



July 22, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Dr. Christina Harris
Supervisor of Special Education
Calvert County Schools
1305 Dares Beach Rd.
Prince Frederick, Maryland 20678

RE: [REDACTED]
Reference: #22-165

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 May 23, 2022, the MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Calvert County 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 consistently provide the student with the Extended School Year (ESY) speech services required by the Individualized Education Program (IEP) during the summer of 2021, in accordance with 34 CFR §§300.101 and .323.
2. The CCPS has not ensured that the student was provided with the proper transportation services required by his IEP since June 10, 2021, in accordance with 34 CFR §§300.101 and 323.

BACKGROUND:

The student is 5 years old and attends [REDACTED] [REDACTED]. He is identified as a student with a Developmental Delay under the IDEA and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: PROVISION OF APPROPRIATE TRANSPORTATION SERVICES

FINDINGS OF FACTS:

1. The student's IEP, in effect prior to December 8, 2020, required the provision of a "safety harness" for use during transportation.
2. On December 8, 2020, the IEP team determined that the student no longer required the use of a "safety harness". The IEP team determined that the student would continue to receive transportation to his "inclusive prekindergarten program" because it was not located near his home. The complainant shared her concerns that the student should not receive "special education transportation" if "general education transportation" was available.
3. The CCPS has acknowledged that due to a computer system flaw, the student's transportation staff were not informed of the IEP team decision regarding the student's need for a safety harness, and that the student was provided with the safety harness through June 2021.
4. There is documentation that the student received transportation during the 2021-2022 school year in the morning from his daycare to his comprehensive school with both disabled and nondisabled students who also attended his daycare, but attended nearby schools.

DISCUSSION/CONCLUSIONS:

In her complaint, the parent alleges that the student was inappropriately provided the use of a safety device during transportation and that the student was assigned to a "special education" bus and denied access to his nondisabled peers during transportation.

Based on Findings of Facts #1 to #3 the MSDE finds that the student was provided with the use of a "safety harness" that was not required by his IEP from December 2020 to June 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding that violation, based on Finding of Fact #3, the MSDE finds that the CCPS has taken steps to address the issue and that no further student-based corrective action is necessary.

Based on Findings of Facts #1 and #3, the MSDE finds that there is no documentation that the student was inappropriately transported with only disabled peers, since June 2021. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2: PROVISION OF EXTENDED SCHOOL YEAR SERVICES

5. The student's IEP, developed on April 12, 2021 required that he be provided with speech/language services for thirty (30) minutes per week during extended school year (ESY) from July 6, 2021 to August 12, 2021.

6. There is documentation that the student was not present during some of the planned ESY sessions, but that some of these sessions were "made up" during ESY.
7. There is documentation that the student was not provided with some of the required ESY speech/language sessions due to the unavailability of the service providers.
8. There is documentation that the CCPS provided "make-up" services to the student in October 2021 at his daycare to account for the services not provided during ESY.

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #5 to #7, the MSDE finds that there is no documentation that the student was consistently provided with extended school year services, as required by his IEP, during the summer of 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding that violation, based on Findings of Facts #6 and #8, the MSDE finds that the CCPS provided the student with additional services to remedy the violation during the 2021-2022 school year. Therefore, no further student-specific corrective action is necessary to remedy this violation.

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 noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it 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 Ms. 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.

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.

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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The MSDE requires the CCPS to provide documentation by October 1, 2022, of the steps taken to identify other students who were not provided with transportation supports aligned with the requirements of their IEP as a result of the same systemic flaw affecting the above-named student. For each student identified, the CCPS should determine whether the error resulted in an impact on the student's ability to benefit from their educational program and if so, the appropriate remedy necessary to address the violation.

The MSDE further requires the CCPS to provide documentation by October 1, 2022, of the steps taken to identify other students who were not provided with speech/language services during extended school year services in 2021 as a result of the unavailability of the staff member responsible for providing services to the above-named student. For each student identified, the CCPS should determine whether the error resulted in an impact on the student's ability to benefit from their educational program and if so, the appropriate remedy necessary to address the violation.

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:gl

c: Daniel Curry
Nancy Gregory
[REDACTED]
Alison Barmat
Diane Eisenstadt
Gerald Loiacono