




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

July 20, 2020




Dr. Arden Sotomayor  
Director of Special Education Services  
Charles County Public Schools  
P.O. Box 2770  
La Plata, Maryland 20646

RE:   
Reference: #20-133

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 May 22, 2020, the MSDE received a complaint from Ms.  hereafter “the complainant,” on behalf of her 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 allegation that the CCPS did not ensure that the Individualized Education Program (IEP) was implemented to provide the student with a Free Appropriate Public Education (FAPE) from March 16, 2020 to May 15, 2020, in accordance with 34 CFR §§300.101, .323, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, United States Department of Education, March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, March 30, 2020.

## **BACKGROUND:**

The student is ten (10) years old and is identified as a student with a Specific Learning Disability (SLD). He has an IEP that requires the provision of special education and related services, and was in the fourth (4th) grade during the 2019 - 2020 school year.

The student attended [REDACTED] Elementary School ([REDACTED] ES) until the March 16, 2020 closure of all schools, as a result of the national COVID-19 pandemic.

## **FINDINGS OF FACTS:**

1. The IEP in effect prior on March 16, 2020 was developed on January 7, 2020.
2. The IEP includes five (5) annual goals to address the student's academic needs, as well as an annual goal to address the student's visual motor skills. It requires that the student be provided with specialized instruction in both a general education classroom and a separate special education classroom. Specifically, the IEP requires six (6) hours and ten (10) minutes per week of specialized instruction in a general education classroom to address the academic goals, to be provided primarily by a general education teacher. The IEP also requires four (4) hours and twenty-five (25) hours per week of specialized instruction in a separate special education classroom to address the academic goals, to be provided primarily by a special education teacher. In addition, the IEP requires one (1) hour per week of occupational therapy (OT) to address his visual motor deficits.
3. From March 16, 2020 to March 30, 2020, Maryland schools were closed.
4. On April 2, 2020, the MSDE issued a Technical Assistance Bulletin indicating that, with parent agreement, a student's IEP could be amended to reflect changes to how the IEP is implemented during the COVID-19 pandemic, consistent with Fact Sheets issued by the United States Department of Education on March 16 and 21, 2020.
5. Also on April 2, 2020, the school staff sent the complainant an electronic message (email) about how to start distance learning through the CCPS website, and with instructions on how to access materials for students with disabilities.<sup>1</sup> On the same date, an OT provider sent an email to initiate communication with the complainant about OT services for the student.
6. On April 8, 2020, the school staff sent an email to the complainant notifying her that the school staff was working on developing individualized tasks to address the IEP goals, and that the complainant would receive an "Individualized Continuity of Learning Plan" (ICLP) the following week for her input.

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<sup>1</sup> Earlier, on March 13, 2020, the complainant sent an email to the school staff reporting that the student was ready for distance learning, and that "he has a quiet workspace and technology to support continued learning."

7. On April 10, 2020, the school staff sent the complainant an email that included work for the student to complete relating to his IEP goals and objectives.
8. Also on April 10, 2020, an OT provider sent the complainant an email that included an “occupational therapy plan” with activities for the student to complete that targeted his IEP goals and objectives.
9. On April 15, 2020, the school staff sent an email to the complainant explaining that, beginning April 15, 2020, distance learning will include the addition of “Microsoft TEAMS” as a way to provide online instruction to students through “a collaborative learning tool that features a classroom set up in Microsoft Office 365.”<sup>2</sup>
10. There is documentation that on April 17, 2020, the student participated in the first (1st) session of online instruction, and that the instruction was provided by both a general education teacher and special education teacher.
11. Also on April 17, 2020, via email, the school staff sent the complainant a proposed amendment to the IEP as a document entitled “IEP Amendment for the Provision of the Individualized Continuity of Learning (ICLP)” for her input.
12. The ICLP reflects that all of the student’ IEP goals will be addressed through the period of distance learning for up to 3 hours daily. The ICLP further reflects that the manner of delivery of the special education classroom instruction was changed by requiring that it be provided through a “virtual platform” or by using paper copies of instructional materials. The ICLP does not reflect any change to the educational placement of a combination of general and separate special education classrooms.
13. A review of the ICLP reflects that it continued the requirement to provide the student with OT services once per week.
14. There is documentation that, between April 10, 2020 and May 15, 2020, an OT provider sent weekly emails to the complainant that included OT plans for the student with activities targeting the IEP visual motor skills goal and objectives.
15. There is documentation that virtual special education instruction that was provided by a general education teacher and special education teacher began on April 17, 2020. However, virtual special education instruction taught primarily by a special education teacher was not offered until May 1, 2020, and the student did begin participating in this instruction until May 15, 2020.
16. On May 25, 2020, the IEP team convened via telephone to determine the student’s eligibility of Extended School Services (ESY). The Prior Written Notice (PWN) of the

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<sup>2</sup> “Microsoft Teams is a digital hub that brings conversations, content, assignments, and apps together in one place, letting teachers create vibrant learning environments. Word, Excel, PowerPoint, OneNote, Chat, Web-Conferencing Tools, and more are all built into Microsoft Teams” (CCPS website).

meeting states that the “Parent shared that [the student] has been completing OT assignments and participating in distant learning via TEAMS.”

17. The IEP goal progress reports developed in April 2020 and May 2020 document that the student was making sufficient progress towards mastery of all of the IEP goals. However, the reports from June 2020 reflect that the student is no longer making sufficient progress to achieve the goals.

### **CONCLUSIONS:**

Based on the Findings of Facts #1 - #17, the MSDE finds that there is documentation that special education instruction and related OT services were provided following school closures, in accordance with 34 CFR §§300.101 and .323.

However, based on the Findings of Facts #2, #12, and #15, the MSDE finds that the special education instruction was not offered primarily from a special education teacher, as required by the IEP, until May 1, 2020. Therefore, this office finds that a violation occurred from the start of virtual instruction on April 2, 2020 until May 1, 2020.

### **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.<sup>3</sup>

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.<sup>4</sup> Dr. Birenbaum can be reached at (410) 767-7770.

The MSDE requires the CCPS to provide documentation that the IEP team has reviewed and revised the IEP to address the lack of expected progress towards achievement of the annual goals. The CCPS must also provide documentation that the IEP team has determined whether the lack of progress on the annual IEP goals can be attributed to the lack of special education

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<sup>3</sup> 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.

<sup>4</sup> The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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instruction primarily from a special education teacher between April 2, 2020 and May 1, 2020, and, if so, must also determine the compensatory services or other remedy for the violation.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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.

The parents 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  
and Special Education Services

MEF/ksa

c:

LeWan Jones

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