



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

April 2, 2019

Ashley S. VanCleaf, Esq.  
Law Office of Brian K. Gruber, P.C.  
6110 Executive Boulevard, Suite 220  
Rockville, Maryland 20852

Ms. Linda Chambers  
Acting Director of Special Education and  
Student Support  
Frederick County Public Schools  
191 South East Street  
Frederick, Maryland 21701

RE: XXXXX  
Reference: #19-094

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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 January 22, 2019 the MSDE received correspondence from Ashley S. VanCleaf, Esq., hereafter, “the complainant” on behalf of Mr. XXXXXXXX and Mrs. XXXXXXXXXXXX, and their son, above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) 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 FCPS has not developed an Individualized Education Program (IEP), that addresses the student’s identified reading and math needs since January 2018, in accordance with 34 CFR §§300.320 and .324.

2. The FCPS has not ensured that the reports of the student's progress towards achievement of the annual IEP goals have been consistent with the data, since January 2018, in accordance with 34 CFR §§300.101, .323 and .324.

**BACKGROUND:**

The student is eleven (11) years old and is identified as a student with Multiple Disabilities including a Specific Learning Disability (Dyslexia, Dyscalculia, and Dysgraphia) and a Speech/Language Impairment under the IDEA. He has an IEP that requires the provision of special education instruction and related services and attends XXXXXXXXXXXXXXXXXXXX.

**FINDINGS OF FACTS:**

1. The IEP in effect at the start of the investigation period was developed on March 10, 2017, and documented that the student was in the third (3<sup>rd</sup>) grade, demonstrated grade level reading comprehension skills, but exhibited difficulty with inferencing skills related to grade level texts. The student's math problem solving skills were one (1) year below grade level.
2. The student had specific difficulties with phonological awareness, sound manipulation, abstract language concepts and vocabulary skills. The IEP also documented that the student was having difficulties attending to and persisting with tasks which resulted in his needing teacher support during independent work.
3. The IEP included a goal for the student to be able to determine the main idea of the text, and use the vocabulary within the text to select three (3) or more details to support his reasoning on three (3) out of four (4) opportunities. The IEP also included a reading comprehension goal for the student to summarize the text, and use events from the beginning, middle, and end of the story to make predictions and inferences about the text on three (3) out of four (4) opportunities.
4. The reading progress reports, dated January 2018, indicated that the student was making sufficient progress to achieve the reading goals in fluency, comprehension, and phonics by March 9, 2018.
5. The student's mother requested that all reading instruction take place within the special education classroom. The IEP team determined that, based on the data, the student was able to access grade level curriculum through both whole group and guided reading groups within the general education classroom and needed to continue to access the grade level reading curriculum to make progress with grade level skills. The complainant and the student's mother disagreed.
6. The IEP also included two (2) goals to solve math problems when given a fraction and representing an equivalent fraction in four (4) out five (5) opportunities given, and

when completing two (2) step word problems involving addition, subtraction, multiplication, and division, with eighty percent (80%) accuracy.

7. The IEP required accommodations that included graphic organizers, extended time, and reduced distractions for the student in a small group setting. The supplementary aids, services, and instructional supports required by the IEP included daily use of speech-to-text software, wait time before a response, organizational aids, and the provision of verbal cues. The student was to be given the opportunity to demonstrate knowledge of new concepts by teaching them to younger students, and was to be provided with verbalization and retention strategies.
8. The IEP required daily math connections between new and previously learned material, provision of a pre-writing conference with the student to assist with assignments, frequent and immediate feedback, altered assignments, chunking of texts, and preferential seating.
9. The IEP required that the student receive three (3) hours and thirty (30) minutes of special education instruction weekly to address his reading and writing needs. The IEP also required that the student receive two (2) hours weekly of special education instruction in math. The special education instruction was to be provided in the special education classroom.
10. The math problem solving progress reports, dated January 2018, stated that the student began working on the goal, which was to be achieved by March 9, 2018, during the third (3<sup>rd</sup>) quarter of the IEP and, therefore, progress could not be reported.
11. On February 1, 2018, the student's mother and the FCPS agreed to amend the IEP by adding math tools and a calculator to the IEP accommodations.

#### **April 20, 2018 IEP Team Meeting**

12. On April 20, 2018, the IEP team considered information from the special education teacher that the student, who was in the fourth (4<sup>th</sup>) grade, was reading at grade level expectations with satisfactory comprehension, according to a benchmark assessment. However, his reading fluency was reported as below grade level.
13. The school psychologist reported on a private neuropsychological assessment provided by the student's mother, indicating the student was calculating and solving math problems on a third (3<sup>rd</sup>) grade level. The assessment results also indicated that the student had difficulty recalling basic math facts, using signs of operations, and using mental math strategies and visual spatial representations.
14. The teacher reported a "noticeable decrease" in the student's math skills resulting from the previously conducted educational assessment on April 13, 2015. The teacher reported that,

with assistance, the student is able to talk through the math problem and identify the steps with prompting, use of manipulatives, addition and subtraction algorithms. The teacher also reported that the student is using more than the extended time allotted to complete math assessments. In a report of a classroom observation, the teacher noted that the student used math manipulatives accurately, and given prompting, rephrasing of the questions and wait time, the student was able to use a number line to show fractions.

15. In April 2018, after two (2) quarters of working on the math problem solving goal, and after the goal was to be achieved, the staff documented that the student was not making sufficient progress to achieve the IEP goal, which was revised on May 7, 2018.
16. The reading progress reports, dated April 2018, indicated that the student was making sufficient progress to achieve the reading goals in fluency, comprehension, and phonics.

#### **May 7, 2018 IEP Team Meeting**

17. On May 7, 2018, the IEP team continued the meeting that started on April 20, 2018. According to the school data, the student was achieving on grade level in vocabulary, decoding, word attack skills and reading comprehension, but continued to have difficulty with reading fluency. The school based members of the IEP team disagreed with concerns of the complainant and the student's mother that phonics was a significant area of need for the student. The school staff provided assessment data indicating the student's encoding and decoding skills were on grade level and considered as areas of strength. As a result of the disagreement, the IEP team agreed to collect additional assessment information to determine the student's level of phonological awareness.
18. The IEP team developed goals in the areas of reading fluency, vocabulary, reading comprehension, math calculation, problem solving, and numeration. The IEP team also determined the student was eligible to receive Extended School Year (ESY) services based on emerging math skills.
19. The IEP team determined that the student's services would increase to five (5) thirty (30) minute sessions each of special education instruction in reading and math, in a special education classroom and five (5) fifteen (15) minute sessions of special education instruction per week inside of the general education classroom for math.

#### **June 12, 2018 IEP Team Meeting**

20. On June 12, 2018, the IEP team reconvened to review the results of the Phonological Awareness Skills Test, which indicated that the student scored mastery at grade level on all of the tests administered, including reading (short vowels, long vowels, diagraphs, and blends, and multisyllabic words), fluency and spelling.

21. On a math inventory assessment, the student demonstrated needs related to the third (3<sup>rd</sup>) grade math curriculum. The student's math fact fluency, and addition and subtraction with decimals were identified as areas of need for the student in math.
22. The complainant expressed concerns about the student's phonics skills, stating that he had significant weaknesses that must be addressed through a structured, multisensory literacy program. The Special Education Supervisor shared that there is consistency across several assessment measurements that show the student has eighty percent (80%) accuracy or better and was meeting grade-level expectations, consistently accomplishing a proficiency standard in the area of phonics.
23. The student's mother questioned the validity of the reading assessment data. The Special Education Supervisor stated that the assessments were done with fidelity and were valid for the purposes intended of the assessment. She also shared that if the student was placed in a phonics reading intervention program, he would be removed from grade level curriculum that he is showing mastery toward and placed in a reading intervention without data to support the provision of the intervention. The IEP team noted that there were discrepancies in the student's performance on phonics assessments between those which were performed in school those that were conducted privately.
24. The complainant asserted that the student would benefit from receiving the Language Foundations Intervention.<sup>1</sup> The IEP team discussed the amount of time the student would be missing grade level material in order to participate in the intervention. However, the team added two (2) reading goals to the IEP, to address decoding and encoding real and nonsense words and decoding short versus long vowels, at the mother's request. The IEP team was in agreement that the reading comprehension goal would be addressed in the general education class, during two (2), thirty (30) minute sessions of special education instruction per week.
25. The IEP team added objectives to both math goals. The complainant requested that the time for math special education instruction be increased to five (5) forty-five (45) minute sessions outside of the general education classroom in order for the student to make progress. The IEP team recommended that the student be provided with time to generalize the math skills back to the general education classroom by increasing the math time from five (5) fifteen (15) minute sessions to five (5) twenty (20) minute sessions inside the general education classroom and five (5) thirty (30) minute sessions inside the special education classroom.
26. On the IEP goal reports, dated June 2018, November 2018 and January 2019, the student's progress on the reading goals were reported as making sufficient progress with

---

<sup>1</sup> Language Foundations is a multi-sensory, sequential, structured literacy program created to remediate language based learning differences in students, within a small group setting, 45 minutes per day, 5 days per week (<https://www.wilsonlanguage.com/programs/foundations/>).

the exception of January 2019 where the student was not making sufficient progress on the reading fluency goal (see Finding of Fact #33 ).

27. On the IEP goal reports, dated June 2019, November 2018 and January 2019, the student's progress on the math problem solving goal was reported as not measurable because the skill was newly introduced. The progress report stated that the focus of the math intervention had been on whole numbers and decimals and that fraction word problems were to be addressed during the fourth (4<sup>th</sup>) quarter of the 2018-2019 school year.

### **February 22, 2019 IEP Team Meeting**

28. On February 22, 2019, the IEP team met to discuss the mother's concerns about the student's emotional well-being. The teacher reported that the student gets upset when he has to leave the classroom for the reading intervention and then has to catch up on what was missed and that he was evidencing some fatigue during the reading intervention class. The teacher reported that the student is generally a very happy student and likes being with his peers.
29. The IEP team proposed assessments to determine whether an Emotional Disability is impacting the student's education. The complainant expressed agreement and stated that academic difficulties were the cause of the student's anxiety. The IEP team recommended a psychological assessment, to include emotional and cognitive functioning, educational and phonological processing assessments and classroom observations in reading and math classes.
30. The private speech/language therapist reported that the student paused for great lengths of time when confronted with unknown vocabulary and did not acknowledge punctuation during a reading of a second (2<sup>nd</sup>) grade level text. She reported that the student made forty-one (41) vocabulary and decoding errors. According to the Orton Gillingham Decoding Benchmark, the therapist reported that the student regressed in decoding skills on the three (3) word lists presented.
31. The Special Education Supervisor reported that the student was able to read with between eighty and one hundred percent (80% and 100%) accuracy when administered all thirty-eight (38) word lists with few at the seventy percent (70%) accuracy level. The private speech/language pathologist stated that the student needed to be taught using a sequenced, systematic approach to phonics and master those skills with one hundred percent (100%) accuracy. The complainant indicated that 80% may be acceptable for other students, but it is not acceptable for students with Dyslexia.
32. The IEP team reviewed the results of the following assessments previously administered by the school system:

- On the Math Inventory Assessment, the student scored in the below basic range and based on the standards assessed is working on focused skills for the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) grade levels. He continues to have some gaps, but is moving toward grade level;
  - On the Performance Series Math Assessment, the student received a scaled score of 2130 on September 20, 2018, which is in the “below average range”;
  - On the Phonological Awareness Skills Test (PAST), the student displayed mastery of fourteen (14) out of sixteen (16) components, with one error in syllable segmentation and rhyme completion, at eighty-three percent (83%) which is considered mastery;
  - On the San Diego Quick Assessment, the student read with one hundred percent (100%) accuracy for grades three, four and five (3, 4, and 5) word lists. On the grade six (6) word list, he achieved seventy percent (70%) accuracy;
  - On the Nonsense Word Test I, the student scored one hundred percent (100%) accuracy on short vowels, eighty percent (80%) on long vowels, seventy percent (70%) on digraphs and blends, seventy percent (70%) on other vowels, seventy percent (70%) on multisyllabic words;
  - On the Nonsense Word Test II, the student scored one hundred percent (100%) on consonant/vowel/consonant words, one hundred percent (100%) on consonant/ consonant/vowel/consonant/ consonant/ consonant/vowel/consonant words; one hundred percent (100%) on bossy “r” words; ninety percent (90%) on consonant/vowel/consonant/”e”; one hundred percent (100%) on vowel teams; sixty percent (60%) on more vowels; and eighty percent (80%) on closed and open syllables;
  - On the Read Naturally Placement Tests, the student scored a level four point zero (4.0) at ninety-two (92) words correct per minute at ninety-nine percent (99%) accuracy, level four point five (4.5) at ninety-five percent (95%) words correct per minute at ninety-seven percent (97%) accuracy, level five point zero (5.0) at one hundred three percent (103%) word correct per minute at ninety-eight percent (98%) accuracy, and level five point six (5.6) at sixty-three percent (63%) word comprehension per minute at ninety-one percent (91%) accuracy; and
  - On the Fountas & Pinnell Benchmark Assessment System, the student met the fourth (4<sup>th</sup>) grade fall expectation of level Q, winter expectations R, spring expectations S and T. The results indicate that the student is meeting expectations for comprehension with grade level text, however, he continues to need support within the classroom to gain deeper meaning from grade level text.
33. The IEP team also reviewed the student’s progress report on the reading fluency goal, dated January 2019, indicating that the student did not make sufficient progress to meet the annual goal for reading fluency. The student’s teacher reported that, while the student

has shown an increase in fluency with words correct per minute on assessments since the beginning of the school year, he is not meeting grade level expectancies. The complainant expressed her disagreement with the position that there was an increase in fluency skills.

34. The objective was for the student to read ninety (97) words correct per minute with ninety-five percent (95%) accuracy in three (3) out of four (4) opportunities given. In November 2018, the student read seventy-four (74) words correct per minute, with ninety-eight point seven percent (98.7%) accuracy, in January 2019, he read seventy-six (76) words correct per minute with ninety-six (96%) accuracy, and eighty-three (83) words correct per minute with ninety-eight point eight percent (98.8%) accuracy. The student reads at an inconsistent pace, pausing, re-reading, and slowing down to self-correct which impacts the number of words read per minute with his intonation approaching natural language.
35. In response to the mother's request for an explanation of how the student's fluency score on the benchmark assessment indicated that he was reading fluently, but, he was not meeting grade level standards, the teacher explained that the benchmark scoring criteria was based upon decoding accuracy and comprehension in lieu of words correct per minute. The teacher stated that reading at a slower rate on the reading benchmark assessment is not as concerning since the student is comprehending meaning from grade level text. The complainant disagreed.
36. The IEP team addressed the student's lack of progress on the reading fluency goal by changing the student's reading services from two (2) thirty (30) minute sessions of special education instruction in the general education classroom to five (5) fifteen (15) minute sessions of special education instruction inside of the special education classroom. The decision was based upon information the student's need to be able to increase his focus and attention during class and to obtain more consistent repetition of fluency skills practice of "hot and cold" reads, which build fluency skills.
37. The IEP team reviewed the student's phonics and reading comprehension progress reports, dated January 2019, which indicated that the student was making sufficient progress to achieve the annual goals based upon assessment and classroom data. The reports indicated that the student was able to blend words, segment words, and identify initial, medial, and final sounds in word patterns.
38. The complainant disagreed with the documented progress for the reading comprehension goal but did not provide evidence to show what she described as "significant regression" of the student's comprehension skills.
39. The audio recording of the February 22, 2019 IEP team meeting reflects that the school staff reported that they aligned the introduction of the fraction math skills in the general education classroom with the math intervention sequence of skills to avoid confusion and



to provide more consistency for the student to be able to master grade-level curriculum because the student has difficulty bridging skills from the math intervention class to the general education class.

40. At the February 22, 2019 IEP team meeting, the IEP team reviewed the student's second math problem solving progress report related to fractions, dated January 2019. The math teacher reported that the student does well with teacher support, prompting and provision of a model of the assignment, but that she would like the student to become more of an independent learner. The IEP team did not revise the IEP to address the teacher's concern and there is no indication that the goal will be achieved by May 2019.
41. At the February 22, 2019 IEP team meeting, the complainant expressed concern that the math goal was newly introduced after three (3) quarters of the IEP being implemented. The special education teacher explained that the fraction curriculum had not been introduced in the general education classroom, therefore, school staff determined not to expose the student to fractions within the special education intervention math class. The complainant expressed concern about whether the math intervention was appropriate to meet the student's math needs.

## **CONCLUSIONS:**

### **Allegation #1: IEP that Addresses Reading and Math Needs**

Based on the Findings of Facts #1- #38, the MSDE finds that, while there was conflicting data, there was data to support the IEP team's decisions about how to address the student's reading needs, and the IEP team addressed lack of expected progress on the reading fluency goal, in accordance with 34 CFR §300.320 and .324. Therefore, the MSDE finds no violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #6, #15, #21, #25, #31, and #38 - #41, the MSDE finds that the IEP team has not addressed the lack of expected progress on the math problem solving goal, in accordance with 34 CFR §300.320 and .324. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation.

### **Allegation #2: Progress Reports Consistent with the Data**

Based on the Findings of Facts #4, #10, #15, #16, #26, #32, #35, #36, #39, and #40, the MSDE finds there was data to support the reports made of the student's progress towards achievement of the annual IEP goals, in accordance with 34 CFR §§300.101 and .324. Therefore, the MSDE does not find a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student Specific:**

The MSDE requires the FCPS to provide documentation by June 1, 2019, that the IEP team has convened and revised the IEP to address the lack of progress in math problem solving, determined the amount and nature of compensatory services or other remedy to redress the violation, and developed 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 FCPS to provide documentation by the end of the 2018-2019 school year, of the steps it has taken at the XXXXXXXXXXXXXXXXXXXX to ensure that the IEP team reviews and revises the IEP to address the lack of expected progress on IEP goals. The documentation must include a description of how the FCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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.

The parent and the school system 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: sf

c:	XXXXX	Michelle Concepcion	XXXXX	Sharon Floyd
	XXXXXXXX	Denise Flora	Dori Wilson	
	Theresa Alban	XXXXXX	Anita Mandis	