



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

November 26, 2019

XXX  
XXX  
XXX  
XXX

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

RE: XXXXX  
Reference: #20-038

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 October 1, 2019, the MSDE received a complaint from Mr. XXXXXX XXX and Mrs. XXXX XXXX, hereafter “the complainants,” on behalf of their 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 student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) has included the required content with respect to written language consistent with the data, since October 1, 2018, in accordance with 34 CFR §§300.320 and .324.
2. The MCPS has not ensured that the progress reported towards achievement of the annual IEP goals, since October 1, 2018, has been consistent with the data, in accordance with 34 CFR §300.324.

XXX

XXX

Mr. Philip A. Lynch

November 26, 2019

Page 2

3. The MCPS has not ensured that the student has consistently been provided with writing support in classes other than English, access to and training in speech to text software, and access to text to speech software, as required by the IEP since October 18, 2018, in accordance with 34 CFR §§300.101 and .323.
4. The MCPS has not ensured that the IEP team addressed parental concerns about the data used to determine the student's academic performance and progress relative to grade-level standards in all areas, and about the student's ability to independently produce writing, in accordance with 34 CFR §300.324.
5. The MCPS has not ensured that the IEP team's decision in May 2019, that the student's social, emotional and behavior skills no longer impact his academic achievement and functional performance, is consistent with the data, in accordance with 34 CFR §300.324.

### **BACKGROUND:**

The student is fourteen (14) years old, is identified as a student with a Specific Learning Disability (SLD) under the IDEA, and has an IEP that requires the provision of special education and related services. The student is in the eighth (8th) grade and attends the XXXXXX XXX XXXXX School (XXXXXXXX MS) where he participates in the "Gifted & Talented/Learning Disabled" Program (GTLD Program).

### **ALLEGATION #1                      IEP REQUIREMENTS**

### **FINDINGS OF FACTS:**

1. The IEP in effect since October 1, 2018 has included information from multiple sources about the student's strengths and weaknesses in written language, and a description of how his disability affects his involvement in the general curriculum. The IEP has also included measurable annual goals in written language designed to improve the student's areas of weakness that have been identified, and that the goals are based on the State standards that correspond to the grade level in which the student is enrolled. The IEP has further included special education services to assist the student with achieving the goals.
2. The IEP in effect in October 2018 includes a written language expression goal which states that, "Given graphic organizers, word processor, teacher modeling & check-ins, and rubrics, [the student] will use words, phrases and clauses to create cohesion and clarify the relationships among claims, evidence and reasons." The objectives within the goal require the student to use words, phrases, and clauses among claims and the reasoning behind claims, strengthen his argument by showing how evidence logically supports his claims, use transitions purposefully to support unity, and apply academic vocabulary to express relationships precisely.

XXX

XXX

Mr. Philip A. Lynch

November 26, 2019

Page 3

3. It also includes a written language mechanics goal which states that “Given prompts to read written work aloud, specific feedback for revision, and the use of a revision and editing checklist, [the student] will apply the revision and editing stages of the writing process to the writing piece to make edits to grammar, punctuation, and spelling.” The objectives within the goal require the student to correct grammar errors using a variety of sources, edit writing for correct punctuation, grammar, spelling errors, use of commas and quotation marks, and correct pronoun use and subject-verb agreement.
4. The April 2018 IEP reflects that both written language goals will be measured based on the use of “with 85% accuracy” as the evaluation method, and that mastery is achieved with “3 out of 4 trials.”
5. On October 8, 2018, the complainants sent an email to the school staff expressing concern that the IEP written language goals are not measurable. On November 12, 2018, the school staff met with the complainants for a parent-teacher conference to discuss their concern.
6. On November 14, 2018, the IEP was amended to change the evaluation method for the written language goals. The amended IEP reflects that both written language goals will be measured based on the use of a “classroom based assessment” as the evaluation method, and that mastery is achieved with a score of 4 or better on a 6 point scale using the Six Traits of Writing Rubric.
7. On May 28, 2019, the IEP team met to conduct an annual review. At the meeting, the complainants expressed concern that the IEP written language goals are not measurable because they require progress to be measured based on the student’s performance with support and prompting. The complainants requested that the student’s progress on the IEP written language goals be evaluated using independent samples of the student’s writing.
8. The IEP team revised the written language expression goal to state that “Given graphic organizers, word processor, teacher modeling & check-ins, and rubrics, [the student] will write arguments to support claims in an analysis of substantive topics or texts” in 3 out of 4 trials based on a classroom based assessment. The goal includes objectives that require the student to introduce a claim, acknowledge and distinguish the claim from alternate or opposing claims, and organize the reasons and evidence logically; support a claim with logical and relevant evidence, using accurate, credible sources and demonstrating an understanding of the topic or text; use words, phrases and clauses to create cohesion and clarify the relationships among claims, counterclaims, reasons and evidence; and provide a concluding statement or section that follows from and supports the argument presented.

XXX

XXX

Mr. Philip A. Lynch

November 26, 2019

Page 4

9. The IEP team also revised the written language mechanics goal to state that “Given prompting and adult support, [the student] will revise and edit written work, focusing on the audience and purpose.” The goal includes objectives that require the student to choose words and phrases for effect and to convey ideas precisely; edit for correction of subject verb agreement, punctuation and spelling; include grammatically correct complex sentences; vary sentence patterns for meaning, reader/listener interest, and style; and revise and edit work based on teacher feedback. The goal states that it will be measured based on the use of a classroom based assessment, and that mastery is achieved with a score of 4 or better on a 6 point scale of the relevant portion of the teacher made writing rubric that was developed by the IEP team.
10. The written summary and audio recording of the May 2019 meeting reflect that the IEP team discussed that the student currently requires supports for his writing in order to be successful, and that teachers provide feedback on his use of supports. The IEP team also discussed the student’s current workload, and his resistance to complete an independent written assignment during the 1st quarter of the school year. While the IEP team did not agree to the use of an independent writing sample to measure progress on the goals, they agreed to consider using the “Progress Checks” as samples of the student’s independent writing if they are given without a graphic organizer and spelling and grammar devices.
11. The IEP has included several supports to assist the student with achieving the writing goals, including the following: small group instruction, use of a word processor with organization software, copies of teacher notes, editing checklist, conferencing during the pre-writing phase, conferencing after the revising and editing phase, specific feedback for revision, extended time, rubric for expectations of written tasks, and direct feedback on completion of graphic organizers.
12. In addition, the IEP has required that the student be provided daily specialized instruction in a resource class, in addition to daily specialized instruction in all core content area classes in the general education classroom.
13. The IEP has also required that the complainants be notified of the student’s progress on the IEP goals on a quarterly basis.

### **CONCLUSIONS:**

Based on the Findings of Facts #1 - #13, the MSDE finds that the documentation does not support the allegation that the IEP has not included the required content with respect to the student’s written language needs. Therefore, the MSDE does not find a violation occurred with respect to this allegation.

**ALLEGATION #2                    IEP PROGRESS REPORTS**

**FINDINGS OF FACTS:**

14. A review of the IEP goal progress reports made since October 1, 2018 reflects that progress was not measured in the manner described in the goals, and the MCPS acknowledges a violation with respect to this allegation.
15. Since October 1, 2018, the student has been enrolled in an Advanced English course. He has achieved As each marking period. Additionally, the student's report card documents that he achieved As as the final grade in all of his courses for the 2018 - 2019 school year.
16. There is documentation that, since October 1, 2018, the student's performance on State standardized assessments demonstrates that he "meets or exceeds expectations" in written expression and knowledge of language and conventions.

**CONCLUSION:**

Based on the Finding of Fact #14, the MSDE concurs with the MCPS acknowledgement that, since October 1, 2018, the progress reported on the IEP goals has not been consistent with the data, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Findings of Facts #15 and #16, the MSDE finds that the student has progressed through the general curriculum. Therefore, the MSDE finds that the violation did not impact the student's ability to benefit from the education program.

**ALLEGATION #3    IEP IMPLEMENTATION**

**FINDINGS OF FACTS:**

**Provision of Writing Support in Classes Other than English**

17. Since October 1, 2018, the IEP has required several supplementary supports to assist the student with his writing. The IEP reflects that the supports are required "periodically" or on "when needed," and clarifies that they are to be provided in all academic classes or across all content areas when extended writing is required.
18. There is documentation that, since October 1, 2018, the student has participated in a daily resource class where he has received support with completing written assignments for his content area classes. In addition, the quarterly teacher reports developed by the student's content area teachers reflect that the student consistently completed writing assignments in courses where writing is required, such as science and social studies.

XXX

XXX

Mr. Philip A. Lynch

November 26, 2019

Page 6

#### Speech to Text Software

19. The IEP has not required speech to text software since October 1, 2018.

#### Text to Speech Software

20. The IEP in effect from October 1, 2018 until May 28, 2019 reflects that the student required the use of text to speech software, but there is no documentation that the student was provided with this support.

21. On May 28, 2019, the IEP was revised and the requirement for text to speech software was discontinued. Although the school staff report that it was removed because the student does not require it and that it had been mistakenly included from a previous year's IEP, there is no documented basis for the removal of the support.

### **CONCLUSIONS:**

#### Provision of Writing Support in Classes Other than English

Based on the Findings of Facts #17 and #18, the MSDE finds that there is documentation that the student has been provided with the writing support in classes other than English that was required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

#### Speech to Text Software

Based on the Finding of Fact #19, the MSDE finds that the documentation does not support the allegation that the IEP required speech to text software. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

#### Text to Speech Software

Based on the Finding of Fact #20, the MSDE finds that, while the IEP included text to speech software from October 1, 2018 until May 28, 2019, there is no documentation that it was provided to the student during this time period, in accordance with 34 CFR §§300.101 and .323. Based on the Finding of Fact #21, the MSDE finds that, while the service was discontinued in May 2019, there is no documentation that the student did not require this support. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

### **ALLEGATION #4 ADDRESSING PARENTAL CONCERNS**

#### **FINDINGS OF FACTS:**

22. There is documentation that, during the 2018 - 2019 school year, the complainants expressed ongoing concern about the student's performance on grade level State standards in reading and writing, the use of specific measures to evaluate the student's progress on the IEP writing goals, and their desire for the student to demonstrate the ability to produce written work independently.

XXX

XXX

Mr. Philip A. Lynch

November 26, 2019

Page 7

23. A review of the audio recording of the May 28, 2019 IEP team meeting, the Prior Written Notice (PWN) document from the May 28, 2019 IEP meeting, and electronic mail (email) messages between the parties since October 1, 2018, document that the IEP team has considered the complainants' concerns, but that the complainants continue to disagree with the IEP team's decisions.

### **CONCLUSION:**

Based on the Findings of Facts #22 and #23, the MSDE finds that the IEP team has addressed the complainants' concerns, in accordance with 34 CFR 300.324. Therefore, the MSDE does not find a violation with respect to this allegation.

### **ALLEGATION #5 ADDRESSING THE STUDENT'S SELF-ADVOCACY NEEDS**

### **FINDINGS OF FACTS:**

24. The IEP in effect from October 1, 2018 until May 28, 2019 identified that the student had social, emotional, behavioral needs in the area of self-advocacy skills. The IEP included a goal stating that "Given fading adult support and verbal and nonverbal prompts, [the student] will demonstrate self-advocacy skills in order to communicate learning style, academic and behavioral needs." The goal included objectives requiring the student to request and use accommodations, communicate with teachers to seek help, clarify instruction or requirement of academic tasks, seek guidance or direction when facing new or difficult situations, and request adult support to review rubrics to identify that demands of a task have been met. The goal reflects that it is being measured using informal procedures in 4 out of 5 trials.
25. The IEP revised on May 28, 2019 reflects that the team decided that the student no longer has needs in the area of self-advocacy skills and discontinued the self-advocacy IEP goal. There is data that the student was advocating for himself, including at times when needing assistance and feedback on his writing, requesting accommodations, communicating with the school staff, and asking questions when he needed clarification.

### **CONCLUSION:**

Based on the Findings of Facts #24 and #25, the MSDE finds that there is data consistent with the IEP team's decision in May 2019 to discontinue the self-advocacy IEP goal, in accordance with 34 CFR §300.324. Therefore, the MSDE does not find a violation with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to support it in working toward completion of required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action. Dr. Birenbaum can be reached at (410) 767-7770.

**Student-Specific**

The MSDE requires the MCPS to provide documentation by February 1, 2020, that the IEP team has determined whether the student requires text to speech and has revised the IEP, as appropriate to address needs consistent with the data.

The MSDE also requires the MCPS to provide documentation at the end of the second, third, and fourth quarters of the 2019 – 2020 school year that the student’s progress towards achievement of the IEP goals is being measured as described in the IEP.

**School-Based**

The MSDE requires the MCPS to provide documentation by February 1, 2020, of the steps it has taken, including training, to ensure that the North Bethesda MS staff comply with the IDEA requirements relating to the violations identified in this Letter of Findings.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.



XXX

XXX

Mr. Philip A. Lynch

November 26, 2019

Page 9

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 complainants 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  
and Special Education Services

MEF/ksa

c: Jack Smith  
Kevin Lowndes  
Philip A. Lynch  
Julie Hall  
Tracee Hackett  
XXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin