

December 4, 2024

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

RE: [REDACTED]
Reference: #25-100

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 October 11, 2024, MSDE received a complaint from [REDACTED] and [REDACTED], hereafter, “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants 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 parent with prior written notice (PWN) of the decision to remove counseling services from the student’s Individualized Education Program (IEP) since October 2023, in accordance with 34 CFR § 300.503.
2. The MCPS has not developed an IEP that addresses the student’s identified health and behavioral needs since the start of the 2024-2025 school year, in accordance with 34 CFR § 300.324.
3. The MCPS has not ensured that the IEP contains appropriate measurable goals and an accurate statement of the student’s present levels of academic achievement and functional performance since the start of the 2024-2025 school year, in accordance with 34 CFR § 300.320.
4. The MCPS has not ensured that the student was provided with the counseling services, supplementary aids, services, and accommodations as required by the IEP since October 2023, in accordance with 34 CFR §§ 300.101 and .323.

5. The MCPS has not followed proper procedures when disciplinarily removing the student from school since the start of the 2024-2025 school year, in accordance with 34 CFR §§ 300.530, COMAR 13A.08.02, COMAR 13A.08.03, and COMAR 13A.08.01.11.
6. The MCPS did not follow proper procedures when responding to a request for an IEP team meeting on September 20, 2024, in accordance with 34 CFR § 300.503.

BACKGROUND:

The student is 15 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.

FINDINGS OF FACT:

1. The student's IEP developed on March 6, 2023, and amended on July 30, 2023, requires the provision of 45-minutes per week of counseling services outside the general education classroom provided by the school counselor.
2. The student's IEP developed on February 27, 2024, reflects that the following areas are impacted by the student's disability: math problem solving, written language content, self-management, social emotional/behavioral, social interaction skills, and health (sleep-wake disorder).

The present levels of academic achievement and functional performance (PLAAFP) reflect the following:

- Math problem solving is on the 8th grade level: based on classroom-based assessments, report card grades, and quarterly progress from the 2023- 2024 school year and Measures of Academic Progress (MAP-M) Fall 2023 data;
- Written language content is on the 8th grade level: based on teacher reports and report card grades from the 2023-2024 school year;
- Self-management is below grade level expectancies: based on teacher reports and quarterly progress reports from the 2023-2024 school year;
- Social interaction skills are below grade level expectancies: based on teacher reports and quarterly progress reports from the 2023-2024 school year; and
- Health (sleep-wake disorder) is below grade level expectancies: based on a November 9, 2023, doctors note, health room report from September 13, 2023, through November 27, 2023, and teacher reports from the 2023-2024 school year.

The IEP requires goals in the following areas:

- Math problem solving: "By February 2025, given direct instruction on solving problems and relevant vocabulary, extended time, a graphing calculator, copies of class notes, opportunities for practice, models, examples, [the student] will choose and produce an equivalent form of an expression to reveal and explain properties of the quantity represented by the expression with 80% accuracy in 4 out of 5 measurable opportunities;"
- Self-management: "By February 2025, given fading adult support, support with clarifying tasks and workload, a list of accommodations, access to trusted adults, and checks for understanding, [the student] will self-advocate (e.g. effectively communicate, convey, negotiate or assert

- interests/desires/needs/rights) for needed accommodations and accept staff feedback/support in order to participate in class and complete assignments in 3 out of 5 observable opportunities over 3 consecutive weeks;" and
- Social interaction skills: "By February 2025, given a cooperative learning classroom situation, a specific role and duties within that group, and fading adult feedback and support, [the student] will engage in positive peer interactions in cooperative learning environments in 4 out of 5 observable opportunities across 3 consecutive weeks."

The IEP requires the provision of supplementary aids, services, and accommodations:

- Frequent breaks;
- Reduced distractions to self and others;
- Calculation device;
- Monitor test responses;
- Extended time (1.5x);
- Periodically provide the student with a copy of student/teacher notes;
- Periodically provide student with visual models with step-by-step instructions for solving math problems;
- Periodically model the steps to math problems giving verbal cues as needed;
- Periodically provide access to word processor;
- Periodically check for understanding;
- Periodically repeat directions;
- Periodically monitor independent work;
- Periodically provide frequent and/or immediate feedback;
- Periodically provide social skills training;
- Periodically provide home school communication;
- Periodically encourage the student to ask for assistance when needed;
- Periodically use positive/concrete reinforcers;
- Periodically allow extra time for movement between classes;
- Periodically provide adult support for check-ins; and
- Yearly occupational therapist consult.

The IEP continues to require the provision of 45-minutes per week of counseling services outside the general education classroom provided by the school counselor.

3. On September 12, 2024, the student was suspended for one day. There is documentation that the complainants were notified of the suspension, and a conference was scheduled with MCPS personnel to review school expectations.
4. On September 18, 2024, the student was suspended for one day. There is documentation that the complainants were notified of the suspension, and a conference was scheduled with MCPS personnel to review school expectations.
5. On September 20, 2024, the complainants requested a Manifestation Determination Review (MDR).

6. On October 8, 2024, the IEP team convened to review and revise the IEP and discuss an IEP amendment. The PWN generated following the meeting reflects the:
- MCPS declined the complainants' request for a manifestation determination meeting because the student was not suspended in an excess of 10 school days;
 - IEP team updated the PLAAFP for written language content, math problem-solving, social emotional/behavioral, social-interaction, self-management, and sleep-wake disorder;
 - IEP team agreed to conduct a Functional Behavior Assessment (FBA);
 - IEP team agreed to additional supplementary aids, accommodations and a social emotional goal; and
 - IEP team proposed an annual review within 30-days.
7. The student's IEP developed on February 27, 2024, was amended on October 8, 2024. The IEP has an annual review date of February 26, 2025. The IEP reflects that the following areas are impacted by the student's disability: math problem solving, written language content, self-management, social emotional/behavioral, social interaction skills, and health (sleep-wake disorder).

The PLAAFP reflects the following updated information:

- Math problem solving is on the 8th grade level: based on classroom data and teacher feedback from quarter one of the 2024-2025 school year;
- Self-management is below grade level expectancies: based on incident referrals, and teacher reports from quarter one of the 2024-2025 school year;
- Social emotional/behavioral is below grade level expectancies: based on attendance records, incident referrals, and teacher reports from quarter one of the 2024-2025 school year;
- Social interaction skills are below grade level expectancies: based on incident referrals, and teacher reports from quarter one of the 2024-2025 school year; and
- Health (sleep-wake disorder) is below grade level expectancies: based on teacher feedback from the 2024-2025 school year.

The IEP requires an additional goal in social emotional/behavioral: "By February, 2025, given instruction on self- and emotional-regulation strategies, a menu of collaboratively developed coping strategies, modeling, positive behavior support, clear expectations, flash pass, and access to identified trusted adults, [the student] will communicate his needs and regulate his emotional responses in order to manage feelings and safely respond to stressors in the school environment on 4 out of 5 observable opportunities across 3 consecutive weeks."

The IEP requires the provision of additional supplementary aids, services, and accommodations:

- As needed flash pass;
- Periodically provide list of identified coping strategies;
- Periodically provide a list of identified coping strategies; and
- Periodically encourage/reinforce appropriate behavior in academic and non-academic settings.

The IEP continues to require the provision of 45-minutes per week of counseling services outside the general education classroom provided by the school counselor.

8. On October 22, 2024, the student was suspended for two days. There is documentation that the complainants were notified of the suspension and a conference was scheduled with MCPS personnel to review school expectations.
9. On November 1, 2024, the IEP team convened to discuss re-evaluation assessments. The PWN generated following the meeting reflects that the IEP team discussed that counseling services had not been removed from the IEP. In addition, the PWN reflects that the IEP team agreed to conduct assessments in the areas of occupational therapy, speech-language: receptive, expressive, and pragmatics, educational (reading, writing, and math), psychological (cognitive, social emotional rating scales), and autism rating scales. The PWN further reflects that the IEP team reviewed a letter provided to the team by the student's private medical provider: "due to a sleep disorder, he is required to take 30-minute naps during the school day."
10. While there is documentation that the student was provided with the counseling services as required by the IEP from October 2023 through April 2024, there is no documentation that the student was provided with counseling services from May 2024 through November 2024.
11. There is no documentation that the student was provided with supplementary aids, services, and accommodations as required by the IEP since October 2023.

DISCUSSIONS AND CONCLUSIONS:

Allegation #1 Provision of PWN

In this case, the complainants allege that the counseling services were removed from the student's IEP without a PWN. However, there is no documentation that demonstrates that counseling services were removed from the student's IEP. Therefore, MCPS was not required to provide a PWN indicating as such.

Based on the Findings of Facts #1, #2, #7, and #9, MSDE finds that counseling services were not removed from the student's IEP. Therefore, the MCPS was not required to provide the parent with the PWN of the decision to remove counseling services from the student's IEP, since October 2023, in accordance with 34 CFR § 300.503. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #2 Development of the IEP

Based on the Findings of Fact #2, #4, and #10, MSDE finds that the MCPS has developed an IEP that addresses the student's identified health and behavioral needs since the start of the 2024-2025 school year, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning the allegation.

Allegation #3 Appropriate Measurable Goals and PLAAFP

Based on the Findings of Fact #2, #6, #7, and #9, MSDE finds that the MCPS has ensured that the IEP contains appropriate measurable goals and an accurate statement of the student's present levels of academic achievement and functional performance since the start of the 2024-2025 school year, in accordance with 34 CFR § 300.320. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #4 **Provision of Counseling Services, Supplementary Aids, Services, and Accommodations**

Provision of Counseling Services

Based on the Findings of Fact #1, #2, #7, and #10, MSDE finds that the MCPS has ensured that the student was provided with the counseling services as required by the IEP from October 2023 to April 2024, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on the Findings of Fact #1, #2, #7, and #10, MSDE finds that the MCPS has not ensured that the student was provided with the counseling services as required by the IEP from April 2024 to November 2024, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Provision of Supplementary Aids, Services, and Accommodations

Based on the Findings of Fact #1, #2, #7, and #11, MSDE finds that the MCPS has not ensured that the student was provided with the supplementary aids, services, and accommodations as required by the IEP since October 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning this aspect of the allegation.

Allegation #5 **Disciplinary Procedures**

The IDEA provides protection to students with disabilities who are removed from school in excess of ten school days in a school year. The public agency is required to convene a manifestation meeting within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct (34 CFR § 300.530). If a student with a disability is removed for less than ten school days, general education discipline procedures and regulations apply

In this case, the student was suspended from school on September 12, 2024, September 18, 2024, and October 22, 2024, for a total of four days. Each of these suspensions were due to a behavior incident, and the parent was notified afterwards.

Based on the Findings of Fact #5, through #9, MSDE finds that the MCPS has followed proper procedures when disciplinarily removing the student from school since the start of the 2024-2025 school year, in accordance with 34 CFR §§ 300.530, COMAR 13A.08.02, COMAR 13A.08.03, and COMAR 13A.08.01.11. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #6 **Proper Procedures When Responding to a Request for an IEP Meeting**

In this case, on September 20, 2024, the complainants requested a MDR to be held. The MCPS denied this request as the student had not been suspended for in excess of ten school days within the current school year. However, an IEP team meeting convened on November 1, 2024.

Based on the Findings of Fact #7, #8, and #10, MSDE finds that the MCPS did follow proper procedures when responding to a request for an IEP team meeting on September 20, 2024, in accordance with 34 CFR § 300.503. Therefore, this office does not find 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.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 January 24, 2025, that the IEP team has taken the following action:

- a. Provided the student with consistent counseling services, supplementary aids, services and accommodations as required by the IEP;
- b. Conducted an IEP team meeting to 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 based on the student's rate of progress;
 - 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.

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.

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.

School-Based

MSDE requires the MCPS to provide documentation by January 24, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of counseling services, supplementary aids, services, and accommodations under the IDEA. 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/sd

c: Dr. Thomas Taylor, Superintendent, MCPS
Dr. 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
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
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