



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

April 12, 2019

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Law Office of Brian K. Gruber, P.C.
6110 Executive Boulevard, Suite 220
Rockville, Maryland 20852

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

RE: XXXXX
Reference: #19-108

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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 February 12, 2019, the MSDE received a complaint from Ashley VanCleaf, Esq., hereafter, “the complainant,” on behalf of 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 above-referenced student.

The MSDE investigated the following allegations:

1. The MCPS did not follow proper procedures when making an Extended School Year (ESY) services determination consistent with the data and based on the student’s needs, on June 5, 2018, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08B.

2. The MCPS did not ensure that the student was provided with special education instruction in reading, as required by the Individualized Education Program (IEP), from October 2018 to December 2018, in accordance with 34 CFR §300.101 and .323.
3. The MCPS has not ensured that the IEP addresses the student's speech/language and reading needs, since the beginning of the 2018 - 2019 school year, in accordance with 34 CFR §§300.300 and .324.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with a Specific Learning Disability under the IDEA, related to Dyslexia. During the 2017 - 2018 school year, the student attended XXXXXXXXXX School. She currently attends XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: ESY SERVICES ELIGIBILITY DETERMINATION

FINDINGS OF FACTS:

1. In its written response, the MCPS acknowledges that a violation has occurred with respect to the allegation. Specifically, the MCPS acknowledges that the IEP team did not document the basis for all of their decisions related to the student's eligibility determination for ESY services, on June 5, 2018.
2. The MCPS proposes to provide professional development for XXXXXXXXXX XXXX staff on proper procedures for determining and documenting ESY services eligibility for students.

CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE finds that the MCPS did not follow proper procedures when making an ESY services determination, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08B. This office appreciates the MCPS' acknowledgement and concurs that a violation occurred with respect to the allegation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION READING INSTRUCTION

FINDINGS OF FACTS:

3. The IEP in effect in October 2018 required the student to be provided with a reading intervention, in a separate special education classroom, for one (1) hour and forty (40) minutes each day, to be provided by a special education teacher.

4. There is documentation that the student was provided with a reading intervention by a substitute teacher while the special education teacher was on leave, from October 2018 to December 2018.
5. The MCPS acknowledges that a substitute teacher provided the required reading intervention during the absence of the special education teacher, from October 2018 to December 2018, and that the substitute teacher received training on the intervention in a manner that is inconsistent with the MCPS procedures.
6. The MCPS proposes to provide professional development for XXXXXXXXXXXXXXXXXXXX staff to ensure that they are appropriately trained in designated reading interventions, which includes the MCPS process for requesting intervention training for substitute teachers.

CONCLUSION:

Based on the Findings of Facts #3 - #6, the MSDE finds that the student was not provided with special education instruction in reading in a manner consistent with the school system's procedures, in accordance with 34 CFR §300.101 and .323. This office appreciates the MCPS' acknowledgement and concurs that a violation occurred with respect to the allegation.

ALLEGATION #3: AN IEP THAT ADDRESSES THE STUDENT'S READING AND SPEECH/LANGUAGE NEEDS SINCE THE START OF THE 2018 - 2019 SCHOOL YEAR

FINDINGS OF FACTS:

7. The IEP in effect at the start of the 2018 - 2019 school year identified needs in reading phonics, comprehension, and expressive and receptive speech/language. The IEP included goals to improve these skills and specialized instruction and supports to assist the student in achieving the goals. At that time, the student was participating in a reading intervention to improve fluency and comprehension.
8. On January 24, 2019, the IEP team identified needs in the areas of reading phonemic awareness and fluency. The IEP included goals to improve these skills and specialized instruction and supports to assist the student in achieving the goals.
9. There is documentation that the IEP team convened in October 2018, December 2018, and January 2019, to review and revise the student's IEP to address her speech/language and reading needs. Further, there is documentation that the student made progress on her annual goals in those areas.

CONCLUSION:

Based on the Findings of Facts #7 - #9, the MSDE finds that MCPS has ensured that the IEP addresses the student's speech/language and reading needs, since the beginning of the 2018 - 2019 school year, in accordance with 34 CFR §§300.300 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation by the end of the 2018 - 2019 school year, that the IEP team has convened and determined whether the violations had a negative impact on the student's 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 to redress the violations and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

The MCPS must ensure that the parent is provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MCPS proposes to provide professional development for XXXXXXXXXXXXXXX staff on proper procedures for determining and documenting ESY services eligibility for students. The MCPS also proposes to provide professional development for XXXXXXXXXXXXXXX staff to ensure that they are appropriately trained in designated reading interventions, which includes the MCPS process for requesting intervention training for substitute teachers.

The MSDE concurs with the MCPS' proposed corrective action and requires the MCPS to provide documentation by the end of the 2018 - 2019 school year that the proposed steps have been taken to ensure that the violations identified do not recur at XXXXXXXXXXXX School and XXXXXXXXXXXX School. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

TECHNICAL ASSISTANCE:

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

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As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence.

The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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 (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 Early Intervention/Special Education Services

MEF:ac

c: Jack R. Smith
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