



Mohammed Choudhury
State Superintendent of Schools

August 12, 2022

Ms. Selene Almazan, Esq.
43 Randolph Road, Box 202
Silver Spring, Maryland 20904

Mr. Phillip A. Lynch
Director of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: [REDACTED]
Reference: #22-191

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 June 14, 2022, the MSDE received a complaint from Ms. Selene Almazan, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, [REDACTED] and [REDACTED]. 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 above-referenced student.

The MSDE investigated the allegation that the MCPS has not ensured that the student has consistently been provided with the special education instruction, supports, and Teacher of the Hearing-Impaired services required by the Individualized Education Program (IEP) since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is fourteen years old and is identified as a student with Multiple Disabilities under the IDEA. He is enrolled in the [REDACTED] 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 February 3, 2021. The IEP requires 11.25 hours per week of specialized instruction outside of the general education setting for English, Math, and "Resource", 11.25 hours per week of specialized instruction in the general education setting for Science, and Reading and Math Interventions, and 1 hour per month of Teacher of Hearing-Impaired services. The IEP further requires a human reader/signer for assignments and assessments, daily provision of wait time to process information, secure attention before speaking, visual models, repetition of directions, alternative ways to demonstrate learning, picture schedule, check for understanding, use of manipulatives, pictures to support reading passages, reduce number of answer choices, break down assignments into smaller units, altered/modified assignments, daily 1:1 adult support throughout the school day, reinforce positive behavior through non-verbal/verbal communication, manipulatives and/or sensory activities to promote listening and focusing skills, frequent changes in activities or opportunities for movement, advance preparation for schedule changes, preferential seating, and environmental aids.
2. The student's Virtual Academy schedule for the 2021-2022 school year reflects instruction from a general educator in Math, English, and Science and instruction from a special educator in Academic Literacy and Resource.
3. There is no documentation that the student was consistently provided specialized instruction, supports, and Teacher of the Hearing-Impaired services as required by his IEP from the start of the school year until October 11, 2021.
4. The IEP team convened on October 11, 2021, to review and revise the student's IEP. The prior written notice generated after the meeting reflects that the MCPS proposed that the IEP will be "implemented to its fullest extent possible while your child is participating in Virtual Academy." The IEP team determined that the special education and related services on the student's IEP require modifications to be delivered in the virtual setting. The "hours of special education services will be implemented as written with the following changes: inclusion English, Math, and Resource." The supports were modified as follows:

Human Reader/Human Signer: Cannot be implemented
Secure attention before speaking using verbal cues
Visual models provided electronically on Chromebook screen
Allow use of manipulative: Cannot be implemented
Reinforce positive behavior through verbal communication
Provide sensory activities verbally to promote listening and focusing skills
Provide frequent changes in activities or opportunities for movement: Provided by parents at home
Advance preparation for schedule changes: Cannot be implemented
Preferential seating: Cannot be implemented
Directions Clarified: Cannot be implemented
General Administration Directions Read Aloud and Repeated as Needed: Cannot be implemented
Human Reader or Human Signer Mathematics, Science, and Government Assessments (entire text or selected sections): Cannot be implemented
Frequent breaks: Self-breaking
Reduce distractions to self through the use of break-out rooms
Reduced distractions to others through the use of break-out rooms

MCPS recommended implementing the student's IEP at [REDACTED] School, "due to the parents declining Alternative Learning Outcomes (ALO) and the MCPS team's recommendation for placement at [REDACTED] LFI program." The parents declined placement at [REDACTED] School and agreed to the IEP modifications for implementation in the virtual setting.

5. There is documentation that the Teacher of the Hearing Impaired contacted the parent on October 27, 2021, and November 11 and 12, 2021. There is no documentation that the student was consistently provided with the specialized instruction, supports, and Teacher of the Hearing-Impaired services as required by his IEP or agreed upon at the October 12, 2021, IEP team meeting, from October 12, 2021, to February 18, 2022.
6. The student's IEP developed on February 18, 2022, requires 15 hours per week of specialized instruction outside of the general education setting, however, "no services are provided in the self-contained setting at the virtual academy", 7.5 hours per week of specialized instruction in the general education setting, and 1 hour per month of Teacher of Hearing-Impaired services. The IEP further requires a human reader/signer for assignments and assessments, daily provision of wait time to process information, secure attention before speaking, visual models, repetition of directions, alternative ways to demonstrate learning, picture schedule, check for understanding, use of manipulatives, pictures to support reading passages, reduce number of answer choices, break down assignments into smaller units, altered/modified assignments, daily 1:1

adult support throughout the school day, reinforce positive behavior through non-verbal/verbal communication, manipulatives and/or sensory activities to promote listening and focusing skills, frequent changes in activities or opportunities for movement, advance preparation for schedule changes, preferential seating, and environmental aids. The IEP states that the following supplementary aids and services would not be implemented in the Virtual Academy: “manipulatives are available at the parent request or they can use anything available in the home setting, adult support throughout the day, reduce number of answer choices, frequent changes in activities or opportunities for movement, preferential seating, and environmental aids.”

7. The prior written notice generated after the February 18, 2022, IEP meeting reflects that the MCPS proposed to implement the IEP developed on February 18, 2022, based upon the IEP team’s review of the student’s progress and revisions to his present level of academic achievement and functional performance, development of appropriate goals, and supplementary aids and supports which indicate that the February 18, 2022, IEP is necessary to provide him with a free appropriate public education. MCPS further proposed that the parents apply for “IIS”, however, the parents rejected the proposal. The parents shared that the student is unwilling to engage in academics and did not want the “enforcement of academics to negatively impact his progress” with related service providers. The Virtual Academy agreed to set up a meet and greet with the student and his teachers.
8. There is no documentation that the student was consistently provided with the specialized instruction, supports, and Teacher of the Hearing-Impaired services as required by his IEP since February 18, 2022.

DISCUSSION/CONCLUSION:

Based on the Finding of Facts #1 - #8, the MSDE finds that the MCPS has not ensured that the student has consistently been provided with the special education instruction, supports, and Teacher of the Hearing-Impaired services required by the IEP¹, since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to this allegation.

¹ The Prior Written Notice generated following the IEP team meeting on October 11, 2021, reflects that the parents agreed to modifications of the student’s delivery of instruction and supports and agreed not to pursue “compensatory/recovery services for any portion of the student’s IEP that are unable to be provided in the Virtual Academy. “

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.² 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student-Specific

The MSDE requires the MCPS to provide documentation by October 1, 2022 that the school system has taken the following actions:

- a. Provided the student with the specialized instruction, supports, and Teacher of the Hearing-Impaired services as required by his IEP.
- b. Convened an IEP team meeting to clarify the services that the student requires to receive a FAPE and determine the services, or other remedy, needed to remediate the violations identified in this investigation. As part of this analysis, the IEP team should consider the impact of not providing the services agreed upon following the October 11, 2021 IEP team meeting.

² 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.

³ 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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- c. Developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The MCPS 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.

System-Based

The MSDE requires the MCPS to provide documentation of the steps that have been taken to ensure that staff serving students in the [REDACTED] follow proper procedures when implementing students' IEPs. This should include steps that staff should take when the student does not participate, fails to make progress, or refuses services. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Furthermore, the MSDE requires that the MCPS conduct a review of student records at the [REDACTED] to identify the students with disabilities for whom similar violations may have occurred. In particular, the MCPS must identify other students who entered the Virtual Academy and thereafter had services reduced or revised based on the inability of the school to implement the student's IEP. For each student identified, the MCPS must ensure that the IEP team reviews each student's IEP and determines the level of services required for the student to receive a FAPE irrespective of the school's ability to implement the IEP. The IEP team must then determine whether the violation negatively impacted the student's ability to benefit from the educational program. In each case where a negative impact is found, the IEP team must also determine the compensatory services required to remedy 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

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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: Monifa B. Mcknight
Diana K Wyles
Maritza Macias
[REDACTED]
Alison Barmat
Gerald Loiacono
Tracy Givens
Diane Eisenstadt