



**Mohammed Choudhury**  
State Superintendent of Schools

August 12, 2022

Ms. Megan Jones, Esquire  
Disability Rights Maryland  
1500 Union Avenue  
Suite 2000  
Baltimore, Maryland 21211

Mr. Philip Lynch, Director  
Department of Special Education  
850 Hungerford Drive  
Rockville, Maryland 20850

RE: [REDACTED]  
Reference: # 22-201

Dear Ms. Jones:

The Maryland State Department of Education (MSDE) received a complaint dated June 23, 2022, from Ms. Megan Jones, hereafter, “the complainant,” on behalf of 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 above-referenced student.

The MSDE investigated the following allegations:

1. The MCPS did not ensure that the parent was provided with proper prior written notice of the decision to reduce the student’s counseling services on April 11, 2022, in accordance with 34 CFR §300.503.
2. The MCPS did not ensure that the decision to reduce the student’s counseling services on April 11, 2022 was consistent with the data, in accordance with 34 CFR §300.1 and COMAR 13a.05.01.01 and 13a.13.01.11.

**BACKGROUND:**

The student is a twenty (20) years old student and is eligible under the IDEA as a student with autism. He currently receives specialized instruction and related services in his home.

**FINDINGS OF FACTS:**

1. The student's IEP, in effect prior to April 11, 2022 required that he be provided with four hours per week of counseling services to address social/emotional and behavioral concerns.
2. On April 11, 2022, the IEP team met to review and revise, as appropriate, the student's IEP. During this review, the IEP team proposed that the student participate in the Extensions Transitions program located at the [REDACTED]. As part of this program, the student would receive community based instruction and transition services in the community. In order to "allow the student to engage in community-based instruction and transition activities during the week", the IEP determined that the student's counseling services would be reduced from four hours per week to two hours per week. The prior written notice generated following the IEP team meeting reflects this change in services.
3. Although the IEP team described the program in which the student would participate, there is no indication that the IEP team considered the individual student needs affected by the reduction in counseling services and the necessity of the student to participate in the program in order to receive a FAPE.
4. The Prior Written Notice generated following the April 4, 2022 IEP team meeting reflects the changes in services determined by the IEP team.

**CONCLUSIONS:**

**Allegation #1: Provision of Prior Written Notice**

Based on Finding of Facts #1 and #4, the MSDE finds that the parent was provided with prior written notice of the April 4, 2022 IEP team decision to change the student's counseling services, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to this allegation.

**Allegation #2: IEP Team Decisions Consistent with the Needs of the Student**

Based on the Findings of Facts #1 to #3, the MSDE finds that the MCPS did not ensure that the IEP team provided a rationale for reducing the student's counseling services in relation to addressing the student's social/emotional and behavioral needs and the provision of a FAPE, in accordance with 34 CFR §300.1. and COMAR 12A.05.01. Therefore, the MSDE finds a violation with regard to this allegation.

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**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.<sup>1</sup> 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.<sup>2</sup> Ms. Eisenstadt can be reached at (410) 767-7770 or by email at [diane.eisenstadt@maryland.gov](mailto:diane.eisenstadt@maryland.gov).

The MSDE requires the MCPS to provide documentation by September 30, 2022, that the IEP team has convened to determine, based on individual student need, the counseling services required by the student to address his social/emotional and behavioral needs in order to receive a FAPE.

The MCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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

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<sup>1</sup> 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.

<sup>2</sup> 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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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

c: Monifa B. McKnight  
Diana K. Wyles  
Joanne Hoffman  
Maritza Macias  
Alison Barmat  
Diane Eisenstadt  
Gerald Loiacono