



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

December 31, 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: XXXXX
Reference: #20-052

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 November 7, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 did not ensure that the student was consistently provided with the accommodations and supplementary supports required by the Individualized Educational Program (IEP), from November 7, 2018 through the end of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is nine (9) years old and is identified as a student with an Other Health Impairment under the IDEA relating to Attention Deficit Hyperactivity Disorder (ADHD).

During the time period covered by the investigation, the student attended XXXXXX Elementary School (XXXXXX ES) and had an IEP that required the provision of special education and related services. In September 2019, the complainant withdrew the student from the MCPS and parentally placed him in the XXXXXX, a private school.

FINDINGS OF FACTS:

1. The IEP in effect since November 7, 2018 identifies that the student's disability impacts his written language and self-management behavior skills, and includes two (2) annual goals to address these areas of need.
2. Since November 7, 2018, the IEP has required several instructional and assessment accommodations, including the following: graphic organizer, clarification of directions, directions read aloud and repeated, frequent breaks, reduced distractions, a human scribe for math and science responses, and extended time.
3. Since November 7, 2018, the IEP has also required numerous supplementary supports, including the following: a personal "word wall," oral rehearsal before writing, checklists for task completion, proofreading checklist, opportunities to write in a small group, opportunities to orally explain mental math, strategies to initiate and sustain attention, structured time for organization of materials, frequent changes in activities and opportunities for movement, and chunking of text. The IEP reflects that the supplementary supports are required on a daily basis and "across all instructional settings."
4. The MCPS acknowledges that there is no documentation of the provision of accommodations and supplementary supports required by the IEP. While there is documentation that the school staff developed a weekly checklist to record the provision of IEP supports to the student, the MCPS also acknowledges that there is no documentation of completed checklists.
5. There is documentation that, at the April 23, 2019 IEP annual review meeting, the complainant reported that she was "happy" with the student's teacher, and that the student was "doing well on a daily basis," and that he was "very proud of his writing."¹
6. The teacher reports which were considered by the team at the April 2019 IEP meeting document that the student was functioning on grade level in written language and that the teachers had no concerns about the student's academic or behavioral performance.
7. The IEP goal progress reports for the 2018 - 2019 school year document that the student achieved the IEP self-management goal, and that he was making sufficient progress towards achieving the IEP written language content goal.

¹ There is no documentation that the complainant expressed any concern about the lack of provision of accommodations or supplementary supports at the April 2019 IEP meeting.

8. The student's report card for the 2018 - 2019 school year reflects that his fourth (4th) quarter grades consisted of As in science, social studies, art, music and physical education courses, and Bs in math, writing and reading courses. It further reflects that the student's "end of year average" was an A in all subject areas.
9. The student's report card also reflects that, while the student was reading on grade level at the start of the 2018 - 2019 school year, his reading improved to "above grade level" at the end of the 2018 - 2019 school year.

CONCLUSIONS:

Based on the Findings of Facts #1 - #4, the MSDE concurs with the MCPS's acknowledgment, and therefore finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Findings of Facts #5 - #9, the MSDE finds that the student achieved educational benefit from his program, and therefore no student-specific corrective action is required.

CORRECTIVE ACTION/TIMEFRAMES:

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 timeframes below to ensure that noncompliance is corrected in a timely manner.² 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 any of the timeframes 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.³ Dr. Birenbaum can be reached at (410) 767-7770.

² 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.

³ 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.

School-Based

The MSDE requires the MCPS to provide documentation by February 15, 2020 of the steps it has taken, including training, to ensure that the XXXX ES staff are properly documenting the provision of IEP accommodations and supports, as required by students' IEPs.

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: Jack R. Smith
Kevin Lowndes
Julie Hall
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