




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

April 24, 2020




Mr. Nicholas Shockney
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: 
Reference: #20-102

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 February 26, 2020, 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 Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The CCPS has not ensured that the Individualized Education Program (IEP) has addressed all of the student’s communication and assistive technology needs, since February 26, 2019, in accordance with 34 CFR §§300.101, .320 and .324.
2. The CCPS did not ensure the provision of Prior Written Notice (PWN) of the decisions made by the IEP team at meetings held in May 2019 and June 2019, in accordance with 34 CFR §300.503. The complainant specifically expressed concern with the decisions made by the IEP team in response to her requests for the following:
 - Counseling services for the student;
 - Staff training on the use of the student’s communication device; and
 - Inclusion of the use of an iPad on the IEP document.

3. The CCPS did not ensure that proper procedures were followed when conducting a reevaluation of the student in February 2020, in accordance with 34 CFR §300.300. The complainant specifically alleged that the CCPS did not obtain parental consent before conducting an Assistive Technology Assessment of the student in February 2020.

BACKGROUND:

The student is seven (7) years old and is identified as a student with Multiple Disabilities under the IDEA relating to Autism, an Intellectual Disability and an Other Health Impairment. She has an IEP that requires the provision of special education and related services.

The student [REDACTED] until the March 16, 2020 Statewide closure of all schools, as the result of the national COVID-19 pandemic.

FINDINGS OF FACTS:

1. The IEP in effect on February 26, 2019 was developed on November 1, 2018. It reflects that the student is nonverbal and states that her “communication skills are profoundly delayed.” It also reflects that the student’s performance on a formative language assessment indicates her level of functioning is “in the 2 year old range.” She also has needs in the areas of social interaction and social, emotional behavior skills, where she is performing “significantly below age expectations,” specifically, at the level of “15-18 months with scatter to 21 months.”
2. The IEP states that the student requires the use of pictures to aid her communication and includes the following additional information about the student’s communication functioning:
 - While the student did not master her previous communication goal, she “has made significant gains in her PECS¹ program and skills.”
 - She needs to develop communication skills to make extended requests, express her needs and wants, and increase her receptive vocabulary for nouns.
 - She continues to utilize PECS and “needs to continue to work through the phases of PECS to make requests. This will allow her to work on her functional communication skills across environments and with a variety of communication partners, as well as functional vocabulary skills. This can be done with her new communication device that has the PECS app, as well as a paper backup system.”
3. The IEP includes a supplementary support requiring the daily use of “aided language

¹ PECS stands for Picture Exchange Communication System, an alternative augmentative communication system. The primary goal of PECS is to teach functional communication through the use of specific prompting and reinforcement strategies to lead to independent communication (<https://pecsusa.com/pecs>).

stimulation strategies² (using pictures paired with oral language) with robust language for a variety of communicative intentions (i.e. requests, comments, complaints, etc.) to support [the student's] language acquisition.”

4. The IEP also includes a supplementary support requiring the use of daily “communication supports.” In clarifying this support, the IEP states that the student “requires the use of pictures for communication purposes and to expand her communication skills. Staff should use pictures to aid her communication under the SLP [speech language pathologist]/special educator in order to support [the student] to express and receive information.” Consistent with the language under the assistive technology (AT) section describing picture supports, this supplementary support also states that “the picture supports can be in the form of picture symbols as well as light-tech and high-tech devices.”
5. The IEP includes a communication goal that is expected to be achieved by June 6, 2019. The goal requires the student, when given no more than one (1) verbal/gestural prompt, “to use total communication strategies (e.g. signs/gestures, picture symbols, light-tech and high-tech devices) to request items and ask for assistance in 70% of targeted opportunities across a marking period.” The objectives within the goal require the student to use those strategies “to generate 2 word utterances” to request a preferred leisure item and a preferred food item, and to request assistance.
6. The IEP requires specialized instruction as well as related services, including three (3) thirty (30) minute sessions of speech-language therapy per week, in a separate special education classroom, to address the student’s IEP goals.
7. There is documentation that, on October 26, 2018, the CCPS and the complainant entered into a Settlement Agreement relating to the student’s use of her personal iPad at school, and the school’s provision of a communication system to the student. The terms of the agreement, which were effective through the end of the 2018 - 2019 school year, provided as follows:
 - The student was “permitted to bring her personal iPad to school,” and it would be “utilized at the discretion of the school staff working with” her.
 - The CCPS would provide the student with “a Communication System with high contrast picture communication symbols.”
 - The complainant “waives all claims to deprivation of FAPE related to or arising from the use of Assistive Technology from the date of this agreement through the end of the 2018 - 2019 school year.”

² Aided Language Stimulation is a teaching strategy in which the facilitator highlights symbols on the student’s communication display as he or she interacts and communicates verbally to the user.” (CCPS report of an Augmentative/Assistive Technology Evaluation conducted on November 17, 2016 and December 1, 2016.)

- After the end of the 2018 - 2019 school year, changes to the student's IEP relating to AT would be decided by the IEP team.
8. On May 7, 2019, the school staff documented that the student was not making sufficient progress to achieve the IEP communication goal, noting that she was "not discriminating between the picture symbols on her device in order to communicate a purposeful message."
 9. On May 15, 2019, the IEP team convened and conducted the annual IEP review. The IEP team discussed that the student has "significant cognitive and communication deficits," and that "her intellectual disability impacts her ability to learn communication and academic skills and her ability to function adaptively at an age-appropriate rate."
 10. The IEP team also discussed, and there is documentation, that the student uses various communication systems at school, including PECS and picture boards, as well as different applications (apps), including the GoTalk app,³ that are on the personal iPad device that the student is permitted to bring to school. The IEP team documented that the student needs "a functional communication system/method in order to make wants and needs known; therefore the team will focus on the use of multi-modal communication strategies, which includes the Picture Exchange Communication System (PECS)."
 11. The complainant reported that the student independently navigates the GoTalk app at home, and requested that the school staff use the full range of the apps's capability to address her need for "total communication."
 12. The IEP team considered that the student did not master the IEP communication goal that was expected to have been achieved by June 2019. The IEP team discussed that the student was demonstrating a "regression" in her communication skills as a result of a traumatic event, and that the goal remains appropriate.
 13. The IEP team considered information from the student's private speech therapist that the student was overstimulated by the iPad applications and having difficulty with accurately using the buttons on the iPad's GoTalk application. They also discussed that the student responds "very well" to using a stand alone GoTalk device board to request items and match vocabulary pictures, and responds "well" to using a picture exchange system to make requests. The IEP team also discussed that the student was previously able to use picture symbols as part of the PECS program to create intentional and purposeful messages.

³ The GoTalk app is a customizable augmentative communication technology application for use on an iPad for individuals who have difficulty speaking. It offers adjustable communication pages that display images, pictures or icons to create communication books with different settings. It also offers customizable navigation, and recorded text to speech capabilities, and provides flexibility to import sounds and images from a set of symbols, the internet, and a camera (www.attainmentcompany.com/gotalk).

14. At the May 2019 meeting, the IEP team determined that the student has a “severe delay in receptive language skills,” and identified this as a new area that impacts the student’s functional performance. Consistent with the skill areas being addressed through the student’s private speech therapy sessions, the IEP team developed a receptive language goal that states that, “when given no more than three 3 verbal/gestural prompts, [the student] will follow 1-step directions during structured tasks and identify receptive vocabulary with 70% accuracy in 3 out of 5 sessions.”
15. There is no documentation, including a review of audio recordings, that, at the May 2019 IEP meeting, the complainant requested counseling services for the student or staff training on the use of the student’s communication device. While the documentation, including the audio recordings, reflects that the IEP team discussed the student’s use of the iPad at the May 2019 IEP meeting, there is no documentation that the complainant requested that the iPad be included in the IEP document.
16. On June 10, 2019, the IEP team convened to discuss concerns about the student’s transportation that they were unable to address at the May 2019 meeting. There is no documentation, including audio recordings, that, at the June 2019 IEP meeting, the complainant requested counseling services for the student, staff training on the use of the student’s communication device, or including the iPad on the IEP document.
17. On June 17, 2019, the school staff documented that the student was making sufficient progress towards mastery of the IEP communication goal “with her use of total communication strategies to express her desire for preferred items/activities, especially through the use of picture communication symbols as part of the Picture Exchange Communication System.” On the same date, the school staff also documented that the student’s progress on the IEP receptive language goal was sufficient.
18. On August 4, 2019, the school staff documented that the student was making sufficient progress towards mastery of the IEP receptive language and communication goals.
19. On August 26, 2019, the IEP team convened. The complainant requested that the student’s team of teachers receive training specifically on the use of the student’s iPad with the GoTalk app. The written summary of the August 2019 meeting reflects that the IEP team determined that the student requires an AT service, and revised the IEP to include a periodic AT consultation to the IEP as a new supplementary support. In clarifying the manner of this support, the IEP states that the AT staff “will train [the student’s] teachers and caregivers on whatever communication system that is deemed appropriate by the IEP team.”
20. The written summary of the August 2019 IEP meeting documents the complainant’s request that the IEP be revised to specify that the student’s personal iPad with the GoTalk app is “her designated communication system.” The IEP team considered that using only the iPad with the GoTalk app “may be too limiting” for the student, and recommended a “dynamic observation”⁴ to determine the most appropriate communication systems and supports for the student, by looking at her various communication needs and collecting

⁴ The school system staff report that this is what was previously referred to as an assistive technology assessment.

data on features that she can access in terms of both low and high technology systems and devices. The written summary of the meeting reflects that the complainant refused permission for the observation and data collection. The IEP team “explained that since they cannot tell if the GoTalk Now app is the most appropriate system for [the student] without assessing her present levels of functioning in the area of AT, it is still only to be used at the discretion of her teachers unless it is determined otherwise.”

21. The IEP team considered the student’s progress on the communication and speech and language goals with the use of picture supports as required by the IEP, and based on this data, documented that “neither the GoTalk Now app nor her personal iPad were [required to be] added to her IEP.” While the IEP team discussed that the student could continue bringing her personal iPad to school, they documented that “the team does not have to use [the student’s] iPad because they are not sure it is the right technology to meet her needs but that they can choose to use it at their discretion.”
22. There is documentation that, starting in September 2019, the CCPS speech pathologist regularly used the student’s iPad with the GoTalk app during her three (3) weekly speech therapy sessions with the student.
23. On October 6, 2019, the student’s CCPS speech language pathologist (SLP) exchanged an electronic mail (email) message with other school system staff, stating that the “student is making some great connections using the GoTalk,” and that “she definitely is intentionally communicating with the device.” The CCPS SLP also stated that the student “is limited by what is on the device,” and that she wants to see the student “on a more robust system,” but that she was “not sure how to proceed here in terms of working with a family device.”
24. On November 18, 2019, the CCPS SLP sent correspondence to the complainant stating that the student was “learning and retaining what is modeled on the GoTalk iPad app” and making progress on her speech and language goals. The SLP requested a conference with the complainant to discuss ways to support the student’s increasing communication skills.
25. On November 26, 2019, the AT staff consulted with the SLP. They discussed limitations with the GoTalk app, and the SLP’s desire to trial another language application that has more language but that cannot be placed on the student’s personal device.
26. Also on November 26, 2019, the SLP and other school system staff held a conference with the complainant. They discussed that, since the first (1st) day of the 2019 - 2020 school year, the school staff were using the student’s iPad with the GoTalk, and that she was learning new patterns quickly. However, they also discussed challenges with supporting the app and limitations to the student due to the formatting of multiple communication books created in the student’s GoTalk app on her iPad. The documentation indicates that the complainant “refused” other recommendations.
27. On December 18, 2019, the IEP team convened. The IEP team reviewed the student’s progress, including the IEP goal progress reports dated October 3, 2019, November 8, 2019, and December 13, 2019, documenting sufficient progress towards

mastery of the IEP communication and receptive language goals. The complainant agreed to the IEP team's request for videos of the student working with her private speech therapist, but did not agree to permit the school system staff to communicate with the private provider.

28. At the December 2019 meeting, the IEP team documented its discussion that AT services include trialing AT devices and data collection.
29. On January 22, 2020, the IEP team convened and conducted reevaluation planning. The IEP team decided that no additional data was needed about the student's academics, cognitive functioning, or speech and language skills, but that additional data was needed with respect to the student's fine motor, gross motor, and behavior skills.
30. On January 23, 2020, the student's CCPS SLP documented the need to move the student beyond using PECS, as well as concerns about the student's personal communication device which was challenging to use for communicative functions other than primarily to make requests.
31. On January 29, 2020, the school staff documented that the student was making sufficient progress to achieve the IEP receptive language and communication goals.
32. On February 5, 2020, the school system staff met to discuss an AT trial. The school system staff reviewed the student's use of her personal iPad with the GoTalk app from the beginning of the 2019 - 2020 school year. The documentation of the meeting reflects the recommendation for developing a new goal with more "communication intention" for the student at the next IEP development, with possible trials after that time.
33. On February 23, 2020, the school staff documented that the student was making sufficient progress to achieve the IEP receptive language and communication goals.
34. The IEP team has not yet convened to review the results of assessments that were recommended at the January 2020 reevaluation planning meeting.

CONCLUSIONS:

Allegation #1 Addressing the Student's Communication and AT Needs

In this case, the complainant alleges that the student's communication needs require the use of an iPad with a particular application as her designated communication system and AT device.

Based on the Findings of Facts #1 - #6, #13 and #14, the MSDE finds that, since February 26, 2019, the IEP has identified that the student has communication needs, including functional communication and receptive language skills needs, and has required specialized instruction and related services designed to address annual goals in these areas.

Based on the Findings of Facts #1 - #4, the MSDE also finds that, since February 26, 2019, the IEP has identified that the student requires an AT device in the form of picture supports to address her special communication needs, and that the picture supports can include picture

symbols, as well as light-tech and high-tech devices.

Based on the Findings of Facts #7, #10, #11, #13, #17, #18, #21 - #27, #30, #31 and #33, the MSDE finds that the student has made progress on her communication and receptive language skills goals, with the use of a various picture supports, including her iPad, in accordance with 34 CFR §§300.101, .320 and .324. Therefore, the MSDE does not find a violation with respect to the allegation.

Allegation #2 Provision of Prior Written Notice (PWN)

In this case, the complainant alleges that she did not receive PWN of the IEP team's decisions in response to her requests, made in May 2019 and June 2019, for counseling services, staff training on the student's communication device, and inclusion of the iPad on the IEP document

Based on the Findings of Facts #9, #15 and #16, the MSDE finds that there is no documentation that the complainant requested counseling services for the student at the May 2019 or June 2019 IEP meetings. Therefore, the facts do not support the allegation, and the MSDE does not find a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #9, #15 and #16, the MSDE finds that there is no documentation that the complainant requested staff training on the student's communication device in May 2019 or June 2019. Based on the Findings of Facts #19 and #20, the MSDE finds that there is documentation that, at the August 2019 IEP team meeting, the IEP team revised the IEP to include staff training on the use of the student's communication system, at the complainant's request, in accordance with 34 CFR §300.503. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #9, #15 and #16, the MSDE finds that there is no documentation that the complainant requested that the IEP require the use of an iPad in May 2019 or June 2019. Based on the Findings of Facts #19 and #21, the MSDE finds that there is documentation that, at the August 2019 IEP team meeting, the IEP team rejected the complainant's request that the IEP require the use of the iPad, and that the written summary of the meeting documents the basis for the team's refusal, in accordance with 34 CFR §300.503. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Allegation #3 Reevaluation Procedures When Conducting an Assistive Technology Assessment in February 2020

Based on the Findings of Facts #28 and #32, the MSDE finds that, while there is documentation that the school system staff met in February 2020 to discuss conducting an AT trial, there is no documentation that the CCPS conducted an AT assessment in February 2020. Therefore, the

facts do not support the allegation, and the MSDE does not find a violation with respect to the allegation.

Ms. [REDACTED]
Mr. Nicholas Shockney
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TIMEFRAME:

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.

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
and Special Education Services

MEF/ksa

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