

January 3, 2025

[REDACTED]

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

RE: [REDACTED]
Reference: #25-122

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 November 4, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainants,” 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 has been provided with physical therapy as a related service, as required by the Individualized Education Program (IEP) since November 2023, in accordance with 34 CFR §§ 300.101 and 300.323.
2. The MCPS has not followed proper procedures when conducting a reevaluation of the student since March 4, 2024, in accordance with 34 CFR §§ 300.303–300.306.
3. The MCPS did not ensure that a physical therapy assessment was conducted in response to a request during the reevaluation of the student since March 4, 2024, in accordance with 34 CFR §§ 300.303–300.311 and COMAR 13A.05.01.06.
4. The MCPS has not ensured that the IEP team addressed parental concerns regarding changes in the student’s physical therapy (PT) services and safety concerns since March 2024, in accordance with 34 CFR § 300.324.
5. The MCPS has not ensured that the student has been provided with transportation services as required by the IEP since September 2024, in accordance with 34 CFR § 300.323.

6. The MCPS has not ensured that the student's progress toward achieving the IEP goals has been measured in the manner required by the IEP since November 2023¹, in accordance with 34 CFR § 300.320.

BACKGROUND:

The student is eight years old and is identified as a student with Multiple Disabilities (MD) in the areas of Other Health Impairment (OHI), Autism, and Intellectual Disability (ID) under the IDEA. The student currently attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1

PROVISION OF PHYSICAL THERAPY

FINDINGS OF FACT:

1. The IEP in effect in November 2023 was created on March 17, 2023. The March 17, 2023, IEP reflects identified needs in the areas of Early Literacy, Math Problem Solving, Reading Phonics, Speech-Language Expressive Language, Speech-language Receptive Language, Written Language Expression, Social Emotional/Behavioral, Social Interaction Skills, Fine Motor, and Gross Motor. The IEP includes goals that address these areas of concern.
2. The March 17, 2023, IEP reflects the student requires:
 - 10 hours per week of specialized instruction inside the general education classroom to receive support in art, music, PE, library, class meetings, lunch, and recess with grade-level peers;
 - 19 hours and five minutes per week of specialized instruction outside the general education classroom to receive support in reading, math, writing, social studies, science, and learning behaviors;
 - 1 hour per week of speech-language services as a related service outside the general education classroom;
 - 1 hour per week of occupational therapy as a related service outside the general education classroom;
 - 30 minutes a week of physical therapy as a related service outside of the general education classroom; and
 - Transportation as a related service with curb-to-curb service, a child safety harness, and a bus attendant to monitor safety and assist with boarding and exiting the bus.
3. There is documentation that the student received physical therapy as a related service, as required by the IEP.

¹ The initiation letter reflects "since October 2023" in error. The investigation was conducted since November 2023.

CONCLUSION:

Based on the Findings of Fact # 1 through #3, MSDE finds that the MCPS has ensured that the student has been provided with physical therapy as a related service, as required by the IEP since November 2023, in accordance with 34 CFR §§ 300.101 and 300.323. Therefore, this office finds that a violation has not occurred concerning this allegation.

ALLEGATIONS #2, #3, and #4

REEVALUATION PROCEDURES, PROVISION OF PHYSICAL THERAPY ASSESSMENT, and PARENTAL CONCERNS

FINDINGS OF FACT:

4. On March 4, 2024, the IEP team convened for a re-evaluation planning and determination of the student's eligibility, to conduct an annual review and determine if the student is eligible for Maryland Alternate Assessments. The Prior Written Notice (PWN) generated after the meeting reflects that the IEP team determined the student continued to be eligible for special education services and the team proposed to update her disability category from Developmentally Delayed (DD) to Multiple Disabilities (MD). The IEP team also proposed adding a supplementary aid, removing the student's direct PT service and adding PT services as a supplementary service, removing the PT gross motor goal, modifying occupational therapy delivery, and reconvening for goal review. The IEP team provided mediation resources to the family due to disagreement.
5. The PWN reflects the IEP team used a variety of data sources, including previous medical diagnoses, parent and teacher reports, Unique Learning Systems (ULS) benchmark assessments, informal observations, related service logs, and classroom assessments, to inform its decisions concerning the reevaluation process. The PWN further notes that direct PT data revealed the student can navigate stairs and the school environment safely with supervision. Given her adequate gross motor skills, the team recommended transitioning to bi-monthly 30-minute PT sessions as a supplementary aid and service provided by staff to integrate gross motor skills during her daily activities for safety and consistency. While the PWN reflects that the student has "mastered"² her current PT goals and has adequate skills for safely navigating the school environment, the student's quarterly progress reports do not demonstrate independence in navigating throughout the school environment, as specified in her gross motor IEP goal.
6. The PWN reflects that during the meeting, the family disagreed with the proposed reduction and delivery model change for PT services, and the parents were provided with their Procedural Safeguards for dispute resolution, if desired. The PWN reflects that the MCPS IEP team members initially suggested 1x30 minutes of monthly direct PT but revised it to 2x30 minutes monthly as a supplementary aids model after the family and their attorney voiced concerns.
7. On June 12, 2024, the IEP team reconvened to conclude the annual review of the student's IEP. The PWN reflects that IEP goals were proposed in areas including Receptive and Expressive Language, Fine Motor Skills, Reading Phonics, Math Problem Solving, Written Language Expression, Reading Comprehension, Social-Emotional Behavior, and Social Interaction Skills based on the student's present levels of functioning. Unlike the previous IEP, the updated goals do not address gross motor skills. The IEP team discussed the student's progress in physical therapy and proposed maintaining

² The student's progress report dated January 26, 2024, and April 9, 2024, reflect the student is "Making sufficient progress to meet goal."

the supplementary aid and services model at 2x30 minutes monthly. The PWN reflects the student can navigate stairs and her school environment safely but struggles with follow-through on goals due to behavioral challenges. The team determined the student would benefit from 2x30 minutes of monthly direct PT support, supplemented by staff integration of gross motor skills throughout her school day.

8. The PWN reflects that the family strongly opposed the proposed removal of direct PT services and the shift in the delivery model. They expressed concerns that reducing consistent, structured support could cause skill regression. They particularly noted insufficient progress in stair navigation and advocated for more intensive services to address the student's needs. The family requested a "formal assessment" to "discontinue services" but was informed that "MCPS does not require an assessment to dismiss related services, though no related services were recommended for dismissal at this time."
9. On June 12, 2024, the parent emailed the teacher to express concerns and disappointment on how she was treated within the school building and was not allowed to see the student demonstrate her abilities within the school building. The classroom teacher responded to the parent stating that she loved working with the student and wished the parent a great weekend.
10. On July 12, 2024, the IEP team met at the parents' request to discuss a June 12, 2024, incident where the student sustained a head injury. The PWN reflects the family asked for clearer language in the student's evacuation plan section of the IEP and noted the student required "contact supervision" as opposed to "close supervision". The requested change was made to the IEP. The family also requested to review the student's safety plan due to her head injury. The PWN reflects the IEP team made the necessary changes to the safety plan. The family and advocate expressed that they did not believe the current public-school placement was the safest for the student and wished to pursue a non-public school placement.
11. During the July 12, 2024, IEP meeting, the family requested that a PT assessment be conducted over the summer, emphasizing the need to reevaluate the student's large motor skills and school navigation before the 2024–2025 school year. The PWN reflects the MCPS IEP team agreed that further PT assessment would be beneficial, however, recommended conducting it in the fall for the most accurate data, reflecting the student's typical school environment.
12. On July 22, 2024, MCPS issued a "Notice of IEP Team Meeting" scheduled for August 29, 2024, to review existing information and discuss the need for additional data, services, or reevaluation for continued eligibility. This meeting was rescheduled to September 3, 2024, but was postponed at the parents' request to September 13, 2024.
13. On September 13, 2024, the IEP team convened for a reevaluation planning meeting to discuss the student's need for PT. The PWN reflects the IEP team proposed to assess the student in the area of gross motor skills per the request of the parents. The PWN reflects that the "Authorization for Assessment" was sent to the parents following the meeting. However, the form completed by the parent reflects it was backdated to "July 12, 2024," with a note stating that permission for the assessment was provided on that date. The PWN reflects the IEP team is "still within the 90- day window for re-evaluation based on the summer meeting date of July 12, when the assessment was requested."

14. The student's reevaluation was completed on March 4, 2024. Following the reevaluation, the student's parents requested an additional assessment. The date of referral for the PT assessment is July 12, 2024. The date of consent for the PT assessment is September 13, 2024.
15. On September 20, 2024, the parents requested an incident report regarding the student's head injury sustained during dismissal on September 19, 2024. They were informed that no incident report was created as there were no visible injuries and the student was not seen by health room staff. The parents' advocate requested a report for medical purposes, however, MCPS Counsel clarified that the school followed protocol for documentation as no injuries were observed.
16. On September 20, 2024, October 14, 2024, and October 21, 2024, MCPS conducted a PT assessment.
17. On November 8, 2024, the parents received an email to schedule an IEP meeting to review the PT assessment on December 5, 2024.
18. On November 26, 2024, the parents received their "5-day documents" including the PT assessment.
19. On December 6, 2024, the IEP team reconvened to review the PT assessment. The PWN reflects the assessing PT noted during the re-assessment that the student is motorically able to access the school building but had questions regarding the student's vision and its' impact on her navigation of the school building, and requested that the vision specialist share her data from her vision consultation. Based on consultation from the vision specialist, the team recommended that a mobility and orientation specialist consultation should be completed. During the IEP team meeting, the PT did not formally review her assessment as the parent's attorney noted that the family did not receive the 5-day documents in time "due to the holiday" as the school was closed from November 27, 2024, through November 29, 2024³. She requested an additional meeting to review the PT assessment, the private educational consultant observation, and the vision specialist consultation note.

CONCLUSIONS:

Reevaluation Procedures

The complainant alleges that the proposed change to the student's PT services was a significant change in her eligibility and it was done without reevaluation or supporting data. However, changing the service delivery model of a related service does not reflect a change to a student's eligibility for special education. Instead, it represents a modification in what the IEP team deems necessary to ensure a Free Appropriate Public Education (FAPE). While data must inform service changes, IDEA does not mandate a formal assessment to alter services. In this case, MCPS determined that the change provided the student with FAPE. Her eligibility under the IDEA was not affected by the change.

Based on the Findings of Fact #4 and #5, MSDE finds that the MCPS has followed proper procedures when conducting a reevaluation of the student since March 2024, in accordance with 34 CFR §§ 300.303–300.306. Therefore, this office finds that a violation has not occurred concerning this allegation.

³ MSDE acknowledges that November 28, 2024, being a holiday, will not count toward the five-day rule, meaning that this day will not be included in the timeline for compliance under that rule.

Provision of physical therapy assessment

In this case, the IEP team agreed on July 12, 2024, and September 13, 2024, to conduct a PT assessment. At the July 12, 2024, IEP team meeting, the MCPS provided the parents with a PWN about why they declined to begin the assessment during the summer. The parents disagreed but took no action based on their disagreement. When school reconvened, MCPS followed through with their recommendation and reconvened the IEP team to discuss the agreed to PT assessment. The parents were provided with a consent form, however, backdated it to the referral date in July. Based on Finding of Fact #11, the date of consent for the assessment to be conducted was the date in September when the parents returned the signed consent form.

Based on the Findings of Fact #11, #12, #13, #14, #16, and #19, MSDE finds the MCPS did not ensure that a physical therapy assessment was conducted in response to a request within a reasonable time since September 2024, in accordance with 34 CFR §§ 300.303– 300.311 and COMAR 13A.05.01.06. Therefore, this office finds that a violation has occurred concerning this allegation.

Parental Concerns

The complainant alleges that the IEP team did not address the parent's concerns regarding the changes to the student's PT services. Specifically, the parent was concerned about the removal of the student's direct services related to her gross motor IEP goal and the necessity of that service to ensure the student's safety throughout the school building.

While the PWN reflects that the IEP team noted the reduction was due to the mastery of the student's gross motor IEP goals, the data does not align with the basis of the IEP team's decision. The MCPS states that the basis for the change in the service was due to the student mastering her gross motor goal, however, the quarterly progress reporting on the goal does not reflect that the student has achieved the goal. MCPS did not provide a response to the parent's concerns regarding this issue or the safety of the student without direct service.

Based on the Findings of Fact #5 through #9, #11, #13, #19, and #26, MSDE finds that the MCPS has not ensured that the IEP team addressed parental concerns regarding changes in the student's physical therapy services since March 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation has occurred concerning this allegation.

Based on the Findings of Fact #7, #10, and #15, MSDE finds that the MCPS has not ensured that the IEP team addressed parental concerns regarding safety concerns since March 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation has occurred concerning this allegation.

ALLEGATION #5

PROVISION OF TRANSPORTATION

FINDINGS OF FACT:

20. The IEP in effect since September 2024 was amended on July 12, 2024. The IEP reflects the student's required transportation as a related service. The student required curb-to-curb transportation, with a child safety harness and bus attendant to monitor safety and assist with boarding and exiting the bus.

21. On September 9, 2024, the parent emailed the MCPS school administrator to advise that the school bus was 15 minutes late. The parent also requested information about before and after school care. The administrator noted that parents are asked to give a 10-15 minute grace period due to traffic. The parent brought the student to school due to the bus not arriving by 9:00 a.m.
22. On October 9, 2024, the parents emailed the MCPS school administrator regarding delays in transportation and informed the MCPS administrator that they would bring the student to school themselves again. In response, the administrator confirmed via email that they had contacted the bus office and assured the parents that the student would be picked up on time the next morning.
23. On October 15, 2024, the bus was again delayed. The bus attendant informed the parent that the bus would not arrive until 8:45 a.m. daily.
24. Although the bus may have arrived late to the student's home, it is not possible to determine what time it would have arrived as the parent drove the student to school on the days it was late. As such, there is no documentation indicating that the student has consistently missed instruction as a direct result of the delayed transportation.

CONCLUSION:

Based on the Finding of Fact #24, MSDE finds that the MCPS has substantially ensured that the student has been provided with transportation services as required by the IEP since September 2024, in accordance with 34 CFR § 300.323. Therefore, this office finds that a violation has not occurred concerning this allegation.

ALLEGATION #6

PROGRESS REPORTS

FINDINGS OF FACT:

25. The reports of the student's progress towards the achievement of the written expression, early literacy, and phonics IEP goals, dated October 2023, November 2023, and January 2024, reflect that the student is "Making sufficient progress to meet goal."
26. The report of the student's progress towards the achievement of math problem solving, social interaction, speech and language, social-emotional, fine and gross motor IEP goals, dated October 2023, November 2023, and January 2024, reflect that the student is "Making sufficient progress to meet goal." However, progress is not measured in the manner required by the IEP.
27. The report of the student's progress dated April 2024 towards the achievement of all IEP goals except her gross motor IEP goals reflects that the student is "Making sufficient progress to meet goal." However, progress is not measured in the manner required by the IEP.
28. The report of the student's progress dated June 2024 towards the achievement of the annual goals, reflects the "Newly Introduced skill; progress not measurable at this time" for all her new IEP goals.
29. The report of the student's progress dated October 2024 towards the achievement of the annual IEP goals reflects that the student is "Making sufficient progress to meet goal" for all her goals. However, in the areas of fine motor, speech and language, and reading phonics, progress is not measured in the manner required by the IEP.

DISCUSSION AND CONCLUSION:

The LEA must ensure the provision of written information about the student's progress toward their IEP goals and that the written information is based on the data collection method required by the IEP (34 CFR §§ 300.101, .320, and .323).

Based on the Findings of Fact #25 through #29, MSDE finds that the MCPS has not ensured that the student's progress toward achieving the IEP goals has been measured in the manner required by the IEP since October 2023, in accordance with 34 CFR § 300.320. Therefore, this office finds that a violation has occurred concerning this 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 manner⁴. 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 action⁵. 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 15, 2025, that the IEP team has taken the following action:

- a. Convened an IEP team meeting to review the PT assessment, reconsider the student's progress and determined if the student requires direct services and IEP goals in the area of gross motor skills. If the IEP team determines the student requires direct services, the IEP team must update the IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) and implement the created IEP goal;
- b. Determined the services needed to remediate the violations identified in this investigation; and
- c. Developed a plan for the implementation of the services within one (1) year of the date of this Letter of Findings.

⁴ 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, the 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.

⁵ 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 March 31, 2025, of the steps it has taken to ensure that the staff at [REDACTED] properly implements the requirements for conducting assessments in a timely manner and how to appropriately measure the student's progress to develop progress towards the achievement of IEP goal as required by the IEP.

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 for why the documentation was not made available during the investigation. The written request for reconsideration should be provided to Tracy Givens, Section Chief, Dispute Resolution via email at Tracy.Givens@maryland.gov. 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/sj

c: Dr. Thomas Taylor, Superintendent, MCPS
Dr. Peggy Pugh, Chief Academic Officer, MCPS
Diana K. Wyles, Associate Superintendent, MCPS
Eve Janney, Compliance Specialist, MCPS
Gerald Loiacono, Supervisor, Resolution and Compliance Unit, MCPS
[REDACTED], [REDACTED], Principal, MCPS
Alison Barmat, Branch Chief, Dispute Resolution and Family Support, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
Stephanie James, Complaint Investigator, MSDE