

February 3, 2025

[REDACTED]

Ms. Kia Middleton-Murphy  
Director of Special Education  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

Re: [REDACTED]  
Reference: #25-162

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report on the final results of the investigation.

**ALLEGATIONS:**

On December 5, 2024, MSDE received a complaint from [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public School (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements concerning the above-referenced student.

MSDE investigated the following allegations:

1. The MCPS has not ensured that the student’s motor needs have been identified and addressed since January 2024 in accordance with 34 CFR §§ 300.304 and .324.
2. The MCPS did not ensure that the Behavior Intervention Plan (BIP) was consistently implemented since December 2023, in accordance with 34 CFR §§ 300.101 and .323.
3. The MCPS did not ensure that the IEP team considered the parent information and concerns at the IEP meetings held since December 2023, in accordance with 34 CFR § 300.324.
4. The MCPS has not followed proper procedures when disciplinarily removing the student from school since March 2024, in accordance with 34 CFR §§ 300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10.

**BACKGROUND:**

The student is 10 years old and is identified as a student with Autism under the IDEA. The student attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

**ALLEGATIONS #1 and #2**

**MOTOR NEEDS IDENTIFIED and ADDRESSED and BIP**

**FINDINGS OF FACT:**

1. The IEP in effect in January 2024 was developed on January 11, 2023, and amended on December 6, 2023. The IEP reflects the following areas impacted by the student's disability: Written Language Expression, Social Interaction Skills, Speech-Language Expressive Language, Listening Comprehension, Speech-Language Receptive Language, Math Problem Solving, Speech-Language Pragmatics, Reading Phonics, Behavioral - Self-management, Math Calculation, Attention, and Social Emotional/Behavioral.

The IEP reflects that the student has a Functional Behavior Assessment (FBA) dated November 8, 2023, and a Behavior Intervention Plan (BIP) developed on November 13, 2023.

2. The IEP does not reflect that motor needs are an area impacted by the student's disability. On July 11, 2024, the parent consented to an occupational therapy (OT) evaluation. On December 3, 2024, the IEP team attempted to review the MCPS OT evaluation. However, the complainant and his advocate refused to review the OT assessment. As a result, the IEP team was unable to determine if the student required services. The IEP team meeting was rescheduled.
3. The BIP developed on November 13, 2023, was reviewed on March 14, 2024, and April 11, 2024. The BIP reflects the following target behaviors:
  - Task-avoidant behaviors which include complaining of stomach pain, needing to use the bathroom, leaving his seat, walking around/running, and saying he is mad/angry/growling at others when he is presented with academic demand;
  - Disruptive behaviors which include blurting out, yelling off task and repetitive comments (yelling a student's name over and over again), violating student's personal space (going up to other students and singing in their faces); and
  - Physical aggression includes throwing items, shoving, hitting, or knocking items out of the hands of students and staff. This includes attempts as well as times he makes physical contact.
4. The BIP also reflects specific short-term and long-term goals for each target behavior. The short-term goals span a duration of 6 to 8 weeks, while the long-term goals extend over 6 to 12 months. Data collection within the BIP will be based on the frequency of the target behaviors. Each instance of data collection will have a clearly defined start and end for all three target behaviors.
5. There is documentation that the BIP has been implemented as required by the IEP.

## **CONCLUSIONS:**

### **Identify and Address Motor Needs**

Based on the Findings of Fact #1 and #2 MSDE finds that the MCPS is in the process of re-scheduling a review of the OT evaluation after the parent's refusal to review the assessment in December 2024. As a result, the MCPS has not had an opportunity to determine if motor needs impact the student's IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation has not occurred concerning this allegation.

### **Implement BIP**

Based on the Findings of Fact #1, #3 through #5, MSDE finds that the MCPS did ensure that the BIP was consistently implemented since December 2023, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation did not occur concerning this allegation.

## **ALLEGATION #3**

## **CONSIDER PARENT INFORMATION**

### **FINDINGS OF FACT:**

6. The prior written notices (PWNs) generated following the December 6, 2023, February 4, 2024, and March 14, 2024, IEP team meetings do not reflect that the complainant shared concerns or made inquiries during the IEP team meetings.
7. The PWN generated following an IEP team meeting on April 11, 2024, reflects that the IEP team convened to review the BIP. The PWN reflects the IEP team proposed and agreed to:
  - Update the BIP to address an increase in aggressive and inappropriate behaviors, the updated BIP will be sent to the parent via email;
  - Use errorless teaching strategies and collect behavioral data; and
  - Create visual rule boards to be used at home and school, and the school will notify parents via email if computer time is revoked.

The PWN reflects the parents requested an OT consultation for potential sensory needs, and the school-based team agreed to the parents' proposal.

The PWN also reflects the student's file was sent to the Central IEP team (CIEP) to discuss an alternative placement and programming.

8. The Maryland Online IEP system reflects that two PWNs were generated for the May 1, 2024, IEP team meeting. The PWNs reflect that the IEP team convened to review the IEP and revise it if appropriate.
  - The complainant raised concerns about the CIEP referral to a more restrictive environment. He disagreed with the referral and stated that he did not fully understand his parental rights. The MCPS central office staff responded by proposing that the MCPS convene an IEP team meeting with the family to address the recommendations. The MCPS central office staff proposed to reconvene the CIEP team meeting if the recommendation is to continue with a more restrictive setting. The MCPS rejected moving forward with the CIEP team meeting to ensure the family has time to get clarity regarding their concerns and the process.

9. The PWN generated following the June 12, 2024, IEP team meeting, reflects that the IEP team convened as a result of the CIEP team meeting to review and or revise the IEP. The PWN reflects:
  - MCPS proposed that the advocate provide the school team with IEP-related notes by June 19, 2024, based on the family's concern that they didn't have the opportunity to fully participate in and provide feedback on the last approved IEP.
  - Upon receipt of the notes the school will review and provide the family with a draft IEP proposal for the next IEP team meeting. The school-based team proposed and agreed to convene on July 11, 2024, at 12pm.
  - The IEP team proposed and agreed that the CIEP chair will attend the IEP team meeting and participate in placement discussion if warranted.
  - The team proposed and agreed to document parent concerns with the proposed meeting time of 1 hr.
10. The PWN generated following an IEP team meeting on July 11, 2024, reflects that the IEP team convened to review/revise the IEP, and determine the student's educational placement. The PWN reflects the school-based team accepted 14 of the complainant's amendments to the student's IEP. The PWN further reflects:
  - The parent team does not believe that the data on the IEP and BIP are accurate. The parent team disagrees with the operational definitions of the behavior on the FBA and what is being collected. The parent team also expressed concerns about the training provided to the staff who collected the data. The parent team rejected the IEP.
  - The MCPS considered but rejected the parent's request for a functional behavior assessment (FBA).
  - The IEP team have met multiple times over the 2023-2024 school year to review and discuss behavior data, make changes to the behavior plan, and to implement new strategies.
  - The MCPS considered but rejected emergency evacuation accommodations, the school-based team reports the student successfully participates in emergency evacuation drills without accommodations.
  - The MCPS considered but rejected the request to remain in a less restrictive setting with 1:1 support.
  - The MCPS agreed to an OT evaluation to explore sensory needs that are impacting the [Student's] access to instruction.
  - The MCPS proposed that a non-public separate day school is the [Student's] LRE. Referrals for placement consideration will be sent to: [REDACTED]; [REDACTED] and [REDACTED].
  - The MCPS rejected that LRE C (less than 40% of the day inside general education) within elementary learning center services with a 1:1 aide is [Student] LRE.
11. The PWN generated on December 3, 2024, reflects the CIEP team convened. The PWN reflects the complainant and private Board-Certified Behavior Analyst's (BCBA):
  - Raised concerns about the timing for the review of the OT assessment;
  - Raised concerns about the use of the calculator as an accommodation;
  - Requested placement within a private separate day school be reconsidered;
  - Requested additional academic data to be added to the present levels; and
  - Expressed concerns with speech-language expressive language.

In response to the concerns and requests the MCPS proposed:

- To review the OT assessment on Thursday before winter break. They will seek feedback from the Office of General Counsel regarding concerns that the assessment tools do not meet COMAR standards. The OT assessment review is delayed allowing the IEP Chair to consult with the parties involved. If the family disagrees with the assessment outcomes, they can use the options identified in the procedural safeguards;
- To reconvene at the end of the quarter to review behavioral and academic data. MCPS reviewed the current academic data captured and [Student's] results. MCPS determined the requested academic data is already captured; and
- Reconvening with the Speech-Language Pathologist present in order to address the complainant's concerns with expressive language and ongoing participation.

The school-based team shared when the student utilizes the calculator accommodation. The school-based team also shared that during the July 2024 CIEP team meeting, special education services within a comprehensive setting were ruled out. The MCPS determined that the student requires a private separate day school. Since the meeting in July 2024, referrals have been sent to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

The MCPS proposed updating the BIP to ensure the response to intervention is captured within the document. The school team agreed to update the plan with the current data.

#### **CONCLUSION:**

Based on the Findings of Fact #6 through #11, MSDE finds that the MCPS did ensure that the IEP team considered the parent information and concerns at the IEP meetings held since December 2023, in accordance with 34 CFR § 300.324. Therefore, this office finds that a violation did not occur concerning this allegation.

#### **ALLEGATION #4**

#### **DISCIPLINARY REMOVAL**

#### **FINDING OF FACT:**

12. There is no documentation to support the complainant's allegation that the student was disciplinarily removed from school since March 2024.

#### **CONCLUSION:**

Based on the Finding of Fact #12, MSDE finds that there is no documentation that the student was disciplinarily removed from school since March 2024, in accordance with 34 CFR § 300.530, and COMAR 13A.08.03. Therefore, MSDE finds that a violation did not occur concerning this allegation.

#### **TIMELINES:**

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 why the documentation was not made available during

the investigation. Requests for reconsideration must be sent to Tracy Givens, Section Chief, Dispute Resolution Branch, at [Tracy.Givens@maryland.gov](mailto:Tracy.Givens@maryland.gov). 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,

Antoine L. Hickman, Ed.D.  
Assistant State Superintendent  
Division of Early Intervention and Special Education Services

ALH/ra

c: Dr. Thomas Taylor, Superintendent, MCPS  
Dr. Peggy Pugh, Chief Academic Officer, MCPS  
Diana K. Wyles, Associate Superintendent, Office of Special Education, MCPS  
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