



Mohammed Choudhury  
State Superintendent of Schools

April 28, 2023



Ms. Chris Wittle  
Director of Special Education  
Carroll County Public Schools  
125 North Court Street  
Westminster, Maryland 21157

RE: [REDACTED]  
Reference: #23-161

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 February 27, 2023, MSDE received a complaint from Ms. [REDACTED], hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Carroll 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:

1. The CCPS did not follow proper procedures in responding to a request for an evaluation since March 2, 2022, in accordance with 34 CFR §§300.303 - .306 and .503.
2. The CCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified audiological needs since March 2022, in accordance with 34 CFR §§300.101 and .324.
3. The CCPS did not ensure that the student was provided with the audiological services required by his IEP since March 2, 2022, in accordance with 34 CFR §§300.101, and .323.

**BACKGROUND:**

The student is 12 years old and attends [REDACTED] School. He is identified as a Deaf student under the IDEA and has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. On March 2, 2022, the IEP team met to conduct an annual review of the student's IEP. The IEP team noted that the student has been diagnosed with a bilateral sensorial hearing loss of moderate to severe degree in the right ear and severe to profound degree in the left ear. The student received a hearing aid in 2012 and cochlear implant in 2018. The most recent audiological assessment was performed by the student's private provider. The assessments reflect that the hearing aid and cochlear implant improved the students' hearing to the mild range bilaterally. The IEP required that the student be provided with the services of an oral transliterator for the purpose of supporting direct communication opportunities with school personnel, and opportunities for direct instruction in the student's language and communication mode. The IEP further requires that the student be provided with assistive technology devices and services including an FM/DM system to support amplification needs; routine monitoring of the FM/DM system (service providers will implement the use of technology strategies, software and hardware based on identified needs); provision of assistive technology for written communication; and a device that includes word processing, word prediction, and speech to text. To support the student, the IEP team determined that the student would receive services from a Teacher of Deaf and Hard of Hearing for 30 minutes of classroom instruction once per week inside the general education classroom, 30 minutes of classroom instruction once per week outside of the general education classroom, and a consultation with teachers, staff and family regarding the maintenance of the FM/DM equipment. The student also received an audiologist consultation to include an annual hearing test with the CCPS contracted audiologist.
2. On April 18, 2022, the student received an audiological examination. On May 9, 2022, the provider notified the CCPS that the examination had been completed for the student. There is no evidence, to date, that the IEP team has reviewed the results from this assessment.
3. The service log from March 2022-June 2022 reflects the provision of daily transliterator services. The log reflects the following behaviors were tracked: called out, asked for help, asked for oral repeat of transliterator, approximate time watched/used transliteration, asked what another student said, and space for notes. The notes documented if the student was absent, took a test, completed or incomplete assignments, readiness for class, and information regarding behaviors.
4. The weekly service log maintained by the oral transliterator reflects the following behaviors were tracked daily since September 6, 2022:
  - asked for help
  - asked for a repeat
  - used and watch Transliterator
  - repeat teacher's instruction
  - repeat student input
  - repeat directions for assignment
  - points of active participation

- notes - recorded participation, time with hearing teacher, if a sub covered
5. In August 2022, the student enrolled in [REDACTED] School. The service log from the beginning of the 2022-2023 school year from the Teacher of Deaf and Hard of Hearing reflects weekly provision of service inside and outside of the general education setting. The log reflects the subjects the student was in when receiving the service, the date of the service, support from the oral transliterator, and interactions with the teachers since August 29, 2022. Additionally, the log documents when the student is distracted, noncompliant or compliant, and completing the tasks.
  6. The log from the Teacher of Deaf and Hard of Hearing also reflects that monitoring of the FM system occurred on the following days during the 2022-2023 school year:
    - September 21, 2022;
    - October 4, 2023 - troubleshoot system left at school as was not charged;
    - November 29, 2022 - student informed Teacher of Deaf and Hard of Hearing that FM was not connecting, the teacher connected the system to the receiver and provided extra batteries to the student;
    - January 3, 2023 - the Teacher of Deaf and Hard of Hearing emailed CCPS to check if the new boot was received and if the FM system was working properly, the CCPS responded yes to both questions;
    - January 6, 2023 - the student went to the [REDACTED] for repairs. The student was provided with a new receiver the FM was connected and working;
    - January 13, 2023 - FM system needed to be charged;
    - January 23, 2023 - Teacher of Deaf and Hard of Hearing provided the student with a new FM system, and lanyard, the system was connected and working;
    - March 3, 2023- Teacher of Deaf and Hard of Hearing provided extra batteries, receiver/transmitter, and lanyard to the school; and
    - March 7, 2023- Teacher of Deaf and Hard of Hearing contacted CCPS to make sure student had access to multiple outlets during outdoor learning, for the charging the cochlear and drying case.
  7. On December 7, 2022, the IEP team met to consider the need for an evaluation of the student. The IEP documented that the “parents were upset that yearly audiology appointments/screenings will be removed from the IEP”. The IEP team did not document its determination that the service would be removed from the student’s IEP or the basis for the decision, and the IEP was not revised to reflect this decision.
  8. On March 3, 2023, the IEP team met for the student to conduct an annual review of his IEP. The IEP team determined that audiological services would be removed from the student’s IEP, but they did not document a basis for the determination. During the IEP team meeting, the parents raised concerns regarding the functioning of the student’s hearing aids and asked to be contacted if the student’s hearing aids malfunctioned. While the CCPS staff agreed that “extra transmitters can be

brought in for (the student), so that we have it in the event of a malfunction”, there is no documentation that the IEP team responded to the parent’s concerns and/or proposals.

9. The prior written notice generated following the IEP team meeting on March 3, 2023, reflects the team completed the “Eligibility Determination Hearing Impairment or Deafness Worksheet” and identified the student’s disability classification as deafness. The team reviewed and revised the IEP based on eligibility data. The team reviewed supplementary aids and services, specialized instruction, and agreed to conduct assessments in Emotional/Social/Behavior Development and Cognitive Functioning. The team proposed additional assessments, due to concerns that the student may have other impairments that impact performance. The prior written notice also reflects the team proposed and agreed to removing the audiological consult from the IEP, but they did not document the basis for this determination.

### **DISCUSSION/CONCLUSIONS:**

#### **ALLEGATION #1 PROPER PROCEDURES IS RESPONDING TO A REQUEST FOR AN EVALUATION**

Based on the Findings of Facts #1-#9, MSDE finds that the discussion regarding audiological exams of the student were made during discussions of the student’s supplementary aids and supports and that there was no request, since March 2022, that the student be evaluated under the IDEA, in accordance with 34 CFR §§300.303 - .306 and .503. Therefore, this office does not find that a violation occurred with respect to this allegation.

#### **Allegation #2 DEVELOPMENT OF IEP THAT ADDRESS STUDENTS IDENTIFIED AUDIOLOGICAL NEEDS**

Based on the finding of Facts #1 and #7-9, MSDE finds that the student’s audiological services were removed from the student’s IEP in March 2023, as indicated in the December 2022 IEP team meeting, without a documented basis for the determination, as required by 34 CFR §§300.101 and .324. Furthermore, based on Findings of Facts #1, #8 and #9, the MSDE finds that the IEP team did not consider the concerns of the parents related to the student’s audiological needs during the March 3, 2023, IEP team meeting, as required by 34 CFR §§300.101 and .324. Therefore, this office finds that a violation has occurred with respect to this allegation.

#### **Allegation #3 PROVISION OF AUDIOLOGICAL SERVICES**

Based on the Finding of Facts #1 to #6, MSDE finds that while the student has received some of the audiological services required by the student’s IEP, the IEP team has not reviewed the audiological report completed for the student as required by the student’s IEP, prior to March 3, 2023, in accordance with 34 CFR §§300.101 and .323.

### **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. 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](mailto:diane.eisenstadt@maryland.gov).

### **Student-Specific**

MSDE requires the CCPS to provide documentation by June 1, 2023, that it has taken the following actions:

- a. Convened an IEP team meeting to review audiological data and the parent's concerns related to the student's audiological needs to ensure that the IEP developed for the student addresses his audiological needs.
- b. Provide documentation that the IEP team has determined whether the violations related to providing the student's audiological services and addressing his audiological needs in his 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.

### **Similarly Situated Students**

MSDE requires the CCPS to provide documentation by July 1, 2023 that it has identified all students with disabilities under IDEA who have had audiological services removed from their IEPs without a legitimate documented basis. For those students identified, the CCPS must ensure that an IEP team convenes to determine the individual student's need for audiological services, and if appropriate, determines the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services, and develops a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

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. 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: Cynthia McCabe  
Wayne Whalen  
Diane Eisenstadt  
Gerald Loiacono  
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