



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

February 3, 2020

Ms. Jennifer Engel Fisher, M.S.
Weinfeld Education Group
4865A Cordell Ave., Suite 240
Bethesda, Maryland 20814

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

RE: XXXXX
Reference: #20-074

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 December 12, 2019, the MSDE received a complaint from Ms. Jennifer Engel Fisher, hereafter “the complainant,” on behalf of the above-referenced student and her grandmother, Ms. XXXXXXXX. 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 following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) has included the required content to address the student’s needs consistent with the data, since December 12, 2018,¹ in accordance with 34 CFR §§300.101, .320 and .324.

¹ While the complainant also expressed concerns that occurred prior to this date, she was informed, in writing, that only those violations that are alleged to have occurred within one (1) year of the filing of the State complaint can be resolved through the State complaint investigation procedure (34 CFR §300.153).

The complainant specifically alleged that the IEP:

- a. Does not include sufficient supports and services that the student requires in order to advance appropriately towards achieving the goals and to make progress in the general curriculum;
 - b. Does not include goals in written language that are measurable and are aligned with the student's present levels of performance; and
 - c. Did not include goals to address the student's documented needs in the area of math, until February 2019.
2. The MCPS did not ensure that the student was consistently provided with the reading intervention in the manner required by the IEP, from December 12, 2018¹ through the end of the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .323.
 3. The MCPS did not ensure that the student was consistently provided with specialized instruction from a certified special education teacher as required by the IEP, from December 12, 2018¹ to the end of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with a Specific Learning Disability (SLD) under the IDEA. She has an IEP that requires the provision of special education and related services and attends the XXXXXXXXXXXXXXXX (XXXXXXXXXXXX).

ALLEGATION #1 ADDRESSING THE STUDENT'S NEEDS

FINDINGS OF FACTS:

1. The MCPS has acknowledged a violation with respect to each aspect of the allegation, and proposes to convene an IEP meeting to discuss compensatory services for the violation.
2. On June 5, 2019, the IEP team conducted a reevaluation and determined that additional information was needed to determine the student's needs and current performance levels. The team recommended updated assessments of the student's academics, psychological functioning, and speech and language skills.
3. On August 8, 2019, the IEP team convened and reviewed the results of the assessments that were recommended by the team in June 2019. Based on the data, the IEP team proposed changes to the IEP. However, the written summary of the August 8, 2019 meeting documents that the IEP team was unable to complete the IEP review "due to time constraints," and that the IEP "team agreed to finalize the IEP via email so than an

updated IEP would be in place prior to the start of the 2019 – 2020 school year.”²
There is no documentation that a revised IEP was completed prior to the start of the 2019 – 2020 school year.

4. On October 8, 2019, the IEP team reconvened and completed the IEP review that began on August 8, 2019. Based on the reevaluation data considered during the August 2019 IEP meeting, as well as new data from teacher reports, and formal and informal assessments that the team considered at the October 2019 meeting, the IEP team identified the student’s areas of need and revised the IEP to reflect current data on the student’s levels of performance. The IEP team also revised the IEP statement describing how the student’s disability affects her involvement in the general education curriculum, made revisions to accommodations and supplementary supports, and revised the annual goals to increase the student’s skills in her areas of need. The IEP was further revised to require increased specialized instruction and the addition of counseling services as a related service.

CONCLUSION:

Based on the Finding of Fact #1, the MSDE concurs with the MCPS’s acknowledgment, and therefore finds that a violation occurred with respect to the allegation.

However, based on the Findings of Facts #2 - #4, the MSDE finds that the violation ended on October 8, 2019, when the IEP team completed the development of an IEP that addresses the student’s identified needs, based on the data.

ALLEGATIONS #2 AND #3

IEP IMPLEMENTATION: PROVISION OF READING INTERVENTION AND SPECIALIZED INSTRUCTION BY A CERTIFIED SPECIAL EDUCATION TEACHER

FINDINGS OF FACTS:

5. The MCPS acknowledges violations occurred with respect to Allegations #2 and #3.
6. On August 8, 2019, the IEP team convened and determined that, based on the data, the student is owed fifty-six (56) hours as compensatory services for the portion of the 2018 – 2019 school year that the student did not receive the required IEP services. The complainant and the student’s grandmother disagreed with the amount of compensatory services.

² The written summary of the meeting states that the team was unable to identify a mutually convenient time to reconvene a meeting prior to the start of the 2019 – 2020 school year. It also states that an IEP meeting was “required by the end of the 1st quarter to discuss any outstanding matters.”

7. On October 14, 2019, the complainant, as educational advocate for the student's grandmother, sent an electronic mail (email) communication to the school system staff requesting compensatory services above the fifty-six (56) hours that the IEP team had determined. On October 23, 2019, the MCPS denied the request, but agreed to reimburse the student's grandmother for fifty-six (56) hours of compensatory services, at a rate of \$80 per hour for a total of \$4,480, to be provided by a private provider of her choice.
8. On October 28, 2019, the student's grandmother requested the MCPS to approve an hourly rate of \$85 for compensatory services by her private provider. On November 6, 2019, the MCPS agreed to the request, and asked that the complainant let the school system staff know if she was in agreement or going to "pursue other dispute resolution options." On December 12, 2019, the complainant filed this State complaint.

CONCLUSIONS:

Allegation #2

Reading Intervention

Based on the Finding of Facts #5, the MSDE concurs with the MCPS's acknowledgement, and therefore finds a violation occurred with respect to this allegation. However, based on the Findings of Facts #6 - #8, the MSDE finds that the IEP team has determined compensatory services, and therefore does not require additional student specific corrective action.

Allegation #3

Provision of Specialized Instruction

Based on the Finding of Facts #5, the MSDE concurs with the MCPS's acknowledgement, and therefore finds a violation occurred with respect to this allegation. However, Based on the Findings of Facts #6 - #8, the MSDE finds that the IEP team has determined compensatory services, and therefore does not require additional student specific corrective action.

CORRECTIVE ACTION/TIMEFRAMES:

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.³ This office will follow up with the public agency to ensure that it

³ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency must 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

completes the 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.⁴ Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the MCPS to provide documentation by March 15, 2020, that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the violation relating to not ensuring an IEP that addresses the student's needs that is consistent with the data. The MCPS must also develop a plan for the provision of those compensatory services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the MCPS to provide documentation by April 1, 2020 of the steps it has taken, including training, to ensure that the XXXXXXXXXXXX staff understand the requirements for development and implementation of IEPs that are based on the data. 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.

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.

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 timeframes reported in this Letter of Findings.

action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

⁴ 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.

Ms. Jennifer Engel Fisher, M.S.

Mr. Philip A. Lynch

February 3, 2020

Page 6

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

and Special Education Services

MEF/ksa

c: Jack R. Smith
Kevin Lowndes
Julie Hall
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Ms. Jennifer Engel Fisher, M.S.

Mr. Philip A. Lynch

February 3, 2020

Page 7