



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

February 14, 2020

Nicole Joseph, Esq.
10421 Stevenson Road #442
Stevenson, Maryland 21153

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

RE: XXXXX
Reference: #20-078

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 December 20, 2019, the MSDE received a complaint from Nicole Joseph, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. 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 special education instruction and developmental reading class were provided to the student, as required by the Individualized Education Program (IEP) during the 2018 - 2019¹ school year, in accordance with 34 CFR §§300.101 and .323.

¹ In her correspondence, the complainant indicated that the violation occurred beyond one year from the date of the filing of the State complaint. She was informed that only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation procedure (34 CFR §300.153).

2. The MCPS did not ensure that the Extended School Year (ESY)² services to address phonemic awareness needs were provided to the student, as required by the IEP during the summer of 2019, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. 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 IEP, dated September 28, 2018, was in effect on December 20, 2018. The IEP required that the student be provided with a “developmental reading period” outside of the general education classroom, for fifty (50) minutes each day.
2. On February 5, 2019, the IEP team discussed that the student struggles with organization and submitting class assignments in a timely manner, and revised the IEP to require a resource class to support this area of need. At the same time, the “developmental reading period” was removed from the IEP without explanation.
3. On May 3, 2019 and June 10, 2019, the IEP team developed new reading goals for the student. The IEP was revised to require that the student receive a reading class outside of general education classroom to support needs in phonemic awareness, reading vocabulary and reading comprehension, because the “data indicates that these services were needed for the student to make appropriate progress.”
4. There is no documentation that the student was provided with a reading class outside the general education classroom, from December 20, 2018 to the end of the 2018 - 2019 school year.
5. At the June 10, 2019 IEP team meeting, the team determined that the student qualified for ESY services due to his needs in basic reading as a critical life skill. During the provision of ESY services, special education and related services were to be provided to assist the student with achieving the goals to improve phonemic awareness, reading vocabulary, and speech/language goals.
6. The IEP team meeting summary, dated July 11, 2019, reflects that the student’s mother refused the ESY services offered to address the reading goals because she did not believe that instruction would be individualized for the student, based on her review of the description of the education program through which ESY services would be provided.

² ESY services are an individualized extension of specific services beyond the regular school year designed to meet specific goals included in the student’s IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP Implementation

Based on the Findings of Facts #1 - #4, the MSDE finds that there is no documentation that the student was provided with a reading class in a separate special education classroom, from December 20, 2018 to the end of the 2018 - 2019 school year, as required 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 during this timeframe.

Allegation #2: Provision of ESY Services to Address Phonemic Awareness

In this case, the complainant alleged that the student was not offered ESY services to address his phonemic awareness needs because the description of the education program through which ESY services were to be provided did not indicate that instruction would be provided on phonemic awareness.

Based on the Findings of Facts #5 and #6, the MSDE finds that, because there is no requirement for the general program description to reflect how instruction will be individualized to each student's needs. Based on these same Findings of Facts, the MSDE finds that because the IEP reflected that specialized instruction for the student was to be provided to address phonemic awareness, the MCPS offered the student ESY services to address this area of need. Therefore, this office does not find that a violation occurred.

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.³ 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.

³ 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.

If the public agency anticipates that any of the time frames 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 April 1, 2020, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the lack of the provision of a developmental reading class, and developed 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 IEP 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 MSDE requires the MCPS to provide documentation by April 30, 2020 of the steps taken to ensure that the violation does not recur at XXXXXXXXXXXXXXXXXXXX.

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.

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.

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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: XXXXXXXXXXXX
 Jack R. Smith
 Kevin Lowndes
 Tracee Hackett
 Julie Hall
 XXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Albert Chichester
 Nancy Birenbaum