



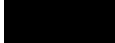
**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

June 4, 2021



Ms. Bobbi Pedrick  
Co-Director of Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401


Ms. Diane McGowan  
Co-Director of Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE:   
Reference: #21-080

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.

ALLEGATIONS:

On April 6, 2021 and May 17, 2021, the MSDE received a State complaint from Ms.  hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to **her** daughter.

The MSDE investigated the following allegations:

1. The AACPS has not ensured that the student was provided with the vision, speech/language, and music related services, and the special education instruction

required by the Individualized Education Program (IEP) from April 6, 2020 to June 16, 2020, in accordance with 34 CFR §§ 300.101 and .323.

2. The AACPS has not ensured that the student was provided with the physical therapy related services required by the IEP, since April 6, 2020, in accordance with 34 CFR §§ 300.101 and .323.
3. The AACPS has not ensured that the decision made regarding Extended School Year (ESY) services related to physical therapy, for the summer of 2021, was consistent with the data, in accordance with 34 CFR §300.101 and .324.
4. The AACPS has not ensured that the IEP has addressed the student's physical therapy needs since April 6, 2020, in accordance with 34 CFR §§300.101 and .324.

#### **BACKGROUND:**

The student is sixteen (16) years old and is identified as a student with Multiple Disabilities, including Intellectual Disability and Orthopedic Impairment under the IDEA. She has an IEP that requires the provision of special education instruction and related 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.

#### **ALLEGATION #1: PROVISION OF VISION, SPEECH, AND MUSIC RELATED SERVICES AND SPECIAL EDUCATION INSTRUCTION FROM APRIL 6, 2020 TO JUNE 16, 2020**

#### **FINDINGS OF FACTS:**

1. On April 3, 2020, an amendment was made to the IEP, with parental agreement, to address school closures as a result of the COVID-19 pandemic. This amendment to the IEP for distance learning required special education classroom instruction for four (4) hours and thirty (30) minutes monthly, as well as thirty (30) minutes weekly of speech/language related services.
2. On April 16, 2020, the IEP was again amended to discontinue direct speech/language therapy and to provide forty-five (45) minutes per month of "other therapies," including:
  - Consultative vision services to be provided to the family and classroom teacher, as needed;
  - Consultative occupational therapy services provided to the family and team, as needed;
  - Speech/language consultation services to facilitate functional communication related to support accessing the student's reading goal.

- Consultative physical therapy services provided to the family and team, as needed; and
  - Music therapy services provided through live or pre-recorded sessions, varying in length from fifteen to thirty minutes.
3. There is documentation, in the form of a service log and reports of progress made in April and June 2020, in the present levels of performance section of the student's IEP, that special education classroom instruction and music therapy were provided to the student from April 6, 2020 to June 16, 2020.
  4. There is documentation, in the form of a service log, that consultative vision services were provided to the student as required by the IEP from April 6, 2020 to June 16, 2020.
  5. There is documentation, in the form of a service log, that direct and consultative speech/language services were provided to the student as required by the IEP, from April 6, 2020 to June 16, 2020.

**DISCUSSION/CONCLUSIONS:**

Based on Findings of Facts #1 - #5, the MSDE finds that student was provided with the vision, speech/language, and music related services, and the special education instruction required by the IEP from April 6, 2020 to June 16, 2020, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds no violation with respect to this aspect of the allegation.

**ALLEGATION #2: PROVISION OF PHYSICAL THERAPY SINCE APRIL 6, 2020**

**FINDINGS OF FACTS:**

6. The IEP in effect since April 16, 2020, has not required the provision of direct physical therapy services. There is documentation that these services were discontinued during virtual learning due to the inability to provide those services virtually. Instead, the IEP requires consultative physical therapy services on an "as needed" basis to school staff and the student's parents.
7. There is no documentation that the school staff or parent have requested a physical therapy consultation since April 6, 2020.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #6 - #7, the MSDE finds that direct physical therapy services were not required by the IEP since April 6, 2020 and there is no documentation of the need for physical therapy consultation. Therefore, this office finds that there is no violation with respect to this allegation.

**ALLEGATION #3:                    ESY SERVICES DECISION**

**FINDING OF FACT:**

8.        A review of the audio recording of the IEP team meeting held on March 26, 2021 reflects that, on that date, the IEP team determined that the student requires ESY services during the summer of 2021. The complainant requested that these services include physical therapy. The IEP team rejected the request and documented that the basis was that there was no data regarding the student's needs in this area.

**DISCUSSION/CONCLUSIONS:**

Based on Findings of Facts #6 and #8, the MSDE finds that the ESY services decision was inconsistent with the data that the student has identified physical therapy needs, in accordance with 34 CFR §300.101 and .324. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #4                    IEP ADDRESSING PHYSICAL THERAPY NEEDS**

**FINDINGS OF FACTS:**

9.        In January 2021, the AACPS provided families with the option of hybrid learning, consisting of two (2) days per week of in-person instruction and three (3) days per week of virtual learning. The combination face-to-face and virtual instruction was to begin on or around March 2021, depending on health guidelines.
10.      The complainant reports that the student is not able to attend school in-person due to a medical condition. However, the complainant has not provided medical documentation and applied for Home Health Teaching (HHT) services.

**DISCUSSION/CONCLUSIONS:**

Based on Findings of Facts #6, # 9, and #10, the MSDE finds that the AACPS has not ensured that the IEP has addressed the student's physical therapy needs from April 6, 2020 until Spring 2021, when in-person services were offered to the student, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation occurred with respect to this time period 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.<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 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

### **Student Specific**

The MSDE requires the AACPS to provide documentation that the IEP team has done the following:

1. Determined the student's need for physical therapy services during ESY services, consistent with the data; and
2. Determined the compensatory services or other remedy for not addressing the student's physical therapy needs, to be provided when the student either returns to the school building or is approved for HHT services.

### **School-Based**

The MSDE requires the AACPS to provide documentation of the steps taken at the [REDACTED] School to ensure that ESY services decisions are based on the data.

### **Similarly-Situated Students**

The MSDE requires the AACPS to provide documentation that similarly-situated students within the school system whose physical therapy needs could not be addressed through virtual learning have been identified and that they are offered compensatory services to redress the loss.

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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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

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Ms. Diane McGowan  
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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 school system and the complainant 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:dee

c:

George Arlotto  
Alison Barmat  
Dori Wilson  
Anita Mandis  
Diane Eisenstadt  
Nancy Birenbaum