



**Mohammed Choudhury**  
State Superintendent of Schools

July 15, 2021



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

RE: [REDACTED]  
Reference: #21-100

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 May 18, 2021, the MSDE received a complaint from [REDACTED] hereafter “the complainant,” on behalf of her son, 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 developed and implemented an Individualized Education Program (IEP) that addressed the student’s academic, occupational therapy and speech language needs since May 18, 2020, in accordance with 34 CFR §§300.101 and .324.

**BACKGROUND:**

The student is eleven (11) years old and is identified as a student with an Intellectual Disability under the IDEA. He has an IEP that requires the provision of special education services.

The student attended the [REDACTED] 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:**

### **IEP DEVELOPMENT:**

#### **Academics**

1. The IEP in effect in May 2020, identified needs in the area of reading and math, and included goals to improve the student's performance in those areas of identified need. It required twelve (12) hours per week of special education classroom instruction in the general education classroom provided by the general educator, special education classroom teacher, or instructional assistant, in the areas of science and non-core academic subjects. It also required nineteen (19) hours per week of special education classroom instruction in a separate special education classroom, provided by the special education teacher or the instructional assistant, through the SOAR program<sup>1</sup> to develop skills essential to achieving independence, self-advocacy, flexibility and generalization.
2. The reports of the student's progress dated June 11, 2020, reflect that the academic goals were newly introduced and the student's progress could not be measured due to insufficient data.
3. On October 12, 2020, the IEP was amended to address the provision of Free Appropriate Public Education (FAPE) during virtual learning. The IEP was amended to decrease the amount of special education instruction inside the general education classroom for science and non-core academic subjects to three (3) hours and twenty (20) minutes, and to increase the amount of special education instruction the student would receive in a separate special education classroom, to twenty-two (22) hours of special education instruction per week.
4. The reports of the student's progress towards achieving his annual goals to improve academic performance in November 2020, reflect that the student, "has just been introduced to this goal and there is not sufficient data...progress not measurable at this time." However, the IEP team did not meet to consider the impact of the goals not being addressed for two (2) of the four (4) quarters in which they were to be achieved.
5. The reports of the student's progress towards achieving his annual goals in the area of academic performance, dated February 16, 2021, reflect that the student was not making sufficient progress due to difficulty getting him to participate in virtual learning sessions. The reports reflect that the school staff suggested that the student turn the camera off and only

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<sup>1</sup> SOAR (Structured teaching, Opportunities for social inclusion, Active learning, and Rigor) is a regionalized program for students requiring specialized instruction in order to develop skills essential to achieving independence, self-advocacy, flexibility, and generalization.  
(<https://www.ccboe.com/schools/gwynncenter/index.php/pages/mit-taasc-program>)

- participate in small group breakout sessions, which seemed to help the student's anxiety, however, the student only participated in five (5) virtual sessions during the third quarter.
6. There is email and text message documentation that the complainant requested a program review due to her concerns with virtual learning as early as January 2021. However, the IEP team did not convene until March 16, 2021, at which time the IEP team met to review the student's IEP and consider additional supports for the student.
  7. At the March 16, 2021 IEP team meeting, the student's parents expressed that they did not believe that the virtual instruction provided to the student was appropriate for his needs. They expressed that, due to the student's disability, he did not like to be seen on camera and was not motivated to complete his school work virtually.
  8. The written summary of the March 16, 2021 IEP team meeting reflects that the team considered information that the student requested a return to in person services, however, the complainant was uncomfortable returning him to in person services due to her concerns about his safety, given the COVID-19 pandemic. The IEP team determined that additional supports would be added to the IEP, including a token reward system, frequent change of activities and the provision of paper packets for the student for the times when the student refused to work in the online classroom.
  9. The reports of the student's progress towards achieving his annual goals, dated April 16, 2021, in the area of academics, reflect that the student continued to not make progress, due to non-participation in the virtual setting.
  10. On May 5, 2021, the IEP team considered the student's difficulty with anxiety during virtual learning, caused by his disability, and discussed the availability of in-person services, as well as participation in a summer in person "boost" program. However, the student's parents were unwilling to have the student return to in person learning.
  11. The reports of the student's progress dated June 16, 2021 reflect that the student was not logged on to any virtual classes during the fourth quarter of the 2020-2021 school year, however work materials and manipulatives were provided to the student outside of the virtual environment.

### **Speech Language**

12. The IEP in effect in May 2020, identified needs in the areas of speech and language expressive, receptive, pragmatics and articulation, and included goals to improve the student's performance in all of the areas of identified need.
13. The IEP in effect in May 2020 required forty-five (45) minutes per week of speech language therapy related services in a separate special education classroom.
14. On October 12, 2020 the IEP was amended to reduce the length of speech sessions at the complainant's request due to his anxiety related to being on camera.

15. The reports of the student's progress towards achieving his annual goals in the area of speech language, dated February 2021, reflect that the student was making sufficient progress in that area, despite the fact that he was not consistently being logged on for scheduled speech sessions.
16. The written summary of the IEP team meeting in March 2021 reflects that, at that time, the complainant requested that the amount of speech language therapy sessions be increased. The speech language provider reported that the student was not consistently attending speech therapy, but she was currently working with the family to reschedule sessions reportedly due to the student's "sleepiness" during scheduled sessions. She also reported that additional supplemental work would be provided to the student. Based on this information, the team denied the request for additional speech sessions.
17. The report of the student's progress towards achieving his annual goals, dated April 16, 2021, in the area of speech language therapy reflects that the student was making sufficient progress in that area, despite a number of sessions where the student did not log on for therapy.
18. The service provider logs reflect that the student was not logged on to any of the sessions offered in June 2021.

### **Occupational Therapy**

19. The IEP in effect in May 2020, identified a need in the area of fine motor skills, which affected the student's writing, and included a goal to improve the student's performance in this area.
20. The IEP in effect in May 2020 required two (2) thirty (30) minute sessions of occupational therapy related services per month in a separate special education classroom.
21. The IEP amended on October 12, 2020 continued the goals and services required for occupational therapy.
22. The computer login data sheets reflect that the occupational therapist attempted breakout sessions with the student to provide services from October 2020 to June 2021, and there are service provider logs documenting attempts at service provision from May 2020 to June 2021. Those logs reflect sporadic attendance at sessions and that the student was not consistently logged in to participate in scheduled sessions.
23. There is email documentation that the occupational therapist worked with the complainant to reschedule missed sessions.
24. The reports of the student's progress towards achieving his annual goals in the area of occupational therapy, dated February 2021, reflect that the student was making sufficient progress in that area,

25. The written summary of the IEP team meeting held in March 2021, reflects that the complainant requested an increase in occupational therapy services. The IEP team denied the request, based on information that the student was making progress.
26. The reports of the student's progress towards achieving his annual goals, dated April 16, 2021 and June 2021, in the area of occupational therapy, reflect that the student subsequently stopped making progress, because he was no longer being logged on for occupational therapy sessions.

### **IEP IMPLEMENTATION:**

27. There are teacher and student schedules, parent contact logs, emails, text messages, lesson plans, computer logs, work samples and work packets that document that the student was offered the special education instruction required by the IEP to the extent that the student was available for that instruction.
28. While there is email and text message correspondence from the complainant indicating that the student was having difficulty with virtual instruction, for technical reasons as well as reasons related to the student's disability, there is documentation in the form of contact logs, numerous emails and text messages that the school staff provided technical assistance and a technology device. There is also documentation of the provision of accommodations, including: providing breakout rooms with one to one assistance, allowing the student to turn his camera off, and providing supplemental work packets both digitally and in hard copy.
29. There are service provision logs, contact logs, and emails documenting that the student was offered the speech and language related services required by the IEP. When the complainant communicated difficulties with the student attending sessions, the provider accommodated the student's needs by rescheduling sessions that were missed and changing student session schedules to meet the needs of the student and family.
30. There are service provision logs, contact logs, emails and text messages documenting that the student was offered the occupational therapy related services required by the IEP.

### **DISCUSSION/CONCLUSIONS:**

At the onset of the COVID-19 pandemic, the United States Department of Education (USDOE) issued guidance emphasizing the obligation of each public agency to make every effort to offer a FAPE to students with disabilities during the pandemic, and stated that, in doing so "school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff." The USDOE stated:

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions,

during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language education services.

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments. (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Service Children with Disabilities*, March 21, 2020).

A FAPE is offered when a student identified as a student with a disability under the IDEA is provided with the services required by an IEP that addresses the student's individualized needs, including any behaviors of the student that interfere with access to special education (34 CFR §§300.101, .320, .323, and .324).

In light of the unique circumstances created by the need for virtual at-home instruction, parents, including the parents of disabled students, have been expected to arrange for a responsible person to make the student available for instruction and to provide any necessary supervision during the virtual school day. This responsibility includes assisting the student with logging onto the computer and redirecting the student back to instruction when needed. These expectations are analogous to other longstanding parental expectations such as arranging for a child to be safely accompanied to and from the bus stop for transportation when traveling to and from the school building.

A student may require new and additional services to recover from any widening of the gap between performance and grade level expectations during virtual learning. In addition, compensatory services may be owed to the student if the public agency did not offer a FAPE during the period of virtual learning.

The award of compensatory services is an equitable remedy created by the Courts to address the denial of the offer of a FAPE to a student with a disability. The USDOE has explained that, when conducting IDEA State complaint investigations, the State Education Agency (SEA) must determine an appropriate remedy, which can include compensatory services, when it concludes that the public agency **has violated a requirement of the IDEA** [Emphasis added] resulting in the failure to provide a FAPE (*Letter to Lipsitt*, 72 IDELR 102, April 19, 2018).

### **IEP Development - Academics**

Based on the Findings of Facts #1-#3, the MSDE finds that the IEP in effect in May 2020 addressed the student's academic needs, in accordance with 34 CFR §§300.320 and .324.

However, based on Findings of Facts #4-#6, the MSDE finds that the IEP team did not address the fact that the student was not accessing virtual instruction on the academic goals from November 2020 until March 16, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds a violation with respect to this aspect of the allegation for this time period.

Based on the Findings of Facts #7-#11, the MSDE finds that the IEP team has attempted to address the student's difficult accessing virtual instruction since March 16, 2021 and has offered a return to in person services needed for the student to receive a FAPE, but that the complainant has not accepted the offer and is no longer providing the student with access to virtual lessons. Therefore, the MSDE does not find a violation since March 16, 2021.

### **IEP Development – Speech/Language**

Based on the Findings of Facts #12 and #13, the MSDE finds that the IEP in effect in May 2020 addressed the student's speech/language needs, in accordance with 34 CFR §§300.320 and .324.

Based on Findings of Facts #14 and #15, the MSDE finds that there was data to support the IEP team's decisions with respect to how speech/language services were provided during the period of virtual learning, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #16-#18, the MSDE finds that the IEP team has attempted to address the student's difficult accessing virtual instruction since March 16, 2021 and has offered a return to in person services needed for the student to receive a FAPE, but that the complainant has not accepted the offer and is no longer providing the student with access to virtual lessons. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

### **IEP Development – Occupational Therapy**

Based on the Findings of Facts #19 and #20, the MSDE finds that the IEP in effect in May 2020 addressed the student's occupational therapy needs, in accordance with 34 CFR §§300.320 and .324.

Based on Findings of Facts #21-#24 the MSDE finds that there was data to support the IEP team's decisions with respect to how occupational therapy services were provided during the period of virtual learning, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #25 and #26, the MSDE finds that the IEP team has attempted to address the student's difficult accessing virtual instruction since March 16, 2021 and has offered a return to in person services needed for the student to receive a FAPE, but that the complainant has not accepted the offer and is no longer providing the student with access to virtual lessons. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

### **IEP Implementation**

Based on the Findings of Facts #27-#30, the MSDE finds that there is documentation that special education and related services were offered consistent with the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE does not find a violation 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, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.<sup>2</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>3</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at Nancy.birenbaum@maryland.gov.

#### **Student Specific**

The MSDE requires the CCPS to provide documentation that it has determined the amount and nature of compensatory services or other remedy to redress the violation identified in this Letter of Findings, and develop a plan for the provision of those services, to be provided once the student returns to in person learning.

#### **School-Based**

The MSDE requires the CCPS to provide documentation of the steps taken at [REDACTED] to ensure that the violation does not recur. 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 recur.

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

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<sup>2</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>3</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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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 guardian 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 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:de

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