



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

May 29, 2020

Ashley VanCleaf, Esq.
136 N. East Street
Frederick, Maryland 21701

Dr. Jeffrey Gladhill
Director of Special Education
Washington County Public Schools
10435 Downsville Pike
Hagerstown, Maryland 21740

RE: [REDACTED]
Reference: #20-115

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 March 30, 2020, the MSDE received a complaint from Ashley VanCleaf, Esq., hereafter “the complainant,” on behalf of the above-referenced student and her mother, Ms. [REDACTED]. In that correspondence, the complainant alleged that the Washington County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The WCPS has not ensured that the student’s Individualized Education Program (IEP) was designed for her to make a reasonable amount of progress in light of her circumstances, since March 30, 2019, in accordance with 34 CFR §§300.101, .320 and .324. The complainant specifically expressed concern that the IEP did not include annual goals, supports and specialized instruction sufficient to address the student’s functional toileting and speech/language needs, as well as her reading and math skills needs.

2. The WCPS did not ensure that the parent was provided with the draft IEP reviewed by the team at the September 24, 2019 IEP meeting, at least five (5) business days prior to the meeting, in accordance with COMAR 13A.05.01.07.
3. The WCPS did not ensure the confidentiality of the student's personally identifiable information, in accordance with 34 CFR §§300.610 and .611 and the Family Education Rights and Privacy Act (FERPA).

BACKGROUND:

The student is nine (9) years old and is identified as a student with Multiple Disabilities, including a Specific Learning Disability (SLD), an Orthopedic Impairment and an Other Health Impairment (OHI), under the IDEA. She has an IEP that requires the provision of special education and related services.

The student attended the [REDACTED] Elementary School ([REDACTED] ES) until the March 16, 2020 closure of all schools, as a result of the national COVID-19 pandemic.

ALLEGATION #1 IEP DEVELOPMENT TO ADDRESS NEEDS AND MAKE REASONABLE PROGRESS

FINDINGS OF FACTS:

Reading and Math Needs

1. The IEP in effect on March 30, 2019 was developed on February 25, 2019. At that time, the student, who was in the second (2nd) grade, was placed in kindergarten classes for the provision of special education instruction in math and reading, indicating that she was performing at the kindergarten instructional level. The assessment report used to identify the student's needs does not include sufficient information to understand the student's levels of performance in math and reading, but does indicate the skills in which her performance was found to be "low" in those areas. The IEP has included goals for the student to improve these skills and special education services to assist the student to achieve the goals.
2. During the time period covered by this investigation, the school system has issued reports that the student has made sufficient progress to achieve the annual IEP goals. On May 13, 2019 and September 24, 2019, the IEP team met to review the student's progress and revised the IEP goals based on the student's reported progress.
3. The student is now in the third (3rd) grade and the data reflects that she is performing at the first (1st) grade level in math, and continues to perform at the kindergarten level in reading. There is no documentation that the IEP team has addressed the continued gap between performance and grade level expectations in math and the widening of that gap in reading. The student's Full Scale Intelligence Quotient (FSIQ) is reported to be in the "borderline" range. However, the team has not documented the impact on the ability of

the student to make reasonable skills growth during the time period covered by this investigation, and there is no documentation that the student's performance in adaptive skills indicates a significant cognitive disability that impacts her ability to make skills growth.

Speech/Language Needs

4. The February 2019 IEP does not identify that the student has needs in the area of speech/language. It states that "the student "is demonstrating average performance in expressive and receptive language as well as in pragmatic language," and states that the student's communication skills do not impact her academic achievement and/or functional performance.
5. When the IEP team met on May 13, 2019, they reviewed the January 15, 2019 report of an Independent Education Evaluation (IEE) of the student's language skills. The report reflects that the student's auditory skills necessary for the development, use, and understanding of language commonly used in academic and everyday activities are in the "borderline normal range." The IEE evaluator concluded that the student's receptive language skills are within "average-normal limits" and states that "No further direct SLP intervention is required at this time per full evaluation results."
6. The IEP team documented that, based on the data, the student does not require speech/language services in the school setting because there is no educational impact. The student's mother and the complainant disagreed with the team's decision.
7. There is no data that the student's speech/language skills interfere with her access to instruction.

Toileting Needs

8. The February 2019 IEP includes information about the student's bathroom usage. It states that the student "is coming to the bathroom 3 times a day" and is able to "take care of her bathroom needs." There is documentation that, when the February 2019 IEP was developed, the student's mother expressed concern that the student does not void when she goes to the bathroom at school and requested an annual goal for "toileting." She reported that "toileting is not a medical issue" and the IEP team discussed that the reason for the student's refusal to use the toilet is unknown. The team further discussed that the student has the skills needed for toileting and has the opportunity, and is prompted, to go to the bathroom at school several times during the day. The IEP includes a supplementary aid to ask and prompt the student to use the restroom throughout the day.
9. When the IEP team convened on May 13, 2019, they discussed that the student goes to the nurse twice a day for the opportunity to use the bathroom but that she "is holding it all day." The IEP team revised the IEP to add a supplementary support requiring the staff to encourage and prompt the student to drink fluids throughout the school day.

10. When the IEP team convened on August 29, 2019, they reviewed “orders” from the student’s physician stating that she required a period of 10-15 minutes on the toilet three (3) times per day, and suggesting that she be given “a tablet while sitting on the toilet to occupy her.” The IEP team discussed that the student’s physician reports “knows that she has the ability to use the restroom and eliminate, but they are unsure if she gets the sensation needed to know if she needs to go or not.” They also discussed that the student’s ABA home service providers “are going to time train her” and are willing to support the school in this area as well. In addition, the IEP team considered an order from the student’s physician that she drink 2-4 ounces every 2-3 hours during the school day.
11. The IEP team determined that “due to sanitary guidelines,” the student will not have a tablet or other item while sitting on the toilet. However, the IEP team agreed to continue the use of a sticker chart and reward system that was previously used for the student to earn prizes for sitting as well as eliminating waste while on the toilet. The IEP team also agreed to clarify the IEP supplementary support for encouraging the student to drink to reflect the specific amount recommended in the doctor’s order. They also decided to meet with the student’s ABA therapist once clarification of the toileting “protocol” is provided.
12. There is no data that the student’s toileting interferes with her access to instruction.

CONCLUSIONS:

Reading and Math Needs

Based on the Findings of Facts #1 - #3, the MSDE finds that there is no documentation that the IEP has been designed for the student to make a reasonable amount of progress in math and reading in light of her circumstances, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office finds that a violation has occurred with respect to this aspect of the allegation.

Speech/Language

Based on the Findings of Facts #4 - #7, the MSDE finds that there is no data that the student has speech/language needs that need to be addressed through the IEP, in accordance with 34 CFR §300.320. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Toileting

Based on the Findings of Facts #8 - #10 and #12, the MSDE finds that, while there is documentation that the student does not void when given the opportunity to use the bathroom at school, the documentation reflects that it is not a medical problem and there is no documentation that it interferes with the student’s access to instruction.

However, based on the Findings of Facts #8, #9 and #11, the MSDE also finds that the IEP team has added supplementary support to address the family's concern in this area, in accordance with 34 CFR §300.324. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

ALLEGATION #2 PROVISION OF DRAFT IEP

FINDINGS OF FACTS:

13. On September 16, 2019, the school system staff sent an electronic mail (email) message to the student's mother that included a draft IEP that was expected to be discussed at the upcoming IEP meeting scheduled for September 24, 2020.
14. The school system staff acknowledge that the correct draft of the IEP considered at the September 2019 IEP meeting was not the draft that was provided to the student's mother prior to the meeting, and report that this was an error.
15. The written summary of the September 24, 2019 meeting documents that "there was confusion about which IEP draft was provided" to the student's mother in advance of the meeting. As a result, the school staff provided the most recent draft IEP to the student's mother and the complainant, and they were given the opportunity to review the IEP at the meeting.

CONCLUSION:

Based on the Findings of Facts #13 and #14, the MSDE finds that the student's mother was not provided with the correct version of the draft IEP that the IEP team expected to review at least five (5) business days in advance of the September 24, 2019 meeting, in accordance with COMAR 13A.05.01.07. Therefore, the MSDE finds a violation with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #14 and #15, the MSDE finds that the violation was caused by an error that does not require corrective action to ensure that it does not recur.

ALLEGATION #3 CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

FINDINGS OF FACTS:

16. On September 18, 2019, the student's mother sent an email to the student's general education teacher. The student's mother stated that she was seeing "amazing progress" and wanted to "check in" with the teacher about her "impressions" and whether the teacher had any concerns about how the student was doing so far in the school year.
17. In her email response on the following date, the general education teacher informed the student's mother that the student's progress would be discussed at the IEP meeting. The

general education teacher copied two individuals who serve as Washington County Teachers Association representatives, a special education teacher of the student and a Central Office staff member, both of whom had served and continue to serve as IEP team members for the student.

CONCLUSION:

Based on the Findings of Facts #16 and #17, the MSDE finds that there is no documentation that the school system staff shared confidential personally identifiable information about the student outside of the IEP team, in accordance with 34 CFR §§300.610 and .611 and FERPA. Therefore, the MSDE does not find a violation with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINE:

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.¹

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.

If the public agency anticipates that the timeline 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.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific Corrective Actions:

The MSDE requires the WCPS to provide documentation that the IEP team has reviewed and revised the IEP in math and reading consistent with data regarding the student's circumstances, including the special education that has previously been provided, the student's previous rate of academic growth, and whether she is on track to achieve grade level proficiency within a reasonable amount of time.

¹ 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 action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² 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.

The WCPS must ensure that the IEP goals are sufficiently ambitious to help narrow the gaps between the student's current levels of performance and grade level expectations based on the data, and that there are sufficient special education services to enable the student to achieve those goals within one (1) year of development.

The MSDE requires the WCPS to provide documentation that the IEP team has met and considered the student's progress on a quarterly basis until the end of the 2020-2021 school year, and has reviewed and revised the IEP consistent with the data. At each IEP team meeting, the team must document whether the progress is sufficient to achieve the goals and the basis for those decisions.

If, at any meeting, there is no data to support a determination that sufficient progress is being made to achieve the goals, the team must determine whether the goals remain appropriate. If the team decides that the goals remain appropriate, it must determine the additional services to be provided to accelerate the student's progress. If the team decides that a goal requires revision, it must document the basis for that decision and the data used in making the decision.

School-Based Corrective Actions:

The MSDE requires the WCPS to provide documentation of the steps taken to ensure that assessment reports include sufficient information to determine a student's present levels of performance in the areas assessed, and that IEPs include sufficient information to determine a student's present levels of performance in all areas that impact their academic achievement and/or functional performance. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

The MSDE also requires the WCPS to provide documentation of the steps taken to ensure that the [REDACTED] Elementary School staff follow proper procedures to make sure that IEP goals are based on each student's present levels of performance and are ambitious but achievable, and that each IEP includes the special education services needed to assist the students with achieving the goals.

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.

Ms. Ashley VanCleeef, Esq.
Dr. Jeffrey Gladhill
May 29, 2020
Page 8

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.

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:


Boyd Michael
Brenna Creedon


Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum