



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

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December 18, 2017

Margaret Joya Jones, Esq.  
13401 Dowlais Drive  
Rockville, Maryland 20853

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

RE: XXXXX  
Reference: #18-028

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 October 20, 2017, the MSDE received a complaint from Margaret Joya Jones, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and her parents. 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 allegation that the MCPS has not ensured that the student has been provided with a Free Appropriate Public Education (FAPE) since October 2016<sup>1</sup> as a result of the following violations, in accordance with 34 CFR §§300.101 and .320, .324, and COMAR 13A.03.05 and 13A.05.01:

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<sup>1</sup> While the complainant alleged that the violations have occurred beyond this time period, she was informed, in writing, that only those IDEA violations that are alleged to have occurred within one year of the date of filing may be handled through the State complaint investigation process (34 CFR §300.153).

- A. The MCPS has not ensured that the Individualized Education Program (IEP) team has addressed the student's lack of expected progress towards achievement of the annual IEP goals;
- B. The MCPS has not ensured that the IEP team's decisions regarding the student's need for Extended School Year (ESY) services have been consistent with the data;
- C. The MCPS has not ensured that the IEP team has considered the parents' request for a specific instructional methodology to address the student's needs arising out of dyslexia and dysgraphia; and
- D. The MCPS did not ensure that the student was provided with Home and Hospital Teaching (HHT) services as required during the 2016-2017 school year.

**BACKGROUND:**

The student is fifteen (15) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

The student was enrolled at XXXXXXXXXXXXXXXXXXXX School for the 2016-2017 school year and at XXXXXXXXXXXXX for the 2017-2018 school year.

**FINDINGS OF FACTS:**

- 1. The MCPS acknowledges that violations occurred with respect to Sections A and B of the allegation.
- 2. There is no documentation that the student's parents requested that a specific methodology of instruction be used with the student and no documentation that a particular methodology was recommended as of the date of the filing of the State complaint.
- 3. On April 4, 2017, the student's private physician provided the school system with verification of the student's need for HHT services. The verification reflected that the student required the services on a part-time basis.
- 4. On April 24, 2017, the IEP team determined that the student would be provided with six (6) hours of HHT instruction weekly.
- 5. On May 2, 2017, thirteen (13) school days after receipt of the verification of the need for HHT services,<sup>2</sup> the school staff initiated those services. On the same date, the student's

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<sup>2</sup> The MCPS was closed for professional development on Friday, April 7, 2017, and the MCPS spring break was April 10-17, 2017.

private physician revised the verification to reflect that the student required HHT services on a full-time basis.

6. There is documentation that HHT services were attempted on May 10, 2017, but refused by the parents due to a disagreement about the manner in which the services were provided.
7. The parties resolved the dispute and HHT services were resumed on May 17, 2017 and continued through the week of June 12, 2017. The student was provided with six (6) hours per week of HHT services during the weeks of May 22, 2017, May 29, 2017 and June 5, 2017, but was provided with less than that amount during other weeks.
8. The MCPS HHT services verification form states that students approved for full-time HHT services “typically receive 6 hours of instruction per week.” The MCPS regulations state that HHT services are “typically provided for a minimum of six hours per week for students in a full-day program or a minimum of three hours per week for students in a half-day program.”

### **CONCLUSIONS:**

Based on the Finding of Fact #1, the MSDE concurs with the MCPS’ finding and concludes that a violation occurred with respect to Sections A and B of the allegation.

Based on the Finding of Fact #2, the MSDE does not find that a violation occurred with respect to Section C of the allegation.

With respect to Section D of the allegation, the MCPS asserts that it was not required to provide six (6) hours per week of HHT services until ten (10) school days from receipt of the verification of the need for a full-time program.

The MSDE finds that the six (6) hours per week is the minimum for a full-time program, and there is no maximum amount of instruction for either a full-time or part-time program. Therefore, the MCPS was required to provide the student with six (6) hours per week of HHT services, consistent with the IEP team’s decision, within ten (10) school days of receipt of the April 4, 2017 receipt of verification of need for a part-time program.

Based on the Findings of Facts #3 - #8, the MSDE finds there was a three (3) day delay in initiating HHT services, and that the student was not provided with the amount of HHT services determined necessary by the IEP team throughout the time period covered by the verification. Thus, the MSDE finds that a violation occurred with respect to Section D of the allegation.

## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The MSDE requires the MCPS to provide documentation by March 1, 2018 of the following:

1. The IEP team has reviewed and revised, as appropriate, the IEP to address lack of expected progress towards achievement of the annual goals; and
2. Services are being provided to the student, as determined by the IEP team, to accelerate her achievement of the IEP goals in order to compensate her for the violations identified.

### **System-Based**

The MSDE requires the MCPS to provide documentation by the end of the 2017-2018 school year of the steps taken to ensure that the amount of HHT services provided is based on individual student needs and not the minimum amounts required to be provided. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure compliance with the requirements.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

## **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the MCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached at (410) 767-7770.

Please be advised that both the complainant and the MCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents and the school system 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 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 Special Education/Early Intervention Services

MEF:am

c:     XXXXXXXXXX  
       Jack R. Smith  
       Tracee Hackett  
       XXXXXXXXXX  
       XXXXXXXXXX  
       Dori Wilson  
       Anita Mandis  
       Nancy Birenbaum