




**Mohammed Choudhury**  
State Superintendent of Schools

August 30, 2021




Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 230  
Rockville, Maryland 20850

RE:   
Reference: # 22-002

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.

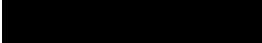


**ALLEGATIONS:**

On July 7, 2020, the MSDE received a complaint from Dr.  hereafter, “the complainant,” on behalf of his son, the above referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) has been reviewed by the IEP team at least annually, in accordance with 34 CFR §300.324.
2. The MCPS has not provided access to documents in the education record in response to a request made by the complainant on April 9, 2021, in accordance with 34 CFR §300.613.

**BACKGROUND:**

The student is twenty-one (21) years old, is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services. The student is placed by the MCPS at  a nonpublic, separate, special education school. The student returned to in-person instruction at   in

April 2021 following a period of virtual learning that began in March 2020 as a result of the COVID-19 pandemic.

**FINDINGS OF FACTS:**

1. There is a Prior Written Notice (PWN) document that indicates that, on June 11, 2020, the IEP team conducted a review of the IEP.
2. There is a PWN document that indicates that, on November 20, 2020, the IEP was amended by agreement of the school system and the student's mother, who has sole legal custody. The IEP goals and services were revised through the amendment, and the school staff documented an agreement between the student's mother and the school system that these revisions would be in effect until November 4, 2021.
3. There is an electronic mail message (email) from the school system staff to the complainant, dated December 23, 2020, documenting that on that date, the complainant was provided with the IEP amended on November 20, 2020. That IEP reflects that the student's mother and the school system entered into an agreement to provide the student with an additional year of high school beyond the 2020-2021 school year in response to his inability to access virtual learning during the COVID-19 pandemic.
4. There an email from the complainant to the school system staff, dated April 9, 2021, documenting that on that date, the complainant acknowledged being aware of the agreement between the school system and the student's mother, and stating:

As a non-custodial parent, I believe that I am entitled to have a copy of the confidential agreement and should have had the opportunity to participate in the negotiation.

The complainant did not provide information that he was unable to inspect and review the document, which is a part of the education record, without being provided with a copy.

5. There is no documentation that the MCPS has provided the complainant with a copy of the document requested on April 9, 2021.

**DISCUSSION/CONCLUSIONS:**

**Allegation #1                      Annual IEP Review**

At the onset of the COVID-19 pandemic, the United States Department of Education (USDOE) issued guidance stating:

If a Local Education Agency (LEA) closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once

school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's IEP.

The USDOE further stated:

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE (*Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak*, March 2020).

Subsequently, the USDOE issued guidance that emphasized the obligation of an LEA 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.

Further, while stating that the IDEA timelines are not waived during the pandemic, the USDOE stated “as a general principal, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate (*Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, March 21, 2020).

In this case, the complainant alleges that the school system was required to convene the IEP team to review the IEP at least annually during the COVID-19 pandemic, and has not done so.

Based on the Findings of Facts #1 and #2, the MSDE finds that the school system and the custodial parent agreed to extend the timeline for the annual review, and that this was permitted consistent with guidance from the USDOE. Therefore, this office does not find that a violation occurred with respect to this allegation.

**Allegation #2**

**Request for Student's Record**

The parents of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a Free Appropriate Public Education (FAPE) to the student. This includes the right to inspect and review the records, and the right to request copies of the records if failure to provide copies would effectively prevent the parent from exercising the right in inspect and review the records (34 CFR §300.613).

In this case, the complainant alleges that he was entitled to a copy of the confidential agreement entered into between the custodial parent and the school system, and that the MCPS has not provided him with a copy of the document.

Based on the Findings of Facts #3 - #5, the MSDE finds that, while there is no documentation that the MCPS has provided the complainant with a copy of the requested document, there is also no documentation that the complainant requires a copy of the agreement in order to inspect and review the document, in accordance with 34 CFR §300.613. Further, based on the Finding of Fact #3, the MSDE finds that the school system provided the complainant with written notice of the content of the document. Therefore, this office does not find that a violation occurred with respect to the allegation.

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.

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 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

c: [REDACTED]  
Monifa B. McKnight  
Julie Hall

Maritza J. Macias  
Dori Wilson  
Anita Mandis