



Mohammed Choudhury  
State Superintendent of Schools

July 19, 2022

[REDACTED]

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

RE: [REDACTED]  
Reference: #22- 163

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.

**ALLEGATION:**

On May 24, 2022, the MSDE received a complaint from Mr. [REDACTED], hereafter, “the complainant,” on behalf of his 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 allegation that the MCPS did not ensure that the student was consistently provided with specialized instruction, accommodations, and special education supports as required by the Individualized Education Program (IEP) from August 30, 2021, to January 24, 2022, in accordance with 34 CFR §§300.101 and .323.

Specifically, the following was alleged:

- a. The MCPS did not provide the student with specialized instruction in self-management and social interaction;
- b. The MCPS did not provide the student with instructional and testing accommodations, including noise-blocking devices, small group, separate location, paper-based testing, and monitoring of test responses;
- c. The MCPS did not provide the student with social and behavioral supports: a visual chart for self-management and a voice level chart;
- d. The MCPS did not provide the student with preferential seating.

**BACKGROUND:**

The student is ten years old and is identified as a student with autism under the IDEA. He is currently a home-schooled student. Prior to January 24, 2022, the student attended ██████████ School and was eligible under IDEA as a student with autism. During that time, he had an IEP that required the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. The student's IEP, developed on May 10, 2021, required that the student be provided with 12 hours and 30 minutes of special education classroom instruction per week to assist the student in achieving goals to improve self-management and social interaction. The IEP further required that he be provided with instructional and testing accommodations, including noise-blocking devices, small group, separate location, paper-based testing, and monitoring of test responses. The student's IEP also requires that the student be provided daily with social and behavioral supports: a visual chart for self-management and a voice level chart. His IEP also requires that he be provided with daily preferential seating:

“(The Student) benefits from sitting in the front of the room for his needs and to minimize impact of self-talk on the balance of the class.”

2. While there is documentation that the student was provided with specialized instruction in self-management and social interaction on September 9, 2021, and October 12, 2021, there is no documentation of the provision of specialized instruction in self-management and social interactions at any other times from August 30, 2021, to January 24, 2022.
3. While there is a matrix of testing accommodations prepared on July 14, 2021, that should have been updated and provided during state-mandated testing throughout the 2021- 2022 school year, there is no documentation of the provision of instructional and testing accommodations for any other time from August 30, 2021, to January 24, 2022.
4. In the June 17, 2022, Prior Written Notice (PWN), the MCPS acknowledges that the student was not provided instructional and testing accommodations, including noise-blocking devices, small group, separate location, paper-based testing, and monitoring of test responses or with social and behavioral supports: a visual chart for self-management and a voice level chart or preferential seating from August 30, 2021, to January 24, 2022.
5. On May 5, 2022, and June 17, 2022, the IEP team convened and discussed compensatory services. The prior written notice generated following the IEP team meeting reflects that the student was offered 20 hours of compensatory services to remediate the violations described above as well as "time lost due to quarantine teaching."

**CONCLUSIONS:**

Based upon the Findings of Fact #1- #4, the MSDE finds that the MCPS did not ensure that the student was provided with instructional and testing accommodations, social and behavioral supports, and preferential seating as required by the IEP from August 30, 2021, to January 24, 2022, in accordance with 34 CFR §§300.101 and .323. Therefore this office finds that a violation occurred with respect to the allegation.

Based on the Finding of Fact #1- #4, the MSDE appreciates the MCPS acknowledgment and concurs that there was a violation with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #5, the MSDE finds that the IEP team has determined the compensatory recovery services needed to remediate the violation. Therefore, no further student-specific corrective action is required.

**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>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 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).

The MSDE requires MCPS to provide documentation of the steps taken to ensure that the violation does not recur at ██████████ School. Those steps must include staff development, as well as tools created to document and monitor the provision of IEP supports and services to students with disabilities attending ██████████ School. The MSDE further requires the submission of three consecutive months of the

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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 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 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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completed monitoring tool for a random sample of students, beginning with a submission on September 30, 2022. The monitoring tool must reflect the implementation of assessment and instructional accommodations and supplementary aids and services in compliance with student's IEPs.

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 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:sd

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