



**Mohammed Choudhury**  
State Superintendent of Schools

December 30, 2021

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

RE: [REDACTED]  
Reference: #22-053

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 November 2, 2021, the MSDE received a complaint from Ms. Kimberly Glassman, hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Ms. [REDACTED] and Mr. [REDACTED]. 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 has been provided with the special education instruction and related services required by the Individualized Education Program (IEP) since November 2, 2020, in accordance with 34 CFR §§300.101 and .323.
2. The MCPS has not provided the student with assistive technology to address his hearing needs as required by the IEP since November 2, 2020, in accordance with 34 CFR §§300.101 and .324.

3. The MCPS did not follow proper procedures when the IEP team determined the school placement in which the student would receive special education instruction for the 2021-2022 school year in accordance with 34 CFR §§300.114 and .116.
4. The MCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address his hearing needs during virtual learning since November 2, 2020, in accordance with 34 CFR §300.324.
5. The MCPS did not ensure that the IEP team convened to review the student's IEP by January 16, 2021, in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324.
6. The MCPS did not provide proper written notice of the IEP team's decisions from the IEP team meeting held on May 6, 2021, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with an Autism Spectrum Disorder under the IDEA. He is currently homeschooled and has an IEP that requires the provision of special education instruction and related services.

**FINDINGS OF FACTS:**

1. On October 21, 2020, the student's mother completed the *Home Instruction Notification Form* through the MCPS Office of Home Instruction. The student's mother also notified the school staff that the virtual environment was challenging for the student to access due to his disability.
2. On January 7, 2021, the student's mother contacted the school staff by electronic mail (email) to inform them of her intent to re-enroll the student in school and requested that the annual IEP meeting scheduled for January 12, 2021, be postponed.
3. On February 8, 2021, the school staff contacted the student's mother to convene a scheduled IEP team meeting, however, the student's mother indicated that she was unaware that the IEP team meeting was scheduled for this day, and that she was not available to participate.
4. On April 19, 2021, the IEP team convened for an annual review. The IEP team meeting summary reflects the parent's request for a substitute hearing device that will enable the student to "understand and actively participate during each distance learning lesson" should the student re-enroll. The IEP team rejected the parent's request and indicated that the hearing device is "not offered to students virtually." The hearing device is an accommodation required by the student's IEP. The IEP team did not consider any other options to address the student's hearing needs in anticipation of his re-enrollment.

5. On May 6, 2021, the IEP team reconvened to determine the student's educational placement. The IEP team reviewed the student's educational record, grades, assessments, and the parents' and student's input. The team considered the general education classroom with and without support, self-contained classes at the school that the student would attend if nondisabled, and the Gifted and Talented/Learning Disabled (GTLD) program at [REDACTED]. Based on this review, the team determined that the appropriate placement for which the student's IEP could be implemented was in the general education classroom in the GTLD program at [REDACTED] and that the GTLD program would provide services and support in the general education setting that addresses his needs as a twice-exceptional student that are not available at his current school placement. The team also determined that the student would receive one period of resource room to provide specialized instruction to address his weakness in attention, executive functional, self-advocacy, and social emotional needs. The IEP reflects that the team determined that there were no harmful effects to the student as a result of him being placed in the general education classroom with supports.
6. An email dated May 16, 2021, reflects that the school staff provided the parents with prior written notice from the IEP team meeting held on May 6, 2021.
7. On September 9, 2021, the student's mother completed the *Annual Notification to Continue Home Instruction* through the MCPS Office of Home Instruction.

### **DISCUSSION/CONCLUSION:**

#### **Allegation #1 and #2: Provision of Special Education Services**

Based on the Findings of Facts #1 and #7, the MSDE finds that the MCPS was not required to provide special education services to the student while he was enrolled in homeschool since November 2, 2020, in accordance with 34 CFR §§300.101, .323, and .324. Therefore, this office does not find that a violation occurred with respect to the allegations.

#### **Allegation #3: Placement**

Based on the Finding of Fact #5, the MSDE finds that the MCPS followed proper procedures when determining the educational placement in which the student would receive special education instruction for the 2021-2022 school year, in accordance with 34 CFR §§300.114 and .116. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **Allegation #4: IEP that Addresses the Student's Hearing Needs**

Based on the Finding of Fact #2 and #4, the MSDE finds that the MCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address his hearing needs upon re-enrollment during virtual learning in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

**Allegation #5: Annual IEP Meeting**

Based on the Finding of Fact #3, the MSDE finds that the MCPS ensured that the IEP team convened to review the student's IEP at least annually, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #6: Prior Notice**

Based on the Finding of Fact #6, the MSDE finds that the MCPS provided proper written notice of the IEP team's decisions from the IEP team meeting held on May 6, 2021, in accordance with 34 CFR §300.503. Therefore, this office does not find 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, 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 non-compliance is corrected in a timely manner.<sup>1</sup> 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 Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770 or by email at [Nancy.Birenbaum@maryland.gov](mailto:Nancy.Birenbaum@maryland.gov).

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<sup>1</sup> 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, 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>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

**Student-Specific**

The MSDE requires the MCPS to provide documentation that the IEP team has convened to discuss the parent's concerns regarding the student's hearing needs, should the parents re-enroll the student in school.

The MCPS must ensure that the parents are provided with written notice of the team's decisions.

**School-Based**

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violation identified in this Letter of Findings does not recur at [REDACTED]

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 parent and the school system 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/tg

c: Monifa B. Mcknight  
Diana K Wyles  
Maritza Macias  
[REDACTED]

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