



April 8, 2015

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

RE: XXXXX  
Reference: #15-055

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 20, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX 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).

**INVESTIGATIVE PROCEDURES:**

1. On February 26, 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 for Special Education Compliance, CCPS.

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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. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated May 27, 2014;
  - b. Reports of the student's progress towards achievement of the annual IEP goals, dated October 30, 2014 and January 26, 2015;
  - c. Correspondence from the complainant containing an allegation of violations of the IDEA, received by the MSDE on February 20, 2015;
  - d. The speech/language therapist's service logs from the start of the 2014-2015 school year through February 2015; and
  - e. The school system's calendar for the 2014-2015 school year.

### **BACKGROUND:**

The student is five (5) years old, is identified as a student with a Speech/Language Impairment under the IDEA, and has an IEP that requires the provision of speech/language therapy as special education instruction. The student attends XXXXXXXXXXXXXXXXXXXXXXXX (Docs. a and c).

### **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 (Doc. a).

#### **September 2014**

2. The speech/language therapist's service logs document that the student received two (2) thirty (30) minute sessions of speech/language therapy per week during the month of September 2014 (Doc. d).

### **October 2014**

3. The speech/language therapist's service logs document that the student received two (2) thirty minute sessions of speech/language therapy per week during the month of October 2014, despite the fact that the school was closed for a scheduled holiday on one (1) of the days that the student was scheduled to receive services. This is because the service that was missed was voluntarily made up by the speech/language therapist on another day (Docs. d and e).

### **November 2014**

4. The speech/language therapist's service logs document that the student received only one (1) thirty (30) minute session of speech/language therapy during the week of November 3, 2014 because the speech/language therapist was not available for the second (2<sup>nd</sup>) session due to a school staff training. The service logs also document that the speech/language therapist has attempted to make up the missed session, but that on the date she attempted to do so, the student was absent from school (Doc. d).
5. The speech/language therapist's service logs document that the student missed another speech/language therapy session on November 24, 2014 due to the student's absence from school, and a third (3<sup>rd</sup>) session on November 28, 2014 due to the school being closed for a scheduled holiday (Docs. d and e).

### **December 2014**

6. The speech/language therapist's service logs document that the student missed three (3) speech/language therapy sessions during the month of December 2014 due to the school being closed for winter break (Docs. d and e).

### **January 2015**

7. The speech/language therapist's service logs document that the student missed two (2) speech/language therapy sessions during the month of January 2015 due to the school being closed for winter break and a scheduled school closing, respectively (Docs. d and e).

### **February 2015**

8. The speech/language therapist's service logs document that the student missed one (1) speech/language therapy session in February 2015 due to the school being closed for a scheduled holiday (Docs. d and e).

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### **The Student's Progress**

9. The reports of the student's progress, dated October 30, 2014 and January 26, 2015 state that the student is making sufficient progress to achieve the speech/language goals in the IEP by May 26, 2015 (Doc. 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 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 - #8, 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 one (1) session that was missed due to the student's absence, and one (1) session that was missed due to the speech/language therapist's unavailability, the student has been provided with the amount of speech/language therapy required by the IEP during the scheduled school year. Based on the Findings of Facts #3 - #5, 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.

Based on the Finding of Fact #9, 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.

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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/am

c: Kimberly Hill  
Marsha Diaz  
Shayna Gold  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis