




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

March 11, 2020




Dr. Terri Savage
Executive Director of Special Education
Howard County Public Schools
10901 Clarksville Pike
Columbia, Maryland 21042

RE: 
Reference: #20-087

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.

ALLEGATIONS:

On January 15, 2020, the MSDE received a complaint from Ms.  hereafter “the complainant,” on behalf of her son, the above-referenced student. 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 student.

The MSDE investigated the following allegations:

1. The HCPS has not provided the student with accommodations required by the Individualized Education Program (IEP) since January 15, 2019, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged that the student has not been provided with the following:
 - a. Eliminating answer choices;
 - b. Bookmark items for review;
 - c. General directions clarified, and read aloud, and repeated as needed;
 - d. Frequent breaks;
 - e. Reduced distractions; and
 - f. Notes and outlines from teachers.

2. The HCPS has not provided the student with supplementary supports required by the IEP since January 15, 2019, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged that the student has not been provided with the following:
 - a. Check off lists during independent work;
 - b. Proofreading checklist;
 - c. Organization system;
 - d. Breaking down assignments into smaller units;
 - e. Positive reinforcers; and
 - f. Frequent breaks.
3. The HCPS did not ensure that the IEP team's November 12, 2019 decision about the student's need for specialized instruction throughout the day in smaller classes with a special educator, was based on data regarding the needs of the student, in accordance with 34 CFR §§300.101, .320 and .324.

BACKGROUND:

The student is fourteen (14) years old and has an IEP that requires the provision of special education and related services. At the start of the investigation period, the student was identified as a student with an Other Health Impairment (OHI) under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). On October 1, 2019, after considering additional data, the student's disability coding was changed to an Intellectual Disability.

At the start of the investigation period, the student was attending [REDACTED] ([REDACTED]). On February 21, 2020, the complainant withdrew the student from the HCPS due to relocation to Baltimore County, Maryland.

ALLEGATIONS #1 AND #2

IEP IMPLEMENTATION

FINDINGS OF FACTS:

1. The IEP in effect on January 15, 2019 was developed on October 15, 2018. The IEP was subsequently revised on January 25, 2019 and November 12, 2019.

Accommodations

2. The October 2017 MSDE Maryland Assessment, Accessibility & Accommodations Manual (Accommodations Manual) defines accessibility features as "tools or preferences that are offered in the classroom instruction, offered in classroom-based assessments and, in many cases, built into the assessment system," that can be used by any student. The

Accommodations Manual states that “Since the accessibility features are intended for all students, they are not classified as accommodations.”

3. Since January 15, 2019, the IEP has referenced, but has not required, the following “accessibility features” that are available to all students:
 - Eliminate answer choice.
 - Bookmark (Flag items for review).
 - General administration directions clarified.
 - General administration directions read aloud and repeated as needed.
4. Since January 15, 2019, the following items, while also identified as “accessibility features” available for all students,” have been required by the IEP:
 - Frequent breaks.
 - Reduced distractions to self.
 - Reduced distractions to others.
5. There is no documentation that, since January 15, 2019, the student has been provided with frequent breaks, reduced distractions to self, and reduced distractions to others during instruction and assessments.
6. Since January 25, 2019, the IEP has included a presentation accommodation that requires that the student be provided with notes and outlines during instruction. Similarly, the IEP has also included a supplementary support requiring that the student be provided with copies of student/teacher notes on a daily basis, since January 25, 2019.
7. While there is documentation that the student was provided with notes in March 2019, January 2020, and February 2020, there is no documentation of the provision of notes and outlines at any other times since January 25, 2019.

Supplementary Supports

8. Since January 15, 2019, the IEP has required the following supplementary supports:
 - Check-off lists when working independently.
 - Breaking down assignments into smaller units, required daily.
 - The use of positive/concrete reinforcers.
 - Frequent changes in activities or opportunities for movement “to give him a break.”
 - Assistance with organization, required daily.
9. There is no documentation that the student’s assignments were broken down into smaller units on a daily basis, or that he has been provided with check-off lists, the use of positive/concrete reinforcers, and frequent breaks, since January 15, 2019.

10. While there is documentation that, during the second (2nd) quarter of the 2019 - 2020 school year, the student was provided with assistance with organization, there is no documentation of daily assistance to the student with organization.
11. Since November 12, 2019, the IEP has included a supplementary support requiring that the student be provided with a proofreading checklist on a daily basis. There is no documentation of the provision of proofreading checklists to the student.

Progress

12. On April 5, 2019, the school staff documented that the student was not making sufficient progress towards mastery on any of the four (4) IEP annual goals.
13. The student received Es in all of his core academic classes for the third (3rd) quarter of the 2018 - 2019 school year.
14. The student received two (2) Es in core academic classes as his final year-end grades for the 2018 - 2019 school year.
15. The student's performance on the State assessment in English Language Arts during the 2018 - 2019 school year was lower than his scores on the State assessment during each of the previous four (4) school years.
16. On November 1, 2019, the school staff documented that the student was not making sufficient progress towards mastery on the IEP math and self-management annual goals.
17. The student received two (2) Es in core academic classes for the first (1st) quarter of the 2019 - 2020 school year.
18. On January 24, 2020, the school staff documented that the student was not making sufficient progress towards mastery on the IEP math and self-management annual goals.
19. The student received two (2) Es in core academic classes for the second (2nd) quarter of the 2019 - 2020 school year.

CONCLUSIONS:

Allegation #1 Provision of IEP Accommodations

Based on the Findings of Facts #1 - #3, the MSDE finds that the IEP did not require that the student be provided with accessibility features for eliminating answer choices, bookmarks, or directions that are clarified, read aloud, or repeated. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #1 and #4 - #7, the MSDE finds that there is no documentation that, since January 2019, the student was provided with notes and outlines during instruction, or that he was provided with frequent breaks, reduced distractions to self and others, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegation.

Allegation #2 Provision of IEP Supplementary Supports

Based on the Findings of Facts #8 - #10, the MSDE finds that there is no documentation that, since January 15, 2019, the student's assignments were broken down into smaller units on a daily basis, that he was provided assistance with organization on a daily basis, or that he was provided with check-off lists during independent work, positive/concrete reinforcers, and frequent breaks, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegation.

Based on the Finding of Fact #11, the MSDE also finds that there is no documentation that, since November 12, 2019, the student has been provided with proofreading checklists, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #12 - #19, the MSDE further finds that the violations had a negative impact on the student's education program.

**ALLEGATION #3 IEP TEAM DECISION ON NOVEMBER 12, 2019
REGARDING THE STUDENT'S NEED FOR ALL SPECIALIZED
INSTRUCTION IN SMALLER CLASSES**

FINDINGS OF FACTS:

20. On November 12, 2019, the IEP team convened to conduct the annual review of the student's educational program. The complainant expressed her belief that the student "is not getting the assistance he needs" and that he is "falling further behind." The complainant noted her earlier request for smaller class sizes, and the written summary of the meeting documents the complainant's expressed concern about "what we are going to do differently" to assist the student.
21. There is no documentation that the complainant's request for smaller class sizes for the student has been addressed by the IEP team.

CONCLUSION:

Based on the Findings of Facts #20 and #21, the MSDE finds that there is no documentation that the IEP team has addressed the complainant's request for smaller classes for the student, in accordance with 34 CFR §300.324. Therefore, the MSDE finds a violation with respect to the allegation.

CORRECTIVE ACTION/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 timeframes 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 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.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the HCPS to provide documentation by June 1, 2020, that it has requested that the BCPS convene an IEP team meeting with HCPS participation to consider the complainant's request for small class sizes and determine the amount and nature of compensatory services or other remedy, to be provided or paid for by the HCPS, for the student's loss of services from January 2019 until February 2020.

School-Based

The MSDE requires the HCPS to provide documentation by the end of the 2019 – 2020 school year, of the steps it has taken to ensure that the [REDACTED] staff are implementing and properly documenting the provision of IEP accommodations and supports, as required by students' IEPs. The MSDE also requires the HCPS to provide documentation of the steps taken to ensure that the [REDACTED] ES staff consider parent concerns and requests, and understand the legal requirements to develop IEPs that are based on the individual needs of students and not on the availability of resources in a particular school building. The

¹ 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.

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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documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

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: Michael J. Martirano
Kathy Stump
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Anita Mandis
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