made to the student's IEP.

Based on the Findings of Fact #15 and #17, MSDE finds that the student's IEP was amended/revised on May 13, 2024, during an IEP team meeting, however, the PWN does not properly reflect the IEP team's decisions. Therefore, MSDE finds that the MCPS did not provide the complainant with prior written notice of the team's decision to revise/amend the student's IEP, at the May 13, 2024, IEP team meeting, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation did occur.

Based on the Findings of Fact #10 through #14, MSDE finds the MCPS did follow proper procedures when revising the IEP and obtained parental agreement to amend reading comprehension and written language goals and objectives on September 20, 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning this aspect of the violation.

ALLEGATION #3

PLACEMENT

CONCLUSION:

Based on the Findings of Fact #1, and #5, MSDE finds that the MCPS has ensured that the student has been provided with special education services in the educational placement required by the IEP, since October 8, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

ALLEGATION #4

FIVE DAY DOCUMENTS

CONCLUSIONS:

Based on the Findings of Facts #2, #4, #8, and #17, MSDE finds that the MCPS did ensure that the complainant was provided with the accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meetings, were provided at least five business days before each scheduled meeting, on October 26, 2023, and February 9, 2024. Therefore, a violation did not occur concerning this aspect of the allegation.

Based on the Findings of Facts #4, #15, and #16 MSDE finds that the MCPS did not ensure that the complainant was provided with the accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meetings, were provided at least five business days before the scheduled IEP team meeting on December 11, 2023, and May 13, 2024. Therefore, this office finds that a violation did occur concerning this aspect of the allegation.

ALLEGATION #5

PROGRESS MEASURED AS REQUIRED

FINDINGS OF FACT:

Report on progress towards IEP goals

21. The report of progress towards the achievement of the annual math problem solving, written language content, reading comprehension, and math calculation goals reported on October 31, 2023, reflects that the goals were not measured as required by the IEP.
22. The report of progress towards the achievement of the annual communication goal reported on October 31, 2023, reflects that the goal was measured as required by the IEP.
23. The report of progress towards the achievement of the annual independent living skills and on-site work-based learning goals, reported on October 31, 2023, reflects the goals were not introduced.
24. The report of progress towards the achievement of the annual task completion IEP goal was not measured as required since December 19, 2023.
25. The report of progress towards the achievement of the annual social emotional/behavioral, speech and language pragmatics, speech-language expressive language, math calculation, math calculation, math problem solving, written language content and reading comprehension IEP goals, were measured as required since December 19, 2023.

CONCLUSION:

Based on the Finding of Fact #22, the MDSE finds that the MCPS has not ensured that the student's progress towards achievement of the math problem solving, written language content, reading comprehension, and math calculation goals was measured as described in the IEP, on October 31, 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, a violation did occur with respect to this aspect of the allegation.

Based on the Finding of Fact #23, the MDSE finds that the MCPS has ensured that the student's progress towards achievement of the communication goal was measured as described in the IEP, on October 31, 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, a violation has not occurred with respect to this aspect of the allegation.

Based on the Finding of Fact, #25, MSDE finds that the MCPS has not ensured that the student's progress towards achievement of the annual task monitoring goal was measured as described in the IEP, since December 19, 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, a violation did occur with respect to this aspect of the allegation.

Based on the Findings of Fact, #26, MSDE finds that the MCPS has ensured that the student's progress towards achievement of the annual social emotional/behavioral, speech and language pragmatics, speech and language expressive language, math calculation, math calculation, math problem solving, written language content and reading comprehension goals were measured as described in the IEP, on January 31, 2023, in accordance with 34 CFR §§ 300.101 and .324. Therefore, a violation did not occur with respect to this aspect of the allegation.

ALLEGATION #7

PARENT INFORMATION AND CONCERNS

CONCLUSION:

Based on the Finding of Fact #10, the IEP team never addressed the concerns that the parent brought up at the February 9, 2024, IEP team meeting. Accordingly, MSDE finds that the MCPS did not ensure that the IEP team considered the parent information and concerns at the IEP meeting held on February 9, 2024, in accordance with 34 CFR § 300.324. Therefore, a violation did occur with respect to this aspect of the allegation.

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 timeframes 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.

Student-Specific

MSDE requires the MCPS to provide documentation by March 1, 2025, that the IEP team has taken the following action:

- a. Ensured the student is consistently provided with instruction, accommodations, supplementary aids and services as required by the IEP;
- b. Provided the complainant with PWN documenting the revisions/amendments made to the student's IEP in May 2024; and
- c. Convened an IEP team meeting and determined the compensatory services to remediate the violations identified through this investigation and developed a plan for the implementation of the services within one 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 parents are provided with written notice of the team's decisions. The parents 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 15, 2025, of the steps it has taken to ensure that the [REDACTED] staff ensures provision of instruction, and the development of report of progress of IEP goals measured as required under the IDEA and COMAR. 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 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: Dr. Thomas Taylor, Superintendent, MCPS
Dr. Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, Office of Special Education, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], [REDACTED], Acting Principal, MCPS
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Alison Barmat, Section Chief, Family Support and Dispute Resolution Branch, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Rabiātu Akinlolu, Compliant Investigator, MSDE