

December 19, 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: #25-109

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 22, 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 follow proper procedures when identifying and evaluating the student to determine if the student is a student with a disability requiring special education and related services, from October 2023 to April 2024, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06.
2. The MCPS has not developed an Individualized Education Program (IEP) that addressed the student’s identified social-emotional and behavioral needs from October 2023 to April 2024, in accordance with 34 CFR §§ 300.101 and .324.
3. The MCPS did not provide the parent with a copy of¹ each assessment, report, data chart, draft IEP, or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, within five business days before the IEP team meetings on March 8, 2024, and April 4, 2024, in accordance with COMAR 13A.05.01.07.

¹ The original allegation said, “IEP document”.

4. The MCPS did not provide the parent with a copy of the IEP document within five business days after the IEP team meetings on November 16, 2023, March 8, 2024, April 4, 2024, and April 16, 2024, in accordance with COMAR 13A.05.01.07.

BACKGROUND:

The student is nine years old and is identified as a student with an emotional disability under the IDEA. He currently attends [REDACTED], Frederick County Public Schools (FCPS) and has an IEP that requires the provision of special education instruction and related services. During the 2023-2024 school year, the student was enrolled in MCPS. The allegations stem from the student's tenure in MCPS.

FINDINGS OF FACT:

1. On August 28, 2023, the student was enrolled in MCPS.
2. On October 18, 2023, the complainant emailed the MCPS asking to start the "IEP process."
3. On October 24, 2023, a 504 plan² was implemented.
4. On November 16, 2023, the MCPS convened a meeting to discuss Child Find screening and the need for eligibility assessments. The Prior Written Notice (PWN) generated following the meeting reflects that the IEP team reviewed teacher reports, educational history, observations, parent questionnaire, parent input/feedback, reports and observations from mental health providers and team discussion. In addition, the MCPS proposed to conduct psychological and educational testing to "gather data to determine if [the student] is a student with a disability that warrants special education intervention and instruction."

There is documentation that the complainant was provided with a copy of the Child Find/IEP documents that were reviewed by the IEP team on November 16, 2023, within five business days before the IEP team meeting.

5. On November 16, 2024, a Notice and Consent for Assessments was developed. The Notice and Consent for Assessments reflects that the student would be assessed in the areas of cognitive/intellectual, social-emotional behavioral, and academic (math problem solving, written expression, written language mechanics, phonics, reading fluency and oral reading skills).

There is no documentation that the complainant agreed to the proposed testing.

6. On December 13, 2023, the student was withdrawn from MCPS. There is documentation that the student was attending a private school.

² "Section 504" refers to Section 504 of the Rehabilitation Act of 1973, which requires schools to provide a free appropriate public education (FAPE) to each eligible student, including the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student as adequately as the needs of a student without a disability are met. (34 CFR § 104.33).

7. On January 4, 2024, the complainant emailed the MCPS to inform them that they did not consent to the psychological and educational testing discussed at the November 16, 2024, Child Find meeting due to the student's medical treatment.
8. On January 11, 2024, MCPS received a signed consent to test the student. The PWN generated to document this consent reflects that the student continues to attend private school and is "currently enrolled as a student who attends private school."
9. On February 1, 2024, the student was enrolled in MCPS.
10. On March 4, 2024, the complainant was provided with the educational testing report.
11. On March 8, 2024, the IEP team convened to determine the student's eligibility for special education services. The PWN generated following this meeting reflects that the IEP team determined the student was eligible for special education services under a disability coding of emotional disability. It is reflected that the "Multidisciplinary Evaluation form for an emotional disability was completed and signed by the IEP team participants." The PWN reflects that the IEP team reviewed the psychological and educational testing. The IEP team determined that the student presented with many behavioral characteristics associated with autism. In addition, the PWN reflects that the complainant shared that they would be pursuing additional assessments to further explore autism spectrum disorder and will share them with the IEP team once it is complete.

There is no documentation that the complainant was provided with a copy of the IEP documents that the IEP team planned to review at the March 8, 2024, IEP team meeting at least five business days before the IEP team meeting.

There is documentation that the complainant was provided with a copy of the completed IEP documents.

12. On March 8, 2024, the "Evaluation Report and Determination of Initial Eligibility" was completed. The report reflects a parent provided an October 2023 private psychological evaluation, which reflects a diagnosis of Major Depressive Disorder (MDD). The report further reflects that the "student presents with many of the symptoms directed related to the DSM-5 diagnostic criteria and is exhibiting many of the associated characteristics of an autism spectrum disorder."
13. On April 4, 2024, and April 16, 2024, the IEP team convened to develop the initial IEP. The PWN generated following the meeting reflects that the IEP team reviewed the Functional Behavior Assessment (FBA) and agreed to implement the developed IEP.

The PWN reflects that the IEP team agreed to the following:

- Goals in the areas of social-emotional development including coping strategies to self-calm, self-regulation, and attention, and self-management;
- 20 hours weekly of special education services inside the general education setting;
- Two hours and 30-minutes weekly special education services outside the general education setting;
- 30-minutes weekly of counseling services inside the general education setting;
- 45-minutes weekly of counseling services outside the general education setting; and
- Develop a Behavior Intervention Plan.

The PWN reflects that on April 16, 2024, the complainant agreed to sign and authorize the IEP.

There is no documentation that the complainant was provided with a copy of the IEP documents the IEP team planned to review during the April 2024 IEP team meetings; at least five business days before the IEP team meeting.

There is documentation that the complainant was provided with a copy of the IEP document within five business days after the IEP team meeting.

14. The IEP was developed on April 16, 2024. The IEP reflects that the areas impacted by the student's disability are social-emotional and behavioral.

The social-emotional behavior present levels of academic achievement and functional performance (PLAAFP) reflect that the student was rated as elevated to very elevated on the parent provided private autism spectrum rating scale (ASRS), and the Connors 4th Edition (Connors-4) assessments. The IEP reflects that an FBA was conducted on April 11, 2024, and that the student does not require a BIP.

The IEP requires the student to be provided with:

- 20 hours weekly of special education services inside the general education setting;
- Two hours and 30-minutes weekly special education services outside the general education setting;
- 30-minutes weekly of counseling services inside the general education setting; and
- 45-minutes weekly of counseling services outside the general education setting.

The IEP requires the student to be provided supplementary aids, services, and accommodations to address his needs, including his social-emotional behavior needs:

- Small group;
- Time of day;
- Frequent breaks;
- Reduced distractions to self and others
- Monitor test responses;
- Extended time (1.5x);
- Periodic provision of alternative ways for students to demonstrate learning;
- Allow for oral rehearsal of idea when writing;
- Periodic access to writing tools and resource
- Periodic repetition of directions, frequent feedback, and check ins;
- Periodic break down assignments into smaller units;
- Periodic direct instruction to teach coping strategies and social skills;
- Daily use of first/then, offer choices, structured reinforcement system;
- Daily utilize reflective listening, be aware of tone and body language;
- Daily check ins;
- Daily adult support;
- Periodic check-ins with the school counselor;
- Daily encourage student to ask for assistance when needed;
- Daily preferential and flexible seating options;
- Daily access to a coping menu of strategies to self-calm;
- Daily access to prearranged and/or frequent breaks, antiseptic bounce;
- Daily access to trusted adult;
- Daily silent agreed-upon cues to request help/breaks and access to a flash pass; and
- Daily access to calming area (in the classroom and alternative location) and calming tools.

The IEP requires social-emotional behavioral goals:

- “Coping strategies to self-calm: By April 2025, given adult facilitation, supported problem solving, prompts, repetition of directions, access to movement breaks and sensory strategies, opportunities to practice, [the student] will learn and apply coping strategies to self-calm when he is feeling emotionally dysregulated and manage frustration so that he can participate in a variety of activities.”
 - Measured by 6 out of 10 observable opportunities.
- “Self-regulation and Attention: By March 2025, given clear and consistent expectations, strategies to initiate and maintain attention, verbal/nonverbal cues and reinforcement, and faded adult support, [the student] will demonstrate improved self-regulation and attention skills necessary to complete work and participate in a variety of activities throughout the day.”
 - Measured by 3 out of 5 observable opportunities.
- “Self-management - positive statements: Given adult facilitation, supported problem solving, prompts, repetition of directions, access to movement breaks and sensory strategies, opportunities to practice, [the student] will identify and express positive feelings and strengths about self and others.”
 - Measured by 3 out of 5 observable opportunities.
- “Self-esteem and Self-confidence: By April 2025, given adult facilitation, supported problem solving, prompts, sensory strategies and strategies to support attention, [the student] will demonstrate improved self-esteem, self-confidence and improved social skills by participating in a variety of activities throughout the day.”
 - Measured by 3 out of 5 observable opportunities.

15. On April 25, 2024, the student unenrolled from MCPS and enrolled in FCPS.

CONCLUSIONS:

Allegation #1 Proper Procedures When Identifying and Evaluating the Student to Determine Eligibility

In this case, the complainant alleges that MCPS failed to properly find the student eligible under IDEA when the MCPS did not determine eligibility at the same time the student was found eligible under Section 504 on October 24, 2023. However, Section 504 and the IDEA are two separate laws with different eligibility criteria and processes.

Based on the Findings of Fact #2 through #9, MSDE finds that the MCPS did follow proper procedures when identifying and evaluating the student to determine if the student is a student with a disability requiring special education and related services, from October 2023 to April 2024, in accordance with 34 CFR §§ 300.301-.311 and COMAR 13A.05.01.06. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #2 Development of the IEP

In this case, the student was not found eligible for special education services until March 8, 2024, and an IEP was developed on April 16, 2024.

Based on the Findings of Fact #3, through #5, #11 through #14, MSDE finds that the MCPS was not required to develop an IEP that addressed the student's identified social-emotional and behavioral needs from October 2023 to April 16, 2024, as MCPS was still conducting the evaluation process, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office does not find a violation occurred concerning the allegation.

Allegation #3 Provision of IEP Document Five Days Prior To IEP Meeting

School personnel shall provide the parent of a student with a disability an accessible copy of each assessment, report, data chart, draft IEP, or other document the IEP team or other multidisciplinary team plans to discuss at that meeting, at least 5 business days before the scheduled meeting (MD Code, Education § 8-405 (e)(1)(i); COMAR 13A.05.01.07).

Based on the Finding of Fact #4, MSDE finds that the MCPS did provide the parent with a copy of the Child Find/IEP documents within five business days before the IEP team meetings on November 16, 2023, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find a violation occurred concerning this aspect of the allegation.

Based on the Findings of Fact #11 and #13, MSDE finds that the MCPS did not provide the parent with a copy of each assessment, report, data chart, draft IEP, or other document the IEP team or other multidisciplinary team planned to discuss at a meeting within five business days before the IEP team meetings on March 8, 2024, and April 4, 2024, in accordance with COMAR 13A.05.01.07. Therefore, this office finds a violation occurred concerning this aspect of the allegation.

Allegation #4 Provision of IEP Document Five Days After an IEP Meeting

In this case, the IEP team convened on November 16, 2023, to discuss Child Find screening and the need for evaluation assessments. The IEP team convened on March 8, 2024, to discuss identification, eligibility, and assessments. There were no IEPs developed at these meetings.

Based on the Findings of Fact #4 and #11, MSDE finds that the MCPS was not required to provide the parent with a copy of the IEP document within five business days after the IEP team meetings on November 16, 2023, and March 8, 2024, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find a violation occurred concerning this aspect of the allegation.

Based on the Finding of Fact #13, MSDE finds that the MCPS did provide the parent with a copy of the IEP document within five business days after the IEP team meetings on April 16, 2024, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find a violation occurred concerning this aspect of 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.³ This office will follow up with the public agency to ensure that it completes the required actions consistent with the 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.⁴ 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 February 14, 2025, that the IEP team has provided the complainant with a copy of each assessment, report, data chart, draft IEP, or other document the IEP team or other multidisciplinary team discussed at the March 8, 2024, and April 4, 2024, IEP team meetings.

School-Based

MSDE requires the MCPS to provide documentation by February 14, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision to the parent of a copy of each assessment, report, data chart, draft IEP, or other document the IEP team or other multidisciplinary team plans to discuss at IEP team meetings, under the COMAR, as applicable. 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.

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/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
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Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
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