


December 19, 2024




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

RE:   
Reference: #25-107

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 24, 2024, MSDE received a complaint from , 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 ensured that the student was provided with a padded helmet as required by Individualized Education Program (IEP) since December 2023, in accordance with 34 CFR §§ 300.101 and .323.
2. The MCPS has not ensured that the IEP team met to review and revise the student’s IEP, as appropriate, to address the lack of expected progress toward achieving the math IEP goals since December 2023, in accordance with 34 CFR §§ 300.101 and 324.
3. The MCPS did not ensure that the student was provided with a dedicated aide as required by the IEP from April 2024 to August 2024, in accordance with 34 CFR §§ 300.101 and .323.

## **BACKGROUND:**

The student is 13 years old and is identified as a student with multiple disabilities (Autism, Emotional Disability, and Other Health Impairment) under the IDEA. The student is placed at [REDACTED], a nonpublic special education school by MCPS and has an IEP that requires the provision of special education instruction and related services.

## **FINDINGS OF FACT:**

1. In December 2023, the student was attending the [REDACTED] through a placement by the MCPS.
2. On December 5, 2023, the IEP team convened to conduct the student's annual review. The prior written notice (PWN) generated after the meeting reflects that the IEP team proposed to continue the one-to-one classroom aide because the student demonstrated the behaviors of being easily distracted; becoming frustrated quickly; is an elopement risk; exhibits physical aggression, noise sensitivity, and low academic skills; and is a safety risk to herself and others. The MCPS proposed to provide the student with a standard padded helmet because "[the student] is a frequent headbanger" and although the student has a one-to-one aide "there are times when the aide is not able to intervene fast enough." The PWN further reflects that the MCPS proposals "were not rejected."

The PWN reflects the complainant shared that he did not want to send the student back to [REDACTED] of PG "due to his concerns about her safety."

The IEP team considered the student's educational record, progress on IEP goals, teacher progress reports, teacher and related services staff reports during the meeting, parental input during the meeting, parental written input provided to the MCPS for consideration at the meeting and written information provided to the team by the student's education advocate.

3. The December 5, 2023, IEP reflects the student's primary disability as multiple disabilities with math problem solving, reading comprehension, speech and language receptive language, self-advocacy, and social emotional/behavioral as the areas affected by the disability. The IEP reflects the student performing at the second-grade instructional level.

The IEP required several supplementary aids, services, program modifications, and supports from December 5, 2023, to December 4, 2024, including:

- Dedicated aide provided by an instructional assistant, daily: "[The student] requires one-to-one dedicated support to manage her behaviors (including self-injury, pushing and grabbing at others) and in-the-moment social skills [;]"
- Dedicated space for de-escalation provided by a special education classroom teacher, as needed; and
- Padded helmet provided by MCPS for students with physical disabilities, daily: "[The student] has a history of head-banging behaviors, so to reduce potential damage or concussions she will be provided with a semi-padded helmet to wear throughout the school day and in transit to and from school."

The IEP required the following math goal to be reported at the end of the marking period:

- Math problem solving: “By December 4, 2024, given teacher modeling, frequent and immediate feedback, simplified discussion, visual supports, opportunities for practice, and use of a calculator and other visuals such as a times table or place value chart, [the student] will solve multi-step word problems using the four operations with 80% accuracy in 3 out of 4 trials.”

The IEP reflects the Extended School Year (ESY) decision as “deferred.”

4. On December 20, 2023, the IEP team reconvened to consider Interim Instructional Services (IIS) for the student. The PWN generated after the meeting reflects that the IEP team considered the student’s medical recommendation and parental input. The MCPS proposed to provide the student with 10 hours per week of IIS services because the student’s medical provider determined that the student was unable to attend school at that time. The MCPS proposed to work on the student’s math problem-solving goal because it is an area of “significant deficit” for the student and could be worked on in a homebound environment. The PWN further reflects that the MCPS proposals “were not rejected”. MCPS refused the complainant’s request for 15 hours per week of IIS “because 10 hours per week [is] an appropriate amount of time to work on the identified goals in a one-to-one setting.”

The PWN for this meeting is dated January 2, 2024, and reflects that the IEP meeting was convened on December 21, 2023. MSDE has determined that the date of the IEP meeting listed on the PWN is a typographical error.

5. The IEP generated at the December 20, 2023; IEP meeting reflects the student’s math problem-solving goal “will be worked on during interim instructional services.” The student’s grade level of performance in math problem solving, supplementary aids, services, program modifications, and supports required by the IEP, and deferment of the ESY decision continued.
6. The January 19, 2024, report of the student’s progress toward the achievement of the math goal is as follows: “Not yet introduced: [the student] has participated in IIS for quarter 2. Due to this interim placement, [REDACTED] has not been able to track her progress on IEP goals.”
7. On February 29, 2024, the IEP team reconvened to review/revise the IEP and consider educational placement. The PWN generated after the meeting reflects that the IEP team considered the student’s educational record, previous speech-language, psychological, and educational assessments, progress and behavior reports, input from [REDACTED], and parental input. The student’s IIS placement began on January 3, 2024, and expires on March 1, 2024. The PWN reflects the IEP team determined that the student required new assessments once placed in her new school setting. The MCPS acknowledged that IIS teacher did not complete the 10 hours weekly of service and the student is due 40 hours for missed services. The team discussed possible placements for the student, and the complainant inquired whether a “1:1 would be available immediately.” This PWN is dated March 6, 2024.
8. The April 4, 2024, report of the student’s progress toward the math problem solving IEP goal is as follows: “Not yet introduced. [The student] has participated in IIS instruction for quarter 3. Due to this interim placement, [REDACTED] has not been able to track her progress on IEP goals.”

9. On April 17, 2024, the MCPS placed the student at the [REDACTED] ([REDACTED]).
10. On April 25, 2024, the [REDACTED] IEP team convened. The PWN generated after the meeting reflects that the IEP team considered the December 2023 IEP; the IIS IEP, application, and approved documents; an MSDE complaint; and parental input. The IEP team agreed that the student would receive 125 hours of compensatory services to address any services missed during IIS instruction, in addition to other concerns. MCPS reported that these hours would be “inclusive of missed instruction and all related services.” MCPS also proposed “getting clarity from the family regarding the custom helmet...based on previous meeting outcomes. MCPS expressed concerns with not having the prescription/exact measurements for the custom helmet.” MCPS proposed that the complainant “will send the student to school with the doctor-prescribed helmet for a period of time [and] the complainant agreed to send the...prescribed helmet through the end of the school year.” MCPS proposed to consult with the physical disabilities office to determine the next steps regarding the helmet. The PWN does not reflect the IEP team discussed removing the “dedicated aide” as a supplementary support for the student.
11. The amended IEP developed at the April 25, 2024, meeting is dated April 5, 2024. The IEP reflects the student's service school as the [REDACTED]. The student's instructional grade level of performance and the supplementary aids, services, program modifications, and supports required by the IEP continued except for the removal of “Dedicated Aide” and “Dedicated space for de-escalation” and the addition of:
  - “One to One classroom aide provided by an instructional assistant or special education classroom teacher, daily” from December 5, 2023, to December 4, 2024.”
12. On June 5, 2024, the IEP team reconvened for a 30-day review and/or revision of the student's IEP. The PWN generated after the meeting reflects the IEP team considered the “December prior written notice, observation record, parental input, and the draft IEP” in making its determinations. The MCPS proposed to conduct assessments for the student “given the re-evaluation timeline.” The PWN does not reflect the IEP team discussed ESY.
13. The amended IEP is dated June 5, 2024, IEP. The student's instructional grade level of performance, supplementary aids, services, program modifications, and supports required by the IEP continued. The IEP reflects the student was deemed ineligible for ESY services.
14. The June 24, 2024, reporting of the student's progress toward the Math Problem Solving IEP goal is as follows: “Making sufficient progress to meet goal. [The student] has been provided with teacher modeling, frequent and immediate feedback, simplified discussions, visual supports, opportunities for practice, and use of a calculator and other visuals such as a times table chart to help her solve multi-step word problems using the four operations with 70% accuracy in 2 out of 4 trials. [The student] has had some difficulties identifying the correct operation to use to solve a word problem and setting up an equation accordingly with 70% accuracy in 2 out of 4 trials. With no more than 1 teacher prompt, [the student] can assess the reasonableness of her answers as they relate back to the original problem with 70% accuracy in 3 out of 4 trials.”
15. There is no documentation that MCPS has provided the student with a padded helmet since the end of the 2023-2024 school year as required by the IEP.

16. The June 24, 2024, July 31, 2024, October 1, 2024, and November 6, 2024, reports of the student's progress toward the math problem-solving IEP goal reflect the student is making sufficient progress to meet the IEP goal.

### **DISCUSSIONS AND CONCLUSIONS:**

#### **ALLEGATION #1**

#### **PROVISION OF A PADDED HELMENT**

As soon as possible, following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. (34 CFR §§ 300.323).

In this case, the IEP team agreed to provide the student with a padded helmet at the December 5, 2023, IEP meeting. To date, there is no documentation that MCPS has provided the student with the required padded helmet.

Based on the Findings of Fact #2, #3, #5, #10, #11, and #15, MSDE finds that the MCPS did not ensure that the student was provided with a padded helmet from December 2023 to April 2024 and since August 2024, as required by IEP since December 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

#### **ALLEGATION #2**

#### **ADDRESSING THE LACK OF EXPECTED PROGRESS**

Based on the Findings of Fact #3, #5, #6, #8, #10, #11, #14, and #16, MSDE finds that there is no documentation that the student did not make sufficient progress toward achieving the math IEP goal since December 2023, therefore, MCPS was not required to ensure that the IEP team met to review and revise the student's IEP, in accordance with 34 CFR §§ 300.101 and 324. Therefore, this office finds that no violation occurred concerning the allegation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **Reporting Of Progress**

An IEP must include a description of when periodic reports on the progress the child is making toward meeting the annual goals will be provided. (34 CFR § 300.320).

In this case, the January 19, and April 4, 2024, reports of progress generated did not contain progress data on the student's IEP goals while on IIS services. The student's IIS services included working on the IEP math goal; therefore, reporting of progress was required.

Based on the Findings of Fact #6 and #8, MSDE finds that the MCPS has not ensured that the parent was provided with the student's report of progress toward the achievement of the math problem solving IEP goal on January 19, and April 4, 2024, in accordance with 34 CFR § 300.320. Therefore, this office finds that a violation occurred.

### **ALLEGATION #3**

### **PROVISION OF A DEDICATED AIDE**

As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. (34 CFR § 300.323).

In this case, the IEP required the student to receive support from a dedicated aide from December 2023 until April 5, 2024. After the April 2024 IEP team meeting, the dedicated aide was removed on the amended IEP dated April 5, 2024. There is no documentation that the IEP team discussed the removal of the service or that the parent agreed to the removal without an IEP team meeting.

Based on the Findings of Fact #2, #3, 5, 11, 13, and 17, MSDE finds that the MCPS improperly removed the dedicated aide from the student's IEP on April 5, 2024, therefore, MCPS was required to ensure that the student was provided with a dedicated aide as required by the IEP from April 2024 to August 2024, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred concerning the allegation.

### **ADDITIONAL VIOLATION IDENTIFIED DURING THE COURSE OF THE INVESTIGATION**

#### **Proper Procedures When Amending the IEP**

Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP, provided the parent consents and the amendment is documented in writing. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated (34 CFR § 300.324).

In this case, the April 25, 2024, PWN, generated from the IEP team meeting does not reflect that the IEP team discussed removing the support of a dedicated aide from the student's IEP. The amended IEP from the meeting reflects the removal of the dedicated aide as supplementary support.

The PWN from the June 5, 2024, IEP team meeting does not reflect that the IEP discussed ESY, however, the amended IEP developed after the meeting reflects an ESY decision. There is no documentation that reflects the complainant provided the IEP team with approval to amend the student's IEP without an IEP team meeting.

Based on the Findings of Fact #10 to #13, MSDE finds that the MCPS did not follow proper procedures when amending the student's IEP in April 2024 and June 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred.

### **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. 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 Branch, 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**

By March 19, 2025, MSDE requires the MCPS to provide documentation that the school system has:

- Provided the student with a padded helmet; and
- Convened an IEP team meeting and determined the student's need for a dedicated aide and determine the amount and nature of compensatory services or other remedies to redress the violations identified in this Letter of Findings and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

### **School-Based**

MSDE requires the MCPS to provide documentation by March 19, 2025, of the steps it has taken to ensure that [REDACTED] staff properly implements the requirements for the implementation of providing student's with required equipment (a padded helmet), ensuring proper reporting of progress toward achieving IEP goals, and proper procedures for amending IEPs under the IDEA. These steps must include staff development.

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.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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 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/ebh

c: Dr. Thomas W. Taylor, Superintendent, MCPS  
Diana K. Wyles, Associate Superintendent, MCPS  
Dr. Peggy Pugh, Chief Academic Officer, MCPS  
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS  
Maritza Macias, Paralegal, MCPS  
Eve Janney, Compliance Specialist, MCPS  
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE  
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Elizabeth B. Hendricks, Complaint Investigator, MSDE