



November 23, 2022

Ms. Megan Jones
1500 Union Avenue Suite 2000
Baltimore, Maryland 21211

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

RE: [REDACTED]
Reference: #23-048

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 September 27, 2022, the MSDE received a complaint from Ms. Megan Jones, 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 following allegations:

1. The MCPS has not provided the student the educational placement required by the Individualized Education Program, during the school year 2021- 2022, in accordance with 34 CFR §§300.101 and .323, and §§300.114, and .116.
2. The MCPS has not provided the parent with proper prior written notice of the decision to reject her request for the provision of virtual services, in accordance with 34 CFR §300.503.
3. The MCPS did not ensure that the student was provided with the special education and related services required by his Individualized Education Program (IEP) during the school year 2021- 2022, in accordance with 34 CFR §§300.101 and .323.
4. The MCPS did not follow proper procedures in responding to a request for an Independent Educational Evaluation (IEE) that was made, in accordance with 34 CFR §300.502 and COMAR 13A.0501.

BACKGROUND:

The student is 20 years old and is identified as a student with Autism under the IDEA. He was a student of the Montgomery County Public Schools for the 2021- 2022 school year and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. There is no documentation the MCPS has provided the student with the educational placement required by the IEP, during the school year 2021- 2022.
2. There is no documentation the MCPS has provided the parent with proper prior written notice of the decision to reject her request for the provision of virtual services.
3. There is no documentation the MCPS ensured that the student was provided with special education and related services required by his IEP during the school year 2021- 2022.
4. There is no documentation the MCPS followed proper procedures in responding to a request for an IEE that was made.
5. There is documentation that the MSDE requested documentation from the MCPS to investigate the current complaint on October 12, 2022, November 9, 2022, November 14, 2022, and November 17, 2022.

CONCLUSION

ALLEGATION #1:

PLACEMENT DETERMINATION

Based on the Findings of Facts #1 and #5, the MCPS has not provided the student the educational placement required by the IEP, during the school year 2021- 2022, in accordance with 34 CFR §§300.101 and .323, and §§300.114, and .116. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #2:

PROVISION OF PROPER WRITTEN NOTICE

Based on the Findings of Facts #2 and #5, the MSDE finds that the MCPS has not provided the parent with proper prior written notice of the decision to reject her request for the provision of virtual services, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #3:

**PROVISION OF SPECIAL EDUCATION INSTRUCTION
AND RELATED SERVICES**

Based on the Findings of Facts #3 and #5, the MSDE finds that the MCPS did not ensure that the student was provided with the special education and related services required by his IEP during the school year 2021- 2022, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #4: RESPONDING TO A REQUEST FOR IEE

Based on the Findings of Facts #4 and #5, the MSDE finds that the MCPS did not follow proper procedures in responding to a request for an IEE that was made, in accordance with 34 CFR §300.502 and COMAR 13A.0501. 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.¹ 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.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student specific:

The MSDE required the MCPS to provide documentation by December 30, 2022, that the school system team has taken the following actions:

- a. Convened an IEP team meeting to ensure that proper procedures are followed to determine the placement in which the student will receive special education instruction and related services for the 2022-2023 school year;
- b. Provided documentation that it has provided the complainant with prior written notice of the MCPS decision to deny the provision of in-home virtual services;
- c. The student is being provided with the support and services required by the IEP until the team has;
- d. Conducted the educational assessment required to determine eligibility for special education services, review and revise the IEP consistent with the data;

¹ 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.

² 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.

- e. The IEP team has determined the compensatory services to remediate the violations identified through this investigation and developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The MCPS must ensure that the complainant is provided with written notice of the team's decisions.

Similarly Situated Students

The MCPS Nonpublic Office is required to determine whether there are any other students whose families continue to seek services from MCPS and have been recommended for nonpublic placement, but have remained without any services for an extended period of time³, since September 27, 2022, through the 2022-2023 school year. If there are other similarly situated students, MCPS must convene an IEP team meeting to determine appropriate compensatory services to address the lapse in services. The compensatory service plans, if any, must be delivered 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.

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

MF/sj

c: Monifa B. McKnight
Leslie Margolis

██████████
Stephanie James

Diana K. Wyles
Diane Eisenstadt

Zvi Greismann

³ *Extended time means beyond the average nonpublic placement period of approximately 30 days.*