



June 3, 2022

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

RE: [REDACTED]
Reference: #22-132

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 April 5, 2022, the MSDE received a complaint from Ms. [REDACTED] hereafter, “the complainant,” on behalf of 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 proper procedures were followed in conducting a reevaluation under the IDEA, since November 2021, in accordance with 34 CFR §§300.303 - .306, and COMAR 13A.05.01.05 - .06.
2. The CCPS did not follow proper procedures when determining the student’s educational placement in April 2022, in accordance with 34 CFR §300.114 -.116.
3. The CCPS did not ensure that the student was provided with the special education and related services required by the Individualized Education Program (IEP) since April 2021, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is sixteen (16) years old and attends ██████████ School. She is identified as a student with Multiple Disabilities under the IDEA 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 in April 2021 requires that the student be provided with the use of manipulatives and alternative ways to demonstrate learning, on an as needed basis, assignments broken down, home-school communication, the use of an FM system on a daily basis, and a "check out" on a daily basis, a quarterly consult with an audiologist and the use of close captions as needed. The IEP further requires that the student be provided with specialized instruction for math and reading in an "outside of the general education setting" and social studies and math instruction in the general education setting.
2. On November 2, 2021, the IEP team met to conduct a re-evaluation planning for the student. The IEP team determined that the student was suspected of having a disability related to Other Health Impairment- Down Syndrome (OHI), Intellectual disability, Speech/Language Impairment and Hearing Impairment. The IEP team recommended that Educational, Psychological, Adaptive, and Speech/Language assessments be completed for the student.
3. During the November 2, 2021, IEP team meeting, the parent raised the concern that the student's supplementary aides were not being implemented with fidelity. Reports from the student's teachers at the time noted that the student struggled to complete modified assignments.
4. On January 25, 2022, the IEP team met to review assessment data for the student and complete the evaluation. The IEP team determined that the student continued to be eligible as a student with a disability under the IDEA with multiple disabilities including OHI, Speech/Language Impairment, Hearing Impairment, and Intellectual Disability. The Parent concurred with the IEP team determination related to OHI, Speech/Language and Hearing Impairment, but disagreed with the determination that the student met the criteria for Intellectual Disability. The IEP team reviewed assessment results from the psychological and adaptive assessments that found that the student had "very low" cognitive abilities and adaptive skills in the first percentile.
5. On March 22 and April 5, 2022, the IEP team met to review and revise, as appropriate, the student's IEP. Based on reports from the student's teachers, and recent assessment reports, the IEP team determined that the student would continue to receive the majority of her math and reading instruction outside of the general education setting, but would also receive instruction in social studies and science outside of the general education setting beginning in the 2022-2023 school year.

6. There is documentation that the student's assignments have been modified in some subjects, but there is no documentation that the student was consistently provided with modified assignments, the use of manipulatives or a daily "check out".
7. There is no documentation that the student was consistently provided with the use of the FM system, closed captions for videos or an audiology consult.
8. There is documentation that the student's parent was consistently provided with home-school communication.

DISCUSSION/CONCLUSIONS:

Allegation #1 Evaluation Procedures

Based on Findings of Facts #2 and #4, the MSDE finds that the IEP team appropriately determined that the student met the criteria for a disability required under the IDEA when conducting an evaluation for the student in November 2022, in accordance with 34 CFR §§300.300-.306. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2: Placement

Based on Findings of Fact #5, the MSDE finds that the IEP team appropriately determined the student's placement in April 2022 in accordance with 34 CFR §§300.114 -.116. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #3 Provision of Special Education Services and Supports

Based on Findings of Facts #1, #3, and #6-#8, the MSDE finds that there is no documentation that the student was consistently provided with each of the special education services and supports required by her IEP, since April 2021, in accordance with 34 CFR §§300.101 and .323. 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 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.

The MSDE requires the CCPS to provide documentation by the start of the 2022-2023 school year that the IEP team has taken the following action:

- a. Ensured that the student is being provided with the special education services and supports required by the IEP;
- b. Determined compensatory services needed to remediate the violations identified in this investigation prior to June 24, 2022; and
- e. Developed a plan for the implementation of the compensatory services to be completed within one (1) year of the date of this Letter of Findings.

The CCPS must ensure that the parents are provided with written notice of the team's decisions. The parents maintain 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 CCPS to provide documentation of the steps taken to ensure that the violations identified do not recur at ██████████ School. The documentation must include monitoring of the implementation of supplementary aids and services and accommodations of a random sampling of at least 10 students at ██████████ School, and quarterly reporting to the MSDE documenting full 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.

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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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, 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: Maria Navarro
LeWan Jones
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Alison Barmat
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Gerald Loiacono