




Mohammed Choudhury
State Superintendent of Schools

March 14, 2022




Phillip A. Lynch
Director of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, MD 20850

RE: 
Reference: #22-086

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.

ALLEGATION:

On January 13, 2022, 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 Montgomery County Public Schools MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the MCPS has not provided the student with nursing services as required by the Individualized Education Plan (IEP) since the start of the 2021-2022 school year¹, in accordance with 34 CFR §§300.101 and .323.

¹ The complainant clarified in subsequent communications with MSDE that the student was medically cleared to attend school as of December 17, 2021 and that the alleged violation starts on that date.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Multiple Disabilities (MD) under the IDEA. She attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP in effect at the start of the 2021-2022 school year was developed on June 9, 2021. The IEP requires that the student be transported to and from the [REDACTED] on Sundays and Fridays and that during transportation she be provided with a "registered nurse who will need to accompany her to administer seizure medication and monitor oxygen levels."
2. There is no documentation that the student has been provided with a registered nurse as required by her IEP and as a result has not attended school since being medically cleared to do so on December 17, 2021.

CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE finds that the MCPS has not provided the student with nursing services as required by the IEP since December 17, 2021, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation has occurred with respect to the 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.

The MSDE has established reasonable time frames below to ensure that non-compliance is corrected in a timely manner.² 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.

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.

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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation

of the action.³ Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

Student-Specific

The MSDE requires the MCPS to provide documentation that the student is being provided with the nursing services required by the IEP.

The MSDE requires the MCPS to provide documentation that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the lack of provision of nursing services, and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The MCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violation does not recur for MCPS students placed at the [REDACTED]. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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,

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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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/tg

c: Monifa B. McKnight
Diana K. Wyles
Maritza Macias
Diane Eisenstadt
Gerald Loiacono
Tracy Givens