



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

December 13, 2019

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

RE: XXX
Reference: #20-049

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.

On October 25, 2019, the MSDE received correspondence from Ms. XXXXXXXXX, hereafter “the complainant,” on behalf of her son, the above-referenced student. 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 allegation that the MCPS has not ensured that the student was provided with a Free Appropriate Public Education (FAPE) from November 2018 through September 2019, in accordance with 34 CFR §§300.17, .101, .320, .323 and .324 and COMAR 13A.08.04, based on the following:

- a. The Individualized Education Program (IEP) did not address the student’s academic and behavioral needs;
- b. The special education teacher did not provide the student with special education instruction as required by the IEP; and
- c. Proper procedures were not followed when restraint was used with the student.

BACKGROUND:

The student is four (4) years old and is identified as a student with Developmental Delay under the IDEA and has an IEP that requires the provision of special education instruction and related services.

At the start of the period of time addressed by this investigation, the student attended XXXXX XXXX School. On April 11, 2019, the student was withdrawn from the MCPS and began attending a private preschool, Sandy Springs Friends School, where he was parentally placed.

FINDINGS OF FACTS:

Academic and Social/Emotional Needs

1. The IEP dated October 5, 2018, identifies language, literacy and social foundations as areas of need that are affected by the student's disability. The areas of need are consistent with the data documented in the transition assessment report used to develop the IEP. The assessment further documents that the student experienced 25% delays in the areas of cognition, communication and social, emotional development.
2. On November 4, 2018, without conducting an IEP team meeting, the complainant and the IEP team agreed that speech/language services would be increased from a one hour 45 minute session to two 30 minute sessions, per month, to better meet the student's communication needs.
3. On November 9, 2018, the IEP team met to review the student's progress and determine whether the student's services were appropriate to meet his needs. There is documentation that the IEP team considered that the student was not accessing peers. Further, he requires extensive adult facilitation to initiate all tasks. There is also documentation that the IEP team considered a continuum of placements and determined that the student still needed a Preschool Education Program (PEP) Classic Class¹ in a special education classroom with related services for 12 hours and 30 minutes per week.
4. There is documentation that a private evaluation conducted at the Chesapeake ADHD Center was also used in the development of the IEP. It indicated that the student's needs were in the areas of social and emotional development. It further states that the student's

¹ The [MCPS Preschool Education Program \(PEP\) Classic Classes](http://www.montgomeryschoolsmd.org/departments/special-education/programs-services/preschool.aspx) offers services for children with disabilities ages 3 to 5 with developmental delays in a structured special education setting (www.montgomeryschoolsmd.org/departments/special-education/programs-services/preschool.aspx).

family and the Montgomery County Infant and Toddlers Program (MCITP)² staff were concerned about the student's understanding and use of language, his problem-solving skills and play, and his lack of social engagement with adults and peers.

5. The student was 35 months old at the time of the development of the IEP and the IEP documented that his social development performance was measured at 22 months. The IEP also documents that the student has difficulty following verbal directions in all settings and responding to verbal language. It further states that the student requires constant adult support to participate and complete familiar classroom routines.
6. The IEP documents that the student's language and literacy skills range between 18 to 30 months. It states that the student has developed several rote skills and acquires concepts that have a visual component. It further states that the student has difficulty using and understanding language during literacy tasks and daily activities. The IEP reflects that the student is not yet spontaneously using the bank of language that he has or demonstrating the things he knows without adult prompting. There is also documentation that the student uses less language during childcare and "at home his language is mostly redundant and does not inform or engage others." The IEP further states that the student has "difficulty making verbal choices, following verbal directions, participating in songs and fingerplays and answering simple questions about books." The IEP documents that expressive and receptive language are areas of the student's special communication needs.
7. The IEP states that the student is not yet initiating or maintaining back and forth exchanges verbally or in play. It further states that the student is not yet imitating a variety of gestures during adult led activities and pretend play and his attention span for structured activities is brief. On the social-emotional domain of the evaluation, which measures how students interact and play with their family, other adults and students, and includes the student's beginning understanding of social rules, the student demonstrated that he was able to ask for help and quietly listen to the television. The evaluation also documents the complainant's concerns about the student's lack of social engagement with others.
8. The IEP also states that the student requires prompting and specific structure to be able to show his understanding to classroom requests, interact with books, and play. It further states that "he does not yet sit to read age appropriate books and he is not asking or responding to questions." It further states that "the student is not yet using words to get his needs met." The IEP also documents that the student is not yet verbally asking for food or indicating when he is hungry, preferences, or when he needs assistance. The IEP further documents that the "student prefers his mother to help him finish meals by being fed by her."

² The student had an Individualized Family Service Plan for 8 months, until the age of 25 months, and prior to the age of 3 years old.

9. The IEP requires many supplementary supports, including wait time for processing and responding to directions, repeated practice as a means to increase independence, visual and verbal cues to increase understanding of classroom routines and expectations, a picture schedule to increase independence when completing classroom routines, use of social stories, multi-sensory cuing, and adult facilitation to assist the student with accessing and participating in social interactions and play, manipulatives and sensory activities to assist the student with connecting to tasks, physical prompts to access classroom tasks and demands, and preferential seating to enable face-to-face focus on the speaker.
10. The IEP identifies 5 goals for early learning skills of social foundations and language and literacy including requiring that the student to be able to expand play, increase participation in classroom routines and activities, demonstrate an understanding of pictures, stories, sounds, and gestures, use 3 to 4 word phrases during verbal interactions with adults and peers and demonstrate an understanding of following directions by giving an appropriate response.
11. The IEP further documents that the goals require the student receive multisensory learning experiences, multiple practice opportunities, and fading adult support to use words to communicate turn-taking, initiate and interact with peers, demonstrate parallel play, and engage in multi-step pretend play. It also requires the student participate in large and small group activities and complete multi-step daily classroom routines.
12. The IEP requires 11 hours and 45 minutes per week of specialized instruction in early learning skills including social foundations and language and literacy in a PEP Classic separate structured special education classroom. It further requires 1 hour per week of speech/language services, 30 minutes embedded within the early learning skills and the remaining 30 minutes as a separate therapy to address the student's significant communication needs. The IEP also documents the student's need to access communication and social emotional skills needs.

Special Education Instruction Provided by the Special Education Teacher

13. The IEP progress reports dated January 25, 2019, reflects that the student was making sufficient progress to meet the goals by October 4, 2019.
14. There is documentation that the special education teacher was absent 6 days in November 2018, one day in December 2018, one day in January 2019, and one day in February 2019. There is documentation that when the teacher was absent, a substitute teacher with appropriate credentials was obtained, in accordance with the MCPS policy for substitute teaching.

Proper Procedures Using Restraint

15. The IEP dated October 5, 2018, does not provide for the use of physical restraint nor is it identified as part of a behavior intervention plan. Further, there is no documentation that physical restraint was used with the student.
16. There is documentation that the complainant expressed concerns to the school staff that on February 14, 2019, she reported that she observed a staff member engaging in inappropriate physical contact with her son.
17. There is documentation that on March 4, 2019, the assistant principal met with the staff member and obtained conflicting information about what had occurred. The documentation reflects that the assistant principal discussed with the staff member, the need to ensure appropriate contact with all students with the staff member.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #12, the MSDE finds that the IEP addressed the student's academic and behavioral needs and regularly monitored his progress, in accordance with 34 CFR §§300.17, .320, and .324. Therefore, the MSDE finds no violation with this aspect of the allegation.

Based on the Findings of Facts #13 - #15, the MSDE finds that the student was provided with the special education by a special education teacher provided the student with special education instruction, in accordance with 34 CFR §§300.17, .101, and .323. Therefore, the MSDE finds no violation with this aspect of the allegation.

Based on the Findings of Facts #16 - #18, the MSDE finds that there is no evidence that physical restraint was used with the student, in accordance with 34 CFR §300.17 and COMAR 13A.08.04. Therefore, the MSDE finds no violation occurred with this aspect of the allegation.

TIMEFRAME:

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.

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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/sf

c: Jack Smith
Kevin Lowndes
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