



Karen B. Salmon, Ph.D.
State Superintendent of Schools

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August 18, 2017

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

RE: XXXXX
Reference: #17-149

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 May 23, 2017, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of your son, the above-referenced student. In that correspondence, the complainants 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.

There is a sixty (60) timeline for completion of the complaint investigation process. However, in order to ensure that additional documentation provided on July 20, 2017 was considered, it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to 34 CFR §300.152.

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The MSDE investigated the following allegations:

1. The MCPS did not ensure that the Individualized Education Program (IEP) team reviewed and revised, as appropriate, the student's IEP to address lack of expected progress toward achieving the IEP goals in reading and writing, during the 2016-2017 school year, in accordance with 34 CFR §§300.101 and 324.
2. The MCPS did not ensure that the reading fluency, decoding, comprehension, and writing goals were addressed during the 2016-2017 school year, as required by IEP, in accordance with 34 CFR §§300.101 and .323.
3. The MCPS has not ensured that the decisions made regarding the student's progress towards achievement of the reading and writing goals during the 2016-2017 school year, has been consistent with the data, in accordance with 34 CFR §§300.101 and .324.
4. The MCPS did not ensure that the student was provided with a one-to one (1:1) test monitor, as required by the IEP, during the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 13 years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXX School and has an IEP that requires the provision of special education instruction and related services.

ALLEGATIONS #1 - #3: ADDRESSING THE LACK OF PROGRESS ON ANNUAL GOALS, THE IMPLEMENTATION OF GOALS, AND PROGRESS REPORTS BASED ON DATA

1. The progress reports issued following the last quarter of the 2015-2016 school year indicated that the student was making sufficient progress to achieve all of the goals by April 2017.
2. The progress reports issued following the first quarter of the 2016-2017 school year indicated that the student was making sufficient progress on all of the goals except for two (2) of the reading goals, which had not been addressed during that time period.
3. On November 16, 2016, the IEP team discussed that the student had been placed in a reading intervention program that was inappropriate to address the reading goals, and as a result, he was being placed in a different reading intervention program.

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4. The progress reports issued following the second quarter of the 2016-2017 school year indicated that the student was making sufficient progress to achieve all of the IEP goals by April 2017.
5. The progress reports issued following the third quarter of the school year on April 7, 2017, continued to indicate that the student was making sufficient progress to achieve the goals by April 2017.
6. On May 8, 2017 and June 8, 2017, the IEP team convened to conduct the annual review of the IEP. Based upon its review of the data, the team determined that the student had achieved only the reading fluency goal, and that he had not achieved the remaining reading and writing goals. The team revised the remaining goals to reflect that additional supports would be provided to the student in addressing them, with the exception of one (1) reading comprehension goal, which was continued without explanation.
7. The results of district-wide assessments reflect that the student's general reading skills are improving. In preparation for each IEP team meeting, the student's teachers provided reports of the student's strengths and weaknesses in the classroom. However, there is no data that demonstrates that the student's progress was being measured in the manner required in the IEP goals.

CONCLUSIONS:

Based on the Finding of Fact #7, the MSDE finds that there is no data to support the progress reported on the annual goals. Further, based on the Findings of Facts #1 - #7, the MSDE finds that because the IEP team decisions were based on reports of the student's progress, which is not substantiated by the data, there is no documentation that the IEP has addressed the student's needs. Therefore, this office finds that violations of 34 CFR §300.101, .323, and .324 occurred with respect to Allegations #1 and #3.

Based on the Findings of Facts #2 and #3, the MSDE finds that the reading goals were not addressed during the 1st quarter of the 2016-2017 school year. Therefore, this office finds that violations of 34 CFR §300.323 with respect to Allegation #2.

ALLEGATION #4: PROVISION OF A TESTING MONITOR

8. The IEP in effect during the 2016-2017 school year requires a testing accommodation; specifically, that the student be "monitored (1:1) to ensure that he understands where and how to answer test questions," that he be prompted to read the test aloud before answering question, and that he be given tests in a setting with reduced distractions to himself or others.

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9. The electronic mail (email) correspondence between the student's mother and the school staff reflect that the mother expressed concern that some administrations of the Measures of Academic Progress-Reading (MAP-R), a district-wide benchmark assessment, were conducted using the accommodation, while others were not.
10. An email from the special education teacher to the student's mother and the written response to the State complaint from the MCPS document the school system's understanding that the *Maryland Accommodations Manual* prohibits the use of the accommodation on the computerized MAP-R.
11. The *Maryland Accommodations Manual* is not applicable to district-wide benchmark assessments such as the MAP-R.
12. The MCPS policy regarding the administration of the MAP-R indicates that the test may not be read to a student, but does not forbid the accommodation of prompting a student to read each question before answering.
13. The student's scores on the MAP-R administered during each quarter of the 2016-2017 school year have consistently improved.

CONCLUSIONS:

Based on the Findings of Facts #9 - #14, the MSDE finds that the testing accommodation was not consistently provided to the student during the administration of the MAP-R, as required by the IEP. Therefore, this office finds that a violation of 34 CFR §§300.101 and .323 occurred.

Notwithstanding the violation, based on the Finding of Fact #14, this office finds that there was no impact on the student. Therefore, no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by October 1, 2017 that the IEP team has determined the compensatory services to remediate the violations identified through this investigation. MCPS must also provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

The MSDE further requires the MCPS to provide documentation by November 1, 2017 that steps have been taken to ensure that IEP accommodations that are allowable by MCPS policy are provided during the administration of district-wide benchmark assessments without regard to the requirements for Statewide assessments.

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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 PGCPS 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 within the timelines 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 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 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:ac

c:	Jack Smith	Dori Wilson
	Kevin Lowndes	Anita Mandis
	Tracee Hackett	Albert Chichester
	XXXXXXXXXX	Nancy Birenbaum