



Mohammed Choudhury
State Superintendent of Schools

January 14, 2022



Dr. Terri Savage
Executive Director of Special Education
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, Maryland 21042

RE: [REDACTED]
Reference: #22-060

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 17, 2021, the MSDE received a complaint from Ms. [REDACTED] hereafter, "the complainant," on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

- I. The HCPS has not ensured that the Individualized Education Program (IEP) accurately reflects the team's February 2021 decisions regarding the amount of instructional supports and speech and language services to be provided to the student, in accordance with 34 CFR §300.324.
2. The HCPS did not ensure that the student was provided with special education services required by the IEP while receiving Home and Hospital Teaching (HHT) services, in accordance with COMAR 13A.03.05.03.

3. The HCPS has not ensured that the IEP includes present levels of academic achievement and functional performance in order to properly address the student's identified needs since October 6, 2021, in accordance with 34 CFR §300.320.

BACKGROUND:

The student is twelve (12) years old and is identified as a student with a Speech or Language Impairment under the IDEA. She attends [REDACTED] School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: AN IEP THAT REFLECTS THE IEP TEAM DECISIONS REGARDING INSTRUCTIONAL SUPPORT AND SPEECH/LANGUAGE SERVICES

FINDINGS OF FACTS:

1. On February 26, 2021, the IEP team convened for an annual review of the student's IEP. The IEP prior written notice reflects that the team discussed accommodations and supports for the student and determined that the instructional supports were appropriate. The team also determined that the student would require "breaking down assignments into smaller units," on a daily basis.
2. The student's IEP is consistent with the decisions determined at the IEP team meeting held on February 26, 2021.
3. At the same IEP team meeting, the complainant expressed concern about the school Staff's proposal to reduce the student's speech and language services from four (4) hours each week to three (3) hours each week. The IEP prior written notice reflects that the team reviewed the student's annual speech and language goal, dated January 27, 2021, which reflects that the student mastered her goal and objectives in this area. Based on this review, the school-based members of the team determined that the three (3) hours of speech and language services were appropriate to address the student's needs. The IEP team also revised the student's annual speech and language goal.
4. The student's IEP is consistent with the decisions determined at the IEP team meeting held on February 26, 2021.

CONCLUSION:

Based on the Findings of Facts #1 - #4, the MSDE finds that the student's IEP accurately reflected the IEP team's February 2021 decisions regarding the instructional supports and speech and language services to be provided to the student, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #2: PROVISION OF SPECIAL EDUCATION SERVICES
WHILE RECEIVING HHT SERVICES**

FINDINGS OF FACTS:

5. On September 3, 2021, the complainant submitted a HI-IT verification form approved by the student's private physician stating that the student is recommended for both, full-time home teaching and for the Chronic Health Impaired Program¹. The school staff reported that they attempted to contact the student's physician to verify which recommendation was appropriate for the student, which resulted in a delay of the initiation of services. On September 9, 202, the HHT services were approved for the student.
6. There is documentation that the initiation of HHT services for the student began on September 20, 2021 and that the student was receiving general education services. However, there is no documentation indicating that the IEP team convened to review and revise the student's IEP and to determine the special education instruction that was to be provided to the student.
7. On October 6, 2021, the IEP team convened to review and revise the student's IEP for the provision of HHT services. The IEP team determined that the student's written language, reading comprehension, and math goals would be addressed through the provision of special education instruction for one (1) hour and thirty (30) minutes each week, and a total of six (6) hours of HHT services each week by a "highly qualified" teacher. The team also determined that the student's speech and language needs would be addressed through consultation between the speech pathologist and the HHT teacher.
8. An electronic mail dated November 9, 2021, between the school staff and the complainant, reflects that the HHT services for the student were discontinued on November 5, 2021.
9. The home and hospital logs, student grade reports, meeting lesson assignments, and progress reports maintained by the HHT teacher, reflect that the student was provided with special education instruction while receiving HHT services to address her IEP objectives and goals, as required by the IEP, from October 6, 2021 to November 5, 2021.
10. The HCPSS acknowledges that a violation occurred with respect to the allegation. Specifically, the HCPS acknowledges that there was a delay in the initiation of special education instruction while the student was receiving HHT services from September 20, 2021 to October 6, 2021.

¹ The HHT Chronic Health Impaired Program (CHIP) is for student's anticipated to intermittently miss 30 or more school days throughout the school year due to chronic conditions.

CONCLUSIONS:

Based on the Findings of Facts #8 and #9, the MSDE finds that the student was provided with special education services required by the IEP while receiving Home and Hospital Teaching (HHT) services, from October 6, 2021 to November 5, 2021.

However, based on the Findings of Facts #5 - #7, and #10, the MSDE finds that the student was not provided with special education services required by the IEP while receiving Home and Hospital Teaching (HI-IT) services from September 20, 2021 to October 5, 2021, in accordance with COMAR 13A.03.05.03. Therefore, this office finds that a violation occurred with respect to the allegation during this time period.

The MSDE concurs with HCPS conclusion and appreciates the school system's response to the investigation.

ALLEGATION #3: APPROPRIATE PRESENT LEVEL OF PERFORMANCES

FINDINGS OF FACTS:

11. The student's IEP, dated October 6, 2021 and December 6, 2021, reflect her identified needs in the areas of speaking and listening, social skills, reading comprehension, written language, and math. The IEP includes special education instruction, supports, related services, and annual goals to assist the student with improving her skills in these areas. However, the present levels of performance in these identified areas do not indicate the student's instructional grade level and do not consistently provide an explanation as to how the student's disability impacts their involvement and progress in the general education curriculum.
12. The HCPS acknowledges that a violation occurred with respect to the allegation. Specifically, the HCPS acknowledges that the student's present levels of achievement and performance in her identified areas of need do not indicate the instructional grade level which she is performing in the general education curriculum.

CONCLUSION:

Based on the Findings of Facts #11 - #12, the MSDE finds that the HCPS has not ensured that the student's IEP includes present levels of academic achievement and functional performance in order to properly address the student's identified needs since October 6, 2021, in accordance with 34 CFR §300.320. Therefore, this office finds that a violation is ongoing with respect to the allegation.

The MSDE concurs with HCPS conclusion and appreciates the school system's response to the investigation.

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 manner². 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 action³. Dr. Birenbaum can be reached at (410) 767-7770 or by email at nancy.birenbaum@maryland.gov.

Student-Specific

The MSDE requires the HCPS to provide documentation that IEP team has taken the following action:

- a. Determine the student's present levels of performance in her identified areas of need;
- b. Determine how the student's disability impacts her involvement and progress in the general education curriculum; and
- c. Ensure the annual goals are aligned with the present levels of performance, and that the IEP has been revised, as appropriate.

The IEP team must also determine whether the violations related to the lack of the provision of special education instruction while the student was receiving HHT services and the lack of present levels of performance in the student's identified areas of need 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.

² 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.

³ 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.

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The HCPS must ensure that the complainant is provided with written notice of the team's decisions.

School-Based

The MSDE requires the HCPS to provide documentation of the steps taken to ensure that the violation does not recur at [REDACTED] School.

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 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:ac

c: Michael Martirano
Terri Savage
Kathryn Lyon
[REDACTED]
Brian Morrison
Albert Chichester
Nancy Birenbaum