




Mohammed Choudhury
State Superintendent of Schools

February 11, 2022




Dr. Linda Chambers
Director of Special Education
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: 
Reference: #22-072

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 December 13, 2021, the MSDE received a complaint from Ms.  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.

The MSDE investigated the following allegations¹:

1. The FCPS has not ensured that the student’s parents have been provided with reports of the student’s progress towards achievement of the annual Individualized Education Program (IEP) goals, as required by the IEP since December 12, 2020 in accordance with 34 CFR §§300.101 and .323.
2. The FCPS has not ensured that the student’s IEP was reviewed at least annually, since December 12, 2020, in accordance with 34 CFR §300.324.

¹ In her complaint, the complainant alleged that the violations identified had occurred for multiple years. On January 18, 2022, the MSDE explained to the complainant that only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation procedure (34 CFR §300.153).

3. The FCPS did not follow proper procedures when conducting a reevaluation of the student, specifically, the FCPS did not ensure that an occupational therapy assessment of the student was completed in a timely matter, since December 12, 2020, in accordance with 34 CFR §§300.303-.306 and COMAR 13A.05.01.06.
4. The FCPS did not ensure that accessible copies of each document the IEP team planned to discuss at IEP team meetings, since December 12, 2020, were provided at to the parents at least five business days before each scheduled meeting, in accordance with COMAR 13A.05.01.03.

BACKGROUND:

The student is 15 years old and attends [REDACTED]. He is identified as a student with a Hearing Impairment under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

ALLEGATION #1: IEP PROGRESS REPORTS

1. The student's IEPs developed on July 19, 2019 and May 27, 2021 require that the parents be provided with reports of the student's progress on IEP goals at the "middle and end of each term".
2. There is no documentation that the student's parents were provided with reports of the student's progress on IEP goals at the frequency required by the student's IEP, since December 2020.

ALLEGATION #2: ANNUAL REVIEW OF THE STUDENT'S IEP

3. On July 19, 2019, the IEP team met to develop an IEP for the Student. The IEP team determined that the student required a goal related to his communication needs.
4. While there is documentation that the IEP team met on February 20, 2020, and June 22, 2020, there is no documentation that the IEP team reviewed the student's IEP goal at those times.
5. While there is documentation that the school staff met with the parent to discuss a draft IEP on September 9, 2020, there is no documentation that the meeting was an IEP team meeting or that the student's goal was reviewed at that time.

6. There is documentation that the parent agreed to reschedule an IEP team meeting scheduled for September 24, 2020, but there is no documentation that the FCPS attempted to reschedule this meeting until April 2021.
7. On May 27, 2021, the IEP team met to conduct an annual review of the student's IEP. At that time, the IEP team reviewed the student's communication goal and determined that he had achieved it. The IEP team developed a written expression goal for the student based on his needs in that area.

ALLEGATION #3: EVALUATION PROCEDURES

8. On April 21, 2021, the IEP team met to review a psychological assessment for the student. Based on the recommendation of the psychological assessment, the IEP team recommended that an occupational therapy assessment be conducted for the student. The complainant requested that the occupational therapy assessment be conducted by an occupational therapist with experience working with Deaf or Hard of Hearing students. Members of the IEP team did not agree that it was necessary to conduct an occupational therapy with an occupational therapist with experience with Deaf or Hard of Hearing students, but the team did not make a determination regarding who should conduct the assessment.
9. There is no documentation that the FCPS sought, or the parent provided, written consent for conducting an occupational therapy assessment.
10. While there is documentation that the FCPS have sought the assistance of an occupational therapy assessor who has experience with Deaf or Hard of Hearing students, there is no documentation to date that the assessment has been completed for the student.

ALLEGATION #4: PROVISION OF DOCUMENTS PRIOR TO IEP TEAM MEETINGS

11. There is documentation that the parents were provided with copies of each document the IEP team planned to discuss at IEP team meetings at least five business days before each scheduled meeting convened for the student in April and May 2021.

DISCUSSION/CONCLUSIONS:

Allegation #1: Provision of Progress Reports

Based on Findings of Facts #1 and #2, the MSDE finds that the Student's parents were not provided with reports of the student's progress towards achievement of the annual IEP goals with the frequency required by the student's IEP, since December 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2: Annual Review of the Student's IEP

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals. In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress, information from the student's parents, and the student's anticipated needs. (34 CFR §300.324).

Based on Findings of Facts #3- #7, the MSDE finds that the Student's IEP was not reviewed, at least annually, by the IEP team, from December 12, 2020 to May 27, 2021, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #3: Evaluation Procedures

As part of a reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

If additional data is needed to determine a student's needs, the public agency must promptly request parental consent to assess and if obtained, ensure that assessment procedures are conducted and that the results of the assessment are considered by the IEP team, and that the student's IEP is revised, as appropriate, within ninety (90) days (COMAR 13A.05.01.06).

Based on the Findings of Facts #8 - #10, the MSDE finds that the FCPS has not ensured that the occupational therapy assessment has been conducted within the timeline required by law, since April 21, 2021, in accordance with COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred.

Allegation #4: Provision of Documents Prior to IEP Team Meetings

Based on Finding of Fact #11, the MSDE finds that the Parents were provided with copies of each document the IEP team planned to discuss at IEP team meetings at least five business days before each scheduled meeting, since December 12, 2020, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find that a violation occurred with respect to this 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.²

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 the Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³

Student Based

The MSDE requires the FCPS to provide documentation by March 15, 2022 that it has sought the informed consent of the student's parents to conduct the occupational therapy assessment recommended by the IEP team on April 21, 2021. This consent should include a clarification of the conditions under which the assessment will be completed. If the parent provides consent to conduct the assessment, the assessment should be completed without delay and the results reviewed by the IEP team.

The MSDE further requires the FCPS to provide documentation that the IEP team has convened and determined whether the violations identified in this Letter of Findings 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.

School Based

The MSDE requires the FCPS to provide documentation of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a

² The 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.

³ 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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pattern of noncompliance at the ██████████ High School. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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 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:gl

c: Mike Markoe
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██████████
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