



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

March 6, 2020

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Dr. Terrell Savage
Executive Director of Special Education
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, 21042

RE: [REDACTED]
Reference: #20-082

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.

ALLEGATION:

On January 8, 2020, the MSDE received a complaint from [REDACTED] Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, [REDACTED]. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the HCPS has not ensured that the student’s Individualized Education Program (IEP) addresses all of the needs that arise out of his disability, in accordance with 34 CFR §§300.101, .320, and 324.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment under the IDEA, related to Attention Deficit Hyperactivity Disorder (ADHD). He attends [REDACTED] and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The IEP in effect at the start of the time period addressed by this investigation was developed on May 23, 2018. It states that the student was meeting grade level expectations in math and below grade level expectations in reading, written language, and social, emotional, and behavioral functioning. However, the IEP did not indicate the data that was used to determine levels of performance in math and written language, and the data that was used to determine his level of performance in reading was not current data.
2. The IEP included goals for the student in the areas of reading, written language, and social, emotional, and behavioral functioning to be achieved by May 2019, and required special education instruction, related psychological services, and other supports to assist the student with achieving the goals. It also included a Behavior Intervention Plan (BIP) that includes target behaviors consistent with the data, as well as replacement behaviors, preventative measures, and teaching and response strategies to address the behaviors.
3. The reports of the student's progress towards achievement of the annual IEP goals made in February 2019 reflect that the student was not making sufficient progress on one (1) of the social, emotional, and behavioral goals. By April 2019, the student was reported to not be making sufficient progress towards achievement of either of the two (2) social, emotional, and behavioral goals.
4. While the IEP team met on April 29, 2019 and determined that the student requires Extended School Year (ESY) services due to his interfering behaviors and significant skill deficits in reading and self-management, the team did not address the lack of expected progress on the social, emotional, and behavioral goals.
5. On June 3, 2019, the IEP team met and documented that the student's behaviors continued to interfere with his progress. At that time, the team added adult support to the IEP and revised the BIP to include updated strategies to address the behaviors. The team continued the goals for another year without explanation.
6. The student did not attend school at the start of the 2019 - 2020 school year, and on September 12, 2019, his mother applied for Home and Hospital Teaching (HHT) services. However, she did not provide verification of the student's need due to a medical or an emotional condition that prevented him from attending school at that time.
7. On September 23, 2019, the IEP team convened and decided that psychological and educational assessments were needed. The team discussed that it would need to reconvene to determine HHT services once the student's mother provided the necessary verification of need.

8. On October 7, 2019, the student's mother provided verification of the student's need for HHT services, effective until December 6, 2019.
9. On October 7, 2019, the IEP team also determined the services to be provided in the home. The team did not develop a plan for transitioning the student back to a school-based program at that time.
10. On December 5, 2019, the IEP team convened and discussed that the student had not returned to school and that his mother was attempting to obtain a re-verification of his continued need for HHT services. The team did not develop a plan for transitioning the student back to a school-based program at that time.
11. On December 17, 2019, the IEP team considered the results of psychological and educational assessments. The team considered several categories of disabilities, including Specific Learning Disability, when conducting the reevaluation. The team determined that the student does not meet the criteria for identification as a student with a Specific Learning Disability because the results of the psychological assessment indicate an "area of deficit in phonological processing," but does not indicate that a psychological processing disorder exists. The team determined that the student continues to meet the criteria for identification as a student with a Other Health Impairment under the IDEA, based on ADHD.
12. At the same meeting, the team discussed that the student had not yet returned to school and that the school system had not received a re-verification of his need for HHT services. However, the team decided to delay revision of the IEP based on the reevaluation data and did not develop a plan to transition the student back to a school-based program.
13. On January 9, 2020, the IEP team reconvened and began revising the IEP based on the reevaluation data. The IEP was revised to include present levels of performance based on the data, goals for the student to improve his skills in the areas of need, and special education services to assist him with achieving the goals. The BIP was again revised to include additional interventions and supports. The IEP team decided that the revised IEP could not be implemented in the current educational placement and that they would reconvene with participation by the HCPS Central Office staff to consider a more restrictive setting. This meeting is scheduled for March 12, 2020.
14. To date, the student has not returned to school and is not receiving HHT services because re-verification of need was not provided. There is no documentation that the IEP team has developed a plan to transition the student back to a school-based program from HHT services.

CONCLUSIONS:

Based on the Findings of Facts #1 - #13, the MSDE finds that the HCPS did not ensure that the IEP was based on the present levels of performance from January 8, 2019 until January 9, 2020, in accordance with 34 CFR §300.320.

Based on the Findings of Facts #1 - #4, the MSDE further finds that the HCPS did not ensure that the IEP team addressed the lack of expected progress on the social, emotional, and behavioral goals from February 2019 until June 3, 2019, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #6 - #14, the MSDE also finds that the HCPS has not ensured that a plan to transition the student back to a school-based program has been developed since the initiation of HHT services in October 2019, in accordance with COMAR 13A.05.01.10.

Based on the above, the MSDE finds that violations occurred, and that the HCPS has not ensured that the IEP addresses the student's needs. Therefore, this office finds that the HCPS has not provided the student with a Free Appropriate Public Education (FAPE) since January 8, 2019.

The MSDE reminds the parties that, because the student is of compulsory school age, steps must be taken immediately to ensure the student returns to school without delay.

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

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.

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.

Student-Specific

The MSDE requires the HCPS to provide documentation, by the end of the 2019 - 2020 school year, that the IEP team has taken the following action:

- a. Determined an appropriate placement for the student;
- b. Developed a transition plan to return the student back to a school-based program;
- c. Determined the amount and nature of compensatory services to be provided until the student returns to school; and
- d. Developed a plan for the provision of those services within one year of the date of this Letter of Findings.

The HCPS must ensure that the parent is provided with written notice of the team's decisions. The parent 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 HCPS to provide documentation by the start of the 2020 - 2021 school year of the steps taken to ensure that the violations do not recur at [REDACTED]

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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The

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.

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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: [REDACTED] Michael J. Martirano
Kathy Stump [REDACTED]
Dori Wilson Anita Mandis
Albert Chichester Nancy Birenbaum