



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

August 5, 2016

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

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

Re: XXXXX
Reference: #16-143

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.

ALLEGATIONS:

On June 7, 2016, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student and Ms. XXXXXXXXXXX, his mother. 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 student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s academic, communication and social, emotional and behavioral needs, and his toileting skills, since the start of the 2015 - 2016 school year, in accordance with 34 CFR §§300.101 and .324.
2. The MCPS has not followed proper procedures to conduct and complete a reevaluation of the student that was recommended by the IEP team during the 2015 - 2016 school year, in accordance with 34 CFR §§300.301, and .304 - .311.

3. The MCPS has not ensured that prior written notice of the IEP team's decisions at the January, February and March 2016 IEP team meetings was provided, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.

INVESTIGATIVE PROCEDURES:

1. On June 7, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Philip A. Lynch, Director of Special Education, MCPS.
2. On June 16 and 17, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was unsuccessful in her attempts to contact the complainant by telephone to discuss the allegations to be investigated.
3. On June 22, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the MCPS of the allegations and requested that the MCPS review the alleged violations.
4. On June 27, 2016, Ms. Austin conducted a telephone interview with Ms. XXXXXXXXXXXX, the student's mother, to discuss the allegations to be investigated.
5. On June 27 and 29, 2016, and July 8, 13 and 29, 2016, and August 3, 2016, the MSDE requested documentation from the MCPS.
6. On July 12, 13, 14, 27 and 29, 2016, and August 3, 2016, the MCPS provided documents to the MSDE for consideration.
7. On July 14, 2016, Ms. Austin and Mr. Gerald Loiacano, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX and interviewed the following school system staff:
 - a. Ms. Faith Fischel, Supervisor, Child Find/Early Childhood Disabilities, MCPS;
 - b. Ms. Kia Middleton-Murphy, Special Education Supervisor, Department of Special Education Services, MCPS; and
 - c. Ms. XXXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Ms. Patricia Grundy, Paralegal, Resolution and Compliance Unit, and
Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, participated in the site visit as representatives of the MCPS and to provide information on the school system's policies and procedures, as needed.
8. On July 18, 2016, the MSDE received documentation from the complainant for consideration.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated May 11, 2015;
 - b. The MCPS brochure describing the Preschool Education Program, undated;
 - c. The report of the Sensory Profile School Companion, dated June 3, 2016;
 - d. The record/log of the physical therapist's notes, dated June 16, 2016;
 - e. The Kindergarten Transition Profile Worksheet, dated February 26, 2016;
 - f. The student's performance on the October 2015 and February 2016 MCPS curriculum assessments in reading and math;
 - g. The reports of the student's progress towards mastery of the annual IEP goals, dated January 22 and 23, 2016;
 - h. The report of the student's attendance for the 2015 - 2016 school year;
 - i. Electronic mail (email) messages between the complainant, the student's mother, and the school system staff, dated April to June 2016;
 - j. Correspondence from the complainant requesting assessments on behalf of the student's mother, dated April 28, 2016;
 - k. IEP, and prior written notice, dated May 23, 2016, and documentation of the reevaluation planning, dated May 23, 2016;
 - l. IEP, and prior written notice, dated June 16, 2016;
 - m. Invitation notices for IEP team meetings scheduled on April 13, 2016, and May 2, 2016;
 - n. Invitation notice for the June 16, 2016 IEP team meeting;
 - o. The log of the speech therapists' services to the student from September 2015 to June 2016;
 - p. The Functional Behavior Assessment, and Behavioral Intervention Plan, dated June 16, 2016; and
 - q. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on June 7, 2016.

BACKGROUND:

The student is five (5) years old, is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education and related services. During the 2015 - 2016 school year, the student attended the Preschool Education Program (PEP)¹ at XXXXXXXXXXXXXXXXXXXXXXXX (Doc. a).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Docs. a and l).

¹ The PEP is a special education program for students with a variety of disabilities who receive instruction in the MCPS prekindergarten curriculum as well as special education services through an IEP. The class size is typically nine to ten (9 - 10) students, and is taught by a special education teacher and a paraeducator, with assistive technology and augmentative communications integrated in the classroom (Doc. b).

ALLEGATIONS #1 and #2

**IEP THAT ADDRESSES THE STUDENT'S
ACADEMIC, COMMUNICATION, SOCIAL,
EMOTIONAL AND BEHAVIORAL NEEDS, AND
TOILETING SKILLS; AND REEVALUATION OF
THE STUDENT**

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2015-2016 school year was developed on May 11, 2015. The IEP states that the student demonstrates delays in all developmental areas, and requires adult support in order to complete classroom tasks. The IEP includes the following information detailing the student's present levels of performance and his needs:
 - He imitates some words, shakes his head to meaningfully indicate "no," and imitates/uses "simple" signs to communicate. He needs to use functional language to communicate his wants and needs and to expand his vocabulary.
 - He participates in writing activities, but needs to understand the concept of writing.
 - He points to objects when trying to count, but needs to identify numbers and to understand one-to-one (1:1) correspondence.
 - He is making progress recognizing his name in print and points to pictures in a book to communicate. He needs to recognize letters and their sounds, and to respond to questions from a story.
 - He needs a toileting routine.
 - He imitates the actions of his peers, and follows them through the school routines.
 - He needs to consistently maintain attention, and needs assistance with following commands from adults, interacting with peers, and making transitions (Doc. a).
2. The May 2015 IEP identifies that the student has needs in reading, math, oral and written language, as well as self-help skills pertaining to toileting, and personal and social skills related to peer interaction and "attending consistently." The IEP includes annual goals that address each of these areas of need (Doc. a).
3. To assist the student in achieving the annual IEP goals, the May 2015 IEP requires specialized instruction in a separate special education classroom, together with the provision of supplementary supports, and related services in speech and language, occupational therapy and physical therapy. The IEP states that the student requires "consistent, direct, specialized instruction in a structured setting with a low student to teacher ratio and numerous opportunities for repetition and practice." The IEP identifies that the student's least restrictive environment is the Preschool Education Program (PEP) five (5) days a week, for two and a half (2 1/2) hours each day (Doc. a).

4. The January 2016 progress reports state that the student was making sufficient progress towards mastery of the IEP self-help goal that addresses his use of a toileting routine, but also note that the student “toilets infrequently at school” (Doc. g).
5. The January 2016 progress reports state that the student was making sufficient progress towards mastery of the IEP personal skills goal that addresses his need to attend consistently (Doc. g)
6. The January 2016 progress reports reflect that the student was making progress towards mastery of his speech and language goals addressing his communication. The reports also document the provision of communication supports such as picture symbols, communication boards and a voice output device, to the student. Similarly, the log of the speech and language therapist documents that the student was provided with communication supports such as a communication board, picture symbols, and a speech generating device the 2015 - 2016 school year (Docs. g and o).
7. The January 2016 progress reports state that the student was making sufficient progress towards mastery of the math and written language goals, and one (1) of the reading goals. However, the January 2016 progress reports also reflect that the student was not making sufficient progress towards mastery of the annual reading goal requiring him to develop oral language and concepts of print, and to respond to simple factual question from stories (Doc. g).
8. In February 2016, the school staff had information available to it about the student’s reading and math skills based on his performance on the MCPS curriculum assessments. Specifically, the student’s scores on the assessments indicate that there was no improvement in the student’s performance in reading and math from October 2015 to February 2016 (Doc. f).
9. The school staff scheduled the annual review of the student’s IEP on April 13, 2016. Due to the unavailability of the student’s mother, the meeting was rescheduled for May 2, 2016 (Docs. k and m).
10. On April 29, 2016, the complainant sent an email to the school staff requesting a reevaluation of the student in order to determine his present levels of performance, and requesting rescheduling of the May 2, 2016 IEP team meeting. The email was sent on behalf of the student’s mother, and included her consent for assessments in the areas of cognition, academics, occupational therapy including fine motor and sensory processing, speech and language, and a functional behavioral assessment (Docs. i - k).
11. On May 23, 2016, the IEP team convened to conduct reevaluation planning. The IEP team reviewed existing data, including the student’s performance on the MCPS curriculum based assessments that reflect no improvement in his performance in reading and math, from October 2015 to February 2016. The IEP team also considered the January 2016

- progress reports that document the student's lack of progress towards mastery of one (1) of the annual reading goals, and that he "toilets infrequently at school" (Docs. f, g and k).
12. At the May 23, 2016 IEP team meeting, the IEP team discussed that the student has made "minimal progress in pre-academic skills, communication and fine motor skills." The IEP team noted that the student's "limited progress" may be due to the "significant" absences² due to his health issues. The IEP team also discussed that the student "often displays task avoidance when he perceives a task to be difficult," and that he "sometimes does not want to attend school" (Doc. k).
 13. The IEP team also discussed that standardized assessments "would be difficult [for the student] to complete," and agreed that no additional data was needed at the time. However, at the request of the student's mother, the IEP team agreed to conduct a Functional Behavioral Assessment (FBA) to examine the student's task avoidance behavior and to develop a Behavior Intervention Plan (BIP) (Doc. k).
 14. On May 24, 2016, one day after the May 23, 2016 IEP team meeting, the student's mother sent an email to the school staff stating that "after further consideration," she is requesting an assistive technology assessment and a "sensory processing (occupational therapy) profile." The email indicates her belief that additional supports are needed in order to address the student's communication and sensory processing needs that are necessary for his mastery of the annual IEP goals (Doc. i).
 15. On June 16, 2016, the IEP team convened to conduct the annual review of the student's IEP. The IEP team considered the student's progress, the student's mother's concerns about assistive technology, and the results of the sensory profile. The IEP team considered the report of the sensory profile documenting that the student requires additional external supports to engage in learning, that he may become overloaded very quickly in a typical learning environment, that he is often distracted by peers during instruction, and that he uses withdrawal as a strategy to avoid tasks that he perceives are "threatening or difficult." The evaluator concluded that there are "definite differences" in the student's sensory profile, and recommended numerous supplementary supports to assist the student given the findings of his sensory profile. The IEP team added all of the recommendations for supports to the student's IEP (Docs. c, l and n).
 16. At the June 16, 2016 IEP team meeting, the IEP team also discussed the results of the FBA documenting that the student demonstrates avoidance behaviors, including putting his head down, turning away, distracting himself, and going under a table, during transitions to small group academic tasks or when presented with academic tasks in a small group that he perceives to be difficult. The FBA states that the behaviors occur one (1) to two (2) times a day, during which times the student "shuts down" and will not

² The report of the student's attendance documents that, from September 2015 through February 2016, he was absent from school twenty-two (22) days (Doc. h).

engage in work for three (3) to five (5) minutes. The IEP team developed a BIP identifying replacement behaviors to decrease the student's avoidance behavior, and specific strategies to prevent the behavior and to teach the replacement behaviors (Doc. p).

17. There is documentation that the IEP team discussed the student's toileting needs, and the parent's concern that the student needs to work on toileting to develop greater independence. The June 16, 2016 IEP includes a self-help goal that addresses the student's need to demonstrate greater independence with toileting. There is no documentation that the student had toileting accidents at school (Docs. d and l)
18. At the June 16, 2016 IEP team meeting, the IEP team discussed that the student has been provided with low-tech assistive technology supports, such as picture communication symbols, communication boards, and a speech generating devices to facilitate his communication, and that he is making progress in speech and language with these strategies. The IEP team revised the student's IEP to require the provision of low-tech assistive technology devices (Doc. l).
19. The IEP team revised all of the goals at the June 16, 2016 IEP team meeting. The IEP team determined that the student requires four and one half (4.5) hours of specialized instruction per day in a separate special education classroom, in addition to one (1) hour per week of speech and language therapy services, one (1) hour per week of occupational therapy services, and one-half (½) hour per week of physical therapy services. The IEP identifies that the student will attend the Learning for Independence Program for the 2016 - 2017 school year (Doc. l).

DISCUSSION/CONCLUSIONS:

Allegation #1 IEP That Addresses the Student's Needs

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. The public agency must ensure that all of the student's special education and related services needs are identified and addressed, whether or not commonly linked to the disability category in which the student has been classified (34 CFR §§300.101, .301- .305, and .320).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

Ms. Jessica Williams
Mr. Philip A. Lynch
August 5, 2016
Page 8

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved (34 CFR §300.324). In addition to reviewing the IEP at least annually, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any information from the parents and the student's anticipated needs (34 CFR §300.324).

In this case, the complainant alleges that the student's academic needs were not addressed by the IEP because he did not make sufficient progress to master the annual IEP goals and because his performance on the MCPS curriculum assessments demonstrate that he was not making progress in reading and math. In the area of communication, the complainant alleges that the IEP did not meet the student's needs because the IEP did not require the provision of assistive technology to support his communication needs. She also alleges that the IEP did not address the student's avoidance behavior, and that the IEP did not address the student's toileting skills because the school staff did not change his clothing when he was soiled (Doc. q).

Academic and Social, Emotional and Behavioral Needs

Based on the Findings of Facts ##1 - #6, the MSDE finds that there is documentation that the student was making progress towards mastery of the math and written language goals, as well as the personal skills goal that addresses his need to attend consistently. Therefore, the MSDE does not find a violation occurred with respect to these aspects of the allegation.

However, based on the Findings of Facts #1 - #3, and #7 and #8, the MSDE finds that there is documentation, in January 2016, that the student was not making progress towards mastery of one (1) of his IEP goals in reading, as well as documentation, in February 2016, that the student's performance on the MCPS assessments indicated that he was not making progress in his performance in reading. Further, based on the Findings of Facts #6 and #9, the MSDE finds that the IEP team did not take steps to convene an IEP team meeting in order to address the student's lack of progress in reading until April 2016. Therefore, because of this delay, the MSDE finds a violation occurred with respect to this aspect of the allegation.

Toileting Skills

Based on the Findings of Facts #1, #2 and #17, the MSDE finds that the May 2015 IEP and the June 2016 IEP include a goal that addresses the student's toileting skills. Based on the Findings of Facts #17, the MSDE finds that there is no documentation to support the complainant's allegation with respect to the student's toileting needs. Therefore, the MSDE does not find a violation occurred with respect to this aspect of the allegation.

Communication Needs

Based on the Findings of Facts #1 - #3, and #6, the MSDE finds that, there is documentation that the student was making progress towards mastery of the speech and language goals with the provision of low-tech supports. Based on the Findings of Facts #6 and #18, the MSDE finds that the IEP team revised the student's IEP to require the use of the assistive technology supports that

the student was being provided with during the course of the 2015 - 2016 school year. Therefore, the MSDE does not find a violation occurred with respect to this aspect of the allegation.

Allegation #2 Reevaluation Procedures

When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the student's needs (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #11 - #19, the MSDE finds that the IEP team began the student's reevaluation at the May 23, 2016 IEP team meeting, and that the IEP team completed the reevaluation at the June 16, 2016 IEP team meeting. Therefore, the MSDE does not find a violation occurred.

ALLEGATION #3 PROVISION OF PRIOR WRITTEN NOTICE OF THE DECISIONS MADE AT THE JANUARY, FEBRUARY AND MARCH 2016 IEP TEAM MEETINGS

FINDINGS OF FACTS:

20. There is no documentation that the IEP team convened in January, February or March 2016. The documentation indicates that the only IEP team meetings that were convened during the 2015 - 2016 school year were on May 23, 2016 and June 16, 2016 (Docs. k and l, and interview with the school system staff).

Ms. Jessica Williams
Mr. Philip A. Lynch
August 5, 2016
Page 10

DISCUSSION/CONCLUSION:

Written notice must be provided to parents when the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

In this case, the complainant alleges that the IEP team convened, and made decisions, in January, February and March 2016.

Based on the Finding of Fact #20, the MSDE finds that the facts do not support the allegation. Therefore, the MSDE does not find a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the MCPS to provide documentation by October 1, 2016, that the IEP team has convened and determined whether the violation related to the delay in addressing the student's lack of progress in reading had a negative impact on his ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the MCPS to provide documentation by October 1, 2016, of the steps it has taken to determine if the violation identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Ms. Jessica Williams
Mr. Philip A. Lynch
August 5, 2016
Page 11

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the MCPS 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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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 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

c: XXXXXXXXXX
 Jack Smith
 Tracee Hackett
 XXXXXXXXXX

Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum