



Karen B. Salmon, Ph.D.
State Superintendent of Schools

May 26, 2021



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

RE: [REDACTED]
Reference: #21-075

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 29, 2021, the MSDE received a complaint from Mr. [REDACTED] hereafter “the complainant,” on behalf of his son, 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 student.

The MSDE investigated the following allegations:

1. The CCPS has not ensured that the student has been provided with the amount of special education instruction in the educational placement required by the Individualized Education Program (IEP) since March 29, 2020, in accordance with 34 CFR §§300.101 and .323.
2. The CCPS did not ensure that parental agreement was obtained prior to amendment of the student’s IEP without an IEP team meeting since March 29, 2020, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is seven (7) years old and is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education services. He attended [REDACTED] School, until the March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

FINDINGS OF FACTS:

1. The IEP in effect on March 29, 2020 required one (1) hour per day of special education instruction to address phonics and comprehension in a small group setting in a separate special education classroom and three (3) hours and forty-five (45) minutes per week of special education instruction for math, reading comprehension and written language support in the general education classroom. It also required thirty (30) minutes per day of special education instruction for a “check in, check-up, check out,” in a separate special education classroom or in the general education classroom, as appropriate.
2. There is documentation in the student’s education record that indicates that amendments were made to the IEP in April 2020, September 2020, and October 2020.
3. The parties agree that there was no agreement to amend the IEP in October 2020.
4. The documentation of the amendments made in April 2020 and September 2020 reflect that they were made with parent agreement. There are electronic mail messages (emails) between the parties that further document that amendments were made to the IEP in April 2020 and September 2020 with parent agreement.
5. While there is evidence that some of the special education instruction was provided to the student in the educational placement required by the IEP, the CCPS acknowledges that it has not ensured that the student has been consistently provided with the amount of special education instruction in the educational placement required by the IEP, because the student’s class was “directed to asynchronous instruction and not participating in live virtual instruction for the small groups” for some of the time the student was supposed to be receiving direct special education instruction.
6. The reports of the student’s progress towards achieving the annual goals, dated June 11, 2020, August 17, 2020, November 17, 2020, and February 9, 2021, reflect that the student was making sufficient progress. However, on April 14, 2021, the student was not making sufficient progress in reading and written expression goals.

DISCUSSION/CONCLUSIONS:

Allegation #1

Based on the Findings of Facts ##1, #5 and #6, the MSDE finds that the student was not consistently provided with the services as required by the IEP, in accordance with

34 CFR §§300.101 and .103. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2

Based on the Findings of Facts #2 and #4, the MSDE finds that amendments were made to the IEP with parent agreement in April 2020 and September 2020, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to this allegation.

However, based on the Findings of Facts #3, the MSDE finds that there was no agreement to amend the IEP in October 2020, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation 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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770 or Nancy.birenbaum@maryland.gov.

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

Student-Specific

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

1. The student is being provided with the special education services required by the IEP.
2. The IEP team has reviewed and revised the IEP, as appropriate, to address lack of expected progress and ensured that all members of the IEP team understand what is required of the IEP.
3. The IEP team has determined the compensatory services or other remedy to redress the loss of services.

School Based

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

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.

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: Kimberly Hill
Lewan Jones
[REDACTED]
Dori Wilson
Anita Mandis
Sharon Floyd
Nancy Birenbaum