




Mohammed Choudhury
State Superintendent of Schools

August 7, 2023




Dr. Tia McKinnon
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: 
Reference: #23-260

Dear Parties:

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 June 9, 2023, MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

MSDE investigated the following allegations:

1. The CCPS did not follow proper procedures when identifying the student to determine if he is a student with a disability requiring special education and related services during the 2022-2023 school year, in accordance with 34 CFR §300.301-.306 and COMAR 13A.05.01.06.
2. The CCPS did not provide the complainant with access to the student’s education record following the IEP team meeting on June 5, 2023, in accordance with 34 CFR §300.613.

BACKGROUND:

The student is 14 years old and attends  School. He is not identified as a student under the IDEA.

FINDINGS OF FACTS:

1. On November 10, 2022, the complainant emailed the School Counselor, requesting that the student be evaluated.
2. On November 14, 2022, the School Counselor acknowledged receipt of the email and informed the parents that the information would be shared with the IEP facilitator.
3. On March 30, 2023, the complainant emailed the School Counselor and requested an update on the request for the student to be evaluated. On March 31, 2023, the School Counselor responded to the complainant's email and informed the complainant that the request was sent to the IEP facilitator. The School Counselor also informed the complainant to contact the IEP facilitator directly for additional information or questions.
4. On April 6, 2023, the CCPS local care team responded to the complainant's email regarding the student. The CCPS local care team includes the IEP facilitators assigned to the student home school, and at the temporary placement.¹
5. On April 19, 2023, the IEP team met to review all available information and determined the need for additional information for eligibility. The IEP team suspected a disability of Specific Learning Disability (SLD) and determined that additional assessments and data were required. The team agreed to Cognitive/Intellectual Functioning, Academic: Reading Writing and Math Classroom Observation. The IEP team also discussed concern with "signs of depression" and determined that an emotional disability was not the suspected disability.
6. On May 31, 2023, the psychological evaluation was emailed to the complaint.
7. On June 5, 2023, the IEP team met to preview the assessments as a part of an initial referral for identification/eligibility. During the IEP team meeting, the complainant requested that the meeting be rescheduled because she did not receive copies of all the reports to be reviewed, that there were errors in the assessments, and that additional assessments were needed for the student. The IEP team agreed to reconvene to review the assessments not provided to the parent and agreed that additional assessments would be completed for the student.
8. The meeting was rescheduled for June 9, 2023. The prior written notice (PWN) developed as a result of an IEP team meeting on June 9, 2023, states the purpose of the meeting was to review education assessments, and determine if the student qualifies for special education services. On June 9, 2023:
 - The Specific Learning Disability Eligibility form was completed. The team determined that the student did not have a processing disorder that impacts him in one of the following areas: Oral Expression, Listening Comprehension, Written Expression, Basic Reading Skill,

¹ The student's home school is [REDACTED] School. During the 2022-2023 school year, the student was removed as a result of disciplinary sanctions and placed at [REDACTED] for a long-term removal.

- Reading Fluency Skills, Reading Comprehension, Mathematics Calculations, or Mathematics Problem Solving.
 - There is no severe discrepancy between the student's achievement and cognitive ability.
 - The team proposed and agreed that an IEP team meeting will be held to review the social/emotional/behavioral assessment and determine eligibility for an Other Health Impairment and/or an Emotional Disability.
9. On June 12, 2023, the complainant emailed a request for a copy of the recorded IEP team that occurred on June 5, 2023. On June 13, 2023, the CCPS provided the complainant with a copy of the audio recording.
 10. On June 13, 2023, the complainant requested a copy of the recording to include visual and audio. CCPS made a contemporaneous audio copy of the meeting but did not make a visual recording of the meeting. On June 21, 2023, the IEP facilitator informed the complaint that she no longer had access to the audio recording and provided the complainant with the contact information for the CCPS special education compliance office for additional support.
 11. On August 2, 2023, the IEP team met to review Emotional/Social/Behavioral testing to determine if the student qualifies for special education services. The PWN reflects the IEP team determined the student did not meet the qualification as a student with an Emotional Disability and/or Other Health Impairment.
 12. The PWN developed on August 2, 2023, includes a statement that the complainant has the right to request mediation and a due process hearing regarding the outcome of the IEP team decisions. However, the PWN did not include: a description of the action proposed or refused by the school system; explanation of why the school system proposes or refuses to take this action; description of any options the school district considered prior to this proposal; reasons the listed options were rejected; description of evaluation procedures, tests, records, or reports the school district used as a basis for the proposal or refusal; and other factors relevant to the action proposed.

ALLEGATION #1:

EVALUATION PROCEDURES

An IEP team shall complete an initial evaluation of a student within 90 days of the public agency receiving a written referral (COMAR 13A.05.01.06). The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation; or if the State establishes a time frame within which the evaluation must be conducted, within that time frame (34 CFR §300.301).

Based on the Finding of Facts #1 through #7 and #8, MSDE finds that the CCPS did not begin the evaluation within the established timelines in order to determine if the student has a disability requiring special education and related services, during the 2022-2023 school year, in accordance with 34 CFR §300.301-.306 and COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Finding of Fact #11, MSDE finds that the eligibility process has not been completed within 60 days of receiving parental consent for the evaluation, in accordance with 34 CFR §300.301. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on Finding of Fact #12, MSDE finds that the complainant was not provided with proper PWN of the determination of the IEP team on August 2, 2023. As such, the CCPS did not follow proper procedures in determining the student's eligibility for special education services, in accordance with 34 CFR §300.301. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2:

ACCESS TO STUDENT RECORDS

The public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing or resolution session pursuant and in no case more than 45 days after the request has been made (34 CFR §300.613).

The CCPS will audio record IEP team meetings when the parent/guardian also audio record the meetings. In this case, the parent did not record the IEP team meeting; however, she requested the CCPS record the meeting and CCPS did audio record the meeting. There is no requirement or policy about making video recording meetings.

Based on the Finding of Fact #9 and #10, MSDE finds that the CCPS has provided access to the student's education record following the IEP team meeting on June 5, 2023, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation did not occur with respect to this allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION:

The Prior Written Notice (PWN) by the public agency must include:

- a. a description of the action proposed or refused by the school system, an explanation of why the school system proposes or refuses the action, description of each evaluation procedure;
- b. assessment, record, or report the agency used as a basis for the proposed or refused action;
- c. a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- d. sources for parents to contact to obtain assistance in understanding the provisions of this part;
- e. a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- f. a description of other factors that are relevant to the agency's proposal or refusal.

Based on the Finding of Fact #12, MSDE finds that the PWN developed on August 2, 2023, did not meet the criteria of a prior written notice by the public agency in accordance with 34 CFR §300.503.

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, MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

MSDE has established reasonable time frames below to ensure that noncompliance 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 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.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at diane.eisenstadt@maryland.gov.

Student-Specific

MSDE requires that the IEP team at [REDACTED] School provide the complainant with proper prior written notice of the decisions made by the IEP team on August 2, 2023, by August 20, 2023.

School-Based

MSDE requires the CCPS to provide documentation by October 31, 2023, that it has conducted professional development activities for staff at [REDACTED] School regarding the violations identified relating to the initial evaluation process and eligibility determination. MSDE further requires that CCPS identifies all students who received referrals for consideration of eligibility for special education services during the 2022-2023 and 2023-2024 school year October 15, 2023, and determines whether proper procedures were followed. For each student identified, if the CCPS in its review, determines that proper procedures were not followed when determining initial eligibility, it must convene an IEP team meeting for the identified student and determine the appropriate compensatory services or other remedy to redress the delay in determining eligibility and providing the student with services.

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

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, 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 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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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. MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Dr. Deann M. Collins
Deputy Superintendent
Office of the Deputy Superintendent of Teaching and Learning

DMC:ra

c: Maria Navarro
Lewan Jones
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