


January 10, 2025




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

Re:   
Reference: #25-127

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 12, 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 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 did not follow proper procedures when determining comparable services upon the student’s transfer to the MCPS since November 12, 2023, in accordance with 34 CFR § 300.323.
2. The MCPS has not provided the complainant with written invitations to Individualized Education Program (IEP) team meetings since November 12, 2023, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07D.
3. The MCPS has not ensured that the student's behavioral and social-emotional needs have been identified and addressed since November 12, 2023, in accordance with 34 CFR § 300.324.
4. The MCPS has not ensured that the student has been consistently provided with the related services, special education instruction, and supplementary aids and services, required by the IEP since November 12, 2023, in accordance with 34 CFR §§ 300.101 and .323.
5. The MCPS did not ensure that the behavior intervention plan (BIP) was consistently implemented since the beginning of the 2024 – 2025 school year, in accordance with 34 CFR §§ 300.101 and 323.
6. The MCPS did not follow proper procedures when amending the IEP to remove related services since November 12, 2023, in accordance with 34 CFR § 300.324.

7. The MCPS has not followed proper procedures when responding to a parent request for an IEP team meeting since November 12, 2023, in accordance with 34 CFR § 300.503.
8. The MCPS did not follow proper procedures in responding to a request for an Independent Educational Evaluation (IEE) that was made following the IDEA evaluation, since December 2023, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01.
9. The MCPS did not ensure the proper procedures were followed when responding to a request to inspect and review the student's education record since November 2023, in accordance with 34 CFR § 300.613.

**BACKGROUND:**

The student is 18 years old and is a student with Autism under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of special education.

**ALLEGATION #1**

**COMPARABLE SERVICES**

**FINDING OF FACT:**

1. The student's enrollment history reflects the MCPS is the public agency responsible for providing FAPE to the student. The IEP reflects that it was developed by the MCPS on February 21, 2023, and amended on September 19, 2023. The student withdrew from MCPS and participated in home instruction on August 18, 2023. She re-enrolled in MCPS on September 28, 2023.

**CONCLUSION:**

Based on the Finding of Fact #1, MSDE finds that the IEP developed for the student in February 2023 and amended in September 2023, was still in effect on November 12, 2023. Therefore, the provision of "comparable services" in accordance with 34 CFR § 300.323, was not required. Therefore, this office finds that a violation did not occur concerning this allegation.

**ALLEGATION #2**

**WRITTEN INVITATION**

**FINDING OF FACT:**

2. There is documentation that meeting notices were developed in preparation for IEP team meetings on: December 6, 2023, March 4, 2024, April 10, 2024, October 21, 2024, November 13, 2024, December 10, 2024, and December 11, 2024.

There is no documentation that written meeting notices were provided to the complainant.

**CONCLUSION:**

Based on the Finding of Fact #2, MSDE finds that the MCPS has not provided the complainant with written invitations to Individualized Education Program (IEP) team meetings since November 12, 2023, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07D. Therefore, this office finds that a violation has occurred concerning this allegation.

**ALLEGATIONS #3 and #5**

**DEVELOPMENT AND IMPLEMENTATION OF THE IEP THAT  
ADDRESSES THE STUDENT'S EMOTIONAL NEEDS AND  
IMPLEMENTATION OF BIP**

**FINDINGS OF FACT:**

3. The IEP in effect on November 12, 2023, was developed on February 21, 2023, and amended on September 19, 2023. The IEP reflects the following areas are impacted by the disability: math calculation, math problem solving, reading comprehension, reading fluency, reading phonics, speech-language expressive language, speech-language pragmatics, speech-language receptive language, written language expression, social-emotional/behavioral, and physical - perceptual motor.

The IEP reflects a Functional Behavior Assessment (FBA) was completed on December 6, 2021.

The IEP reflects a BIP was developed on March 11, 2022.

The IEP requires the following Social-Emotional/Behavioral goal:

“By February 2024, given modeling and support, [Student] will use respectful words to ask for assistance or a break when she is experiencing distress; engage in non-preferred tasks without shutting down, refusing to initiate, or anticipating failure; choose and employ coping strategies when experiencing intense emotions; tolerate and recover from her own and others’ mistakes; and use respectful words to communicate feelings of dissatisfaction, disapproval, and irritation during four out of five observed opportunities.”

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

- Daily - provide assistance with organization; use of word bank to reinforce vocabulary and/or when extended writing is required; paraphrase questions and instruction; frequent and/or immediate feedback; allow use of manipulatives; repetition of directions; provide alternative ways for students to demonstrate learning; monitor independent work; limit amount to be copied from board, check for understanding; revise format of test (i.e. fewer question; fill-in-the-blank), chunking of text(s); use pictures to support reading passages; whenever possible; simplified sentence structure, vocabulary; and graphics on assignments and assessments; reduce number of answer choices in all academics; limit amount of required reading; break down assignments into smaller units; altered/modified assignments; use of positive/concrete reinforcers; strategies to initiate and sustain attention; social skills training; reinforce positive behavior through non-verbal /verbal communication; frequent reminder of rules; frequent eye contact/proximity control; encourage/reinforce appropriate behavior in academic and non-academic settings; encourage student to ask for assistance when needed; advance preparation for schedule changes; preferential seating; and 2:1 adult support.
- Periodically – crisis intervention.
- Quarterly - social worker consult.

The IEP requires 31 hours and 55 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 requires occupational therapy (OT) as a related service outside of the general education setting for 30 minutes per week. The IEP requires counseling as a related service, outside of the general education setting for 20 minutes per week. The IEP also requires speech-language as a related service outside of the general education setting twice per week for 30 minutes per session.

4. There is no documentation that the IEP team convened for the purpose of holding the student's annual review meeting prior to February 20, 2024.<sup>1</sup>
5. The Behavior Intervention Plan (BIP) developed on January 7, 2022, reflects the following target behaviors physical aggression, tantrum, noncompliance a negative verbal interaction. The BIP requires the following prevention, educative, reinforcement, and response strategies:
  - Daily - proximity control, safe hands chart
  - Weekly – social thinking
  - Beginning of the year/as needed – seating arrangements, reviewing earning incentives
  - As needed – redirection, pre-correction, relationship building/pairing, environment backward chaining, reduce verbal prompting, visuals, schoolwide events
  - Per period – least to most prompting, chunking, high-quality specific praise, wait time, choices, eagle high five raffle
  - At occurrence- eagle bucks, noncompliance, negative verbal interactions, tantrum, physical aggression.

The BIP reflects it will be reviewed quarterly.

6. There is no documentation that the MCPS implemented the student's BIP since November 12, 2023, as required by the IEP.

## **CONCLUSIONS:**

### **Identify behavioral and social-emotional needs**

Based on the Finding of Fact #3 and #4, MSDE finds that the MCPS has ensured that the student's behavioral and social-emotional needs have been identified from November 12, 2023, through February 21, 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation has not occurred concerning this aspect of the allegation.

### **Identified and addressed behavioral and social-emotional needs**

Based on the Finding of Fact #3 through #6, MSDE finds that the MCPS has not ensured that the student's behavioral and social-emotional needs have been identified since February 21, 2024, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation has occurred concerning this aspect of the allegation.

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<sup>1</sup> A school-based staff indicated that meetings have been held, and staff notes reflect that. However, the student's record does not reflect that the IEP team convened for the purpose of holding an IEP meeting. Additionally, the record of subsequent meetings does not reflect continuation of an annual review meeting.

Based on the Findings of Fact #3 through #6, MSDE finds that the MCPS has not ensured that the student's behavioral and social-emotional needs have been addressed since November 13, 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation has occurred concerning this allegation.

### **Implementation of BIP**

Based on the Findings of Facts #3, #5 and #6, MSDE finds that the MCPS did not ensure that the BIP was consistently implemented since November 16, 2023, in accordance with 34 CFR §§ 300.101 and 323. Therefore, this office finds that a violation did occur concerning the allegation.

### **ALLEGATIONS #4 and #6**

### **PROVISION OF RELATED SERVICES, SPECIAL EDUCATION INSTRUCTION, AND SUPPLEMENTARY AIDS AND SERVICES, AMENDMENT TO IEP**

#### **FINDINGS OF FACT:**

7. While there is some documentation of work samples, there is no documentation that the student was provided with special education instruction as required by the IEP.
8. There is no documentation that the student was provided with OT as required by the IEP from November 12, 2023, through December 7, 2023.
9. While there is some documentation of the provision of speech-language services, there is no documentation that the student was consistently provided with speech-language services as required by the IEP from November 12, 2023, through November 21, 2024.

There is documentation that the student was provided with speech-language services since November 21, 2024, as required by the IEP.

10. There is no documentation that the student was provided with supplementary aids and services as required by the IEP since November 21, 2023.
11. On December 07, 2023, the IEP was amended during an IEP team meeting. The amended IEP reflects the removal of physical-perceptual motor as an area of need from the IEP. The IEP also reflects the removal of OT services, and a change to the special education instructional hours. The amended IEP further reflects special education instruction for 5 hours 15 minutes per day.
12. The PWN generated following the IEP team meeting on December 7, 2023, reflects the MCPS proposed accepting the November 2023 OT report, updating the present levels, and amending the IEP to remove OT service. The complainant disagreed with this decision and stated she would seek mediation, believing that the student still needs OT services and has support from an outside entity. The complainant also formally requested an Independent Educational Evaluation (IEE) for OT. The IEP team's decision was based on the student's educational records, including her grades, quarterly reports, teacher reports, November 2023 assessments, and input from the complainant.

The PWN does not reflect that a discussion occurred regarding changes to the amount of specialized instruction that the student requires.

The PWN includes a procedural safeguards statement about the rights of parents of children with disabilities if they disagree with the proposed and /or refused decisions.

## **CONCLUSIONS:**

### **Provision of Special Education Instruction**

Based on the Findings of Fact #3 and #7 MSDE finds that the MCPS has not ensured that the student has been consistently provided with the special education instruction required by the IEP since November 12, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

### **Provision of OT**

Based on the Findings of Fact #3, #8 and #11, MSDE finds that the MCPS has not ensured that the student has been consistently provided with the OT services required by the IEP from November 12, 2023, through December 7, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

### **Provision of Speech-Language**

Based on the Findings of Fact #3 and #9 MSDE finds that the MCPS has not ensured that the student has been consistently provided with the speech-language services required by the IEP since November 12, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

### **Provision of Supplementary Aids and Services**

Based on the Findings of Fact #3 and #10, MSDE finds that the MCPS has not ensured that the student has been consistently provided with the supplementary aids and services required by the IEP since November 12, 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has occurred concerning this allegation.

### **Amendment to remove related services**

Based on the Findings of Fact #11 MSDE finds that the MCPS did follow proper procedures when amending the IEP to remove related services since November 12, 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning this allegation.

## **ALLEGATION #7**

## **PROPER PROCEDURES WHEN RESPONDING TO A REQUEST FOR AN IEP MEETING**

### **FINDINGS OF FACT:**

13. The PWN generated following the IEP team meeting on October 27, 2024, reflects the IEP team convened in response to the complainant's request for "an IEP meeting to discuss services and review of progress / evaluation." The complainant participated in the IEP team meeting.

14. The PWN generated following IEP team meeting on November 13, 2024, reflects the IEP team convened in response to the complainant's concerns "surrounding service providers and the frequency/determination/eligibility of services (speech, OT, PT)." The complaint participated in the IEP team meeting.

The PWN reflects the complainant requested an Independent Educational Evaluation (IEE) for OT, physical therapy (PT), speech pragmatics, school phobia/anxiety screener and/or assessment. In response to the complainant's request, the school-based team proposed and agreed:

- that the MCPS will calculate compensatory services to address service gaps in speech-language services;  
a request for speech-language compensatory services, will be submitted and will include the complainant's request that compensatory services are provided by a private provider;
- a new speech language pathologist (SLP) will be assigned to the student;
- the occupational therapist who participated in the meeting, will send supporting documents;
- a follow up meeting will be scheduled to discuss psychological assessments, PT and OT providers evaluate progress, and eligibility.

The school-based team proposed that a central MCPS SLP conduct a comprehensive speech-language assessment. The complainant disagreed with this proposal and informed the team that she would like the assessment to be completed by a private provider.

On November 20, 2024, the complainant emailed the school-based team. The email reflects the team was scheduled to meet on December 9, 2024. The complainant requested to change the time of the IEP meeting.

15. There is no documentation that the complainant requested additional IEP team meetings.

#### **CONCLUSION:**

Based on the Findings of Fact #13 through #15, MSDE finds that the MCPS has followed proper procedures when responding to a parent request for an IEP team meeting since November 12, 2023, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation has not occurred concerning this allegation.

#### **ALLEGATION #8**

#### **PROPER PROCEDURES WHEN RESPONDING FOR A REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION**

#### **FINDINGS OF FACT:**

16. There is documentation that the complainant requested an IEE for OT during the IEP team meeting the parent requested on December 6, 2023.
17. There is documentation that on January 5, 2024, the MCPS generated a letter in response to the complainant's request for an IEE made on December 6th, 2023. The letter reflects that the MCPS filed an application for due process on January 5, 2024, in response to the complainant's request. The letter also reflects that a copy of the submitted application, MSDE parent guide, and the procedural safeguards were enclosed.<sup>2</sup>

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<sup>2</sup> On February 8, 2024, the complainant did not participate in the Office of Administrative Hearing (OAH) conference. As a result, the decision of the MCPS to deny the IEE was upheld, and the parent, was in Default.

18. On November 13, 2024, the IEP team convened to review and revise the student's IEP, address functional behavioral assessment and/or behavioral intervention plan, consider Extended School Year services, consider postsecondary goals and transition services, and consider reevaluation to determine need for additional data, determine services and/or determine continued eligibility. At this meeting, the team determined that the student was "not eligible for OT based on current assessments." The complainant requested an IEE in OT in response to this decision.
19. On December 13, 2024, the MCPS emailed the complainant in response to the request made on November 13, 2024. The email reflects "at this time, we cannot grant these requests. We are, however, happy to discuss the need for additional assessments for [Student] and would consider the need for these assessments to be conducted by private assessors." To date, there is no documentation that MCPS has provided any additional responses.

#### **DISCUSSION AND CONCLUSIONS:**

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either (i) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.<sup>34</sup> CFR § 300.502 In Maryland, the local education agency (LEA) must respond within thirty days informing the parent whether they will be requesting a due process hearing or will be funding the assessment as requested. COMAR 13A.05.01.14

In this case, the parent made two requests for an IEE. The first one was made on December 6, 2023. The MCPS responded within thirty days by filing a request for a due process hearing. The second request was made during a reevaluation meeting on November 13, 2024. At that time, the team determined that "based on current assessments," the student was no longer eligible for OT services. The MCPS responded within thirty days, however, they failed to respond properly with the two required options- either fund the assessment or request a due process hearing to defend their evaluation decision.

Based on the Findings of Fact #16 and #17, MSDE finds that the MCPS did follow proper procedures in responding to a request for an IEE that was made following the IDEA evaluation, on December 6, 2023, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on the Findings of Fact #18 and #19, MSDE finds that the MCPS did not follow proper procedures in responding to a request for an IEE that was made following the IDEA evaluation, since December 2023, in accordance with 34 CFR § 300.502 and COMAR 13A.05.01. Therefore, this office finds that a violation did occur concerning this aspect of the allegation.

#### **ALLEGATION #9**

#### **ACCESS TO STUDENT RECORDS**

#### **FINDINGS OF FACT:**

20. On December 13, 2024, the family advocate emailed the MCPS school-based staff requesting a copy of the speech-language logs since the beginning of the 2023-2024 school year.



21. On December 17, 2024, complainant emailed the MCPS school-based team requesting copies of the “service logs that were mentioned/presented during the IEP team meeting in November.”

#### **DISCUSSION AND CONCLUSION:**

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session and in no case more than 45 days after the request has been made. (b) The right to inspect and review education records under this section includes (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and (3) The right to have a representative of the parent inspect and review the records. 34 CFR § 300.613

Based on the Finding of Fact #21, MSDE finds that the MCPS is still within the allotted time to provide the complainant with access to the student record in response to the request made on December 17, 2024. in accordance with 34 CFR § 300.613. Therefore, this office finds that a violation did not occur 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 manner.<sup>3</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, MSDE, to ensure the effective implementation of the action.<sup>4</sup> Ms. Green can be reached at (410) 767-7770 or by email at [nicole.green@maryland.gov](mailto:nicole.green@maryland.gov).

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<sup>3</sup> 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.

<sup>4</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.

### **Student-Specific**

MSDE requires the MCPS to provide documentation, by April 15, 2025, that the IEP team has taken the following action

- a. Identify the student's behavioral and social-emotional needs and ensure the needs are reflected and addressed in the IEP;
- b. Responded to the request made on November 13, 2024, for an IEE;
- c. Provide a PWN to the complainant regarding the decision on December 7, 2023, to amend the special education instructional hours;
- d. Provide the student with special education instruction, speech-language services, supplementary aids and services as required by the IEP; and
- e. Provide documentation that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the failure to provide special education instruction, speech-language services, supplementary aids and services; and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The MCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

MSDE requires the school system to provide documentation by April 15, 2025 that the IEP team has determined the compensatory services to remediate the violations identified through this investigation and to provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

### **School-Based**

MSDE requires the MCPS to provide documentation by June 15, 2025, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at [REDACTED]. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to MSDE. If compliance with the requirements is reported, MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements. A monitoring report must be submitted to MSDE on or before March 31, 2025, reflecting compliance with the violations identified in this LOF for a random sampling of 25 students at [REDACTED]. Full compliance is required.

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. Requests for reconsideration must be sent to Tracy Givens, Section Chief, Dispute Resolution Branch, at [Tracy.Givens@maryland.gov](mailto: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/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], Principal, [REDACTED], MCPS  
Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE  
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE  
Alison Barmat, Branch Chief, Family Support and Dispute Resolution Branch, MSDE  
Nicole Green, Compliance Specialist, MSDE  
Tracy Givens, Section Chief, Dispute Resolution, MSDE  
Rabiatu Akinlolu, Complaint Investigator, MSDE