

January 17, 2025

[REDACTED]

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

Re: [REDACTED]  
Reference: #25-139

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 18, 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 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 ensure that the student was provided with a service plan following placement at The [REDACTED],<sup>1</sup> on November 18, 2023, in accordance with 34 CFR § 300.132.
2. The MCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified needs since November 18, 2023, in accordance with 34 CFR §§ 300.101 and .324.
3. The MCPS did not ensure that accessible copies of each assessment, report, data chart, draft IEP, or other documents the IEP team planned to discuss at the IEP team meetings, since November 18, 2023, were provided at least five business days before each scheduled meeting, in accordance with COMAR 13A.05.01.03B(9).
4. The MCPS did not ensure that the IEP team convened to review the student’s IEP in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324.
5. The MCPS did not ensure that IEP team meetings convened since November 18, 2023, included the required participants, in accordance with 34 CFR § 300.321.

6. The MCPS has not ensured that the student's academic, and social-emotional needs have been identified and addressed since November 18, 2023, in accordance with 34 CFR §§ 300.304 and .324.
7. The MCPS has not ensured that the IEP includes present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from the disability, since November 18, 2023, in accordance with 34 CFR §§ 300.303-.311, .320, and .323.

**BACKGROUND:**

The student is 8 years old and is a student with Other Health Impairment (OHI) under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of special education.

**FINDINGS OF FACT:**

1. The student attended the MCPS until August 2023, when she was withdrawn and parentally placed at [REDACTED]. There is documentation<sup>1</sup> that the MCPS was aware that the student was parentally placed in a private school and continued to reside in Montgomery County.
2. The IEP in effect on November 16, 2023, was developed on June 5, 2023, and amended on August 28, 2023. The IEP reflects that the following areas are impacted by the disability: self-management, reading phonics, speech-language receptive language, speech-language expressive language, reading comprehension, math problem solving, written language expression, reading fluency, math calculation, written language mechanics, and social interaction skills.

The IEP includes a Present Level of Academic Achievement and Functional Performance (PLAFFP) narrative. The narrative does not include a statement of how the child's disability affects the child's involvement and progress in the general education curriculum.

The IEP requires instructional and assessments accessibility features, instructional and assessment accommodation, supplementary aids services, program modifications and supports.

The IEP requires goals in reading phonics, reading phonemic awareness, reading comprehension, math, problem-solving, speech-language receptive language, speech-language expressive language.

The IEP requires two 30-minute sessions per week of special education instruction outside general education setting provided by the IEP team, outside the general education setting. The IEP requires four 40-minute sessions per week provided by the IEP team.

The IEP requires one 30-minute session per week of speech-language as a related service outside the general education setting. The IEP reflects existing "code F- moved known to be continuing."

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<sup>1</sup> On August 7, 2023, the complainant emailed the MCPS informing them that the student will not be at [REDACTED] in the fall. She will be enrolled "in a private school in the area." On August 24, 2023, the complainant sent a follow up email to the MCPS school-based staff informing her that he received an email which reflects the student is enrolled at [REDACTED] and has been assigned to a class. The complainant informed the staff that the student will be attending [REDACTED]. The MCPS staff acknowledged the emails sent by the complainant on August 3, 2023, and August 24, 2023.

3. On April 6, 2024, the complainant emailed an MCPS school-based staff. The email reflects the following "we wanted to reach out to see how we go about updating her IEP, so it remains current, so we are in a position to reinsert [Student] into public school. We haven't heard from anyone at [REDACTED], [REDACTED], or the county, so we are asking for next steps on how to move this forward so we can have that discussion." The email further reflects the complainant asked, "if you aren't the person who handles this, can you give the information for who to reach out to in order to begin this process, so we update it before the school year ends?"
4. There is no documentation that the IEP team convened prior to June 2024 to hold the student's annual review meeting.
5. The MCPS five-day disclosure notice generated on September 19, 2024, for the September 26, 2024, IEP team meeting indicates that the following documents were emailed to the complainant: the draft IEP, work samples or a work samples summary, measure of academic progress (MAP) scores, teacher report, dynamic indicators of basic early literacy skills (DIBELS), and phonological screen awareness (PAST).

There is documentation that the following documents were emailed to the complainant on September 19, 2024: the MCPS 5 day before document, teacher report, work samples, and the meeting invitation.

6. The prior written notice (PWN) generated following the IEP team meeting on September 26, 2024, reflects the team convened to hold a meeting as a re-evaluation planning meeting. The PWN reflects:
  - The IEP team reviewed psychological report completed by a private provider; and
  - Meeting participants included: Special Educator and Case Manager, Speech-Language Pathologist, School Psychologist, General Education Teacher, Assistant Principal, Occupational Therapist, Parents and Advocates.
7. The MCPS five-day disclosure notice generated on October 10, 2024, for the October 21, 2024, IEP team meeting indicates that the following documents were emailed to the complainant: the draft IEP, psychological assessments or assessment summary, MAP scores, teacher report, DIBELS, and PAST.

There is documentation that the following documents were emailed to the complainant on October 14, 2024: 5-day document, teacher report, data (MAP scores, DIBELS, and PAST), psychological evaluation, previous evals, and the draft IEP.

8. The IEP developed on October 21, 2024, reflects the following areas impacts the disability: math calculation, math problem solving, reading comprehension, reading fluency, reading, phonics, speech-language, expressive language, speech-language, receptive language, written language expression, written language mechanics, self-management, and social interaction skills.

The IEP includes a PLAAFP narrative. The narrative does not include a statement of how the child's disability affects the child's involvement and progress in the general education curriculum.

The IEP reflects the student has communication needs in the area of expressive language. Communication needs are addressed through goals and objectives. The IEP requires instructional, and assessments accessibility features and instructional and assessments accommodations, supplementary aids, services, program modifications and supports.

The IEP requires goals in the area of self-management, reading phonics, speech-language receptive language, speech-language expressive language. reading comprehension, math problem solving, written language expression, reading fluency, math calculation, written language mechanics, and social interaction skills.

The IEP requires four 30-minute sessions per week of special education instruction outside general education setting provided by the IEP team, special education teacher, general education teacher, and instructional assistant outside the general education setting.

The IEP requires four 30-minute sessions per week of special education instruction outside general education setting provided by the IEP team, special education teacher, general education teacher, and instructional assistant outside the general education setting.

The IEP requires five 3-hour sessions per day of special education instruction inside general education setting provided by the IEP team, special education teacher, general education teacher, instructional assistant, and speech-language pathologist inside the general education setting.

The IEP requires a 30-minute session of speech-language therapy as a related service.

9. The PWN generated following the IEP team meeting on October 21, 2024, reflects that the meeting participants included: special education teacher, principal, school psychologist, speech-language pathologist, math content coach, classroom teacher, special education area supervisor, parents and advocates.

The special educator who attended the meeting was not the special educator who instructs the student.

10. There is no documentation that the student has needs that are not addressed by the IEP.

## **CONCLUSIONS:**

### **ALLEGATION #1:**

### **DEVELOPMENT OF SERVICE PLAN**

Based on the Findings of Fact #1 and #2, MSDE find that the MCPS did not ensure that the student was provided with a service plan following placement at [REDACTED],<sup>1</sup> on November 18, 2023, in accordance with 34 CFR § 300.132. Therefore, this office finds that a violation did occur concerning this allegation.

**ALLEGATIONS #2, #6, and #7:**

**IEP THAT ADDRESS THE STUDENT'S NEEDS,  
IDENTIFIED STUDENT'S ACADEMIC and  
BEHAVIORAL NEEDS, PLAAFP**

**Developed IEP and Present levels of academic achievement and functional performance (PLAAFP)**

The public agency must ensure that the student's IEP includes a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children). 34 CFR § 300.324

If the IEP fails to assess the 'child's present levels of academic achievement and functional performance' the IEP does not comply with [IDEA]. This deficiency goes to the heart of the IEP; the child's level of academic achievement and functional performance is the foundation on which the IEP must be built. Without a clear identification of [the child's] present levels, the IEP cannot set measurable goals, evaluate the child's progress and determine which educational and related services are needed. *Kirby v. Cabell County Board of Education, Nos. 3:05-0322, 2006 WL 2691435 (S.D. W.VA. Sept. 19, 2006)*

In this case, the present levels of academic achievement and functional performance does not include a statement of how the disability impacts the student's involvement and progress in the general education curriculum.

**IEP Development**

Based on the Findings of Fact #1 and #8, MSDE finds that the MCPS has not developed an IEP that addresses the student's identified needs since November 18, 2023, in accordance with 34 CFR §§ 300.101 and .324. In this case the IEP developed since November 18, 2023, did not include a statement of how the disability impacts the student's involvement and progress in the general education curriculum. Therefore, this office finds that a violation did occur concerning this allegation.

**PLAAFP**

Based on the Findings of Fact #1 and #8, MSDE finds that the MCPS did not ensure that the IEP includes PLAAFP in order to properly identify and address all of the needs that arise from the disability, since November 18, 2023, in accordance with 34 CFR §§ 300.303-.311, .320, and .323. Therefore, this office finds that a violation did occur concerning this allegation.

**Identify and Address Student's Academic and Behavior Needs**

Based on the Findings of Fact #1 and #10, MSDE finds that MCPS has ensured that the student's academic, and social emotional needs have been identified and addressed since November 18, 2023, in accordance with 34 CFR §§ 300.304 and .324. Therefore, this office finds that a violation did not occur concerning this allegation.

**ALLEGATION #3: PROVISION OF IEP DOCUMENTS FIVE DAYS PRIOR TO IEP MEETING**

Based on the Findings of Fact #5 and #7, MSDE finds that the MCPS did ensure that accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the IEP team meetings, since November 18, 2023 were provided at least five business days before each scheduled meeting, in accordance with COMAR 13A.05.01.03B(9). Therefore, this office finds that a violation did not occur concerning the allegation.

**ALLEGATION #4: ANNUAL REVIEW**

Based on the Findings of Fact #1, #3, #4, and #10, MSDE finds that the MCPS did not ensure that the IEP team convened by June 4, 2024, to review the student's IEP in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation occurred concerning this allegation.

Notwithstanding, based on Finding of Fact #10, MSDE finds that the IEP team held an annual review on October 21, 2024, and the student continued to receive his education at the parental placement.

**ALLEGATION #5: MEETING PARTICIPANTS**

Based on the Finding of Fact #6 MSDE finds that the MCPS did ensure that IEP team meetings convened on September 26, 2024, included the required participants, in accordance with 34 CFR § 300.321. Therefore, this office finds that a violation did not occur concerning this aspect of the allegation.

Based on the Finding of Fact #9 MSDE finds that the MCPS did not ensure that IEP team meetings convened on October 21, 2024, included the required participants, in accordance with 34 CFR § 300.321. Therefore, this office finds that a violation did occur concerning this aspect of the 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>2</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.

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<sup>2</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, 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.

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>3</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**

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

- a. Ensured the IEP's PLAAFP reflects a discussion of how the child's disability affects the child's involvement and progress in the general education curriculum; and
- b. Convened an IEP team meeting and determined whether the violations identified through this investigation caused a negative impact to the student's progress. If it is determined to be a negative impact to the student's progress, the MCPS must develop a plan to remediate the impact and develop a plan for the implementation of the services within one year of the date of this Letter of Findings.

### **School-Based**

MSDE requires the MCPS to provide documentation by April 1, 2025, that the special education staff at [REDACTED] are provided with professional development regarding the proper procedures required for developing PLAAFPs, convening annual reviews, and for implementing Individualized Service Plans.

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.

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.

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<sup>3</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/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  
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Dr. Paige Bradford, Section Chief, Specialized Instruction, MSDE  
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE  
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