

January 24, 2025



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

RE: [REDACTED]
Reference: #25-157

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 27, 2024, MSDE received a complaint from [REDACTED] and [REDACTED], hereafter, “the complainants,” on behalf of the above-referenced student. In that correspondence, the complainants 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 developed an Individualized Education Program (IEP) that addresses the student’s identified behavior and transportation needs since December 2023, in accordance with 34 CFR § 300.324.
2. The MCPS has not ensured that the IEP contains the location and manner of delivery of supplementary aids and services, appropriate measurable goals, and a statement of the student’s present levels of academic achievement and functional performance (PLAAFP), since December 2023, in accordance with 34 CFR § 300.320.
3. The MCPS did not provide the parents with prior written notice (PWN) of the team’s decision to add an adaptive physical education goal to the student’s IEP, since December 2023, in accordance with 34 CFR § 300.503.

4. The MCPS did not follow proper procedures in making the determination that the student would participate in the Alternate Maryland School Assessment and would pursue a Certificate of Program Completion, instead of a high school diploma since December 2023, in accordance with 34 CFR § 300.320 and COMAR 13A.03.02.09.
5. The MCPS has not ensured that the student was provided with the augmentative and alternative communication (AAC) device and occupational therapy (OT) as required by the IEP since December 2023, in accordance with 34 CFR §§ 300.101 and .323.
6. The MCPS has not ensured that the IEP team addressed the parent's concerns regarding the: student's behavior, need for an AAC device, home-school communication, OT, pragmatics of speech, transportation, and physical therapy needs since December 2023, in accordance with 34 CFR § 300.324.

BACKGROUND:

The student is 13 years old and is identified as a student with autism under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. On December 12, 2023, the IEP team convened to review and revise the student's IEP. The PWN generated following the meeting reflects that the IEP team reviewed parental input, progress made on the previous IEP, goals and services, discussed instruction using the alternate academic achievement standards and participation in the alternate State assessments, placement, transportation, extended school year (ESY). In addition, it is reflected that the MCPS proposed a classroom trial of a communication device for the student.
2. The Alternate Appendix A: Participation Criteria and Checklist form completed on December 12, 2023, reflects that the IEP team members, including the complainants, agreed to the student's eligibility to participate in the alternate assessments and alternate achievement standards. There is documentation that the complainants signed the Appendix A form in agreement on this same date.
3. The student's IEP developed on December 12, 2023, reflects an annual review date of December 11, 2024, and the areas affected by the student's disability as communication, community education, math calculation, reading comprehension, expressive language, receptive language, written language expression, classroom behavior, self-management, and fine motor.

The IEP required:

- Two hours and 30 minutes weekly of special education instruction in the general education classroom;
- 26 hours and 25 minutes weekly of special education instruction outside the general education classroom;
- 30 minutes quarterly of OT outside the general education classroom to "support and monitor the motor aspects of the goal in the area of his written language expression goal, which will include monitoring handwriting and keyboarding output;"

- One hour weekly of speech-language therapy outside of the general education classroom; and
- Transportation, the student will “receive specialized transportation with curb-to-curb service, CR, and attendant.”

The IEP reflects that the IEP team completed the Appendix A document and determined on December 12, 2023, that the student should participate in the Alternate Assessment and instruction using Alternate Standards and pursue a Maryland High School Certificate of Program Completion.

The PLAAFP reflects a narrative for each identified area describing the student’s current abilities, in addition the following is reflected:

- Communication: scattered pre-kindergarten to kindergarten; based on classroom data and observation the student “will benefit from working on making requests and/or asking for help by including more information related to his request with greater independence (i.e. "I need help opening my orange juice" I want a drink of water"). [The student] will also benefit from working on communicating to an adult when he has finished his work by stating, "I'm finished.";"
- Community based instruction: scattered kindergarten; based on class data and observation the student “will benefit from continuing to increase his independence in the community by practicing scanning an area or location to look for specific items. He will also benefit from continuing to increase his independence in making a purchase;”
- Math calculations: scattered kindergarten to first grade skills; based on classroom observation, data, and a modified curriculum the student “will benefit from continuing to strengthen his math skills and number sense by counting sets from a larger set with greater independence and by actively using his skill of reading digital time to monitor the start and ending of one or more daily activities. [The student] will also benefit from applying his knowledge of numbers to completing simple addition using a calculator;”
- Reading comprehension: scattered kindergarten to third grade skills; based on classroom data and observation the student “will benefit from continuing to develop his reading comprehension skills by responding to "wh" questions when shown a personal picture of people, places, and actions. He will also benefit from following a 3-step written checklist to complete steps of a daily routine. Additionally, [the student] will benefit from continuing to use his knowledge of adjectives to complete sentences;”
- Expressive language: below age expectancy; based on informal observation, therapy logs, functional communication profile and a communication matrix the student has demonstrated slow progress in speech;
- Receptive language: below age expectations; based on parent reporting the student “is demonstrating questionable ability to comprehend info presented in stories, in classroom activities and in the home. Additionally, [the student] has been inconsistent with his yes/no response accuracy. Ongoing SLP services to address [the student’s] receptive language skills for functional tasks for classroom activity and home routine;”
- Written language expression: scattered kindergarten to first grade skills; based on classroom observation, data, and a modified curriculum the student “will benefit from continuing to increase his written language skills by writing sentences specifically related to activities and events that [the student] participates in. He will also benefit from continuing to practice using spacing and punctuation with greater independence;”
- Classroom behavior: below age expectancy; based on classroom data and observation the student “will benefit from continuing to decrease behaviors including disrobing, out-of-seat, aggression, throwing items, and spitting;”

- Self-management: kindergarten; based on observation and data collection the student “will benefit from increasing his independence in completing classroom and pre-vocational tasks and routines by following a picture supported written task analysis to transition between 2-3 vocational tasks;” and
- Fine motor: below age expectancy; based on informal observation, teacher report, and therapy logs the student “needs consistent tripod grasp which is supported by the use of a pencil grip that he does use every day.”

The IEP required assistive technology and services. “[The student] requires use of picture symbols to assist in communication. He benefits from sentence frames, sentence starters, and visual cues to elicit communication.” There is no documentation that the student requires the use of an AAC device.

The IEP required a behavior intervention plan (BIP).

The IEP required supplementary aids, services, and accommodations:

- Human reader or Human signer for mathematics, science, government, and English language arts (ELA)/literacy;
- Separate or alternate location;
- Frequent breaks;
- Reduced distractions to self and others;
- Change location within school;
- Text-to-speech for English language arts ELA/literacy;
- Human reader, including manual control of item audio and repeat item audio;
- ELA/literacy response human scribe;
- Monitor test response;
- Answers recorded in test book;
- “ACCESS” for English language learner's scribe;
- Use clear and concise language, daily;
- Monitor independent work, daily;
- Task analysis/chaining, daily;
- Repetition of directions, daily;
- Allow use of manipulatives, daily;
- Frequent and/or immediate feedback, daily;
- Picture schedule, daily;
- Prompt hierarchy, daily;
- Systematic instruction, daily;
- Use pictures to support reading passages, when possible, daily;
- Break down assignments into smaller units, daily;
- Frequent reminder of rules, daily;
- Adult support, daily;
- Check for understanding, daily;
- Reinforce positive behavior through non-verbal/verbal communication, daily;
- Use of positive/concrete reinforcers, daily;
- Visual cues, daily; and
- Structured environment, daily.

The IEP reflects the reason and manner of delivery for the supplementary aids, services, and accommodations.

The IEP required goals:

- Communication: "Given visual supports, [the student] will use complete sentences to make requests and will communicate when he is finished with his work for 3 out of 4 trials over 3 out of 4 days" on 3 out of 4 trials;
 - Community based instruction: "Given a shopping list, fading prompt hierarchy (verbal, gesture, model), visual support, individualized reinforcement system and opportunities for practice and repetition, [the student] will participate in community-based instruction by locating items and completing steps for making a purchase" on 3 out of 4 trials;
 - Math calculation: "Given systematic instruction, visual cues, and a prompt hierarchy, [the student] will solve real-life and mathematical problems using numerical and algebraic expressions and equations by counting sets from a larger set and by using time to monitor daily activities for 3 out of 4 trials over 3 out of 4 days;"
 - Reading comprehension: "Given written text with picture supports, the use of a prompt hierarchy, and verbal prompts to stay focused on his work, [the student] will use knowledge of language and its conventions when writing, speaking, reading, or listening by responding to wh questions related to personal events, by selecting the correct verb and adjective to describe a picture, and by reading to follow 3-step written directions for 3 out of 4 trials over 4 out of 4 days";
 - Expressive language: "[The student] will use multimodal communication (speaking, pictures, sentence starters, visual choices) to request, protest, answer questions, and comment using 2–5-word phrases with no more than 2 multimodal cues with 80% accuracy by December 2024";
 - Receptive language: "[The student] will demonstrate increase comprehension by responding to wh- and yes/no questions pertaining to personal info, classroom activity and short story presented with 75% acc by December 2024" with 75% accuracy;
 - Written Language expression: "Given the use of the prompt hierarchy and visual supports, [the student] will use knowledge of language and its conventions when writing, speaking, reading, or listening by using 3-5 words to describe a picture and using spacing between words when writing" on 3 out of 4 trials;
 - Classroom behavior: "Given reinforcement and proactive strategies, [the student] will increase appropriate school behaviors by decreasing inappropriate behaviors as measured by the objectives below" with a 25% decrease; and
 - Self-management: "Given a written/PCS task analysis, the use of the prompt hierarchy (V, G, M, PP, FP) and verbal and gesture prompts to attend to visual cues, [the student] will increase his independence in completing tasks and routines" on 4 out of 5 targeted trials.
4. On March 18, 2024, the IEP team convened to review and revise the IEP. The PWN generated following the meeting reflects that the IEP team agreed to add adaptive physical education to the PLAAFP, add it to the goals, and services for 45 minutes daily.
- While there is a "Five Day Verification Notice of Documents Provided After an IEP Team Meeting" form completed reflecting the provision of the IEP documents, however, there is no documentation to demonstrate that the complainants were sent the documents.
5. The IEP developed on December 12, 2023, and amended on March 18, 2024, reflects physical education as an additional area impacted by the student's disability. The IEP requires the additional provision of 45 minutes daily of physical education outside the general education classroom.

In addition, it reflects the physical education PLAAFP as:

- Physical education: below grade level; based on an adapted physical education evaluation the student is “currently able to demonstrate jumping off two feet once but was unable to demonstrate jumping multiple times consecutively. He was also unable to demonstrate hopping on one foot. I would like his PE goal to focus on improving these two skills so that he can improve his bilateral coordination and balance.”

The IEP requires a physical education goal:

- Physical education: “By December 2024, with adult support, visual cues, check for understanding, physical demonstration and positive encouragement, [the student] will independently demonstrate improved jumping skills by successfully jumping over low obstacles, without losing balance, 4 out of 5 trials, in order to improve his bilateral motor coordination” on 4 out of 5 trials.”

The IEP reflects that in March 2023, the complainants agreed with the addition of an adaptive physical education service and goal.

6. On December 5, 2024, the IEP team convened to discuss reevaluation assessments, review and revise the IEP. The PWN generated following the IEP team meeting reflects that the complainants requested, and the IEP team agreed to conduct a bus specific functional behavior assessment (FBA) and BIP, conduct an OT and physical therapy assessments, request consults from MCPS “InterACT” team for assistive technology and AAC needs, and to reconvene the IEP team meeting at a later date to allow the IEP team to incorporate parent and advocate feedback into the IEP document.
7. The BIP reviewed on December 18, 2024, reflects that the student is placed in the Autism Program. The BIP reflects the identification of the student’s:
 - Problem behaviors and the operational definitions, including disrobing, out of seat, throwing items, aggression, and spitting;
 - Hypothesized functions of each problem behavior, including seeking attention, avoiding tasks, and accessing tangible items;
 - Strategies to prevent the problem behavior, including differential reinforcement of incompatible behaviors (DRI), token system, verbal praise, informal reinforcer assessments, non-contingent reinforcement (NCR), adult proximity, opportunities for movement/heavy work/sensory, rule visuals, and environment manipulations;
 - Strategies to teach/increase replacement behavior, including “requesting for attention” and the previously used “accepting no” (this system is no longer in place, but could be reintroduced should behavior rates increase);
 - Strategies to respond when each problem behavior occurs, including block, planned to ignore and redirection, task completion, and clothing options.

In addition, the BIP reflects the current, measurable level of performance for each behavior, what data will be measured for the problem behaviors and replacement behaviors, and a goal for each behavior:

- “By December 2025 given reinforcement and proactive strategies, [the student] will increase appropriate school behaviors by decreasing inappropriate behaviors as measured by the objectives below:
 - [The student] will increase appropriate school related behaviors by decreasing frequency of disrobing per day by 25% from baseline;
 - [The student] will increase appropriate school related behaviors by decreasing frequency of out of seat items per day by 25% from baseline;

- [The student] will increase appropriate school related behaviors by decreasing frequency of throwing items per day by 25% from baseline; and
- [The student] will increase appropriate school related behaviors by decreasing frequency of spitting per day by 25% from baseline.”

The BIP reflects the schedule of data collection and analysis; person responsible for implementing each part of the BIP, progress monitoring; disseminating updates and developing progress reports; how often the parent’s will be updated on progress (“quarterly or on request”); materials, training, or other reports needed to implement the BIP; and a plan for crisis/emergency intervention.

There is documentation that the BIP is a “live” google document that changes with each amendment.

8. There is documentation that the student was provided with OT as required by the IEP since December 2023.
9. There is no documentation to support the complainants’ allegation that they raised concerns to the IEP team regarding home-school communication and the student’s pragmatics of speech needs.

DISCUSSIONS AND CONCLUSIONS:

Allegation #1 IEP That Addresses the Student’s Needs

Based on the Findings of Fact #1, #3, #4 and #7, MSDE finds that the MCPS has developed an IEP that addresses the student’s identified behavior and transportation needs since December 2023, in accordance with 34 CFR § 300.324. Therefore, MSDE finds no violation concerning the allegation.

Allegation #2 An IEP that Contains Location and Manner of Delivery of Supplementary Aids and Services, Appropriate Measurable Goals, and a Statement of the PLAAFP

Based on the Findings of Facts #3 and #6, MSDE finds that the MCPS has ensured that the IEP contains the location and manner of delivery of supplementary aids and services, appropriate measurable goals, and a statement of the student’s PLAAFP, since December 2023, in accordance with 34 CFR § 300.320. Therefore, MSDE finds no violation concerning the allegation.

Allegation #3 Provision of PWN

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency’s proposal or refusal (34 CFR § 300.503).

In this case, on March 18, 2024, the IEP team agreed to add physical education to the PLAAFP and to add a physical education goal to the IEP.

Based on the Findings of Fact #5 and #6, MSDE finds that the MCPS did not provide the parents with PWN of the team's decision to add an adaptive physical education goal to the student's IEP, since December 2023, in accordance with 34 CFR § 300.503. Therefore, MSDE finds a violation concerning the allegation.

Allegation #4 Proper Procedures in Determining that the Student Would Participate in the Alternative Maryland School Assessment Program

In this case, there is documentation that the Appendix A form was completed as part of the IEP team meeting held on December 12, 2023, and that the complainants responded by signing the Appendix A form in agreement on the same date.

Based on the Findings of Fact #1 and #2, MSDE finds that the MCPS followed proper procedures in making the determination that the student would participate in the alternative Maryland School Assessment and would pursue a Certificate of Program Completion instead of a high school diploma since December 2023, in accordance with 34 CFR § 300.320 and COMAR 13A.03.02.09. Therefore, MSDE finds no violation concerning the allegation.

Allegation #5 Provision of AAC Device and OT

In this case, the student does require assistive technology and services, however, the IEP does not specifically require an AAC device.

Based on the Finding of Fact #3, MSDE finds that the MCPS was not required to ensure that the student was provided with the AAC device since December 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, MSDE finds no violation concerning this aspect of the allegation.

Based on the Findings of Fact #3 and #8, MSDE finds that the MCPS has ensured that the student was provided with OT as required by the IEP since December 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, MSDE finds no violation concerning this aspect of the allegation.

Allegation #6 Addressing Parent Concerns

Based on the Finding of Fact #9, MSDE finds that the MCPS was not made aware of the complainants' concerns about home-school communication and pragmatics of speech needs therefore, they were not required to ensure that the IEP team addressed the parent's concerns regarding the: home-school communication and pragmatics of speech needs, since December 2023, in accordance with 34 CFR § 300.324. Therefore, MSDE finds no violation concerning this aspect of the allegation.

Based on the Finding of Fact #7, MSDE finds that the MCPS has ensured that the IEP team addressed the parent's concerns regarding the: student's behavior; need for an AAC device, OT; transportation, and physical therapy needs since December 2023, in accordance with 34 CFR § 300.324. Therefore, MSDE finds no violation 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.¹ 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.² 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 21, 2025, that the IEP team has provided the parent with the March 18, 2024, PWN of the IEP team's decision to add an adaptive PE goal.

The parent maintains 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 18, 2025, of the steps it has taken to ensure that the [REDACTED] staff properly implements the requirements for the provision of the PWN under the IDEA, 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 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 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.

¹ 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.

² 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, Supervisor, Resolution and Compliance Unit, MCPS
Maritza Macias, Paralegal, MCPS
[REDACTED], Principal, [REDACTED], MCPS
Dr. Brian Morrison, Branch Chief, Policy and Accountability, MSDE
Dr. Paige Bradford, Section Chief, Performance Support and Technical Assistance, MSDE
Alison Barmat, Branch Chief, Family Support and Dispute Resolution, MSDE
Nicole Green, Compliance Specialist, MSDE
Tracy Givens, Section Chief, Dispute Resolution, MSDE
Sarah Denney, Complaint Investigator, Dispute Resolution, MSDE