

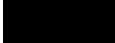


Karen B. Salmon, Ph.D.
State Superintendent of Schools

June 8, 2020





Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: 
Reference: #20-118

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 April 9, 2020, the MSDE received a complaint from Mr.  and Mrs.  hereafter, “the complainants,” on behalf of their 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 above-referenced student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Behavioral Intervention Plan (BIP) addresses the antecedent to the student’s interfering behavior, since the start of the 2019 - 2020 school year, in accordance with 34 CFR §300.324.
2. The MCPS did not ensure that the Individualized Education Program (IEP) meetings convened on October 10, 2019 and December 5, 2019 included the required participants, in accordance with 34 CFR §300.321.

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3. The MCPS did not ensure that the IEP team addressed the request for a change in educational placement made at the October 10, 2019 IEP team meeting, in accordance with 34 CFR §300.324.
4. The MCPS did not provide Prior Written Notice (PWN) of the IEP team's December 5, 2019 decision regarding a change in the student's educational placement, in accordance with 34 CFR §300.503.
5. The MCPS has not ensured that reports of the student's progress towards achievement of the annual IEP goals have been consistent with the data during the 2019 - 2020 school year, in accordance with 34 CFR §300.324.
6. The MCPS has not ensured that the student has been provided with the support required by the BIP and assistance with organization, maintaining attention, and completing work required by the IEP during the 2019 - 2020 school year, in accordance with 34 §§300.101 and 323.

Exceptional Circumstance Timeline Extension

While the IDEA requires that complaint investigations be completed within sixty (60) days of receipt of the State complaint, it permits an extension of the timeline if exceptional circumstances exist with respect to a particular complaint.

In this case, the MSDE has determined that exceptional circumstances exist with respect to Allegation #6, which requires the extension of the timelines for completion of this Allegation. Specifically, the MCPS has indicated that documentation exists to demonstrate compliance with the requirements related to Allegation #6, but that the school system does not currently have access to the documentation due to the closure of schools in response to the COVID-19 outbreak.

Therefore, the timelines for completion of Allegation #6 are being extended to thirty (30) days after the reopening of schools within the MCPS. Because there is access to sufficient documentation to complete the investigation of the remaining allegations, this report contains the results of the investigation into the remaining allegations. A separate Letter of Findings addressing Allegation #6 will be issued within thirty (30) days after the reopening of schools within the MCPS.

BACKGROUND:

The student is twelve (12) years old and is identified as a student with Autism under the IDEA. He has an IEP that requires the provision of special education instruction and related services.

The student is placed at the [REDACTED] School, where he attended school until a March 16, 2020 Statewide closure of all schools as a result of the national COVID-19 pandemic.

ALLEGATIONS #1 - 4: IEP DEVELOPMENT

FINDINGS OF FACTS:

1. The student's BIP, dated February 28, 2019, which was in effect at the start of the 2019 - 2020 school year, states the following:
 - a. The student is "likely to demonstrate emotional outbursts, such as crying and ripping up paper, which occurs when he is being told no to something that he wants, when he perceives a peer as bothering him, or when he becomes stuck on an interaction/event that occurred and he is unable to let it go."
 - b. The student is not "likely to initiate or complete academic tasks, which occurs when he is preoccupied with other concerns that occurred prior to the academic task."
 - c. The student is not "likely to attend to task or instruction, which occurs when he is given writing activities and independent work."
2. The BIP includes preventative and response strategies to assist the student with managing his behavior. It also reflects that for implementation, the school staff will "review the BIP with all staff working with the [student], create behavior contract and monitoring tools, and decide on common language for frustration management."

October 10, 2019 IEP Team Meeting

3. On October 10, 2019, the IEP team convened to review and revise the student's IEP, as appropriate. The IEP team meeting sign-in sheets reflect that all the required participants were in attendance at the meetings. The MCPS does not acknowledge that any of the participants left the meeting early and there is no documentation reflecting that the school staff left the IEP team meeting before it was concluded.
4. The October 10, 2019 meeting summary reflects a statement that the IEP team previously determined on June 10, 2019, that the student would receive educational services in his "home middle school," which was the Least Restrictive Environment (LRE) for the student. The team reviewed the student's progress reported by his teachers in his current educational placement and revised the IEP to include additional accommodations to support the student throughout the school day. The documentation of the meeting states that the complainants expressed concern about the student's academic and behavioral progress and requested a meeting in "ninety (90) days to evaluate the effectiveness of the IEP support and to "discuss whether or not another placement is needed," and an IEP team meeting was scheduled in response.

December 5, 2019 IEP Team Meeting

5. On December 5, 2019, the IEP team convened to review the student's IEP and progress. The meeting sign-in sheets reflect that all the required participants were in attendance at the IEP team meetings.
6. The MCPS acknowledges that the written documentation of the IEP team meeting does not contain sufficient information to give the complainants prior written notice of the decisions made at the meeting.

CONCLUSIONS:

Allegation #1: BIP that Addresses the Antecedent to the Student's Behavior

Based on the Findings of Facts #1 and #2, the MSDE finds that the MCPS has ensured that the BIP addresses the antecedent to the student's interfering behavior, since the start of the 2019 - 2020 school year, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: Required IEP Team Participants

Based on the Findings of Facts #3 and #5, the MSDE finds that the MCPS ensured that the IEP meetings convened on October 10, 2019 and December 5, 2019 included the required participants, in accordance with 34 CFR §300.321. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3: Response to the October 10, 2019 Request for a Change in Educational Placement

Based on the Finding of Fact #4, the MSDE finds that the MCPS did ensure that the IEP team addressed the complainants' request for a change in educational placement made at the October 10, 2019 IEP team meeting, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4: Provision of Prior Written Notice for the December 5, 2019 IEP Team Meeting

Based on the Finding of Fact #6, the MSDE finds that prior written notice was not provided of the team's decisions, in accordance with 34 CFR §300.503, and that a violation occurred with respect to the allegation.

ALLEGATION #5: PROGRESS REPORTS CONSISTENT WITH THE DATA

FINDING OF FACT:

7. The MCPS acknowledges that the progress reported on the annual goals is not consistent with the evaluation method and measurement criteria.

CONCLUSION:

Based on the Finding of Fact #7, the MSDE finds that reports of the student's progress towards achievement of the annual IEP goals have not been consistent with the data during the 2019 - 2020 school year, 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.¹ This office will follow up with the public agency to ensure that it completes the required actions.

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.

Student-Specific

The MSDE requires the MCPS to provide documentation that the IEP team has determined the student's progress, consistent with the data, addressed any concerns expressed by the complainants, and revised the IEP, as appropriate. The IEP team must also determine whether the violations had a negative impact on the student's abilities to benefit from his educational

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.

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program, and if so, determine the amount and nature of compensatory services or other remedy to redress the violations.

School-Based

The MCPS has proposed to provide training to the special education department at [REDACTED] Middle regarding the legal requirements of prior written notice and progress monitoring, and to provide any additional coaching as necessary. The MSDE requires the MCPS to provide documentation that these steps are taken to ensure that the violations do not recur.

Documentation of completion of the 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 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, 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: Jack R. Smith [REDACTED]
Kevin Lowndes Dori Wilson
Julie Hall Anita Mandis
Tracee Hackett Albert Chichester
[REDACTED] Nancy Birenbaum