



Mohammed Choudhury
State Superintendent of Schools

July 29, 2022

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #22-177

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 June 1, 2022, the MSDE received a complaint from Mr. [REDACTED] 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 has not ensured that the student was provided with special education and speech services in October and November 2021, in accordance with 34 CFR §§300.101 and .323.
2. The MCPS has not ensured that the decisions regarding compensatory and/or recovery services made during the 2021-2022 school year were consistent with needs of the student, in accordance with 34 CFR §300.324.

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3. The MCPS did not follow proper procedures when responding to a request for access to the student's record in November 2021, in accordance with 34 CFR §300.613.
4. The MCPS did not ensure that accessible copies of each document the IEP team planned to discuss at the November 10, 2021, IEP team meeting were provided to the parents at least five business days before the meeting, in accordance with COMAR 13A.05.01.03.

BACKGROUND:

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

ALLEGATION #1: PROVISION OF SPECIALIZED INSTRUCTION AND RELATED SERVICES

FINDINGS OF FACTS:

1. The student's IEP, in effect at the start of the 2021-2022 school year, required that the student be provided with two (2) thirty (30) minute sessions of specialized instruction, one (1) thirty (30) minute session of occupational therapy, and one (1) forty-five (45) minute session of speech/language therapy per week at his daycare.
2. There is no documentation that the student received speech/language services or the specialized instruction required by the student's IEP from the start of the 2021-2022 school year to November 2021.

CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE finds that there is no documentation that the student was provided with the speech/language and special education services required by his IEP in October and November 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: DETERMINATION OF RECOVERY SERVICES

FINDINGS OF FACTS:

3. On June 1, 2021, the IEP team met to determine recovery services for the student as a result of the change in service delivery during the COVID-19 pandemic. During the IEP team meeting, the IEP team determined that there was a "negative educational impact" and that the student required five hours of recovery services to address that impact. The IEP team determined that the student would receive the recovery services during the first semester of the 2021-2022 school year. The IEP team further determined that the impact of the student would be reviewed at a later time to determine if additional services are necessary.

4. There is no documentation that the student has been provided with the recovery services determined by the IEP team on June 1, 2021, or that the IEP team has met to review the student's continued need for recovery services related to the COVID-19 pandemic.

CONCLUSION:

Based on Finding of Facts #3 and #4, the MSDE finds that the MCPS has not ensured that the IEP team has reviewed the determinations of the June 1, 2021, decisions regarding recovery services as proposed by the IEP team, and ensured that those services were provided to the student, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATIONS #3 and #4:

PROVISION OF DOCUMENTS PRIOR TO THE IEP TEAM MEETING AND ACCESS TO THE STUDENT'S EDUCATIONAL RECORD

FINDINGS OF FACTS:

5. On November 8, 2021, the IEP team met to review and revise, as appropriate, the student's IEP. During the IEP team meeting, the IEP team discussed the student's present levels of performance. In correspondence sent the following day, the parent requested access to the data underlying the IEP team's conclusions. On November 10, 2021, the student's special educator replied to the parent indicating that she was unable to share a copy of the "test sheet" but could "share the results".
6. On April 21, 2022, the student's special educator shared the results of the academic testing requested by the parent.

CONCLUSIONS:

Allegation #3: Provision of IEP Documents

Based on Findings of Facts #5, the MSDE finds that the IEP team did not review the results of the academic testing completed for the student during the November 8, 2021, IEP team meeting and that the IEP team was not required to provide the parent with a copy of the results prior to the meeting, in accordance with COMAR 13A.05.01.03. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

Allegation #4: Access to the Student's Educational Records

Based on the Findings of Facts #5 and #6, the MSDE finds that the MCPS did not follow proper procedures when providing access to the student's record following the IEP team meeting on November 8, 2021, in accordance with 34 CFR §300.613. Therefore, this office finds that a violation occurred with respect to this allegation. Notwithstanding that violation, based on finding of Fact #6,

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the MSDE finds that the parent has received access to the educational records requested and that no further corrective action is required to remediate 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. 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. 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 student has been provided with the compensatory services as determined by the June 1, 2021, IEP team.

The MSDE further requires documentation by October 1, 2022, that the IEP team has convened and made a determination regarding the student's need for additional compensatory services and whether the violation related to implementing the student's IEP had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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 on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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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: Monifa B. McKnight
Diana K. Wyles
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