



January 4, 2022

Mr. Mark Martin  
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Phillip A. Lynch  
Director of Special Education  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, MD 20850

RE: [REDACTED]  
Reference: #22-067

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 November 5, 2021, the MSDE received a complaint from Mr. Mark Martin, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and Ms. [REDACTED]. 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 allegation that the MCPS has not implemented a due process hearing decision dated October 1, 2021, in accordance with 34 CFR §300.152.

**BACKGROUND:**

The student is ten (10) years old and is identified as a student with an Autism Spectrum Disorder under the IDEA. He attends the [REDACTED] and has an Individualized Education Plan (IEP) that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. On October 1, 2021, Administrative Law Judge (ALJ) Ann C. Kehinde ordered: “the Parents are entitled as a matter of compensatory relief to have the Student placed at the [REDACTED] ([REDACTED]) for the 2021-2022 school year and the MCPS shall pay the associated expenses for the Student’s fifth grade year at the [REDACTED] [REDACTED].”
2. On October 12, 2021, the complainant contacted the MCPS’ Assistant General Counsel by electronic mail (email) to request that the MCPS comply with the ALJ order. The MCPS responded by agreeing to: “comply with the ALJ’s order to fund [REDACTED]. The MCPS staff further agreed to convene an IEP team meeting for the student to review his IEP, but added, “MCPS does not intend to make a referral to [REDACTED] through the IEP process unless the IEP team determines that [REDACTED] is the appropriate least restrictive environment. However, as stated MCPS will comply with the ALJ’s order by reimbursing the parents for the 2020-2021 school year, as well as paying for the 2021-2022 school year. Additionally, MCPS will comply with “stay put”, as a result of the ALJ’s decision.”
3. On October 21, 2021, the complainant contacted the MCPS staff by email to inquire about the status of payment to the [REDACTED]. The MCPS staff responded requesting invoices be sent directly to the General Counsel’s Office. Additionally, the MCPS staff informed the complainant that, “MCPS has still not received authorization to exchange information with the [REDACTED]. Therefore, MCPS has not been able to reach out to them to get questions answered and gather more data, as a result of the last IEP meeting. Please ask your client to sign the authorization form and return as soon as possible.”
4. On October 22, 2021, the complainant contacted the [REDACTED] staff by email to request that the MCPS be invoiced directly. The [REDACTED] staff responded that the request was forwarded to the billing department.
5. On October 25, 2021, the complainant contacted the [REDACTED] staff by email to request transportation be set up for the student. On October 28, 2021, the complainant emailed the MCPS staff requesting transportation be provided to the student. On November 8, 2021, the MCPS staff responded that transportation would begin on November 10, 2021.
6. On November 1, 2021, the [REDACTED] staff contacted the MCPS staff by email to clarify the tuition and services to be invoiced for the 2021-2022 school year. On November 2, 2021, the MCPS staff responded with clarification of the tuition and expenses to be invoiced.
7. There is documentation that on December 21, 2021 the MCPS paid the cost of the student’s tuition and related services from July 2021-October 2021 to the [REDACTED].
8. There is documentation that IEP team meetings were scheduled and then rescheduled for October 12, November 30, and December 21, 2021 to review and revise, as appropriate, the student’s IEP. However, there is no documentation that this meeting was actually convened.

**DISCUSSION/CONCLUSION:**

Based on the Finding of Facts #1 - #8, the MSDE finds that, although the MCPS has taken steps to ensure that it has paid the costs associated with the student's attendance at the [REDACTED] it has not ensured that the student's placement reflects the ALJ's October 1, 2021 order in accordance with 34 CFR §300.152. Therefore, this office finds that a violation has occurred.

Notwithstanding this violation, the MSDE finds that the student has attended the [REDACTED] school consistently since the date of the ALJ's order and that no educational impact has occurred as a result of the violation.

**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 non-compliance 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 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at Nancy.Birenbaum@maryland.gov.

The MSDE requires that the MCPS provide documentation that it has convened an IEP team meeting for the student and has revised the IEP to reflect the placement required by the ALJ's order.

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<sup>1</sup> 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.

<sup>2</sup> 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.

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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 parent and the school system 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/tg

c: Monifa B. Mcknight  
Diana K Wyles  
Maritza Macias  
[REDACTED]  
Brian Morrison  
Tracy Givens  
Nancy Birenbaum