



Mohammed Choudhury  
State Superintendent of Schools

July 12, 2022

[REDACTED]  
[REDACTED]  
[REDACTED]

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

RE: [REDACTED]  
Reference: #22-155

Dear Parties:

The 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 May 13, 2022, the MSDE received a complaint from Ms. Ms. [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) with respect to the above-referenced student.

The MSDE investigated the allegation that the MCPS has not ensured that the student has been provided with adult support since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is fourteen (14) years old and is enrolled in [REDACTED] but receives services through the Montgomery County Public Schools Virtual Academy. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services

**FINDINGS OF FACTS:**

1. The student's IEP, dated April 27, 2021<sup>1</sup>, requires that he be provided with adult support throughout the day to modify the student's assignments, repeat directions, and ensure that the student remains on task.
2. There is no documentation that the student has been consistently provided with the support of adult support since February 2022.

**DISCUSSION/CONCLUSIONS:**

Based on Findings of Facts #1 and #2, the MSDE finds that there is no documentation that the student was consistently provided with adult support as required by his IEP, since February 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation 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, 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.<sup>2</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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective

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<sup>1</sup> The Student's April 27, 2021 IEP contains numerous references to the provision of 1:1 adult support, but on March 8, 2022, the IEP team recognized that the explicit requirement for the support was not clear and amended the IEP to add adult support as a supplementary aid.

<sup>2</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.

implementation of the action.<sup>3</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

### **Student-Specific**

The MSDE requires the MCPS to provide documentation by September 1, 2022 that the student is consistently receiving adult support as required by his IEP. The MSDE further requires that the MCPS convene an IEP team meeting for the student to determine whether the violation related to provision of adult support 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 parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

### **School-Based**

The MSDE requires the MCPS to provide documentation by October 1, 2022, of the steps taken to identify other students at the Montgomery County Virtual Academy who have also not been consistently provided with required adult support. For each student identified, MCPS must ensure that the appropriate support is provided and convene an IEP team to determine whether the violation 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.

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.

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<sup>3</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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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:gl

c: Monifa B. McKnight  
Diana K. Wyles  
Maritza Macias  
Alison Barmat  
Diane Eisenstadt  
Gerald Loiacono