



May 27, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Rebecca Miller
Director of Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 21921

RE: [REDACTED]
Reference: #22-129

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 March 30, 2022, the MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Cecil County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The CCPS did not provide the student with special education services in the placement required by the Individualized Education Program (IEP) from September 2021, to November 29, 2021, in accordance with 34 CFR §§300.114, and .116.
2. The CCPS did not provide the parent with proper written notice of the November 18, 2021, IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07(D).

3. The CCPS has not ensured that the IEP includes present levels of academic achievement and functional performance in order to properly address the student's identified math calculation needs, in accordance with 34 CFR §300.320.
4. The CCPS has not developed an IEP that addresses the student's identified gross motor, fine motor, expressive, receptive, and pragmatic language needs from September 2021, to November 29, 2021, in accordance with 34 CFR §300.324.
5. The CCPS has not ensured that the student has been consistently provided with adult support as required by the IEP from September 2021, to November 29, 2021, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is twelve (12) years old and is identified as a student with an Intellectual Disability under the IDEA. She attends ██████████ School and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP in effect at the start of the 2021-2022 school year was developed on August 27, 2021. The IEP reflects that the student has identified needs in the areas of reading comprehension, math calculation, expressive, receptive, and pragmatic language, written language, fine motor skills, and gross motor skills. The IEP includes annual goals, specialized instruction, supports, and related services to improve the student's skills in these areas.
2. The student's IEP requires thirty-three hours of services per week outside of the general education setting and placement in the "██████████" classroom. There is documentation that the student was enrolled in a ██████████ classroom.
3. On November 11, 2021, the complainant sent an email to the CCPS' requesting a meeting to discuss her concerns related to IEP implementation and placement. On November 11, 2021, the CCPS staff proposed, and the parent agreed, to an IEP team meeting to be held on November 18, 2021.
4. While there is documentation that the CCPS staff generated a "Notice of IEP Team Meeting" on November 11, 2021, for an "expedited" IEP team meeting, that meeting did not occur.

5. The student's present level of performance in the area of math calculation reflects that the student's performance is "below grade level." The summary of assessment findings indicates the student "will pull her hand away from hot items but will return it to the item and push away cold items." The student's annual math calculation goal states that "given a set of numbers up to two-digit numbers with or without decimals, tangible and visual manipulatives, verbal prompts, with no more than three choices provided by using a scanning device using ABC Board and or printed ABC cards, the student will identify the correct response to multiplication and division problems with 60% accuracy, on 4 out of 5 trials as measured by classroom-based assessments by August 2022."
6. The student's present level of performance in the area of gross motor skills does not indicate a level of performance. It reflects "per the previous IEP from another state, the student demonstrated poor balance with an unsteady gait, requires close supervision, and intermittent physical assistance in order to navigate the school environment." The IEP requires the provision of daily adult support throughout the school day "due to accessibility and safety." The student's annual gross motor skills goal states that "with physical assistance fading to close supervision, the student will safely navigate from bus/car to classroom, classroom to bus/car, and throughout her school environment without loss of balance in 3 out of 4 trials by August 2022." The student's IEP requires physical therapy outside of the general education classroom for fifteen minutes per week. The physical therapy services may include direct skill instruction, observation of mobility throughout the school environment, and use of a variety of outdoor and indoor equipment."
7. The student's present level of performance in the area of fine motor skills reflects that the student's performance is below grade level. The summary of assessment findings indicates the student can grasp small objects with her left hand, palmar or fistful grasp when shaking or twirling, requires hand over hand assistance to make meaningful strokes and to grasp or release on command, and requires physical assistance for toileting, dressing, and feeding. The present level indicates the student is not toilet trained, will scribble back and forth with hand over hand guidance, and can hold an IPAD independently. The IEP further indicates that the student uses an adaptive spoon to self-feed preferred foods, will not self-feed non-preferred foods, and can scoop "soft foods" and bring them to her mouth. The student's IEP requires the provision of toileting and adult support daily. The student's annual fine motor skills goal states that "given verbal and visual cues, she will use her bilateral upper extremities in an ADL and IADL tasks in the classroom with 80% accuracy in 3 out of 4 trials as measured by OT data collection and observation by August 2022." The student's IEP requires occupational therapy outside of the general education classroom two times a week for fifteen minutes and allows for sessions to occur inside the classroom for "carryover skills".

8. The student's present level of performance in the area of receptive, expressive, and pragmatic language reflects that the student's performance is below grade level. The summary of assessment findings indicates the student demonstrated "very minimal eye contact even with consistent attempts to be in her field of vision. She had one vocalization in a thirty-minute period. The student was able to make a choice when given three toys, one of which was her known favorite that she did choose. During our observations, she did not follow verbal directions and needed hand-over-hand prompting to use gestures of hi and bye." The IEP requires that the student be provided with an assistive technology (AT) device and AT services. Additionally, the student requires elimination of answer choices of "no more than three, and a unique response accommodation." The IEP requires speech and language therapy outside of the general education classroom three times a week for twenty minutes.
9. The student's annual receptive language goal indicates "given a one-step direction with visual, verbal, and diminishing hand-over-hand prompting, the student will follow a simple command of: give me, show me, point to, or imitate with 60% accuracy and no hand-over-hand prompting by August 2022." The student's annual expressive language goal indicates "given social classroom, and therapy sessions, the student will express her wants and needs by making a choice of three items when given the item, then just a picture of the item including greetings, and moving to a choice board for a symbol and finally to a switch with 60% accuracy as measured by therapist data by August 2022."
10. The student's IEP requires the provision of adult support daily to assist the student with maneuvering the school building safely, eating toileting, and with academic tasks.
11. There is no documentation that adult support was provided to the student from September 2021 to November 29, 2021.

CONCLUSIONS:

ALLEGATION #1: PLACEMENT

Based on the Findings of Facts #1 and #2, the MSDE finds that the CCPS provided the student with special education services in the placement required by the Individualized Education Program (IEP) from September 2021, to November 29, 2021, in accordance with 34 CFR §§300.114, and .116. Therefore, this office does not find that a violation has occurred with respect to this allegation.

ALLEGATION #2: NOTICE OF IEP MEETING

Based on the Findings of Facts #3 and #4 the MSDE finds that the CCPS did not convene an IEP meeting on November 18, 2021, therefore notice was not required in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D. Therefore, this office does not find that a violation has occurred with respect to this allegation.

ALLEGATION #3: MATH CALCULATION PRESENT LEVEL OF ACADEMIC ACHIEVEMENT

Based on the Findings of Facts #5, the MSDE finds that the CCPS has not ensured that the IEP includes present levels of academic achievement and functional performance in order to properly address the student's identified math calculation needs, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #4: IEP THAT ADDRESSES IDENTIFIED GROSS AND FINE MOTOR AND EXPRESSIVE, RECEPTIVE, AND PRAGMATIC LANGUAGE NEEDS

Based on the Findings of Facts #6 - # 9, the MSDE finds that CCPS has developed an IEP that addresses the student's identified gross motor, fine motor, expressive, receptive, and pragmatic language needs from September 2021 to November 29, 2021, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation has occurred with respect to this allegation.

ALLEGATION #5: PROVISION OF ADULT SUPPORT

Based on the Findings of Fact #10and #11, the MSDE finds that CCPS has not ensured that the student has been consistently provided with adult support as required by the IEP from September 2021, to November 29, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this 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.

The MSDE has established reasonable time frames below to ensure that non-compliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it

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

completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student-Specific

The MSDE also requires the CCPS to provide documentation of the following action:

- a. That it has convened an IEP team meeting to determine the present level of academic achievement and functional performance in the area of math calculation and revised the student's IEP, as appropriate;
- b. That it has provided the student with adult support as required by the IEP;
- c. That it has convened an IEP team meeting to determine whether the violations indicated in this letter of finding had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings; and
- d. Developed a plan for the implementation of the services within one (1) year of the date of this Letter of Findings.

The CCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

The CCPS must provide the MSDE with documentation of the results of the team's decisions and documentation of the provision of services, as appropriate.

School-Based

The MSDE requires the CCPS to provide documentation of the steps taken to ensure that the violations identified do not recur at [REDACTED] School. The documentation must include a description of how the CCPS will evaluate the effectiveness of the steps taken and monitor to

² 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.

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ensure that the violations do not reoccur. Results of quarterly monitoring will be reported to the MSDE, ensuring that IEPs for students at ██████████ Schools include grade levels for all academics, that the summary of assessment findings are relevant to the content of the present levels, and that the data included in the present level of functional performance and academic achievement is sufficiently comprehensive to support the drafting of appropriate annual goals.

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 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 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/tg

c: Jeffrey A Lawson
Rebecca Miller
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