




October 13, 2023




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

RE: 
Reference: #24-022

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 August 21, 2023, MSDE received a complaint from  the “complainant,” on behalf of her daughter, 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. The MCPS did not ensure that the student was provided with the special education instruction required by the Individualized Education Program (IEP) from a certified special education teacher in the area of reading (intervention) during the 2022- 2023 school year, in accordance with 34 CFR §§300.101, .156, .323, and COMAR 13A.12.02.
2. The MCPS did not provide the student with the Extended School Year (ESY) services in the area of reading phonics and listening comprehension as required by the IEP during the summer of 2023, in accordance with 34 CFR §§300.101 and .323.
3. The MCPS did not ensure that the parent was provided with reports of the student's progress toward achieving the annual IEP goals during the summer of 2023, in accordance with 34 CFR §§300.320 and .323.

BACKGROUND:

The student is 14 years old and is identified as a student with Other Health Impairment under the IDEA. The student currently attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS

1. The student's IEP in effect at the start of the 2022-2023 school year was developed on May 24, 2022, and amended August 24, 2022. The IEP reflects identified needs in the areas of Listening Comprehension, Math Calculation, Math Problem Solving, Reading Comprehension, Reading Phonics, Speech and Language Expressive Language, Speech and Language Pragmatics, Speech and Language Receptive Language, Written Language Content, Written Language Mechanics, Social Interaction Skills, Task Completion, and Fine Motor. The IEP includes goals to address those needs, as well as supplemental aids, supports, and instructional accommodations. The IEP team determined that the student required two 45 minute sessions a day of specialized instruction outside the general education classroom provided by a Special Education Classroom Teacher or Instructional Assistant in a Reading and a Math Intervention, two hours and fifteen minutes a day of specialized instruction inside the general education classroom provided by a General Education Teacher, Special Education Classroom Teacher or Instructional Assistant, 30 minutes a week of Occupational Therapy, 30 minutes a week of Music Therapy, three hours a month of Speech and Language Therapy as a related services. The student also qualified for Extended School Year (ESY).
2. The IEP amended on August 24, 2022, reflects Reading Phonics as an area that affects the student's academic performance and necessitates goals and objectives that require evidence-based and multi-sensory instruction. According to the IEP, the student received three hours of Orton Gillingham (OG) reading intervention each week outside of the general education classroom.
3. From April 11, 2023, to the end of the 2022-2023 school year, the reading teacher responsible for administering the OG reading intervention to the student was on a leave of absence.
4. There is no documentation that the long- term substitute teacher was certified in special education or in the evidence- based reading instruction provided to the student.
5. On May 16, 2023, the IEP team met to review and revise the IEP as appropriate, review existing data in the reevaluation process and to discuss ESY services for the student. The IEP reflects that the student has continued identified needs in the areas of Math Problem Solving, Math Calculation, Written Language Content, Written Language Mechanics, Listening Comprehension, Reading Phonics, and Social Interaction.
6. The IEP team determined that the student required two hours and fifteen minutes daily of specialized instruction inside a co- taught general education classroom with services provided by the General Education Teacher, Special Education Classroom Teacher or Instructional Assistant, one hour and thirty minutes daily of specialized instruction inside a co- taught general education classroom with services provided by the General Education Teacher, Special Education Classroom Teacher or Instructional Assistant, three hours of specialized instruction daily outside of the general education classroom in a self- contained classroom with services provided by the Special Education Classroom Teacher or Instructional Assistant, 30 minutes a week of Occupational Therapy, 30 minutes a week of

Music Therapy, and three hours and forty- five minutes a month of Speech and Language as a related services.

7. The student's IEP reflects Reading Phonics as an area that impacts her academic achievement. The student has a goal and objectives that require evidence-based and multi-sensory strategies. The student is removed from the general education setting to access occupational therapy, speech therapy, music therapy, reading intervention, English class, Math class, and Resource class.
8. The May 16, 2023, IEP reflects that the IEP team determined that the student meets criteria for participation in ESY and will receive specialized instruction in the area of Math Problem Solving, Listening Comprehension for two hours and fifteen minutes a day inside of the general education classroom, with services provided by General Education Teacher, Special Education Classroom Teacher or Instructional Assistant; however, the written summary of the IEP meeting reflects the ESY goals identified for the student to include Reading Phonics, Math Problem Solving, Listening Comprehension, and Social Interaction Skills.
9. On May 22, 2023, the complainant contacted a staff member requesting an "update on the outstanding items from the most recent IEP" held on May 16, 2023. The complainant sought clarification as to whether the long-term substitute teacher teaching the student's OG reading intervention class during the reading teacher's absence was an "OG trained provider." On May 24, 2023, the school staff member responded to the complainant that "the long-term substitute for the Contemporary Communications course is not OG trained. He is supervised by the Reading Specialist." The complainant also requested confirmation that the student would receive support for her reading intervention services during ESY. The school staff member responded to the complainant that the student "will be provided with special education services to address the selected goals in each of her classes." "Reading interventions are not provided during ESY in the Secondary Learning Support Program. The purpose of ESY is the maintenance of progress toward IEP goals and no new material is presented. Evidence-based strategies will be incorporated into classroom instruction where applicable, but academic interventions outside of the general education setting are not provided."
10. On June 16, 2023, the IEP team met to amend the student's IEP. The complainant shared concerns regarding the qualifications of the long-term substitute and the qualification of the service provider during ESY.
11. The amended IEP reflects that the IEP team determined the student required ESY support in the areas of Social Interaction, Math Problem Solving, Listening Comprehension, and Reading Phonics for two hours daily.
12. Within the areas of Reading Phonics and Listening Comprehension, the student's ESY progress report dated July 28, 2023, indicates that the student is "Making sufficient progress to meet the goal." However, the IEP ESY comments reflect that the "student chose to participate in mainstream classes for all content areas except math during ESY, so this goal [Reading Phonics and Listening Comprehension] was not addressed during ESY."
13. On August 9, 2023, the complainant contacted a school staff requesting the ESY progress report for the student as she had not received it. The ESY teacher apologized for "not sending the IEP progress updates." The school staff provided the complainant with an email detailing the student's progress for the summer. In the email correspondence, the school staff explained to the complainant that the

student started the summer in all “mainstream classes” and during the first week of the summer, another school staff member determined that the student “would be better served in the ESY special education, self-contained math class.” The student received support in math and conflict management for one hour daily.

14. On August 10, 2023, the complainant followed up with an email correspondence requesting an update on the student’s reading intervention and phonics goals that the student worked on through OG’s intervention and her listening comprehension goal. There is no documentation a response was provided to the complainant.
15. There is no documentation that the student received support in Reading Phonics and Listening Comprehension as required by the IEP during the summer of 2023.

CONCLUSIONS

ALLEGATION #1

PROVISION OF SPECIAL EDUCATION INSTRUCTION PROVIDED BY A CERTIFIED SPECIAL EDUCATION TEACHER

Although the student’s IEPs do not clearly indicate the requirement for an evidence-based reading intervention in either the supplementary aids and services or direct services, the least restrictive environment section of the IEP reflects the requirement that the student be removed from the general education setting to receive a reading intervention. MCPS has provided no data to reflect implementation of a reading intervention after April 2023 and no documentation reflecting consistent consultation between the provider and the reading specialist.

Based on the Findings of Facts #1 to #7 and #10, MSDE finds that the MCPS did not ensure that the student was provided with the reading intervention from April 11, 2023, to the end of the 2022- 2023 school year, in accordance with 34 CFR §§300.101,.156, .323, and COMAR 13A.12.02. Therefore, this office finds that a violation occurred.

ALLEGATION #2

PROVISION OF ESY SERVICES IN THE AREA OF READING PHONICS AND LISTENING COMPREHENSION

Based on the Findings of Facts #1 to #2, #8- #15, MSDE finds that the MCPS did not provide the student with the ESY services in the area of Reading Phonics and Listening Comprehension as required by the IEP during the summer of 2023, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

ALLEGATION #3

PROVISION OF ESY PROGRESS REPORTS

Based on the Findings of Fact #13, MSDE finds that the MCPS did ensure that the parent was provided with reports of the student's progress toward achieving the annual IEP goals during the summer of 2023, in accordance with 34 CFR §§300.320 and .323. Therefore, this office finds that a violation did not occur.

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.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. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires the MCPS to provide documentation, by December 15, 2023, that the IEP team has taken the following action:

- a. That the student is receiving the interventions, by appropriate staff, required by her IEP.
- b. The IEP team has convened and determined whether the violation related to the lack of ESY services and reading intervention from April 11, 2023, to the end of the 2022- 2023 school year has 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.

The MCPS must ensure that the complainants are 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.

School-Based

MSDE requires the MCPS to provide documentation by Decemtraine3, of the steps it has taken to ensure that school staff at [REDACTED] School properly implements the requirements for providing ESY

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

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.

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services and reading intervention in the absence of the trained staff. The documentation must include a description of how the Julius West Middle School 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 (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 M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DC/sj

c: Monifa B. McKnight
Diana K. Wyles
[REDACTED]
Zvi Greismann
[REDACTED]
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Paige Bradford
Nicol Elliott
Stephanie James