



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

February 5, 2020

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Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: XXXXX
Reference: #20-066

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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 December 10, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) 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 CCPS has not ensured that the student has consistently been provided with the accommodations required by the Individualized Education Program (IEP) since October 18, 2019, in accordance with 34 CFR §§300.101 and .323.
2. The CCPS has not ensured that the student’s IEP addresses her behavioral needs since October 18, 2019, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is fourteen (14) years old, attends XXXXXXXXX High School, and is identified as a student with Multiple Disabilities under the IDEA, including a Specific Learning Disability and Attention Deficit Hyperactivity Disorder (ADHD). She has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: PROVISION OF ACCOMMODATIONS

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with accommodations, such as an instruction sheet, word choices/dictionary, immediate breaks, a highlighter, proofreading checklist, staff checks for understanding, paraphrased information, visual aids, computer access for long responses, wait time for answering questions, and chunking of texts. It also requires that the complainant be informed regarding missed assignments by the student.
2. The CCPS acknowledges that there is not sufficient documentation to reflect the consistent provision of the accommodations required by the IEP, since October 18, 2019.

CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE concurs with the finding that a violation occurred and appreciates the CCPS acknowledgement.

ALLEGATION #2: AN IEP THAT ADDRESSES THE STUDENT'S BEHAVIOR NEEDS

FINDINGS OF FACTS:

3. The student's IEP identifies social/emotional behavior as an area of need, and includes an annual goal to assist her with interacting respectfully with adults and peers. The IEP also requires support such as reminder of school rules, private conversation with the student regarding negative behavior, and communication with the complainant regarding negative peer or staff interaction in all classes.
4. The student's Behavior Intervention Plan (BIP) addresses the need for appropriate engagement with adults without displaying disrespectful or insubordinate behavior. The BIP includes replacement behaviors, preventative measures, and teaching strategies to assist the student with managing the behavior.
5. On October 31, 2019, the IEP team convened to review the student's IEP and to consider student and parental input, and teacher updates on current classroom performance. The student's teachers reported that her "behavior has been great and that she has not had any behavioral outburst." However, the team also discussed the student's lack of work

completion and that she has demonstrated frustration at times when completing assignments. The team further reported that the student utilizes designated school time for students to complete assignments, but that her grades reflects incomplete class assignments.

6. There is documentation that, since the IEP team convened on October 31, 2019, the student demonstrates “less adverse behaviors and is more academically engaged and successful with completing work in settings with smaller student to teacher ratios.” However, the student has continued to struggle with completing classroom assignments and remaining on task, and the team has not convened to address the interfering behavior related to incomplete class assignments.

CONCLUSION:

Based on the Findings of Facts #3 - #6, the MSDE finds that, although the IEP team convened on October 31, 2019 and discussed the student’s inability to complete class assignments, the team has not considered the use of positive behavioral interventions and supports, or other strategies, to address the behavior, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

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

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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.

Student-Specific

The MSDE requires the CCPS to provide documentation by March 31, 2020 that the student's accommodations are consistently being provided as required by the IEP.

The MSDE also requires that the CCPS to provide documentation by March 31, 2020 that the IEP team has convened to discuss the lack of the provision of accommodations, and positive behavioral interventions and supports, or other strategies, to address the student's inability to complete class assignments. The team must determine whether the violations had a negative impact on the student's ability to benefit from the education program.

If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violations and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The CCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the CCPS to provide documentation by April 30, 2020 of the steps taken to ensure that the violations do not recur at XXXXXXXX High School.

TECHNICAL ASSISTANCE:

Technical assistance is also available to the parties by contacting Dr. Nancy Birenbaum.

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.

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,

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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/Special Education Services

MEF:ac

c: Kimberly Hill
Lewan Jones
XXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum