



Mohammed Choudhury
State Superintendent of Schools

May 10, 2022

[REDACTED]
[REDACTED]
[REDACTED]

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

RE: [REDACTED]
Reference: #22-106

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention Special Education Services (DEI/SES), 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 March 11, 2022, the MSDE received a complaint from [REDACTED] hereafter, “the complainant,” on behalf of 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 following allegations:

1. The MCPS has not ensured that the student has been provided with transportation, feeding, and physical therapy services as required by the Individualized Education Program (IEP) since the start of the 2021 - 2022 school year, in accordance with 34 CFR §§300.101 and 323.
2. The MCPS did not ensure that the parent was afforded the opportunity to participate in the IEP team meeting regarding the determination of compensatory services for the student, in accordance with 34 CFR 300.501.

BACKGROUND:

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

ALLEGATION #1: PROVISION OF SERVICES

FINDINGS OF FACTS:

1. The student's IEP, in effect at the start of the 2021-2022 school year requires that the student be provided with twenty seven and one half (27.5) hours of specialized instruction outside of the general education setting by the special education teacher, fifty (50) minutes of physical education instruction,, one (1) hour of specialized instruction from the teacher of the visually impaired, 45 minutes per week of occupational therapy services, two 30 minute sessions of physical therapy and two 45 minute session of speech/language therapy per week. The student's IEP also requires that she be provided with transportation as a related service daily.
2. The student has both specialized equipment and personnel needs relating to transportation services. A wheelchair lift and tie down, as well as a bus attendant are required to provide transportation services pursuant to the student's June 1, 2021, IEP.
3. There is documentation that the student was at time not able to arrive at school on time due to "transportation issues"
4. There is no documentation that the MCPS has consistently provided transportation services to the student since the start of the 2021-2022 school year, as required by her IEP. Reports of the student's progress towards achieving annual IEP goals from June 1, 2021 through the end of the 2021-2022 school year, and during the first half of the 2021-2022 reflects that the student's progress was impacted by lack of attendance.
5. The Prior Written Notice from the June 1, 2021, IEP team meeting indicates that the IEP team recommended a "mealtime plan of care" in response to the complainant's concerns regarding the student's chewing and swallowing. While the student's IEP includes a supplemental aid and service relating to receiving support for eating and drinking, there is no documentation that a plan was developed.
6. There is documentation that during the 2021-2022 school year, the student was able to eat and drink the food and liquid provided by the complaint. There is further documentation that the complainant was consistently notified when there were concerns related to the student's feeding or the student was unable to eat or drink the food provided by the complainant.

7. There is documentation that the student received one hour of physical therapy services weekly from August 30, 2021 through September 8, 2021, however, she received these services in one session per week, not twice weekly as indicated on her IEP. From September 15, 2021 through January 12, 2022, the student was absent from school, and did not receive physical therapy services. From January 19, 2022 through April 6, 2022, the student received seven one-hour sessions of physical therapy weekly during one session, and one 30-minute session.

DISCUSSION/CONCLUSIONS:

Transportation Services

Based on the Findings of Facts #1-#4, the MSDE finds that there is no documentation that the MCPS ensured that the student was consistently provided transportation services pursuant to her IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Feeding Services

Based on the Findings of Facts #5, the MSDE finds that there is no documentation that the MCPS ensured that a “mealtime plan” was developed for the student as required by her IEP since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Physical Therapy Services

Based on the Findings of Facts #7, the MSDE finds that there is no documentation that the MCPS ensured that the student was consistently receiving the physical therapy services at the frequency and interval required by the student’s IEP, since the start of the 2021-2022 school year, in accordance with 34 CFR §§300.101 and 323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2: PARENT PARTICIPATION IN THE JUNE 1, 2021 IEP TEAM MEETING

FINDINGS OF FACTS

8. There is documentation that the complainant was provided with timely notice of a June 1, 2021 IEP team meeting with a stated purpose to ”Develop the IEP”, “Review and, if appropriate, revise the IEP”, “Consider Extended School Year services”, and “review school psychological report”
9. The prior written notice generated following the June 1, 2021 IEP team meeting indicates that the IEP team also discussed compensatory/recovery services during the meeting.

The IEP team determined that the student should receive 40 hours of compensatory/recovery services to begin “during the 2021-2022 school year 8 hours each of educational. OT, PT, SLP, vision.” The IEP team did not document the data relied on to determine eligibility, or the number of services, nor did they develop a plan for implementation of the services.

10. There is no documentation that the complainant was provided proper prior written notice of the decisions made regarding compensatory/recovery services during the June 1, 2021 IEP team meeting.

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that a parent of a child with a disability is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of purpose of the IEP team meeting. This notice must be provided to the parent at least ten (10) days in advance of the meeting. (34 CFR §§300.322 and .501 and COMAR 13A.05.01.07)

Based on Findings of Facts #8- #10, the MSDE finds that the MCPS has not ensured that the complainant was provided with notice of the purpose of the June 1, 2021 IEP team meeting. Therefore, this office finds 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.

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 Ms. Diane Eisenstadt, Compliance

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.

Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² 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, by July 1, 2022, that the IEP team has taken the following action:

- a. Developed a “mealtime plan” for the student as required by her IEP;
- b. Clarified the appropriate frequency and duration of physical therapy services;
- c. Provided the complainant with the opportunity to provide input regarding the compensatory services determination made during the June 1, 2021 IEP team meeting;
- d. Determined the services needed to remediate the violations identified in this investigation; and
- e. Developed a plan for the implementation of the services within one (1) year of the date of this Letter of Findings.

The MCPS must ensure that the complainant is provided with written notice of the team’s decisions. The complainant 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 by September 15, 2022, of the steps taken to ensure that the violations related to the implementation of transportation, physical therapy and feeding services and providing proper notice of IEP team meetings 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.

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.

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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/Special Education Services

MEF:gl

c: Monifa B. McKnight
Diana K. Wyles
Maritza Macias
██████████
Gerald Loiacono
Alison Barmat