




April 28, 2023




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

RE:   
Reference: #23-162

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 February 28, 2023, the MSDE received a complaint from Ms. , hereafter, "the complainant," on behalf of her 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.

MSDE investigated the following allegations:

1. The MCPS has not ensured that the student's teachers had access to the student's IEP, which has resulted in the following supplementary aids and services not being consistently provided:
  - specialized instruction
  - monitor use of agenda book and/or progress report
  - structured time for organization of materials
  - break down assignments into smaller units
  - frequent changes in activity
  - frequent/immediate feedback
  - directions read aloud
  - extended time
  - small group testing
  - frequent breaks
  - reduce distractions to self

as required by the IEP since the start of the 2022- 2023 school year, in accordance with 34 CFR §§300.101 and .323.

2. The MCPS did not ensure that the parent was provided with reports of progress toward achieving the annual IEP goals since the start of the 2022-2023 school year, in accordance with 34 CFR §300.320.

**BACKGROUND:**

The student is fourteen years old and is identified as a student with an Other Health Impairment under the IDEA. He attends [REDACTED] School, and he has an IEP that requires the provision of special education instruction.

**FINDINGS OF FACTS:**

1. The student's IEP, in effect at the start of the 2022- 2023 school year, was developed on May 17, 2022. The IEP requires two-fifty minute sessions per day of specialized instruction inside of the general education setting for Algebra I and Biology, and fifty minutes per day of specialized instruction outside of general education for "assignment management". The IEP further requires:
  - daily frequent and immediate feedback across all content areas;
  - daily break down of assignments into smaller units;
  - structured time for organization of materials to include a daily check-in during resource class or other designated time to assess the student's organization with an adult;
  - daily monitoring of the use of an agenda book and/or progress report to include a daily check-in during resource class or other designated time to review assignments with an adult; and
  - daily frequent changes in activity across all content areas.

The student's IEP requires the following accommodations during testing and classroom instruction:

- directions read aloud and repeated as needed;
  - small group testing;
  - frequent breaks;
  - reduce distractions to self; and
  - extended time (1.5x).
2. There is documentation that the student's teachers had access to the student's IEP.
  3. While there is some documentation that the student was provided specialized instruction, monitored use of an agenda book and/or progress report, structured time for organization of materials, break down of assignments into smaller units, frequent changes in activity, frequent/immediate feedback, directions read aloud, extended time, small group testing, frequent breaks, extended time, and reduced distractions to self, the documentation does not demonstrate that it was consistently provided, as required by the IEP since the start of the 2022-2023 school year.
  4. The Student's IEP, developed on May 17, 2022, requires that the parent receive reports of the student's progress towards achieving IEP goals ("Progress reports") on a quarterly basis.

5. Progress reports were created for the student on November 4, 2022; January 26, 2023; and March 30, 2023.
6. There is documentation that the parent received a copy of the November 4, 2022, progress report on November 18, 2022.
7. There is documentation that the parent received a copy of the January 26, 2023, progress report on February 6, 2023.
8. There is no documentation that the parent received a copy of the March 30, 2023, progress report.

**DISCUSSION/CONCLUSION:**

**Allegation #1: Provision of IEP Services**

Based on the Findings of Facts #1 to #3, MSDE finds that while the MCPS has ensured that the student's teachers had access to the student's IEP, the MCPS has not ensured that the specialized instruction, monitored use of an agenda book and/or progress report, structured time for organization of materials, break down of assignments into smaller units, frequent changes in activity, frequent/immediate feedback, directions read aloud, extended time, small group testing, frequent breaks, and reduced distractions to self have been consistently provided to the student as required by the IEP, 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 occurred with respect to this allegation.

**Allegation #2: Provision of IEP Progress Reports**

Based on the Findings of Facts #4, to #7, MSDE finds that the MCPS did ensure that the parent was provided with progress reports for November 4, 2022, and January 26, 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation did not occur with respect to this aspect of the allegation.

Based on the Findings of Fact #8, MSDE finds that the MCPS did not ensure that the parent was provided with reports of progress toward achieving the annual IEP goals for March 30, 2023, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation occurred with respect to this aspect of 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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that non-compliance 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

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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 (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.

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 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.

### **Student-Specific**

MSDE requires the MCPS to provide documentation by June 1, 2022, that the school system has taken the following action:

- a. Provided the parent with the reports of progress toward achieving the annual IEP goals for March 2023.
- b. Provided the student with the specialized instruction, monitored use of an agenda book and/or progress report, structured time for organization of materials, break down of assignments into smaller units, frequent changes in activity, frequent/immediate feedback, directions read aloud, extended time, small group testing, frequent breaks, extended time, and reduced distractions to self as required by his IEP.
- c. Convened an IEP team meeting to determine the amount and nature of compensatory services or other remedy to redress the lack of provision of specialized instruction and developed a plan for the provision of those services within one year of the date of this Letter of Findings. Additionally, the IEP team must determine whether the violation related to the provision of IEP services 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 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**

MSDE requires the MCPS to provide documentation of the steps that have been taken to ensure that [REDACTED] School staff properly implements the requirements for the provision of specialized instruction and supplementary aids and services and reports of progress toward achieving the annual IEP goals under the IDEA. 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 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 (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

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<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.

[REDACTED]  
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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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins  
Deputy Superintendent  
Office of the Deputy Superintendent of Teaching and Learning

DMC/tg

c: Monifa B. Mcknight  
Maritza Macias  
[REDACTED]  
Diane Eisenstadt  
Alison Barmat  
Gerald Loiacono  
Tracy Givens