



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

April 8, 2015

XXX
XXX
XXX

Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
P.O. Box 2770
La Plata, Maryland 20646

RE: XXXXX
Reference: #15-054

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 February 24, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, 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 student.

The MSDE investigated the allegation that the CCPS has not ensured that the student’s speech/language needs have been addressed since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101, .320, .324, and *Letter to Balkman*, United States Department of Education, Office of Special Education Programs (OSEP), 23 IDELR 646 (April 10, 1995).

XXX

Dr. Arden Sotomayor

April 8, 2015

Page 2

INVESTIGATIVE PROCEDURES:

1. On March 2, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Arden Sotomayor, Director of Special Education, CCPS, and Ms. Marsha Diaz, Director of Special Education Compliance, CCPS.
2. On March 3, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the CCPS of the allegation and requested that the school system review the alleged violation.
3. On March 17, 2015, the CCPS provided the MSDE with documents to be considered.
4. On March 31, 2015, the MSDE requested and received additional documents to be considered from the CCPS.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated October 7, 2014;
 - b. Reports of the student's progress towards achievement of the annual IEP goals, dated October 30, 2014, January 26, 2015 and March 2, 2015;
 - c. Correspondence from the complainant containing an allegation of violations of the IDEA, received by the MSDE on February 24, 2015;
 - d. The speech/language therapist's service logs from October of the 2014-2015 school year through March 30, 2015;
 - e. The school system's calendar for the 2014-2015 school year;
 - f. The student's attendance for the 2014-2015 school year; and
 - g. The evaluation report and determination of initial eligibility.

BACKGROUND:

The student is seven (7) years old and attends XXXXXXXXXXXXXXXXXXXX. On September 9, 2014, she was identified as a student with a Specific Learning Disability under the IDEA, and on October 7, 2014, an IEP was developed (Docs. a, c, and g).

XXX

Dr. Arden Sotomayor

April 8, 2015

Page 3

FINDINGS OF FACTS:

IEP Requirements

1. The IEP requires that the student be provided with two (2) thirty (30) minute sessions of speech/language therapy per week in order to assist her in achieving annual IEP goals to improve her speech/language articulation skills. The initial IEP was in effect beginning on October 7, 2014 (Doc. a).

October 2014

2. The speech/language therapist's service logs document that upon initiation of the IEP services, the student received two (2) speech/language sessions per week during the month of October 2014 (Docs. a, d, and e).

November 2014

3. The speech/language therapist's service logs document that during the weeks of November 2 and 17, 2015, the student received two (2) thirty (30) minute sessions of speech/language therapy per week (Docs. d and e).
4. The student received one (1) session of speech/language therapy during the week of November 10, 2015 because she was absent from school on the day that the other session was scheduled (Docs. d, e and f).
5. The student did not receive any speech/language therapy during the week of November 24, 2015, because she was absent on one (1) day that a session was scheduled and the other day was a scheduled holiday (Docs. d, e and f).

December 2014

6. The speech/language therapist's service logs document that the student received two (2) sessions of speech/language therapy per week during the weeks of December 1, 8, and 15, 2015 (Docs. d and e).
7. The speech/language therapist's service logs document that the student was not provided with speech/language therapy sessions during the weeks of December 22 and 29, 2014 because the school was closed for winter break (Docs. d and e).

XXX

Dr. Arden Sotomayor

April 8, 2015

Page 4

January 2015

8. The speech/language therapist's service logs document that the student received two (2) sessions of speech/language therapy per week during the weeks of January 5, 12, and 19, 2015. During the weeks of January 12 and 19, 2015, the therapy sessions were provided on alternative days to make up for the loss of services due to the school's closure for inclement weather and a scheduled holiday, respectively on the days that services were scheduled to be provided (Docs. d and e).
9. The speech/language therapist's logs reflect that the student received one (1) session of speech/language therapy during the week of January 26, 2015 because of a scheduled school closure on the other day when services were scheduled (Docs. d and e).

February 2015

10. The speech/language therapist's service logs document that the student received two (2) speech/language therapy sessions for the weeks of February 2 and 9, 2015 (Docs. d and e).
11. The speech/language therapist's service logs reflect that the student received one (1) session of speech/language therapy the week of February 16, 2015, because of a scheduled school closure on the day services were scheduled (Docs. d and e).
12. There were no sessions held during the week of February 23, 2015 because the student was absent and there was a school closure due to inclement weather (Docs. d, e and f).

March 2015

13. The speech/language therapist's service logs document that the student received two (2) speech/language therapy sessions during the weeks of March 9, 16, and 23, 2015. For the week of March 16, 2015, one (1) session was held on an alternative date to make up for the therapist's absence on a day that services were scheduled to be provided (Docs. d and e).
14. The student received one (1) session of speech/language therapy during the week of March 2, 2015, because the school was closed due to inclement weather on the other day that therapy was scheduled (Docs. d and e).
15. According to the IEP, the student is supposed to receive thirty-six (36) hours of speech/language therapy by October 7, 2015. Considering the amount of speech/language therapy provided to date and the amount of time remaining, it is

XXX

Dr. Arden Sotomayor

April 8, 2015

Page 5

anticipated that the student will have been provided with thirty-six (36) hours of therapy by October 7, 2015 (Doc. a).

The Student's Progress

16. The reports of the student's progress, dated October 30, 2014, January 26, 2015 and March 2, 2015, state that the student is making sufficient progress to achieve the annual speech/language goals (Doc. a and b).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability is provided with the special education services required by the IEP (34 CFR §§300.101 and .323). The public agency is generally responsible for making alternative arrangements to provide the services required by the IEP when other school-related activities make either the student or the service provider unavailable during the time that the service is regularly scheduled. The public agency is not obligated to do so when the student is unavailable for other reasons, such as during absences from school (*Letter to Balkman*, OSEP, 23 IDELR 646, April 10, 1995).

However, where a student is absent from school for a prolonged period of time, or there is a pattern of repeated short-term absences from school on days when the services are scheduled to be provided, it may be appropriate for an IEP team to review the IEP to determine if it is necessary to modify the current program or (*Letter to Balkman*, OSEP, 23 IDELR 646, April 10, 1995). This is because the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address information about the student and the student's anticipated needs or any lack of anticipated progress towards achievement of the annual IEP goals (34 CFR §300.324).

In this case, the complainant asserts that the student has missed a significant amount of speech/language therapy due to illness, as well as school-related events and closures that have fallen on the days when the student is scheduled to receive services. The complainant alleges that, despite the fact that the student is missing so much special education instruction, the speech/language therapist has refused to provide additional sessions to make up for the lost services, and that the IEP team has not convened to address the problem (Doc. c).

Based on the Findings of Facts #1 - #15, the MSDE finds that the documentation does not support the allegation. Based on these Findings of Facts, the MSDE finds that, with the exception of four (4) sessions that were missed due to the student's absence, the student has been provided with the amount of speech/language therapy required by the IEP during the scheduled school year. Based on the Finding of Fact #8, the MSDE further finds that attempts have been made to provide additional speech/language therapy, even when the speech/language therapist was not required to do so.

XXX

Dr. Arden Sotomayor

April 8, 2015

Page 6

Based on the Finding of Fact #15, the MSDE further finds that the student is making sufficient progress to achieve the annual IEP goals with the provision of the speech/language therapy that has been provided. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

Please be advised that both the complainant and the CCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant and the school system 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 Special Education/
Early Intervention Services

MEF/sf

c: Kimberly Hill
Marsha Diaz
XXXXXXXXXX
XXXXXXXXXX
Dori Wilson
Anita Mandis
Sharon Floyd