



Mohammed Choudhury
State Superintendent of Schools

July 6, 2023



Mr. Troy Keller
Dr. Linda Chambers
Co-Directors of Special Education
Frederick County Public Schools
191 South East Street
Frederick, MD 21701

RE: [REDACTED]
Reference: #23-205

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 April 20, 2022, 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 Frederick County Public Schools (FCPS) 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 FCPS has not ensured that the student has been consistently provided with the transportation services as required by the Individualized Education Program (IEP) since May 8, 2022, in accordance with 34 CFR §§300.101 and .323.
2. The FCPS has not ensured that the IEP team addressed the parent’s concerns regarding transportation services, social communication needs, and social and emotional needs since May 8, 2022, in accordance with 34 CFR §300.324.
3. The FCPS did not ensure that the IEP team considered the results of an independent educational evaluation (IEE) provided to them on March 27, 2023, by the parent, in accordance with 34 CFR §300.324 and .502.
4. The FCPS did not ensure that the IEP team convened to review the student’s IEP before March 10, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is sixteen years old and is identified as a student with a Hearing Impairment under the IDEA. He attends [REDACTED] School and has an IEP that requires the provision of special education services.

FINDINGS OF FACTS:

1. The student's IEP developed on March 10, 2022, reflects that the projected annual review date is March 9, 2023. The areas affected by the student's disability are communication, written language expression, and hearing. The IEP requires thirty minutes per week of specialized instruction outside the general education classroom with a Teacher of the Deaf and Hard of Hearing (TDHH) and fifteen minutes per month of specialized instruction outside of the general education classroom with a special education teacher. The IEP further requires for special education classroom instruction, ASL interpreters be used as needed during "after or before school pull out support." The IEP team determined that the student did not require after school transportation to receive these services, and the parent indicated that she would decline these services.
2. There is no documentation that the student's IEP requires specialized transportation services.
3. On January 17, 2023, the IEP team met to review the student's IEP. The prior written notice developed after that meeting reflects that the IEP team discussed the student's "social emotional well being and [Deaf and Hard of Hearing] DHH interactions." The student expressed that he has not had opportunities to interact with [Children of Deaf Adults] CODAS or other DHH students, he is not getting "anything that he was promised last year, he wonders where his DHH peers are[,] and he would like to meet them." The complainant inquired as to how FCPS is supporting the student's social communication needs. FCPS staff shared that FCPS has an [REDACTED] team this year that includes DHH students from all across the county. The complainant noted participation in the [REDACTED] has been virtual and the student does not have daily interactions with DHH peers. The student's father expressed a preference for in person activities versus virtual activities. The complainant further expressed that the student has not taken ASL. FCPS staff indicated that ASL 1 was offered at the school. The TDHH suggested that the IEP team is considering the student's needs; however, there are a limited number of DHH or CODA students available at [REDACTED] for interactions. FCPS staff stated that transportation will be provided for [REDACTED] including the upcoming scrimmage. FCPS offered other possible upcoming activities that would allow for peer interaction; including a game night, kickball games, and an FCPS night with the [REDACTED]. The complainant requested an opportunity for the student to practice his bilingualism and strengthen his sign language skills. The FCPS staff agreed to speak to the ASL teacher to see if they were available to tutor outside of the contractual day. They will also look into developing an ASL club but could not guarantee that other students would be interested.
4. On June 2, 2023, the IEP team met to conduct the student's annual IEP review, review the occupational therapy IEE, address social/emotional needs, and "consider eligibility for a specific learning disability. The student shared "that he thought the year went really well" and that there is a "lack of DHH students for him to meet and interact with this year". The general educator shared that the student enjoys the interactive activities like the Model UN simulation and participates in class discussions. The FCPS staff shared that he participated in the [REDACTED] and they will continue to "attempt to offer" opportunities that support the student's social needs.
5. The FCPS psychologist invited to the IEP meeting to support the discussion about the student's social/emotional needs explained that assessments should be considered to determine if supports should be added to the student's IEP. The complainant inquired if the FCPS psychologist had

reviewed the report from the outside provider regarding the student's social/emotional needs. The complainant shared information that DHH students are deprived, as they do not have the same social opportunities as hearing students even though they do well academically. The complainant stated the student's LRE is restrictive and it is not mainstream. She requested the IEP team consider the student's specific needs to include his communication and socialization. The FCPS psychologist proposed rating scales to consider his social/emotional needs. The rating scales would be completed by the student, staff who know him best, and family members. The FCPS psychologist explained that based on the prior report, it was best to update the student's current social/emotional assessments to have the most updated information. The IEP team agreed to provide the FCPS psychologist with a letter from the student's outside therapist. The complainant asked how many "deaf people would be asked to fill out the forms?" The FCPS team proposed that the student's TDHH teacher would complete a rating scale. The complainant questioned the results and reliability with only one deaf person completing the forms. The TDHH explained it was beneficial for him to complete the forms and that information would be collected from the student and his parents. The IEP team agreed to provide the complainant with a consent to evaluate form. The complainant expressed she prefers to have a person with a DHH background accompany her "with this assessment" and that a neutral person review the information and support writing the report. The FCPS team proposed to contact the outside provider to inquire if he was available to consult during this process. The complainant agreed with that recommendation. The complainant further requested a deaf counselor and counseling be available to the student any time. The FCPS staff explained the results of the assessments will determine if this is an area of need, and if so, what counseling services are required. The IEP team agreed counseling would not be added to the student's IEP at this time. The FCPS Assistant Principal stated that the student has access to "his counselor when necessary."

6. There is documentation that on March 27, 2023, the complainant provided a copy of an occupational therapy evaluation to FCPS. The evaluation was reviewed at the June 2, 2023, IEP team meeting.
7. While there is documentation that FCPS provided notice to convene the annual IEP review meeting on March 7, 2023, the complainant requested to postpone the meeting. There is documentation that the annual IEP review meeting was convened on June 2, 2023.

CONCLUSIONS:

Allegation #1: Provision of Transportation Services

Based upon Findings of Facts #1 and #2, MSDE finds that specialized transportation services are not required on the student's IEP. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #2: Addressing Parental Concerns

Based upon Findings of Facts #3 to #5, MSDE finds that although the parent disagreed with the conclusions of the IEP team, the FCPS did ensure that the team considered the parent's concerns regarding transportation services, social communication needs, and social and emotional needs since May 8, 2022, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation did not occur with respect to this allegation.

Allegation #3: Review of the IEE

Based upon Findings of Fact #6, MSDE finds that FCPS has ensured that the IEP team considered the results of an independent educational evaluation (IEE) obtained at public expense provided to them on March 27, 2023, by the parent, in accordance with 34 CFR §300.324 and .502. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4: Annual IEP Review Meeting

Based upon Findings of Fact #7, MSDE finds that FCPS did not ensure that the IEP team convened to review the student's IEP before March 10, 2023, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the 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, 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 non-compliance is corrected in a timely manner.¹ 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

MSDE requires the FCPS to provide documentation by August 15, 2023, that the IEP team has determined whether the violations identified in this Letter of Findings regarding the delay in annually reviewing the student's IEP had a negative impact on the student's ability to benefit from the education program. If the IEP 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 FCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains 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.

¹ 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.

² 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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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/tg

c: Cheryl Dyson
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