



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

October 19, 2018

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Dr. Susan Austin
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #19-023

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.

ALLEGATION:

On August 20, 2018, the MSDE received a complaint from Mr. and Mrs. XXXXXXXXXXXX, hereafter “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the HCPS did not ensure that the student was provided with a Free Appropriate Public Education (FAPE) during the 2017 - 2018 school year, in accordance with 34 CFR §§300.101, .320, .323 and .324, COMAR 13A.05.01.01 and .02, and COMAR 13A.08.04.04 and .06.

BACKGROUND:

The student is seven (7) years old and is identified as a student with an Other Health Impairment under the IDEA related to XXXXX.¹ He has an IEP that requires the provision of special education and related services. The student is in the second (2nd) grade and attends XXXXXXXXXXXXXXXX XXXXXXXX.

¹At the start of the investigation period, the IEP identified the student’s primary disability as a Developmental Delay.

FINDINGS OF FACTS:

1. The student has a “profound expressive language delay” and XXXXXXXX. The IEP documents that he is seven (7) years old but is functioning at the twelve (12) months instructional grade level in the area of expressive language.
2. The IEP documents that the student is unable to communicate his needs verbally and interact with peers and adults effectively, and “is not independent with his engagement and initiative skills” which “impact his ability to access the school environment and communicate effectively.”
3. The IEP documents that the student has special communication needs and that his “primary means of communication” to express his thoughts, wants and needs is through the use of the keyboard on a dynamic display voice output device to compose messages and responses.
4. The IEP includes annual communication goals requiring the student to use a dynamic display voice output device (AT device) to initiate conversation and demonstrate conversational turn taking during speech therapy sessions and classroom activities, with the provision of modeling and prompts. There is documentation that the student did not made sufficient progress towards mastery of the communication goals during the 2017 - 2018 school year.
5. The IEP also includes an annual self-management goal requiring the student to use his AT device to express his thoughts and emotions when presented with non-preferred activities. There is documentation that the student did not made sufficient progress towards mastery of this goal during the 2017 - 2018 school year.
6. The student is frequently removed from the classroom due to behaviors that include physical aggression towards peers and staff.
7. The IEP requires that the student be provided with an AT device for use with communication on a daily basis. However, there is no documentation of the student’s consistent use of the AT device for communication on a daily basis during the 2017 - 2018 school year.
8. The school staff report that the student has been resistant to using the AT device. The school staff also report, and there is documentation, that while the student has demonstrated the occasional ability to respond or make a request using the AT device, he does not independently initiate use of the AT device. The documentation reflects that the student requires “maximum” verbal, visual, tactile and physical prompts, and modeling by an adult to use the device.

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9. A review of a video recording of the student's mother working with the student reflects that he needs constant prompting to engage and that he does not consistently use the AT device to communicate.
10. The IEP includes a Behavior Intervention Plan (BIP) to address some of the student's interfering behaviors, including physical aggression towards peers and staff. However, there is no data that the BIP is sufficiently addressing these behaviors and no documentation that the IEP team has considered how to address the lack of effectiveness of the BIP.
11. There is no documentation that the IEP team has considered how to address the student's lack of use of the assistive technology device that he is to use in order to make progress on the annual IEP goals.

CONCLUSION:

Based on the above Findings of Facts, the MSDE finds that the HCPS has not ensured that the annual IEP goals requiring the student's use of an AT device are being implemented, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the HCPS to provide documentation that the following steps have been taken:

1. By January 1, 2019, the IEP team has convened and developed a detailed AT implementation plan (AT Plan) for the development of the student's communicative competency and improvement of his social-emotional functioning in order to access and participate in the general education curriculum throughout the school day, after consultation with, and the guidance of, an AT expert to be identified by the MSDE Division of Early Intervention and Special Education Services.

In addition to the current HCPS Speech/Language Pathologist, Augmentative Communication, and special education staff IEP team members, the IEP team must include the participation of the HCPS Central Office staff Teacher Assistive Technology Specialist and the student's general education teachers.

The HCPS must also seek consent from the complainants for the participation of the student's private assistive technology service provider in the IEP team meeting to develop the AT Plan. If the private AT provider is unable to participate in the IEP team meeting, the HCPS must request that the complainants provide written input

and recommendations from the student's private AT provider of services and supports needed to assist the student with increasing the use of his AT device for expressive language. The IEP team must consider any input and recommendations from the private AT provider in developing the AT Plan.

The AT Plan must include a description of data collection required in order to monitor and determine the effectiveness of the plan.

2. At the end of the third (3rd) and fourth (4th) quarters of the 2018 – 2019 school year, the IEP team has convened an IEP team meeting, with the participation of the HCPS Central Office Teacher Assistive Technology Specialist and the student's general education teachers, to determine whether the student is making sufficient progress towards achievement of the annual IEP communication and self-management goals requiring the use of an AT device. At each meeting, the IEP team must also review the effectiveness of the AT Plan based on data.

The HCPS must provide the MSDE with documentation of each corrective action within thirty (30) days of its completion.

School-Based

The MSDE requires the HCPS to provide documentation by January 15, 2019, that the HCPS Central Office Teacher Assistive Technology Specialist has provided training to the XXXXXXXXX School staff working with the student, including any adult support, instructional assistants and inclusion helpers, on implementation of the AT Plan.

The MSDE also requires the HCPS to provide documentation that the adult support, instructional assistants and inclusion helpers assigned to the student have received direct coaching in supporting the student with the use of his AT device for communicative competency at least once a week to begin upon the student's return to school and continuing through the end of the 2018 – 2019 school year. The HCPS must provide documentation of the weekly coaching at the end of the second (2nd), third (3rd) and fourth (4th) quarters of the 2018 – 2019 school year.

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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, at (410) 767-7770.

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 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: Sean Bulson
Colleen Sasdelli
XXXXXXXXXX
Dori Wilson
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K. Sabrina Austin
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