

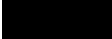


Karen B. Salmon, Ph.D.
State Superintendent of Schools

March 18, 2021




Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: 
Reference: #21-047

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 January 21, 2021, the MSDE received a complaint from Ms.  hereafter “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the CCPS has not ensured that the student has consistently been provided with the special education instruction, accommodations, and supports required by the Individualized Education Program (IEP) since January 4, 2021, in accordance with 34 CFR §§300.101 and .323. This includes:

- a. The CCPS has not ensured that the student has received special education instruction in reading and math from a special education teacher;
- b. The CCPS has not provided communication between home and school; and
- c. The CCPS has not ensured that the student was provided with case manager “check-ins” prior to the first period class and after the last period class.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with Multiple Disabilities under the IDEA, including a Specific Learning Disability and an Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD). She has an IEP that requires the provision of special education services.

The student attended the [REDACTED] School, until the March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

FINDINGS OF FACTS:

1. The IEP requires the provision of special education instruction in reading and math from a special education teacher to assist the student in achieving the annual IEP goals.
2. There are schedules of the student and her special education teacher, and reports of the student's progress towards achievement of the annual IEP goals to improve the student's reading comprehension and math problem solving. The reports of progress document the student is being provided with special education instruction from a special education teacher to address the annual IEP goals.
3. The IEP requires weekly communication between the student's case manager and the complainant regarding the student's academic and behavioral progress.
4. There are electronic mail messages (emails) between the student's case manager and the complainant that document that there has been weekly communication about the student's academic and behavioral progress.
5. The IEP requires daily "check-ins" for the student with her case manager prior to the first period and after the last period of the school day to monitor the student's behavior and attendance.
6. While there is documentation that the case manager met with the student on some dates and attempted to check in with her on other days, there is no documentation of "check-ins" on a daily basis.
7. There is a report of the student's attendance indicating that she has had fewer absences during the 2020-2021 school year than during last school year and there is a report from the school psychologist that the student participates in counseling sessions and is making good progress.
8. There is documentation that the student has earned an A grade in English and a B in math to date.
9. There is documentation that training has been initiated with the student's teachers to ensure that IEP services are provided and documented.

CONCLUSIONS:

Based on the Findings of Facts #1, #2, #8 and #9, the MSDE finds that the student has been provided with special education instruction by the providers required by the IEP, in accordance with 34 CFR §§300.101 and .323.

Based on the Findings of Facts #3, #4, #5 #7, and #9 the MSDE finds that the case manager has communicated with the complainant, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

However, based on the Finding of Fact #6, the MSDE finds that not all of the daily “check-ins” were provided with the frequency required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the CCPS is taking steps to ensure the violation does not recur. Therefore, no school-based corrective action is required.

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.¹

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 timeframe below may not be met, or if any of the parties 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.² Dr. Birenbaum can be reached at (410) 767-7770 and nancy.birenbaum@maryland.gov.

Student Specific:

The MSDE requires the CCPS to provide documentation that the student is being consistently

¹ 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.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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provided with daily “check-ins” with her case manager prior to the first period and after the last period of the school day to monitor the student’s behavior and attendance.

In addition, the MSDE requires the CCPS to provide documentation that the IEP team has determined whether the lack of consistent “check-ins” with the case manager has had a negative impact on the student’s ability to benefit from her education program, and if so, the compensatory services or other remedy needed to remediate the violation.

TECHNICAL ASSISTANCE:

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 timeframes 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 identification, evaluation, placement, or provision of a Free Appropriate Public Education 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/sf

c: Kimberly Hill
Lewan Jones
[REDACTED]
Dori Wilson
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Sharon Floyd
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