



July 29, 2022

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

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

RE: [REDACTED]
Reference: #22- 172

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 May 31, 2022, the MSDE received a complaint from Jessica Williams, hereafter, “the complainant,” on behalf of [REDACTED] the above-referenced student, and her parents, Mr. [REDACTED] and Mrs. [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 following allegations:

1. The MCPS did not follow proper procedures when responding to a request for an Independent Education Evaluation (IEE) for the student during the 2021 - 2022 school year in accordance with 34 CFR §300.502 and Annotated Code of Maryland, Education Article §8-405.
2. The MCPS has not ensured that the student has been consistently provided with counseling services, monitoring of her agenda book, and school-to-home communication, as required by the Individualized Education Program (IEP) since the start of the 2021 school year, in accordance with 34 CFR §§300.101 and .323.

3. The MCPS has not ensured that the (IEP) team considered the results of an IEE obtained at private expense provided to them by the parents on April 16, 2022, in accordance with 34 CFR §300.502.
4. The MCPS did not ensure that the reevaluation of the student was completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
5. The MCPS has not ensured that the student's IEP was reviewed and revised to address her lack of expected progress toward achieving the IEP goals since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.324.
6. The MCPS has not ensured that the IEP contains appropriate measurable goals and a statement of the student's present levels of academic achievement and functional performance since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.320.
7. The MCPS has not ensured that the parent was provided with quarterly progress reports toward achieving the annual IEP goals since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.320.
8. The MCPS has not provided the parent with a Prior Written Notice (PWN) of the decision to reject the parents' proposal for consideration of another placement since the start of the 2021- 2022 school year, in accordance with 34 CFR§300.503.

BACKGROUND:

The student is fifteen years old and is identified as a student with a Specific Learning Disability (SLD), based on Dysgraphia and Dyscalculia under the IDEA. She attends [REDACTED] [REDACTED] [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1:

RESPONSE TO AN IEE

FINDINGS OF FACTS:

1. There is no documentation that the parents requested an IEE during the 2021-2022 school year.

CONCLUSION:

Based upon the Finding of Fact #1, the MSDE finds the MCPS did follow proper procedures when responding to a request for an IEE for the student during the 2021 - 2022 school year in accordance with 34 CFR §300.502 and Annotated Code of Maryland, Education Article §8-405. Therefore, this office finds that no violation occurred with respect to allegation #1.

ALLEGATIONS #3 and #4: CONSIDERATION OF THE PRIVATE ASSESSMENT AND CONDUCTING AN EVALUATION OF THE STUDENT

FINDINGS OF FACTS:

2. On September 28, 2021, the IEP team completed an evaluation of the student, determining that the student continued to be eligible under the IDEA as a student with an SLD utilizing existing data.

3. On April 16, 2022, the parents provided MCPS with a copy of a private educational assessment obtained at the parents' expense.

4. On May 31, 2022, and June 10, 2022, the IEP team met, in part to consider the results of the private educational assessment. During this IEP team meeting, the IEP team recommended that additional academic assessments be completed for the student. There was no rationale provided for this decision or the results of the IEP team's consideration of the private assessment in the documentation generated following the IEP team meeting.

CONCLUSIONS:

ALLEGATION 3: CONSIDERATION OF THE PRIVATE ASSESSMENT

Based on the Findings of Facts #2- #4, the MSDE finds that the MCPS did not ensure that the IEP team considered the results of a private assessment report provided to them by the parents on April 16, 2022, in accordance with 34 CFR §300.304¹. Therefore, this office finds that a violation occurred with respect to allegation #3.

ALLEGATION 4: CONDUCTING AN EVALUATION OF THE STUDENT

Based on the Finding of Fact #4, the MSDE finds the MCPS has ensured that the reevaluations of the student were completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06. Therefore, this office finds that no violation occurred with respect to allegation #4.

ALLEGATION #2: IMPLEMENTATION OF THE STUDENT'S IEP

FINDINGS OF FACTS:

5. The student's IEP developed on September 28, 2021, required that he be provided with bi-monthly fifteen-minute counseling sessions, weekly monitoring of the agenda book, and as needed school-to-home communication for missing and late assignments.

6. There is no documentation that the student was provided with bi-monthly fifteen-minute counseling sessions, weekly monitoring of the agenda book, and as-needed school-to-home communication for missing and late assignments during the 2021-2022 school year.

¹ During the course of the investigation, it was determined that the assessment report obtained by the parent and provided to the MCPS was not a publicly funded IEE, but was obtained at the parent's expense.

CONCLUSION:

Based on the Finding of Fact #5- #6, the MSDE finds that the MCPS did not ensure that the student was consistently provided with counseling services, monitoring of her agenda book, and school-to-home communication, as required by the Individualized Education Program (IEP) since the start of the 2021 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to allegation #2.

ALLEGATION #5: RESPONDING TO THE LACK OF EXPECTED PROGRESS

FINDING OF FACT:

7. Progress reports completed for the student during the 2021-2022 school year reflect that the student was making sufficient progress on each of her annual IEP goals.

CONCLUSION:

Based on the Findings of Fact #7, the MSDE finds the MCPS has ensured that the student's IEP was reviewed and revised appropriately since the start of the 2021- 22 school year to respond to any lack of expected progress, in accordance with 34 CFR §300.324. Therefore, this office finds that no violation occurred with respect to allegation #5.

ALLEGATION #6: Development of the Student's IEP

FINDING OF FACT:

8. The student's IEP, developed on September 28, 2021, reflects academic areas of need in math calculation, math problem solving, and written language mechanics.
 - Math calculation: the student demonstrates an area of need with real and complex number systems. To assist the student in this area of need, the IEP team developed a goal requiring the student to "solve single and multi-step mathematical equations with the use of addition, subtraction, multiplication, and division, measured by 85% accuracy."
 - Math problem solving: the student demonstrates an area of need with real and complex number systems. To assist the student in this area of need, the IEP team developed a goal requiring the student to "use quantitative reasoning to solve problems by creating a coherent representation of the problem, considering the units involved, attending to the meaning of quantities, and using different properties of operations and objects, measured by 80% accuracy."
 - Written language mechanics: the student demonstrates an area of need with punctuation; however, "when prompted, the student is able to review her work for errors in spelling, capitalization or punctuation. "To assist the student in this area of need, the IEP team developed a goal requiring the student to be Given fading

prompting and reminders; word processing supports, graphic organizers and/or checklists, and rubrics/criteria for success; the student will proofread her writing to produce a writing piece that reflects correctness in spelling and conventions (capitalization, punctuation), measured by 4 out of 5 trials.”

9. The student’s IEP, developed on September 28, 2021, reflects behavioral areas of need in social-emotional and organization.
 - Social-emotional: the student “seems to be demonstrating strong self-advocacy skills and shows the leadership skills by initiating conversation in her classes.” To assist the student in this area of need, the IEP team developed a goal requiring the student to be “given fading prompting, reminders, and access to trusted adults; the student will increase her self-advocacy when requesting clarification and/or accommodations either verbally or in writing, measured by 4 out of 5 trials.”
 - Organization: the student has “demonstrated the ability to submit assignments on time, ask for clarification as needed and advocate for herself. She maintains an organizational system and records her homework assignments independently.” Teachers reported that “when the student becomes overwhelmed, she needs more support in organizing and completing assignments.” To assist the student in this area of need, the IEP team developed a goal requiring the student to be “given fading reminders and prompting, as well as the use of preferred organizational systems or an agenda to complete her assignments/ tasks by the due date, measured by 90% of the student’s assignments.”
10. While the student’s IEP, developed on September 28, 2021, reflects that the student’s reading phonics and reading fluency are not areas that impact the student’s academic achievement and/ or functional performance, it does reflect that the student’s reading phonics and reading fluency disabilities do affect her involvement in the general education curriculum. “The areas impacted by these weaknesses include math problem solving and calculation (dyscalculia) [sic] reading phonics and fluency, and written expression and mechanics (dysgraphia) [sic].” The IEP team did not develop IEP goals to assist in those areas.
11. The student’s IEP, developed on September 28, 2021, contains appropriate measurable goals and a statement of the student’s present levels of academic achievement and functional performance in the identified area of needs of math calculation, math problem solving, written language mechanics, social-emotional, and organization.
12. The student’s IEP, developed on September 28, 2021, does not address, or include a statement of the student’s present level of academic achievement and functional performance in the identified areas of need of reading phonics and reading fluency (see impact statement).

CONCLUSION:

Based on the Findings of Facts #8- #12, the MSDE finds the MCPS did not address or include a statement of the student’s present levels of academic achievement and functional performance, in

alignment with the impact statement, since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to allegation #6.

ALLEGATION #7: Provision of quarterly Progress Reports

FINDING OF FACT:

13. There is documentation that on November 29, 2021, February 24, 2022, April 22, 2022, and June 21, 2022, the MCPS provided the student’s parents with quarterly progress reports reflecting the student’s progress toward achieving each of her annual IEP goals.

CONCLUSION:

Based on the Findings of Facts #13, the MSDE finds the MCPS did ensure that the parent was provided with quarterly progress reports toward achieving the annual IEP goals since the start of the 2021- 2022 school year, in accordance with 34 CFR §300.320. Therefore, this office finds that no violation occurred with respect to allegation #7.

ALLEGATION #8: Provision of Prior Written Notice

FINDING OF FACT:

14. During the IEP team meeting on June 7, 2022, the parent proposed that the student would be educated in a “new placement.” While the PWN, dated June 7, 2022, reflects the parents' proposal for consideration of another placement, it does not document the decision or rationale for the decision of the IEP team.

CONCLUSION:

Based on the Findings of Facts #14, the MSDE finds the MCPS did not provide the parent with PWN of the decision to reject the parents' proposal for consideration of another placement since the start of the 2021- 2022 school year, in accordance with 34 CFR§300.503. Therefore, this office finds that a violation occurred with respect to allegation #8.

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 Ms. Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student Specific

By October 1, 2022, the MSDE requires the MCPS to provide documentation that the student is being provided with the bi-monthly fifteen-minute counseling sessions, weekly monitoring of the agenda book, and as-needed school-to-home communication for missing and late assignments.

The MSDE requires the MCPS to provide documentation that the student's IEP has been revised to reflect current present levels of academic achievement and functional performance and appropriate measurable goals concerning the student's area of need in reading phonics and reading fluency.

By October 1, 2022, the MSDE requires the MCPS to provide documentation that the IEP team has convened and determined whether the violation related to the lack of supports in the areas of reading phonics and reading fluency and implementation of the student's IEP 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 remedies 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.

By October 1, 2022, the MSDE requires the MCPS to provide documentation that an IEP team has convened and a PWN documenting the rationale for why additional educational testing will be provided by MCPS and the decision regarding the consideration of the private educational testing.

The MCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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.

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School-Based

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violation does not recur at [REDACTED] [REDACTED] [REDACTED] School. Please note that any documentation that is submitted relating to a future plan of action must be supplemented with documentation that demonstrates that the plan has been implemented and monitored prior to the closing of the case. MCPS must provide the MSDE with monitoring reports reflecting a random sample of at least 15 students at [REDACTED] [REDACTED] [REDACTED] School are: receiving the supplementary aids and services on their IEPs; are receiving proper PWN of the decisions made during the IEP team meeting; are receiving the services and related services required by their IEP; and have goals, supplementary aids or services, or accommodations addressing all areas of need identified by the impact statement, present levels or other areas of the student's IEP. Monitoring reports will be due on December 1, 2022, March 1, 2023, and June 1, 2023.

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

c: Monifa B. McKnight
[REDACTED]
Alison Barmat
Gerald Loiacono
Diane Eisenstadt
Sarah Denney