



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

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September 11, 2017

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Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 230  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #18-010

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.

**ALLEGATION:**

On August 3, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. 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 allegation that the MCPS denied the student a Free Appropriate Public Education (FAPE) by not ensuring that he was provided with the amount of special education instruction in a separate special education classroom required by the Individualized Education Program (IEP) during the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is ten (10) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA due to Attention Deficit Hyperactivity Disorder (ADHD), anxiety, and executive functioning issues, and has an IEP that requires the provision of special education and related services.

**FINDINGS OF FACTS:**

1. The IEP in effect from the start of the 2016 - 2017 school year until April 2017 required that the student be provided with 22.5 hours of specialized instruction in a separate special education classroom each week, and an additional 6 hours and 15 minutes per week of specialized instruction the general education classroom. The IEP states that the student “requires special education support in a self-contained classroom outside of general education for all academics and social skills. He will have special education support for specials, lunch and recess.”
2. The IEP included four (4) written language goals, as well as one (1) IEP goal in each of the areas of reading, self-regulation and inhibition, task completion, safety, organization and executive functioning, attention, coping strategies for anxiety, and social skills and peer interactions.
3. The school system staff acknowledge that the student was not provided with specialized instruction in a separate special education classroom setting for the amount of time that was required by the IEP because they were attempting to determine whether the student could be successful with more instruction in the general education classroom setting.
4. The complainant asserts that the student would have made more progress if he had received the amount of specialized instruction in the placement required by the IEP.
5. There is documentation, including the following information, of the student’s progress from the start of the 2016 - 2017 school year to April 2017:

**Reading**

- At the start of the 2016 - 2017 school year, the student was functioning at the beginning 3rd grade level in reading, one (1) grade level below his grade. In April 2017, the student’s functioning had increased to the beginning 4th grade level in reading.
- The progress reports developed by the school staff in November 2016, January 2017 and April 2017, document that the student was making sufficient progress towards mastery of the IEP reading goal.
- From Fall 2016, to Winter 2016, to Spring 2017, the student’s scores on an MCPS benchmark assessment in reading increased from 188 to 202 to 211. The documentation reflects that the student’s 211 score represents his performance above both the national and MCPS benchmark levels for his grade.

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- In April 2017, the student's fluency level was "slightly below target," as his instructional reading fluency level was one (1) level below the benchmark for his grade at that time.
- The student's report card reflects that, in the 3 areas of reading assessed during each of the 1st, 2nd, and 3rd quarters of the school year, he received four (4) out of nine (9) grades documenting that he was meeting the grade-level standard. All of the remaining five (5) out of nine (9) grades reflect that the student was making progress toward meeting the grade-level standard. The following is a breakdown of the grades per quarter during the 2016 – 2017 school year:
  - 1st quarter: Not meeting the grade-level standard in any area; making progress toward meeting the grade-level standard in all three (3) areas assessed.
  - 2nd quarter and 3rd quarters: Making progress toward meeting the grade-level standard in two (2) of the three (3) areas assessed; making progress toward meeting the grade-level standard in the remaining one (1) area.
- The student's 3rd quarter report card grades document that he was "meeting grade level standards by demonstrating proficiency" in two (2) out of three (3) areas of reading.

### Writing

- At the start of the 2016 - 2017 school year, the student was functioning at the 2nd grade level in written language, two (2) grade levels below his grade. In April 2017, the student's functioning in written language had increased to the beginning 4th grade level.
- The progress reports developed by the school staff in November 2016 and January 2017, document that the student was making sufficient progress towards mastery of all of the IEP written language goals. By April 2017, the student had achieved three (3) out of the four (4) written language IEP goals.
- The student's report card reflects that, in the 5 areas of writing assessed during each of the 1st, 2nd, and 3rd quarters of the school year, he received two (2) out of fifteen (15) grades documenting that he was meeting the grade-level standard. All of the remaining thirteen (13) out of fifteen (15) grades reflect that

the student was making progress toward meeting the grade-level standard. The following is a breakdown of the grades per quarter during the 2016 – 2017 school year:

- 1st quarter: Meeting the grade-level standard in one (1) area; making progress toward meeting the grade-level standard in the remaining four (4) areas assessed.
- 2nd quarter: Not making progress toward meeting the grade-level standard in any area. In all five (5) areas assessed, making progress toward meeting the grade-level standard.
- 3rd quarter: Meeting the grade-level standard in one (1) area of writing, and making progress toward meeting the grade-level standard in the remaining four (4) areas assessed.

#### **CONCLUSION:**

Based on the Findings of Facts #1 - #3, the MSDE finds that the MCPS did not ensure that the student was provided with the amount of special education instruction in the separate special education classroom setting required by the IEP, in accordance with 34 CFR §§300.101 and .323. However, based on the Findings of Facts # 1 - #5, the MSDE finds that the student was able to benefit from the educational program notwithstanding the MCPS's failure to provide the amount of specialized instruction in the classroom setting required by the IEP. Therefore, this office does not find a denial of FAPE, and, as a result, does not find a violation occurred.

#### **TIMELINE:**

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.

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,

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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

MEF/ksa

c: Jack R. Smith  
Tracee Hackett  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Nancy Birenbaum