




November 24, 2021




Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: 
Reference: #22-029

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 September 28, 2021, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her son, 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.

The MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures when conducting an IDEA evaluation of the student which began on December 2, 2020 to ensure that all of the student’s needs were identified, in accordance with 34 CFR §§300.301 - .306, .323, .324, and COMAR 13A.05.01.06.
2. The MCPS did not follow proper procedures when responding to a request to inspect and review the student’s educational record after the January 19, 2021 Individualized Education Program (IEP) team meeting, in accordance with 34 CFR §300.613.

3. The MCPS did not follow proper procedures when excusing the general education teacher from the June 11, 2021 IEP team meeting, in accordance with 34 CFR §300.321.
4. The MCPS did not ensure that IEP team meetings that convened on July 9, 2021 and July 30, 2021 included a general education teacher of the student, in accordance with 34 CFR §300.321.
5. The MCPS did not follow proper procedures when responding to requests to amend the student's educational record between March 26, 2021 and July 2, 2021, in accordance with 34 CFR §300.618.
6. The MCPS did not provide the parent with proper written notice of the IEP team's decision to not provide the student with a second support class at the IEP team meetings held on July 9, 2021 and July 30, 2021, in accordance with 34 CFR §300.503.
7. The MCPS did not follow proper procedures when obtaining parental consent for the initiation of special education services between June 2021 and July 2021, in accordance with 34 CFR §§300.9 and .323.
8. The MCPS did not ensure that the parent was provided with a copy of the procedural safeguards notice during the 2020 - 2021 school year, in accordance with 34 CFR §300.504.
9. The MCPS has not ensured that the student has been provided with a home-school communication system, class notes, frequent reminders, written directions, weekly check-ins for missed assignments, and a study schedule, as required by the IEP, since the start of the 2021 - 2022 school year, in accordance with 34 CFR §§300.101 and .323.
10. The MCPS did not ensure that the confidentiality of personally identifiable information about the student was maintained on April 5, 2021, in accordance with 34 CFR §§300.610 and .622 and the Family Educational Rights and Privacy Act (FERPA) at 34 CFR §99.31.

BACKGROUND:

The student is nineteen (19) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA. He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

Prior to being identified as a student with a disability under the IDEA, he had a Section 504 ¹Accommodations Plan (504 Plan) that required the provision of accommodations.

¹ Section 504 of the Rehabilitation Act of 1973

ALLEGATIONS #1 AND #7: IDEA EVALUATION PROCEDURES AND PARENTAL CONSENT FOR THE INITIATION OF SPECIAL EDUCATION SERVICES

FINDINGS OF FACTS:

1. On December 2, 2020, the complainant made a referral for the student to be evaluated for special education services under the IDEA. The referral reflects that the complainant had concerns with the student's social and emotional functioning, math problem solving, inattentiveness, and organization skills.
2. On January 19, 2021, the IEP team convened for an evaluation of the student under the IDEA. The IEP prior written notice reflects that the school staff reported that the student was passing all of his classes and was making academic progress, with no "gaps in his learning". The school staff also reported that the student's "emotional struggles were related to the current virtual environment." The team reviewed the following data:
 - Parent Input/Letter Written, 1/19/2021
 - Educational History January 2021
 - Letter, Pediatric Care [REDACTED], 10/8/2019
 - [REDACTED] OT Note, 12/13/2011
 - Section 504 Plan
 - Teacher Reports, January 2021
 - Gradebook and Report Card Data

Based on this review, the IEP team determined that the student did not qualify as a student with a disability under the IDEA "due to a lack of educational impact of the difficulties described" by the student's parents, and that assessments were not required for the student.

3. A Child Find Referral, dated January 26, 2021, reflects that the school staff made a referral for the student to be evaluated for special education services under the IDEA. The referral reflects concerns with the student's cognitive ability, social and emotional functioning, math calculation, inattentiveness, and organization skills.
4. There is documentation that the IEP team was scheduled to convene on February 23, 2021 and March 17, 2021 to review the referral for the student to be evaluated under the IDEA. However, the documentation reflects that the complainant canceled the scheduled meeting and requested that it be rescheduled at a later date.
5. On March 24, 2021, the IEP team convened in response to the referral for the student to be evaluated under the IDEA. The IEP team reviewed the following documentation:
 - Parent Input
 - Student Input
 - General Educator Teacher Input

- Classroom-based assignments and assessment
- Educational History, January 2021
- Student Schedule, March 2021
- Student Gradebook Report, March 2021
- Student Interim Report, December 2020
- Student Transcript, February 2021
- MAP-M, MAP-R, Fall 2020
- Student Attendance Profile, January 2021
- Secondary Student Report Cards, 2016 to 2021
- Elementary School Report Cards, Grade K-5
- Terra Nova Scores, 2003
- MD School Assessment Report Card, Grade 3
- MD School Assessment Report, Grade 5
- [REDACTED] ES Reading Assessments, January 2012
- EMT Meeting Notes, June 2013
- Summary of Informal Consultation, Physical Disabilities Program, June 2013
- Parent Letter, January 2021
- Email from Dr. [REDACTED] (undated)
- MP1, MP 2, Interim Report SY 20-21
- MP 3 Grade Reports, March 2021
- Semester 1 Gradebook Reports, Semester 1, 20-21
- Letter from Pediatric Care of [REDACTED], October 2019
- Medical Clearance for Student Athlete, October 2019
- [REDACTED] OT Clinic Initial Evaluation Note, September 2011
- 504 Teacher Reports, March 2021
- Section 504 Plan
- Parent Letter, March 24, 2021
- Neuropsychological Report, [REDACTED] March 2021

The IEP prior written notice reflects that the IEP team reviewed “all existing data in the Child Find/Screening process and determined that additional data is required to determine if [the student] requires specially designed instruction and is eligible for IEP services.” However, following the IEP team meeting, the complainant informed the school staff that she would not provide consent for assessments to be conducted on the student because she believed that the private evaluation which she provided to the IEP team was “comprehensive” and the IEP team had enough data to determine the student eligible for special education services.

6. There is correspondence dated April 12, 2021, from the MCPS Central Office staff to the complainant requesting an IEP team meeting on April 27, 2021 to review data and determine if the student was eligible for specialized instruction under the IDEA.
7. On April 27, 2021, the IEP team convened. The IEP prior written notice reflects that the IEP team reviewed “all existing data” and based on that review, determined that the

student was a student with a disability. However, the IEP prior written notice reflects that the data reviewed by the IEP team was made available and previously reviewed at the March 24, 2021 IEP team meeting, when the team determined that additional assessments were required to determine eligibility for the student.

8. There is documentation that the IEP team was scheduled to convene on May 12, 2021 and May 28, 2021 to develop the student's initial IEP. However, the complainant contacted the school staff and requested that the meeting be canceled.
9. On June 11, 2021, the IEP team convened to develop the student's initial IEP. The IEP prior written notice reflects that the complainant and the school-based members of the IEP team disagreed with aspects of the development of the IEP, and that the complaint requested that the meeting be continued later to complete the IEP. However, the school-based members of the IEP team did not agree to a continuation meeting because the "IEP had been fully developed by the conclusion of this meeting." The parent did not provide written consent for the initiation of special education services for the student at that time.
10. On June 15, 2021, the school staff emailed the complainant informing her that the student's draft IEP was "ready for signature" at the school office. However, the complainant indicated to the school staff that prior to providing written consent for special education services for the student, she requested an opportunity to review the IEP. She further informed the school staff that she was not in full agreement with the student's IEP, as written, and requested an IEP team meeting.
11. On July 9, 2021 and July 30, 2021, the IEP team convened. The school-based members of the team proposed to implement the student's IEP, as written. However, the complainant requested that the IEP be revised based on her input. The IEP team reviewed the student's IEP, included parental recommendations, and requested that the complainant provide written consent for the initiation of special education services for the student.
12. There is documentation that, on August 18, 2021, the complainant provided consent for the initiation of special education services for the student, under the IDEA.

CONCLUSIONS:

Allegation #1: IDEA Evaluation Procedures

Based on the Findings of Facts #1 and #2, the MSDE finds that the MCPS followed proper procedures when conducting an IDEA evaluation that began on December 2, 2020 and ensured that all of the student's needs were identified, in accordance with 34 CFR §§300.301 - .306, .323, .324, and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred with respect to the allegation during this time period.

However, based on the Findings of Facts #3 - #7, the MSDE finds that the eligibility determination that was made in March 2021 was not consistent with the available data. Further, based on the Findings of Facts #7 - #9, the MSDE finds that the student's IEP was not developed within the required timeline when the IEP team determined that the student was eligible under the IDEA, in accordance with 34 CFR §§300.301 - .306, .323, .324, and COMAR 13A.05.01.06. Therefore, this office finds that violations occurred during this time period.

Allegation #7: Informed Consent

Based on the Findings of Facts #9 - #12, the MSDE finds that the documentation does not support the allegation that the MCPS did not follow proper procedures when obtaining parental consent for the initiation of special education services between June 2021 and July 2021, in accordance with 34 CFR §§300.9 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #2: ACCESS RIGHTS TO THE STUDENT'S EDUCATIONAL RECORD

FINDINGS OF FACTS:

13. There is an email dated February 11, 2021, from the complainant to the school staff, requesting that the student's "grade books for all classes for the second marking period" be provided to her.
14. There is an email dated February 25, 2021, from the school staff to the complainant, informing her that a copy of the student's educational record was available for pick up at the student's school building on that day.
15. There is an email dated February 26, 2021, from the complainant to the school staff, reflecting that the complainant received the copy of the student's educational record, but believed that the documentation which was provided to her was incomplete. Specifically, she indicated that she did not receive the "Canvas" grade book, which was used to maintain the student's grades and assignments.
16. There is documentation that on March 5, 2021, the complainant emailed the school staff requesting that she be provided with the student's grade book from the "Canvas" grading system for the first semester of the 2020 - 2021 school year.
17. There is documentation that on March 17, 2021, the school staff provided the complainant with the student's grades from the "Canvas" grading system for the first semester of the 2020 - 2021 school year.

CONCLUSION:

The Family Educational Rights and Privacy Act (FERPA) requires public agencies to permit parents to inspect and review any educational records relating to their children that are collected, maintained, or used by the agency. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing or resolution meeting, and in no case more than forty-five (45) days after the request has been made (34 CFR §99.10). The IDEA parallels this requirement at 34 CFR §300.613.

Based on the Findings of Facts #13 - #17, the MSDE finds that the MCPS followed proper procedures when responding to a request to inspect and review the student's educational record after the January 19, 2021 Individualized Education Program (IEP) team meeting, in accordance with 34 CFR §300.613. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3: EXCUSAL OF AN IEP TEAM MEMBER FROM THE JUNE 11, 2021 IEP TEAM MEETING

FINDINGS OF FACTS:

18. The MCPS acknowledges that a violation occurred with respect to the allegation. Specifically, the MCPS acknowledges that the general education teacher left the June 11, 2021 IEP team meeting prior to the conclusion of the meeting. The MSDE concurs with MCPS' conclusion and appreciates the school system's response to the investigation.

Notwithstanding the violation, based on the Finding of Fact #18, the MSDE finds that the IEP team convened on October 1, 2021 with the required IEP team participants and input was provided by those individuals regarding the student's progress in the general education program. Therefore, no further student-specific corrective action is required.

CONCLUSION:

Based on the Finding of Fact #18, the MSDE finds that the MCPS did not follow proper procedures when excusing a required IEP team participant from the June 11, 2021 IEP team meeting, in accordance with 34 CFR §300.321. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #4: GENERAL EDUCATOR AS A REQUIRED IEP TEAM PARTICIPANTS ON JULY 9, 2021 AND JULY 30, 2021

FINDINGS OF FACTS:

19. The MCPS acknowledges that a violation occurred with respect to the allegation. Specifically, the MCPS acknowledges that the general educator that attended the IEP team meetings was a representative of the general education curriculum, but was not a teacher of the student and was not responsible for implementing the student's IEP. The school staff reported that the teacher of the student was not contracted to work during the summer. However, on October 1, 2021, the IEP team convened with the required participants. The MSDE concurs with MCPS conclusion and appreciates the school system's response to the investigation.

CONCLUSION:

Based on the Finding of Fact #19, the MSDE finds that the MCPS did not ensure that IEP team meetings that convened on July 9, 2021 and July 30, 2021 included all the required participants, in accordance with 34 CFR §300.321. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #19, the MSDE finds that the student did not attend school from July 9, 2021 to July 30, 2021, due to the summer break. Therefore, no further student-specific corrective action is required.

ALLEGATION #5: AMENDMENT OF THE STUDENT'S EDUCATIONAL RECORD

FINDINGS OF FACTS:

20. There are emails dated March 26, 2021, May 6, 2021, May 10, 2021, and July 1, 2021, reflecting that the complainant contacted the school staff regarding the course of action necessary to amend the student's educational records. The request included amendments to the student's IEP and IEP meeting summaries that the complainant considered to be inaccurate.
21. On July 2, 2021, the school staff emailed the complainant indicating that the IEP team would address her concerns regarding amendment of the student's educational record at an IEP team meeting that was to be held on July 9, 2021.

CONCLUSION:

A parent who believes that information in the student's education record is inaccurate or misleading or violates the privacy or other rights of the student may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide,

within a reasonable period of time of the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing to challenge the information (34 CFR §§300.618 and .619).

If the public agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information and inform the parent in writing. If the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it must inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency in the education record (34 CFR §300.620).

Based on the Findings of Facts #20 - #21, the MSDE finds that the MCPS did not follow proper procedures when responding within a reasonable period of time to requests to amend the student's educational record between March 26, 2021 and July 2, 2021, in accordance with 34 CFR §§300.618 - .620. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

Notwithstanding the violation, based on the Finding of Fact #21, the MSDE finds that the IEP team convened on July 9, 2021 and amended the student's IEP based on information provided by the complainant. Therefore, no further student-specific corrective action is required for this time.

ALLEGATION #6: PRIOR WRITTEN NOTICE REGARDING A REQUEST FOR A SECOND SUPPORT CLASS FOR THE STUDENT

FINDINGS OF FACTS:

22. There is documentation that on July 7, 2021, the complainant's educational advocate provided the school staff with correspondence, which included a request from the complainant that the student be receive "two supported classes during the school day: AP English and another supported class sometime earlier or later during the school day, as the schedule permits, where an adult can support [REDACTED] to self-monitor assignment completion and submission." The letter further requested that the IEP team address the concern at the July 9, 2021 IEP team meeting.
23. On July 9, 2021, the IEP team convened at the request of the complainant. The IEP prior written notice reflects that the "parent was offered but declined to discuss the two letters she submitted prior to the meeting." The IEP summary also reflects that the school staff recommended a "resource class to support the goals and objectives on [the student's] IEP, provide consistency and support with task completion, and provide a regular person to meet with him. However, the complainant indicated that the student "does not need a resource class; it is not appropriate."

24. There is documentation that, on August 3, 2021, August 6, 2021 and August 18, 2021, the complainant requested that the school staff provide her with prior written notice of the school system's rationale for rejecting her proposal that the student be provided with "two support classes."
25. On October 1, 2021, the IEP team convened to revise the student's IEP. However, there is no documentation that indicates the school staff provided the complainant with prior written notice of the school system's rationale for rejecting her subsequent proposals that the student be provided with "two support classes."

CONCLUSION:

Based on the Findings of Facts #22 - #23, the MSDE finds that the MCPS provided the complainant the opportunity to discuss her concerns raised in her letters, which she provided to the IEP team prior to the IEP meeting and the complainant declined discussion.

However, based on the Findings of Facts #22, #24, and #25, the MSDE finds that the MCPS did not provide the parent with proper written notice of the IEP team's decision to not provide the student with a second support class at the IEP team meetings since August 3, 2021, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

ALLEGATION #8: PROVISION OF PROCEDURAL SAFEGUARDS NOTICE

FINDINGS OF FACTS:

26. The MCPS acknowledges that a violation occurred with respect to the allegation. Specifically, the MCPS acknowledges that the complainant was provided with a copy of the *Parental Rights, Procedural Safeguards Notice*, however, the copy provided was not the most recent version of the Notice, dated July 2021.

CONCLUSION:

Based on the Finding of Fact #26, the MSDE finds that the complainant has been provided with an updated copy of the procedural safeguards notice during the 2020 - 2021 school year, in accordance with 34 CFR §300.504. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #9: PROVISION OF SUPPLEMENTARY AIDS

FINDINGS OF FACTS:

27. The IEP requires that the student be provided with a weekly home-school communication system, daily class notes, frequent reminders, written directions, weekly check-ins for missed assignments, and a weekly study schedule, since the start of the 2021 - 2022 school year.
28. There is documentation that the student has been provided with some of the supports required by the IEP. However, the documentation does not reflect that the student has been consistently provided with the supports, as required by the IEP.

CONCLUSION:

Based on the Findings of Facts #27 and #28, the MSDE finds the MCPS has not ensured that the student has been consistently provided with a home-school communication system, class notes, frequent reminders, written directions, weekly check-ins for missed assignments, and a study schedule, as required by the IEP, since the start of the 2021 - 2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #10: CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

FINDINGS OF FACTS:

29. The MCPS acknowledges that a violation occurred with respect to the allegation. Specifically, the newsletter which was made public to parents of students that attend the school may have inadvertently identified specific students as students with disabilities. The MSDE concurs with MCPS conclusion and appreciates the school system's response to the investigation.

CONCLUSION:

Based on the Finding of Fact #29, the MSDE finds that the documentation supports the allegation that the MCPS breached the confidentiality of personally identifiable information about students on April 5, 2021, in accordance with 34 CFR §§300.610 and .622 and the FERPA at 34 CFR §99.31. Therefore, this office finds that a violation occurred with respect to the 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

Student-Specific

The MSDE required the MCPS to provide documentation that the school system team has taken the following action:

- a. The student is being provided with the supports required by the IEP;
- b. The IEP team has provided the complainant with prior written notice of the team's decision to accept or reject her recommendation that the student be provided with two support classes.
- c. The parent has been provided with the updated version of the *Parental Rights, Procedural Safeguards Notice*, July 2021.
- d. That the IEP team determined the amount and nature of compensatory services to be provided to the student to remediate the violation related to the inconsistent eligibility determination from March 24, 2021, and develop a plan to for the provision of those services within one year of the date of this Letter of Findings.

² 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.

³ The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

Mr. Philip A. Lynch
November 24, 2021
Page 13

School-Based

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violations identified in this Letter of Findings do not recur at [REDACTED]

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. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Early Intervention/Special Education Services

MEF:ac

c: Monifa B. Mcknight
Diana Wyles
Maritza Macias
Julie Hall
[REDACTED]
Albert Chichester