



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

January 12, 2021



Dr. Terri Savage  
Executive Director of Special Education  
Howard County Public Schools  
10901 Clarksville Pike  
Columbia, Maryland 21042

RE: [REDACTED]  
Reference: #21-037

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 of the final results of the investigation.

**ALLEGATION:**

On November 18, 2020, the MSDE received a complaint from Ashley VanCleaf, Esq., hereafter “the complainant,” on behalf of the above-referenced student and his mother, [REDACTED]. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the HCPS has not followed proper procedures to ensure that the student was evaluated and identified as a student with a disability under the IDEA, since July 6, 2020, in accordance with 34 CFR §§300.8, .111, .301 - .306, and COMAR 13A.05.01.04 - .06.

**BACKGROUND:**

The student is eight (8) years old and is not identified as a student under the IDEA. The student attended [REDACTED] ([REDACTED] ES) until the March 16, 2020 closure of school buildings and initiation of virtual learning, as a result of the COVID-19 pandemic.

### **FINDINGS OF FACTS:**

1. On August 14, 2020, an IEP team convened to review the complainant's July 6, 2020 referral, made on behalf of the student's parents, to request special education eligibility and services for the student.
2. At the August 14, 2020 meeting, the IEP team reviewed the existing information. They determined that additional information was needed in order to determine whether the student is a student with an Other Health Impairment (OHI), Autism, a Specific Learning Disability (SLD), or a Speech/Language Impairment under the IDEA.
3. Also at the August 14, 2020 meeting, the IEP team recommended assessments of the student's intellectual, educational and speech/language skills, as well as an occupational therapy assessment.
4. On August 17, 2020, the parent (mother) provided written consent for the assessments recommended by the IEP team at the August 14, 2020 meeting.
5. On September 16, 2020, the school staff sent an electronic mail (email) message to the parents informing them "that the county is still working through the backlog of assessments dating back to the closure of schools in March," and of its continuing efforts to meet the IDEA timelines for completion and review of assessment results.
6. On November 8, 2020, the school staff sent correspondence addressed to the parent (mother) acknowledging that they had been unable to start the recommended assessments that were to be reviewed by the IEP team. The complainant filed this complaint ten (10) days later, on November 18, 2020.
7. On January 5, 2021, the school system staff sent correspondence to the MSDE outlining specific proposed corrective actions to redress the loss of potential services to the student as a result of not ensuring the timely completion of the evaluation assessments that were recommended by the IEP team in August 2020.

### **CONCLUSION:**

Based on the Findings of Facts #1 - #6, the MSDE finds that proper procedures were not followed to ensure that the student was evaluated, in accordance with 34 CFR §§300.8, .111, .301 - .306, and COMAR 13A.05.01.04 - .06. Therefore, the MSDE finds a violation with respect to the allegation.

### **CORRECTIVE ACTION/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).

Ashley VanCleaf, Esq.  
Dr. Terri Savage  
January 12, 2021  
Page 3

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.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that the action will not be completed within the timeframe indicated, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 and at nancy.birenbaum@maryland.gov.

### **Student-Specific**

In order to address the violation, the HCPS has offered to fund an Independent Educational Evaluation (IEE) that includes an educational assessment, psychological assessment, speech/language assessment and an occupational therapy assessment. The MSDE appreciates this step taken and concurs with this remedy.

Further, following the completion of the IEE assessments, the MSDE requires the HCPS to provide documentation that the IEP team has convened and taken the following actions, consistent with the proposals reflected in its January 5, 2021 correspondence to MSDE:

- (a) Reviewed the results of the assessments recommended in August 2020, and, based on the data, determined the student's eligibility for special education services under the IDEA; and
- (b) If the student is found eligible for special education services, developed an initial IEP for the student, and determined the amount and nature of compensatory services or other

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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.

<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.

remedy for the loss of services from October 2020, and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

### **System-Based**

The MSDE requires that the HCPS provide documentation that it has taken the following actions, consistent with the proposals reflected in its January 5, 2021 correspondence to MSDE:

1. Resumed conducting in-person assessments, consistent with local health metrics, following its decision on November 16, 2020 to pause testing.
2. Explored options for expanding in-person testing by the school system.
3. Consulted with one (1) or more publishing companies and virtual, private assessment companies about the possibility of supplementing the school system's in-person assessments with virtual assessments.
4. If a decision is made to conduct virtual assessments, training on the delivery of virtual assessments has been provided to the school system staff.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

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 parents and the school system 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

Ashley VanCleaf, Esq.  
Dr. Terri Savage  
January 12, 2021  
Page 5

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  
and Special Education Services

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