



Mohammed Choudhury
State Superintendent of Schools

November 29, 2021



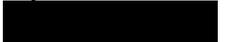
Dr. Tia McKinnon
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: 
Reference: # 22-033

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.

ALLEGATION:

On September 30, 2021, the MSDE received a complaint from Ms.  and Mr.  hereafter “the Complainants,” on behalf of their son, the above-referenced student. In that correspondence, the Complainants alleged that the Charles 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 did not follow proper procedures when the Individualized Education Program (IEP) team determined the placement in which the student would receive special education instruction and related services for the 2021-2022 school year, since September 2021, in accordance with 34 CFR §§300.114 and .116.
2. The CCPS has not ensured that the student has been provided with the special education instruction and related services required by the IEP since August 2021, in accordance with 34 CFR §§300.101 and .323.

3. The CCPS did not follow proper procedures when determining the need for Home and Hospital Teaching (HHT) services since September 2021, in accordance with COMAR 13A.03.05.01 and COMAR 13A.05.01.10.

BACKGROUND:

The student is nine years old and is identified as a student with a Speech or Language Impairment under the IDEA. The student is assigned to [REDACTED] and has an IEP that requires the provision of special education and related services. Since October 2021, the Student has received instruction through HHT.

FINDINGS OF FACTS:

1. The student's IEP, developed on October 21, 2020, reflects that the student has needs related to math problem solving, reading comprehension, reading phonics, speech and language, written language instruction and fine motor skills. The student's IEP requires that he receive 10 hours per week of specialized instruction including a reading intervention.
2. During the 2020-2021 school year, the student received all of his instruction virtually due to the COVID-19 pandemic.
3. Prior to the start of 2021-2022 school year, the Complainants applied on behalf of the student in the CCPS "Virtual Academy" for 2021-2022 school year based on their concerns regarding the student's health if he were to return to the physical school building.
4. On August 30, 2021, the Complainants were informed that the student's instruction in the Virtual Academy would begin on September 2, 2021. While there is documentation that the student received instruction via the Virtual Academy, there is not documentation that the student was provided all of the services required by his IEP.
5. On September 8, 2021, an IEP team meeting was convened for the student to determine the appropriateness of his participation in the Virtual Academy. The IEP team determined that the student's progress during virtual learning prior to the 2021-2022 school year was attributable to "pre-loading" of information. The IEP team decided that because the student would receive some pre-recorded lessons in the Virtual Academy, preloading of information would not be possible. The team further determined that the reading intervention required by the student's IEP could not be provided in the program. The IEP team determined that these services and supports were necessary for the student to receive a Free and Appropriate Public Education (FAPE), and that participation in the Virtual Academy was therefore inappropriate for the student.

6. On September 13, 2021, the Student was unenrolled in the Virtual Academy, against the wishes of the Complainants.
7. On September 27, 2021, the Student was approved for HHT.
8. On October 7, 2021, the student began receiving HHT services.
9. On October 8, 2021, the IEP team met to determine the services the student would receive during HHT. During the IEP team meeting, the IEP team determined that the student was only eligible to receive six hours of instruction during HHT because that was the maximum allowed by the CCPS.
10. On October 14, 2021, the IEP team met to again determine the services the student would receive during HHT. The team decided that, based on the student's needs, he would receive 12 hours and 30 minutes per week of specialized instruction through HHT.

DISCUSSION/CONCLUSION:

Allegation 1: Placement in the Virtual Academy

When determining a student's Least Restrictive Environment (LRE), a public agency must ensure that a continuum of alternative placements is available to the extent necessary to implement the IEP and meet the needs of students with disabilities for special education and related services. Additionally, the educational placement decision of a student with a disability is made by the IEP team based on the student's IEP, with consideration given to any potential effect on the student or on the quality of services that the student needs. (COMAR 13A.05.01.10).

Based on Findings of Facts #1 - #6, the MSDE finds that CCPS followed proper procedures on September 8, 2021, when the IEP team determined that the student could not receive special education instruction and related services for the 2021-2022 school year in the CCPS Virtual Academy, 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 2: Provision of Specialized Instruction

Based on Findings of Facts #1 - #8, the MSDE finds that there is not sufficient documentation to demonstrate that the student was consistently provided with the instruction required by his IEP from the start of the 2021-2022 school year to October 8, 2021, when the IEP team determined his HHT services, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #3: HHT Procedures

Based on Findings of Facts #7- #9, the MSDE finds that the CCPS did not appropriately determine the services the student would receive during HHT when it convened an IEP meeting for the student on October 8, 2021, in accordance with COMAR 13A.03.05.01 and COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred with respect to this allegation. Notwithstanding this violation, based on Finding of Fact #10, the MSDE finds that when the IEP team reconvened on October 14, 2021, the IEP team appropriately determined the services the student would receive during HHT, in accordance with COMAR 13A.03.05.01 and COMAR 13A.05.01.10 therefore this office does not find a violation has occurred since October 14, 2021 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.¹

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 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 or by email at nancy.birenbaum@maryland.gov.

The MSDE requires the CCPS to convene an IEP team meeting to determine if the delay in providing appropriate services for the Student and/or services not provided to the student prior to his qualification for HHT resulted in a negative impact for the student. 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. The CCPS must ensure that the complainant is provided with written notice of the team's decisions.

¹ The United States Department of Education, Office of Special Education Programs (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.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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
and Special Education Services

MEF/gl

C: Maria Navarro
LeWan Jones

Nancy Birenbaum
Gerald Loiacono