




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

August 26, 2020




Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: 
Reference: #20-141


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 June 30, 2020, the MSDE received a complaint from Ms.  hereafter, “the complainant,” on behalf of her daughter, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The CCPS did not ensure that the student’s Individualized Education Program (IEP)
 - a. from  was implemented when she transferred into the CCPS at the start of the
 - b. 2019 - 2020 school year, in accordance with 34 CFR §300.323.

2. The CCPS did not ensure that the decisions made by the IEP team in October 2019 about what constituted comparable services to those in the  IEP were consistent with the data, in accordance with 34 CFR §300.324.

October 1 and 28, 2019 IEP Team Meetings

4. On October 1 and 28, 2019, the IEP team convened to review the student's IEP. The PWN reflects that the student's teachers reported that the student had been receiving instruction in "reading in a small group, that she sometimes rushed through her work and is more responsive when given direct instruction by the teacher." It was also reported that the student "struggled with completing assignments and that she had difficulty staying on task." The complainant reported that the student had assessments completed while attending school in however, the school staff indicated that the previous assessments were "outdated."
5. Based on this information, the IEP team decided to implement the IEP as written, but also determined that an IDEA evaluation of the student was necessary in order to determine eligibility for special education services in Maryland. The team recommended that occupational and physical therapy, sensory, speech/language, educational, and cognitive assessments be conducted, as well as a "a one-to-one supervision profile." The team also reviewed documentation from the student's medical record and determined that she required a health plan to support a medical diagnosis. The complainant provided consent for the assessments to be conducted at the meeting.
6. There is documentation that the student was provided with occupational, physical, and speech/language therapy sessions as required by the IEP. However, there is no other documentation of the implementation of the supports required by the IEP.

November 21, 2019 IEP Team Meeting

7. On November 21, 2019, the IEP team convened to complete the evaluation and, if identified as a student who requires services under the IDEA, to develop an initial Maryland IEP for the student.
8. The "one-to-one supervision profile" considered by the IEP team reflects that the student is able to perform most of her daily activities "independently from start to finish without prompts or help." It also reflects that the student requires "one-to-one supervision for toileting accidents, ongoing medical supervision, academic support in specials, and supervision in the hallways."
9. The PWN of the November 21, 2019 IEP team meeting reflects that the student's physical therapist reported that, based on her clinical assessment conducted on the student, she demonstrated "very functional and independent gross motor skills which were her strength, and that she did not see any deficient in this area."
10. At the November 21, 2019 IEP meeting, the team determined that, based on the data, the student meets the criteria for identification as a student with an OHI in Maryland. The team identified needs in the areas of reading, math, written language, pragmatic language,

self-management, fine motor, and sensory processing, and developed an IEP that includes annual goals for the student to improve her skills in these areas of need.

11. The IEP developed on November 21, 2019 reflects that the student requires special education instruction both in the general and special education classrooms for reading, math, and written language, and that she requires the provision of occupational and speech/language therapy as related services. It requires the provision of accommodations such as graphic organizers, monitoring of independent work, repetition of directions, immediate feedback, provision of manipulatives, chunking of assignments, frequent breaks, reminder of school rules, preferential seating, physical education and occupational therapy consults, and a health plan. The IEP requires “adult support with all transitions in the educational setting,” and the health plan requires “increased bathroom access and medical supervision,” but neither requires the “one-to-one supervision” recommended in the “one-to-one supervision profile.”
12. The CCPS acknowledges that the PWN document did not provide sufficient information to document the complainant’s request for one-to-one support for the student and the team’s decision regarding that request.

February 3, 2020 IEP Team Meeting

13. On February 3, 2020, the IEP team convened to review the offering of Free Appropriate Public Education (FAPE) for the student because the complainant had not provided written consent to implement the student’s IEP. The PWN of the meeting reflects that the complainant expressed concern that the student requires “one-to-one supervision” and that the “IEP team determined that the [student] did not qualify for a one-to-one assistant.” The PWN does not provide a basis for the decision, but indicates that the data used to make the decision included the “one-to-one supervision profile.”

August 13, 2020 IEP Team Meeting

14. On August 13, 2020, the IEP team convened at the request of the complainant. The complainant again requested one-to-one support for the student. The PWN reflects that the team reviewed the “one-to-one supervision profile” and states that there was “sufficient information in the report that includes the [student’s] ability to be independent in the school setting with the level of adult supervision provided at the time of the report.” Therefore, the team determined that the student does not require one-to-one supervision.
15. The complainant did not provide consent for the initiation of special education instruction and services at the meeting.

CONCLUSIONS:

Allegation #1: Provision of the Student's ██████████ IEP

Based on the Findings of Facts #1 - #4, and #6, the MSDE finds that there is documentation that the CCPS ensured that the student was provided with occupational, physical, and speech/language therapy services as required by the ██████████ IEP.

However, based on the Findings of Facts #1 - #3 and #7, the MSDE finds that the documentation does not reflect that the student was provided with special education support and instruction required by the XX IEP from the start of the 2019 - 2020 school year, until November 21, 2020,

when the CCPS' developed a new IEP, in accordance with 34 CFR §300.323. Therefore, this office finds that a violation occurred with respect to the time period identified.

Allegation #2: IEP Comparable Services Decision

Based on the Findings of Facts #1 - #6, the MSDE finds that the CCPS determined that the student's ██████████ IEP would be implemented until an IDEA evaluation was completed, and as a result, CCPS was not required to determine comparable services to those in the ██████████ IEP, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3: IDEA Evaluation Procedures

Based on the Findings of Facts #4 - #10, the MSDE finds that the CCPS followed proper procedures when conducting the IDEA evaluation to ensure that all of the student's needs were identified, in accordance with 34 CFR §§300.301 - .306 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4: Addressing the Student's Identified Needs

Based on the Findings of Facts #7 - #13, the MSDE finds that the IEP developed in November 2019 addresses the needs that were identified in the IDEA evaluation in all areas except the need for one-to-one support, in accordance with 34 CFR §§300.101 and .324.

Based on the Findings of Facts #9 and #11 - #13, the MSDE finds the decision that the student does not require one-to-one support is not consistent with the profile assessment of the student's needs. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #12 and #13, the MSDE finds that the complainant has not provided written consent for the student to receive special education instruction and services under the IDEA in Maryland, since November 21, 2019. Therefore, this office does not find that the violation had a negative impact on the student's

ability to benefit from the education program, and no student-specific corrective action is required.

Allegation #5: Prior Written Notice (PWN) of the October 2019 and November 2019 IEP Team Meetings

In this case, the complainant alleges that the CCPS did not provide PWN of the decision to refuse to provide one-to-one support.

Based on the Findings of Facts #1 - #12, the MSDE finds that the IEP team did not make a determination about the student's need for one-to-one support until the November 21, 2019 IEP team meeting.

Based on the Findings of Facts #9 - #12, the MSDE finds that the CCPS did not ensure that PWN was provided of the decision made by the IEP team regarding one-to-one support at the in November 21, 2019 IEP team meeting, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINE:

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 manner.¹ 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.² Dr. Birenbaum can be reached at (410) 767-7770.

¹ 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.

² 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 CCPS to provide documentation that the IEP team has determined whether the student requires one-to-one supervision, consistent with the data, and has determined whether the violation related to the lack of provision of IEP supports from September 3, 2019 to November 21, 2019 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, to be provided if the complainant provides written consent for the initiation of special education services for the student.

School-Based

The MSDE requires the CCPS to provide documentation of the steps taken to ensure that the violations do not recur at ██████████

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 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: Kimberly Hill LeWan Jones ██████████
 Dori Wilson Anita Mandis Albert Chichester
 Nancy Birenbaum