



Mohammed Choudhury
State Superintendent of Schools

December 19, 2022

Ms. Kimberly Glassman
6110 Executive Blvd
Suite 220
Rockville, Maryland 20815

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

RE: [REDACTED]
Reference: #23- 070

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 October 24, 2022, the MSDE received a complaint from Ms. Glassman, 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 MCPS has not ensured that the student has been consistently provided with on- on-one adult support across all academics and transitions during the school day as required by the Individualized Education Program (IEP) since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP, developed on May 6, 2022, requires "daily adult support provided by an instructional assistant," and that the support should be provided "Across all settings," and that he "benefits from 1:1 adult support for all academics and transitions to support learning and inclusion." The IEP does not indicate if the student requires 1:1 support from the instructional assistant¹.
2. While there is documentation that the student is enrolled in classes with additional support staff present, there is no documentation that the assigned staff member was an instructional assistant, and the functions they performed in the classroom, or if they were assigned to the student as "1:1 adult support," since the start of the 2022-2023 school year.

CONCLUSION:

Based on the Findings of Facts #1- #3, the MSDE finds that the IEP was not written in a manner that contains a clear statement of the services to be provided, in accordance with 34 CFR §300.320. Thus, the MCPS did not ensure that it had been implemented as intended by the IEP team since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has 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.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:

The MSDE requires the MCPS to provide documentation by February 1, 2023, that the student has been provided with the support of a 1:1 instructional assistant, as required by the student's IEP.

¹ In her complaint, the complainant refers to the instructional assistant as the student's "dedicated aide"

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.

The MSDE requires the MCPS to provide documentation by February 1, 2023, that the IEP team has convened and determined whether the violation related to the lack of the 1:1 instructional assistant 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 remedies to redress the violation and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

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.

School-Based:

The MSDE requires the MCPS to provide documentation by February 1, 2023, of the steps it has taken to ensure that the [REDACTED] School staff properly implements the accommodations for students with IEPs. These steps must include staff development, as well as tools developed to monitor the action steps, a monitoring schedule, and provision of the completed monitoring tool to MSDE by March 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 (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

MEF: sd

c:	Monifa McKnight	Diana Wyles
	Phillip Lynch	Maritza Macias
	[REDACTED]	Zvi Greismann
	[REDACTED]	Alison Barmat
	Gerald Loiacono	Diane Eisenstadt
	Sarah Denney	