

February 4, 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: #25-164

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 December 6, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS has not developed and implemented a Behavior Intervention Plan (BIP) since April 2024, in accordance with 34 CFR §§ 300.101 and .324.
2. The MCPS did not provide prior written notice of the IEP team decisions from the IEP team meeting on April 12, 2024, in accordance with 34 CFR § 300.503.
3. The MCPS did not ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss on October 26, 2024, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
4. The MCPS has not ensured that the parent was provided with reports of quarterly progress toward achieving the annual IEP goals since the start of the 2024-2025 school year, in accordance with 34 CFR § 300.320.

BACKGROUND:

The student is six years old and is identified as a student with Developmental Delay (DD) under the IDEA. The student currently attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. The IEP in effect in April 2024 was created on January 24, 2024. The IEP reflects identified needs in the areas of math calculation, reading comprehension, speech-language expressive language, speech-language receptive language, self-management, social-emotional/behavioral, social interaction skills, and fine motor the IEP includes goals that address these areas of concern.
2. The IEP reflects the student requires seven hours and 30 minutes of specialized instruction daily inside of the general education classroom, one hour weekly of specialized instruction daily outside of the general education classroom, 30 minutes weekly of occupational therapy, and one hour weekly of speech-language as a related service.

The January 24, 2024, IEP does not reflect that the student had a Functional Behavioral Assessment (FBA) or the implementation of a BIP.

3. On April 12, 2024, the IEP team convened to review the FBA completed on March 21, 2024, which had been recommended during a previous IEP meeting on January 26, 2024. The Prior Written Notice (PWN) from that meeting indicated that the IEP team would review the FBA within 60 days. The PWN generated after the April 12, 2024, IEP meeting reflects that the student received an FBA due to behaviors observed in the classroom, and the team based its determination on teacher reports, data collection, observations, and classroom performance. Additionally, the PWN notes that the IEP team would reconvene to review the BIP.

The FBA completed on March 21, 2024, reflects the following targeted behaviors:

- Verbal Disruption: Screaming, yelling, and/or crying;
- Physical Aggression: hitting others; and
- Elopement: leaving the classroom and going to the back foyer, sensory room, or special education teacher's room without permission.

There is no documentation to reflect that the parent was provided with the PWN within a reasonable time after the IEP meeting.

4. On May 2, 2024, the IEP team convened to discuss the Extended School Year (ESY) for the student. There is no documentation that the IEP team reviewed the student's BIP.
5. On May 22, 2024, the complainant emailed a member of the IEP team requesting a meeting to review the BIP. The MCPS generated a Notice of IEP Team Meeting for an IEP meeting to be held on June 24, 2024, to address a functional behavioral assessment and/or behavioral intervention plan, however, there is no documentation that a meeting was held.
6. On October 9, 2024, via email, the complainant requested an IEP meeting and an FBA review. The complainant was informed that the FBA was reviewed on April 12, 2024, and this meeting will be to review the BIP. A mutually agreed-upon time was set for October 29, 2024.

7. On October 21, 2024, via email, the complainant received the documents the IEP team planned to review for a Periodic Review and FBA/BIP Review. These included the Five-Day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting, the IEP dated January 24, 2024, an FBA completed on March 21, 2024, the BIP dated May 21, 2024, and a Notice of IEP Team Meeting for an IEP meeting scheduled on October 29, 2024, to review and revise the IEP as needed and address the functional behavioral assessment and/or behavioral intervention plan.
8. On October 24, 2024, the complainant emailed members of the IEP team requesting that the IEP and the BIP be updated to reflect updated data to reflect the student's current ability and needs, "since a lot of things have changed with [Student]." The complainant also noted they "might need to change or reschedule" the meeting due to the allotted time for the meeting which conflicted with her team.
9. On October 25, 2024, the complainant's advocate emailed the IEP team "inquiring why updated present levels were not sent home as they are needed to update present levels to be able to craft clear goals, objectives, and SAS." A member of the IEP team responded that as noted in the email previously sent, the meeting is a "period review" in which the IEP team meets to "check in on a student's progress and ensure their IEP is effective and appropriate. At this time present levels have not been sent home because this is not an annual review (scheduled for January 2025)." She also informed them that the team will "also discuss the BIP as well."
10. On October 28, 2024, the complainant's advocate emailed the member of the IEP team informing them of the law, requested that "relevant documents be provided prior to the meeting" and requested that the meeting be rescheduled due to not receiving the documents 5 days in advance. An IEP member responded that they would be in touch by the end of the week to reschedule.
11. On December 5, 2024, via email, the complainant responded to an IEP member's email expressing concern that the student would not be able to participate in the field trip. The complainant stated that the student has a BIP designed to support her behavioral needs in various settings, including school activities, and should be supported in accordance with MCPS policy and the law. Additionally, the complainant expressed concern about not receiving updated documents reflecting all the problem behaviors the student had been exhibiting recently. The IEP member proposed a virtual parent meeting or phone call to discuss the student's participation in the trip without a chaperone, but the complainant declined the request. Instead, the complainant requested an update on the previous IEP meeting that should have taken place and noted that half of the school year had passed without receiving an updated BIP.
12. On December 8, 2024, a school administrator responded to the complainant, and through several email exchanges regarding the student's IEP meeting and the review of the BIP, the administrator requested that the IEP and BIP reviews be split into two separate meetings. She informed the complainant that the student received an FBA last school year and based on her document review, the FBA had been reviewed, but the BIP had not. She also stated that the FBA could be reviewed again if necessary. Regarding the IEP, the administrator proposed holding the meeting in late January, as that is when the student's annual review is due, pending the complainant's agreement.
13. On December 12, 2024, via email, the complainant expressed frustration over delays in the BIP review, stressing that timely updates could have prevented the ongoing issues. They proposed holding both the BIP review and the annual IEP meeting in January for better coordination.

14. On December 18, 2024, a mutually agreed-upon time was determined for the BIP Review. It was determined that the BIP would be reviewed on January 8, 2025, and the annual IEP meeting would be held on January 17, 2025. The complainant was also assured that the Special Education Supervisor or her Instructional Specialist would be in attendance at her request.
15. On December 20, 2024, the complainant received a Notice of IEP Team Meeting for a meeting scheduled on January 8, 2025, to address the FBA and/or BIP.
16. On January 2, 2025, the complainant received the "updated documents" that the IEP team intended to review on January 8, 2025.
17. On January 7, 2025, the complainant emailed a member of the IEP team a letter expressing her concerns about the updated BIP she received as it lacked thoroughness and accuracy.
18. On January 8, 2025, the administrator thanked the complainant for expressing her concerns in her previous email and informed the complainant and her team that the proposed meeting for the day needed to be rescheduled due to MCPS being closed because of inclement weather. The administrator proposed that both the BIP and IEP meetings be held on January 17, 2025, and recommended adding extra time to the already scheduled meeting.

The complainant responded by emphasizing the importance of addressing the concerns from her previous letter and ensuring the BIP is reviewed and updated before the meeting. She requested that the "updated, compliant BIP" be sent to her at least five days prior to the meeting, as required by law, to allow for adequate preparation. The complainant stated that delays and incomplete documentation directly affect her daughter's progress.

19. On January 10, 2025, via email, the complainant was provided with the documents that IEP planned to discuss for the meeting. These included the Five-Day Disclosure Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting, a draft IEP, a teacher report, BIP #1 and BIP #2, and a Notice of IEP Team Meeting for an IEP meeting scheduled on January 17, 2025, to review and revise the IEP as needed and address the functional behavioral assessment and/or behavioral intervention plan. However, this meeting was rescheduled until February 6, 2025.
20. While there is documentation indicating that the school team collected data on two of the three targeted behaviors in the student's BIP (appropriate voice level and physical aggression) from September 3, 2024, to December 20, 2024, there is no documentation showing that the school team implemented the teaching strategies outlined in the BIP to reduce the target behaviors.
21. The student's progress reports, dated November 2024, reflect that she was making "sufficient progress" to meet all of her IEP goals. There is no documentation that the complainant received reports of quarterly progress toward achieving the annual IEP goals as required by the IEP.
22. On January 26, 2025, the complainant received a copy of the student's progress report via email.
23. On January 26, 2025, the complainant received a copy of the PWN from the IEP meeting held on April 12, 2024, via email.

DISCUSSIONS AND CONCLUSIONS:

ALLEGATION #1

PROVISION OF BIP

In this case, the complainant alleges that MCPS has not completed and reviewed the BIP recommended by the IEP team in April 2024. Additionally, during the 2024-2025 school year, the student began exhibiting new negative behaviors, prompting the complainant to request that the BIP be updated to reflect these changes.

The IEP team determined that in January 2024, the student exhibited behaviors that warranted positive behavioral interventions and supports, along with other strategies as required by 34 CFR § 300.324(a)(2)(i). To date, the IEP team has not provided the support necessary to address the student's behaviors.

Based on the Findings of Fact #3 through #20, MSDE finds that the MCPS has not developed and implemented a BIP since April 2024, in accordance with 34 CFR §§ 300.101 and .324. Therefore, this office finds that a violation occurred concerning this allegation.

ALLEGATION #2

PROVISION OF PRIOR WRITTEN NOTICE

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 (34 CFR § 300.503).

Based on the Findings of Fact #3 and #23, MSDE finds that the MCPS did not provide prior written notice of the IEP team decisions from the IEP team meeting on April 12, 2024, in accordance with 34 CFR § 300.503. Therefore, this office finds that a violation occurred concerning this allegation.

Notwithstanding the violation, based upon Finding of Fact #23, MSDE finds that MCPS provided the parent with a copy of the PWN on January 26, 2025, therefore, no further student-specific corrective action is required.

ALLEGATION #3

PROVISION OF IEP DOCUMENT FIVE DAYS PRIOR TO IEP MEETING

Based on the Finding of Fact # 7, MSDE finds that the MCPS did ensure that the parent was provided with accessible copies of each document the IEP team planned to discuss at the October 26, 2024, IEP team meeting at least five business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation has not occurred concerning this allegation.

ALLEGATION #4

PROVISION OF PROGRESS REPORTS

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 # 21 and #22, MSDE finds that the MCPS has not ensured that the parent was provided with reports of quarterly progress toward achieving the annual IEP goals since the start of the 2024- 2025 school year, in accordance with 34 CFR § 300.320. Therefore, this office finds that a violation occurred concerning this allegation.

Notwithstanding the violation, based upon Finding of Fact #22, MSDE finds that the MCPS provided the parent with a copy of the reports of quarterly progress toward achieving the annual IEP goals on January 26, 2025, therefore, no further student-specific corrective action is required.

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 manner¹. 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 action². 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 April 30, 2025, that the IEP team has:

- a. Convened an IEP meeting to discuss the student's current behaviors and determine if an updated FBA is warranted;
- b. Review and update the student's BIP and IEP to reflect the current behaviors, and ensure proper interventions are implemented;
- c. Determined the compensatory services needed to remediate the violations identified in this investigation; and
- d. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The MCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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 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.

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.

School-Based

MSDE requires the MCPS to provide documentation by April 30, 2025, of the steps it has taken to ensure that [REDACTED] staff properly implements the requirements for developing and implementing effective IEPs, BIPs, and FBAs. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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.

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, Family Support and Dispute Resolution, 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