




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

December 16, 2019




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

RE:   
Reference: #20-044

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 October 17, 2019, the MSDE received a complaint from  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 ensure that the decisions made regarding the student’s progress towards achievement of his reading, writing, and speech/language goals from October 17, 2018 to the end of the 2018 - 2019 school year, were consistent with the data, in accordance with 34 CFR §§300.101 and .323

2. The MCPS has not developed an Individualized Education Program (IEP) that addressed the student's decoding, phonics, writing, and speech/language needs, since October 17, 2018, in accordance with 34 CFR §§300.101 and .324.
3. The MCPS did not ensure that speech/language services were consistently provided to the student, as required by the IEP, from October 17, 2018 to the end of the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .323.
4. The MCPS did not address the student's phonetic awareness needs through Extended School Year (ESY) services during the summer of 2019, in accordance with 34 CFR §§300.101, .106, and .323.
5. The MCPS has not ensured that the student's educational placement for the 2019 - 2020 school year is based on the student's IEP, in accordance with 34 CFR §300.116.

### **BACKGROUND:**

The student is sixteen (16) years old and attends [REDACTED] School. He is identified as a student with a Specific Learning Disability under the IDEA, related to Dyslexia, and has an IEP that requires the provision of special education instruction and related services.

### **FINDINGS OF FACTS:**

1. The student's IEP in effect on October 17, 2018, reflects that he has identified needs in the areas of reading comprehension, written language, and expressive language. The IEP requires goals and supports for the student to improve his performance in these areas. The IEP also requires that the student will receive a "developmental reading period outside of the general education setting."
2. The IEP requires that the student will receive speech/language services outside of the general education setting one (1) time each week for forty-five (45) minutes and one (1) time each month for forty-five (45) minutes inside of the general education setting.
3. The MCPS acknowledges that the student did not receive speech/language services as required by the IEP during the 2018 - 2019 school year. There is documentation that on July 16, 2019, the MCPS offered compensatory services for the speech/language sessions missed during the 2018 - 2019 school year, and although there was a disagreement on how the services were to be provided, on July 17, 2019, the student's parents accepted the offer of compensatory services.
4. The progress reported on November 7, 2018, reflects that the student was making sufficient progress on his reading comprehension, written language, and expressive language goals. However, there is documentation that the student was not making sufficient progress in reading and written language, and that he needed "considerable remedial support for expressing himself in writing, and sentence structure skills are weak and affect meaning."

5. On January 10, 2019 and February 5, 2019, the IEP team convened for an annual review of the IEP to discuss reevaluation for the student. The IEP meeting summary reflects that the student's mother requested that he receive updated assessments. She further expressed concern that the student was not making "adequate" progress in the general education curriculum and requested that he receive additional support in his content area classes. The IEP team determined that the student would be provided with a resource period and a developmental reading period outside of the general education classroom.
6. At the same IEP team meeting, the student's parents requested that he receive 1:1 reading intervention to address his phonological weakness. The school-based members of the IEP team stated that prior educational assessments and teacher reports indicate "average" decoding and fluency skills, but a weakness in reading comprehension, and recommended that the student receive reading instruction to support weaknesses in reading comprehension. The team decided that additional data was required to determine appropriate services, and recommended that psychological, educational and speech and language assessments for expressive and receptive language be conducted for the student. The parents provided consent for the assessments at the meeting.
7. The progress reported in January 2019, reflects that the student was making sufficient progress to achieve the goals within one year. However, the documentation does not demonstrate that progress was measured consistent with the evaluation method and measurement criteria described in the IEP.
8. The progress reported in April 2019, reflects that the student was continuing to making sufficient progress to achieve the goals within one (1) year. There is documentation that the progress was measured consistent with the evaluation method and measurement criteria described in the IEP.
9. On May 3, 2019 and June 10, 2019, the IEP team convened to review the assessment results. The results indicated that the student was a student with Dyslexia, with identified weaknesses in phonemic awareness, reading fluency, and reading comprehension. The team determined that an additional pragmatic language assessment, phonics inventory and reading inventory would be conducted to determine appropriate goals, services, and a reading intervention.
10. The progress reported in June 2019, reflects that the student was continuing to make sufficient progress to achieve the goals within one (1) year. However, the documentation does not demonstrate that the progress was measured consistent with the evaluation method and measurement criteria described in the IEP.
11. At the same IEP team meeting, the team determined that the student would receive Extended School Year (ESY) services to address "phonemic awareness, reading vocabulary and speech/language receptive language goals." The student's parents requested that writing goals be included in the IEP for ESY services. However, the

school-based members of the IEP team stated that the student was making progress with his goals, and because there was no evidence of a likelihood of substantial regression in that area, writing goals did not need to be addressed through ESY services. Based on that information, the team denied the parent's request.

12. On July 11, 2019 and July 29, 2019, the IEP team convened to review and revise the IEP, as appropriate. The student's parents provided the report of a private speech/language assessment, and based on the results, the IEP was updated and revised to include additional speech/language services and goals, phonetic awareness goals, and additional reading support in classes. Further, while the student's parents declined ESY services for the student in reading because they did not believe the program was appropriate to meet the student's needs, he did attend ESY services to address his speech/language goals.
13. At the same IEP team meeting, the team discussed the 2019 - 2020 educational placement for the student. The student's parents requested a placement with smaller class sizes and special educators in each class, and a reading intervention that was taught "solely" by a teacher. In response, the school-based members of the IEP team stated that the student's current high school could implement his IEP in general education classes with supports, and that the data demonstrated that he was making progress in the general education curriculum, on his annual goals, on State standardized assessments, and had a 4.0 grade point average. The team indicated that his IEP would be revised to include additional support in four (4) classes, participation in an appropriate reading intervention with a certified special educator, speech/language consult, and additional supplementary supports.

## **CONCLUSIONS:**

### **Allegation #1: Progress Reports Consistent with the Data**

Based on the Findings of Facts #1, #4, #7, and #10, the MSDE finds that the documentation does not demonstrate that the progress reported on the annual goals was consistently measured as described by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

### **Allegation #2: An IEP that Addresses Decoding, Phonics, Writing, and Speech/Language Needs**

Based on the Findings of Facts #1 - #13, the MSDE finds that the IEP addresses the student's decoding, phonics, writing, and speech/language needs, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #3: Provision of Speech/Language Services**

Based on the Finding of Fact #2, the MSDE concurs with the MCPS conclusion and finds that a violation occurred with respect to the allegation. The MSDE appreciates the MCPS acknowledgement that the student was not provided with the speech/language services required by the IEP during the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .323.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the MCPS has offered compensatory services for the lack of the provision of speech/language services for the student during the 2018 - 2019 school year. Therefore, no further student-specific corrective action is required.

**Allegation #4: ESY Services that Address Phonetic Awareness**

Based on the Findings of Facts #11 and #12, the MSDE finds that the MCPS determined that the student's phonetic awareness needs would be addressed during ESY services, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to the allegation.

**Allegation #5: Educational Placement Determination**

Based on the Findings of Facts #13, the MSDE finds that the MCPS ensured that the student's educational placement for the 2019 - 2020 school year was based on the student's IEP, in accordance with 34 CFR §300.116.

**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 time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

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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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

### **Student Specific**

The MSDE requires the MCPS to provide documentation by February 29, 2020 that the reports of progress on the annual goals are being measured consistent with the evaluation method and measurement criteria described in the IEP.

The MCPS must also provide documentation that the IEP team has determined whether the violation related to progress monitoring negatively impacted 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 or other remedy to redress the violation and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

### **School Based**

The MSDE requires the MCPS to provide documentation by February 29, 2020 of the steps taken to ensure that the violation does not recur at [REDACTED] School.

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/Special Education Services, MSDE.

Technical assistance is also available to the parties by contacting Dr. Nancy Birenbaum.

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.

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<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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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  
Kevin Lowndes  
Tracee Hackett  
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