



Mohammed Choudhury  
State Superintendent of Schools

September 8, 2023

Ms. Jessica Williams  
Education Due Process Solutions, LLC  
711 Bain Drive #205  
Hyattsville, MD 20785

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

RE: [REDACTED]  
Reference: # 24-006

Dear Parties:

Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On July 10, 2023, MSDE received a complaint from Ms. Jessica Williams, “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) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. MCPS did not ensure that proper procedures were followed when determining the student’s educational placement since July 2022, in accordance with 34 CFR §§300.114 -.116.
2. MCPS did not ensure that the Individualized Education Program (IEP) team reviewed and revised, as appropriate, the student’s IEP to address lack of expected progress toward achieving his IEP goals since July 2022, in accordance with 34 CFR §300.324.
3. MCPS did not ensure proper procedures were followed when conducting an evaluation of the student since July 2022, in accordance with CFR §300.303 - .306 and COMAR 13A.05.01.06.
4. MCPS has not ensured that the student's behavioral, social/emotional, sensory, visual motor, and fine motor needs have been identified and addressed since July 2022, in accordance with 34 CFR §300.324.

5. MCPS has not ensured that the student's progress towards achievement of the annual goals ("progress reports") was measured as described in the IEP since July 2022, in accordance with 34 CFR §§300.320 and .323.
6. MCPS did not ensure that the IEP team followed proper procedures to obtain parental consent before determining that the student will receive assessments using alternate standards, in accordance with Md. Code Ann., Educ. §8-405.
7. MCPS has not followed proper procedures when responding to requests to access the student's educational records since July 2022, in accordance with 34 CFR §300.613.
8. MCPS has not ensured that the student's IEP contains appropriate goals to allow the student to make progress in the general education curriculum since July 2022, 34 CFR §300.320.
9. MCPS did not ensure that the student was provided with the home to school communication required by the IEP since July 2022, in accordance with 34 CFR §300.101 and 323.

**BACKGROUND:**

The student is 15 years old and attends [REDACTED] School. He is identified as a student with Other Health Impairment under the IDEA and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

**ALLEGATION #1, #3, AND #6: PLACEMENT DETERMINATION, PROPER REEVALUATION PROCEDURES, AND PARENT CONSENT ALTERNATIVE FRAMEWORK**

**FINDINGS OF FACTS:**

1. The IEP in effect on July 10, 2022, was developed on January 21, 2022. The IEP reflects the areas impacted by the disability include: Math problem solving, Physical Education, Reading Comprehension, Reading phonics, Speech and Language Expressive Language, Speech and Language Articulation, Written Language Content, Social emotional/behavioral, and Social emotional interaction skills. The IEP reflects the student has goals in the following domains: Postsecondary employment, training, and independent living goals. The IEP requires eight hours and ten minutes of specialized instruction per week inside the general education setting, and twenty-five hours and thirty-five minutes of specialized instruction per week outside the general education setting. Due to the student's complex needs, his least restrictive environment is the Learning for Independence program (LFI). The LFI program allows the student to engage with his peers in the general education setting for part of his school day with appropriate supports. The IEP reflects the MCPS received written parental consent on January 21, 2022, for the student to participate in the alternate framework.
2. The IEP requires that the student be provided with the following supports to address his social emotional needs on a daily basis: use of positive/concrete reinforcers, strategies to initiate and sustain attention, provide manipulatives and/or sensory activities to promote listening and focusing skills, provide frequent changes in activities or opportunities for movement, home-school communication, frequent reminder of rules, encourage/reinforce appropriate behavior in academic

- and non academic settings, and encourage student to ask for assistance for assistance when needed. The IEP also requires that the student be provided with “calming strategies” on an as needed basis.
3. On July 21, 2022, the IEP team met for the purpose of reviewing assessment information. The IEP team reviewed the educational assessment report completed for the student on May 6, 2022. As part of that assessment, the student was assessed using the Brigance Inventory of Early Development III. The psychological assessment report was completed for the student on June 13, 2022. As part of that assessment, the student was evaluated using the Adaptive Behavior Assessment System, Third Edition (ABAS-3); the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V); and the Test of Nonverbal Intelligence-Fourth Edition (TONI-4). Following this review, the IEP team determined that the student continued to qualify as a student with a disability with an Other Health Impairment related to a 10p15.3 chromosome deletion. The IEP team further determined that his placement in the LFI program at [REDACTED] School continued to be appropriate.
  4. On January 23, 2023, the IEP team meeting met to review and revise, as appropriate, the student’s IEP. The IEP developed on January 26, 2023, reflects the student’s disability affects the following areas: Math Problem Solving, Reading Comprehension, Reading Phonics, Speech and Language Articulation, Speech and Language Expressive Language, Written Language Content, and Social Interaction Skills. The IEP requires eight hours and ten minutes of specialized instruction per week inside the general education setting, and twenty-five hours and thirty five minutes of specialized instruction per week outside of the general education setting. The IEP team determined that the student continued to require the same supplementary aids and supports required by his July 2022 IEP to address his social/emotional and behavioral needs.
  5. On March 1, 2023, the IEP team convened to address parent concerns and consider the student’s need for a speech/language assessment. The IEP team proposed, and the parent provided consent for, a speech/language assessment to determine the student’s articulation needs.
  6. While there is documentation that the speech/language assessment was completed for the student, there is no documentation to date that the IEP team met for the purpose of reviewing the assessment completed for the student.
  7. Prior to the end of the 2022-2023 school year, the parent requested that the student be transferred to the LFI program at another school. On June 5, 2023, the MCPS informed the parent that the request for a change in school assignment from the LFI program at [REDACTED] School to the LFI program at Paint Branch High School was denied.

## **DISCUSSIONS/CONCLUSIONS**

### **Allegation #1: Educational Placement**

Each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and it must also ensure that when selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. (34 CFR §§ 300.114).

The public agency placement decision is determined at least annually, based on the child's IEP, and is as close as possible to the child's home. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR § 300.116).

In this case, there is documentation that the parent requested, and was denied, a change in location for the student that would transfer the student from one school with a specialized provider to another with an identical specialized program.

Based on the Findings of Facts #1, #3, and #4, MSDE finds that the placement decision made for the student was made in conformity with his least restrictive environment, and that the IEP developed for the student could be implemented in the setting, in accordance with 34 CFR §§300.114 and .116. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **Allegation #3: Proper Procedures When Conducting an Evaluation**

A public agency shall ensure that a reevaluation of each student with a disability is conducted in accordance with 34 CFR §§ 300.303 and 300.305 and COMAR 13A.05.01.05: (a) if the public agency determines that the educational and related services needs, including improved academic achievement and functional performance of the student, warrant reevaluation; (b) if the student's parent or teacher requests a reevaluation; or (c) before determining a student is no longer a student with a disability.

In accordance with 34 CFR § 300.303(b), a reevaluation shall occur: (a) not more frequently than once a year, unless the parent and public agency agree otherwise; and (b) at least once every 3 years, unless the parent and public agency agree that a reevaluation is not necessary.

The results of assessment procedures shall be used by the IEP team in reviewing, and, as appropriate, revising the student's IEP within 90 days of the IEP team meeting. (COMAR 13A.05.01.06)

Based on Findings of Facts #1 and #3, MSDE finds that the MCPS ensured that proper procedures were followed when completing the evaluation of the student on July 21, 2022, in accordance with 34 CFR §§300.303-.306 and COMAR 13A.05.01.06. The following data sources were considered for the purpose of determining the areas of need: parent input, educational assessment, psychological assessment, an adaptive functioning assessment, and IEP team input. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based on Findings of Facts #6 and #7, MSDE finds that MCPS did not meet for the purpose of reviewing the Speech-Language assessment completed on March 2, 2023. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

### **Allegation #6: Obtaining Parental Consent for the Alternative Framework**

The public agency is required to identify the child for the alternative education assessment aligned with the State's alternative curriculum.

If the parent does not provide written consent to one of the actions listed, the IEP team must send the parent written notice of their consent rights no later than five (5) business days after the IEP team meeting

informing them that: 1) the parent has the right to either consent to or refuse to consent to the action proposed; and 2) if the parent does not provide written consent or a written refusal within fifteen (15) business days of the IEP team meeting, the IEP team may implement the proposed action (Md. Code Ann., Educ. §8-405(g)(2)).

Based on Finding of Facts #1 and #4, MSDE finds that on January 23, 2023, MCPS did not ensure that the IEP team followed proper procedures to obtain parental consent annually before determining that the student will receive assessments using alternate standards, in accordance with Md. Code Ann., Educ. §8-405. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATIONS #2, #5, AND #8: ADDRESSING THE LACK OF EXPECTED PROGRESS, PROVISION OF PROGRESS REPORTS AND APPROPRIATENESS OF GOALS**

**FINDINGS OF FACTS:**

8. The first quarter progress report was emailed to the parent on November 4, 2022. It contains the following information regarding the student's progress towards achieving IEP goals:
  - a. The physical education goal states the student "will be able to participate in the four fitness component categories. Aerobic endurance, flexibility, muscular endurance, and muscular strength, when provided when provided positive reinforcement and feedback before, during and after cardiorespiratory endurance exercises, [the student] will decrease his timed one mile by 10% to 13 minutes 21 seconds, 4 out of 5 trials in order to enhance him cardiorespiratory endurance. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect the number of trials as required by the IEP.
  - b. The life skills goal states "given faded prompts [the student] will apply functional math skills to complete life skills tasks." The student will do this in 3 out of 4 trials. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect the number of trials as required by the IEP.
  - c. The Speech and Language Expressive Language goal states "using multimodal communication, [the student] will use [4-5] word grammatically correct sentences to describe actions, pictures, and events" with 80% accuracy. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect a percentage of accuracy as required by the IEP.
  - d. The Speech and Language Articulation goal states the student, "will increase his intelligibility of vowels and consonants at the words and sentence level" with 80% accuracy. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect a percentage of accuracy as required by the IEP.
  - e. The Reading Phonics goal states "given direct/small group instruction, modeling/guided practice, research-based academic interventions, prompting/cues, [the student] will know and apply phonics and word analysis skills in decoding words, "with 90% accuracy. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect a percentage of accuracy as required by the IEP.

- f. The Reading Comprehension goal states “given direct/small group instruction, modeling/guided practice, prompting/cues, and a text modified to his level, [the student] will identify what the text says explicitly and draw inferences from the text,” with 90% accuracy. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect a percentage of accuracy as required by the IEP.
  - g. The Written Language Content goal states “ given a modified writing, task repetition faded prompting, modeling graphic organizers, and picture supports [the student] will use a combination of picture selection, word banks ,and sentence starters to produce a clear coherent permanent product that is appropriate to the specific task (e.g., topic), purpose (e.g., to inform), and audience (e.g., reader),” in four out of five trials. The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect the number of trials as required by the IEP.
  - h. The Math Problem Solving goal states “given manipulatives, visual, graphic organizers small group instruction, evidence based instruction in mathematical problem solving, and fading adults prompts [the student] will use the four major operations (addition, subtraction, multiplication, and division) with whole numbers to solve one step problems,” The narrative reflects the student is making sufficient progress to meet goal. The narrative does not reflect the number of trials as required by the IEP.
9. The second quarter IEP progress report developed on January 26, 2023 indicated the student was making sufficient progress toward achievement of all IEP goals and objectives. The narratives reflect that goals were measured as required by the IEP for the following domains: Life skills, Speech and Language Expressive Language, Speech and Language Articulation, Reading Phonics, Reading Comprehension, and Written Language Content. While the progress report for the student’s Math Problem Solving goal indicated that he was making sufficient progress toward achievement of the IEP goal, the narrative does not reflect the number of trials as required by the IEP.
10. The third quarter IEP progress report developed on March 30, 2023, indicated the student was making sufficient progress toward achievement of all IEP goals and objectives. The narratives reflect that all goals were measured as required by the IEP.
11. The fourth quarter IEP progress report was developed on June 15, 2023, indicated the student was making sufficient progress toward achievement of all IEP goals and objectives. The narrative reflects that goals were measured as required by the IEP for the following domains: Reading Phonics, Reading Comprehension, Math Problem Solving, Written Language Content, Speech and Language Articulation, and Life Skills. The narrative for the speech and language expression goal does not reflect that the goal and objectives were measured as required by the IEP.

## **DISCUSSIONS/CONCLUSIONS**

### **Allegation #2: Addressing the Lack of Expected Progress**

Each public agency must ensure that the IEP team revises the IEP, as appropriate, to address any lack of progress toward the annual goals 34 CFR §300.324.

Based on Findings of Facts #8 through #11, MSDE finds the student made progress towards achieving the annual goals as described in the IEP since July 2022, in accordance with 34 CFR §300.324. As a result, the IEP team did not need to meet for the purpose of reviewing and revising IEP goals. Therefore, this office does not find that a violation occurred with respect to this allegation.

**Allegation #5: Measurement of Progress on IEP Goals as Described In The IEP**

Based on Findings of Facts #8 through #11, MSDE finds that the MCPS has provided the parent with progress reports for each of the student's goals since, July 2022. However, for all goals in November 4, 2022, the Math problem solving goal in January 26, 2023, and Speech and Language expressive goal in June 15, 2023, the progress report narrative did not measure the student's progress as required by the IEP, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**Allegation #8: Development of Appropriate Goals**

Based on the Finding of Facts#4 and #8, MSDE finds that MCPS has ensured that the student's IEP contains appropriate goals to allow the student to make progress in the general education curriculum since July 2022, 34 CFR §300.320. The student is enrolled in an MCPS LFI program. Therefore, this office finds that a violation has not occurred with respect to this allegation.

**ALLEGATIONS #4 AND #9: IDENTIFYING AND ADDRESSING THE STUDENT'S NEEDS AND HOME TO SCHOOL COMMUNICATION**

**FINDINGS OF FACTS:**

12. There is documentation that prior to February 10, 2020 the student received occupational therapy services to address his fine motor skills. On that date, the IEP team determined that the student no longer had needs related to fine motor skills. There is no documentation that since July 2022, that the student required sensory, visual motor or fine motor goals, objectives, or services to address his needs in these areas or that the parent expressed concerns in these areas.
13. While there is some documentation of home to school communication since July 2022, there is no documentation that it was provided on a daily basis, as required by the IEP.

**DISCUSSION/CONCLUSION**

**Allegation #4 Identifying and addressing the student's needs**

In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR § 300.324).

Based on Finding of Facts #2 and 4, MSDE finds that MCPS identified and addressed the student's behavioral and social emotional needs, including the appropriate use of behavioral supports and other strategies, since July 2022, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based on the Finding of Facts #12, MSDE finds that there is no documentation that the student demonstrated sensory, visual motor, and fine motor needs that the IEP team was required to address, in accordance with 34 CFR § 300.324, since July 2022. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

**Allegation #9: Provision of Home to School Communication**

While there is some documentation of implementation of the home to school communication system, based on the Finding of Facts #2, #4, and #13, MSDE finds that MCPS did not ensure that the student was provided with the home to school communication required by the IEP since July 2022 in accordance with 34 CFR §300.101 and 323. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #7: PROVISION OF EDUCATIONAL RECORDS**

**FINDINGS OF FACTS**

14. There is no documentation that the complainant made a request for access to the student's educational record during the time period under investigation.
15. There is documentation that on July 27, 2023, the Advocate picked up the student records from the school.

**DISCUSSION/CONCLUSION**

Based on the Finding of Facts #14 and #15, MSDE finds that while there is no documentation available that the parent made a specific request for access to the student's record, MCPS provided the parent with access the student's educational records since July 2022, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation has not occurred with respect to this allegation.

**CORRECTIVE ACTIONS/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 time frames below to ensure that noncompliance is corrected in a timely manner.<sup>[1]</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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>[2]</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

MSDE requires the MCPS to provide documentation by November 1, 2023, that it has completed the following actions:



- a. Convened an IEP team meeting for the purpose of reviewing the Speech-Language assessment ordered on March 2, 2023, and if the student requires continued participation in the alternative framework, obtain parental consent. The IEP must also determine whether the delay in reviewing the assessment and the decision related to the student's participation in the alternative framework had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.
- b. Implement the home to school communication system as required by the IEP; and
- c. Provided the parent with progress reports in Math Problem Solving, and Speech and Language expression, reflecting measurement as required by the IEP.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) 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. 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,

Dr. Deann Collins  
Deputy Superintendent  
Division of Early Intervention/Special Education Services

DMC:ra

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