




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

August 17, 2020




Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: 
Reference: #20-139

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 June 18, 2020, the MSDE received a complaint from Ms.  hereafter “the complainant,” on behalf of her daughter, 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 following allegations:

1. The MCPS did not ensure the opportunity for parent participation when revising the Individualized Education Program (IEP) on November 11, 2019, in accordance with 34 CFR §300.322.
2. The MCPS did not provide Prior Written Notice (PWN) of the decisions made in response to requests for special education instruction to be provided in “co-taught” English and math classes and in “supportive” science and social studies classes, in accordance with 34 CFR §300.503.

3. The MCPS has not ensured that the IEP has been implemented, as follows, in accordance with 34 CFR §§ 300.101 and .323.
 - a. The MCPS did not ensure that the student was consistently provided with a “co- taught” English class and the accommodations, supplementary aids and services, program modifications and supports in English class required by the IEP from September 2019 to March 2020;
 - b. The MCPS did not ensure that the student was consistently provided with a “co-taught” math class and the accommodations, supplementary aids and services, program modifications and supports in math class required by the IEP from January 27, 2020 to March 13, 2020; and
 - c. The MCPS has not ensured that the student has been provided with the speech/language services required by the IEP since April 6, 2020.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education and related services. The student attended [REDACTED] until the March 16, 2020 Statewide closure of all schools as the result of the national COVID-19 pandemic.

**ALLEGATION #1 PARENT PARTICIPATION IN DECISIONS MADE ON
NOVEMBER 11, 2019**

FINDINGS OF FACTS:

1. On November 11, 2019, an amendment was made to the IEP dated April 29, 2019, without an IEP team meeting being held. The amendment reduced the number of special education instruction service hours.
2. The MCPS acknowledges that there is no documentation that the parent was informed of the changes made to the IEP , or agreed to amending the IEP without an IEP team meeting. The MCPS reports that the changes were made for the purpose of adjusting the services hours to reflect the class periods of the high school setting, as well as correcting a typographical error on the IEP.
3. The IEP progress reports issued in reading dated November 8, 2019, January 24, 2020, and April 17, 2020, indicated that the student was making sufficient progress to meet her reading goals, based on a grade of A in Basic reading and teacher reports.
4. The IEP progress reports issued in reading dated November 8, 2019, January 24, 2020, and April 17, 2020, indicated that the student was making sufficient progress to meet her math goals, based on a grade of A in Geometry and teacher reports.

5. The student's report card grades for school year 2019-2020 are reported as indicated in the chart below:

Class	Q1	Q2	Q3	Q4
Basic Reading	98.7 A	94.6 A	97.8 A	P
Honors Geometry	90.4 A	91.9 A	70.0 C	P
Honors English	93.4 A	84.3 B	86.2 B	P
Honors US History	84.8 B	77.8 C	80.3 B	P
Honors Biology	94.7 A	91.1 A	89.6 B	P

CONCLUSIONS:

Based on the Findings of Facts #1 - #5, the MSDE finds that the IEP was amended without agreement of the complainant and without providing her with written notice of the amendment, in accordance with 34 CFR §324. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #2 PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

6. On May 21, 2020, an annual IEP team meeting was held at which the team decided that special education instruction in reading and math was to be provided in a “co-taught”¹ or supportive setting², which was a change from the prior IEP stating that reading and math would be taught in a “co-taught” setting only.

¹ According to the MCPS website co-teaching is “a service delivery model in which teachers are paired together in a classroom to share the responsibilities of planning, instructing, and assessing ALL students. Both teachers are responsible for the academic success of ALL students. At MCPS, we utilize five models of co-teaching, station teaching, parallel teaching, team teaching, alternative teaching, and one teach, one support. The various co-instructional approaches are tools to help co-teachers meet the needs of their students” (<http://www.mcps.org>).

² According to the MCPS website, a supportive learning environment utilizes “an instructional assistant, also known as a paraprofessional, who is a school employee who works under the supervision of a licensed staff member to assist in providing instruction and other services to children, youth, and their families. The provisions of the Individuals with Disabilities Education Act of 1997 (IDEA), which required schools to serve students with disabilities in the least restrictive environment, has contributed to the rising use of instructional assistants in schools today. Instructional assistants are often utilized in educational settings to provide direct and indirect services to students with disabilities” (<http://www.mcps.org>).

7. While a document entitled, "Prior Written Notice," was developed on May 21, 2020, which describes the decisions made by the IEP team on that date, the MCPS acknowledges that there is no documentation that it was provided to the complainant in a timely manner.

CONCLUSION:

Based on the Findings of Facts #3 - #7, the MSDE finds that PWN of the decisions made with regard to "co-taught" classes was not provided to the parent, in accordance with 34 CFR §300.503. Therefore, the MSDE finds that there is a violation with respect to this allegation.

ALLEGATION #3 IEP IMPLEMENTATION

FINDING OF FACTS:

Provision of Accommodations, Supplemental Aids and Supports in Math and English

8. The IEP in effect at the start of the investigation period, dated April 29, 2020 and amended July 16, 2019, requires the provision of numerous accommodations, supplemental aids and supports and services.
9. The MCPS acknowledges that, while there is documentation that some accommodations, supplemental aids and supports and services were provided, there is no documentation of the consistent provision of all of the required accommodations, supports and services in English, from September 2019 to March 2020 or in math from January 27, 2020 to March 13, 2020.

"Co-taught" Classes and Supports in English from September 2019 to March 2020, and Math from January 27, 2020 to March 13, 2020

10. The IEP in effect during the time period of the investigation required sixteen (16) hours and forty (40) minutes per week of special education classroom instruction to be provided by the special education classroom teacher. The IEP requires a "co-taught" English and math class, as well as a supported science and social studies.
11. The MCPS acknowledges that a paraeducator was provided to support the student's math class and a "co-teacher" was not provided as required by the IEP from January 27, 2020 to March 13, 2020.
12. The MCPS acknowledges that there is no documentation to support the consistent provision of a "co-teacher" in the English classroom, as required by the IEP from September 2019 to March 2020.

Speech/Language Services

13. The IEP identifies the student's need to improve her vocalization for increased class participation and included an annual goal to improve this skill. It also requires the provision of speech/language therapy for one (1) hour per week to assist her with achieving the goal.
14. An IEP progress report issued on April 17, 2020 indicated that the student was making sufficient progress to meet her speech/language goal.
15. An online parent communication log documents a telephone call by the speech pathologist on May 15, 2020 to the parent. The purpose of the call was to document the implementation of an Individualized Special Education Distance Learning Plan. The Plan would address receptive and/or expressive language goals through tele-practice services.
16. On May 18, 2020, the speech pathologist contacted the complainant via email to propose continuation of speech services virtually.
17. The MCPS acknowledges that there is no documentation that the speech/language services required by the IEP were provided to the student since April 6, 2020.

CONCLUSIONS:

Provision of Accommodations, Supplemental Aids and Supports in Math and English

Based on the Findings of Facts #3 - #5 and #8 - #9, the MSDE finds that the accommodations, supplementary aids and supports in English and Math class have not been consistently provided in English from September 2019 to March 2020 and in math from January 27, 2020 to March 13, 2020. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation for these time periods.

“Co-taught” Classes and Supports in English from September 2019 to March 2020, and Math from January 27, 2020 to March 13, 2020

Based on the Findings of Facts #3 - #5 and #10 - #12, the MSDE finds that “co-taught” classes were not consistently provided in English from September 2019 to March 2020 or Math classes from January 27, 2020 to March 13, 2020, as required by the IEP. Therefore, the MSDE finds that a violation occurred with respect to this aspect allegation for these time periods.

Speech/Language Services

Based on the Findings of Facts #13 - #17, the MSDE finds that there is no documentation to support the provision of speech/language services since April 6, 2020. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation for this time period.

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.³

The MSDE has established reasonable timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to support it in working toward completion of 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.⁴ Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the MCPS to provide documentation that the IEP team has completed the following:

1. Considered any concerns of the complainant regarding the November 11, 2019 amendment of the IEP;
2. Determined whether the violations related to the provision of special education instruction using the “co-teaching” model required by the IEP had a negative impact on the student’s ability to benefit from the education program, and if so, the compensatory services or other remedy for the violations; and
3. Determined the compensatory services or other remedy for the loss of speech/language services.

³ 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.

⁴ The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

School-Based

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the violations do not recur.

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 complainants 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/dee

c: Jack R. Smith
Kevin Lowndes
Philip A. Lynch
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