



February 21, 2018

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Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: XXXXX
Reference: #18-067

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.

ALLEGATIONS:

On December 27, 2017, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Charles County Public Schools (CCPS) 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 CCPS did not ensure that the student was provided with special education instruction, as required by the Individualized Education Program (IEP), from September 5, 2017 to November 7, 2017, in accordance with CFR §§300.101 and .323.
2. The CCPS did not ensure that the student had the opportunity to participate in extracurricular activities with non-disabled peers, as required by the IEP, on October 31, 2017 and December 12, 2017, in accordance with CFR §§300.101 and .323.

BACKGROUND:

The student is 13 years old and is identified as a student with a Specific Learning Disability under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with special education instruction to improve his reading skills and behavior management. He is to receive this instruction in a separate special education classroom for eighteen (18) hours each week, to be provided by a special education teacher.
2. Substitute teachers were assigned to the special education classroom between September 5, 2017 and November 7, 2017. There is no documentation that these substitute teachers held special education certifications and no documentation that the student was provided with special education instruction in that classroom during that period of time.

CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE finds that there is no documentation that the student was provided with special education instruction in reading and behavior management, between September 5, 2017 and November 7, 2017, as required by the IEP, in accordance with CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATION #2: PARTICIPATION IN EXTRACURRICULAR ACTIVITIES
WITH NON-DISABLED PEERS ON OCTOBER 31, 2017 AND
DECEMBER 12, 2017**

FINDINGS OF FACTS:

3. The IEP requires that the student participate with non-disabled peers in extracurricular activities.
4. There is no documentation that the student was provided the opportunity to participate with his non-disabled peers in the extracurricular activities that took place on October 31, 2017 and December 12, 2017.

CONCLUSION:

Based on the Findings of Facts #3 and #4, the MSDE finds that the student was not provided with the opportunity to participate with his non-disabled peers in extracurricular activities on October 31, 2017 and December 12, 2017, as required by the IEP, in accordance with CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the school system to provide documentation, by April 30, 2018, that the IEP team has determined the compensatory services to remediate the violations identified through this investigation. CCPS must also provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of complainants' refusal of such compensatory services or other remedy.

Similarly-Situated Students

The MSDE requires the CCPS to provide documentation by May 31, 2018, that it has identified all students with disabilities, under IDEA, at XXXXXXXXXXXXXXXXXXXX, that were enrolled in a separate, special education reading class, between September 5, 2017 and November 7, 2017, when non-certified special education teachers were assigned to the classroom.

For those students identified, the CCPS must ensure that an IEP team convenes to review the reading services and determine the amount and nature of compensatory services or other remedy to be provided to the student for the loss of services, and develops a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

If a student transfers to another school system prior to the completion of the provision of the remedy, the CCPS must coordinate with the public agency responsible for the education of the student in order to ensure that the remedy is provided.

School-Based

The MSDE requires the CCPS to provide documentation by May 31, 2018, of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff follow proper procedures for implementing the requirements for the provision of appropriate staffing in their special education classrooms.

The MSDE also requires the CCPS to provide documentation by May 31, 2018, of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff follow proper procedures for implementing the requirements for student-based inclusion for disabled and non-disabled peers in extracurricular activities.

TECHNICAL ASSISTANCE:

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

Please be advised that both the complainant and the CCPS 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 Special Education/Early Intervention Services

MEF:ac

c: Kimberly Hill
Nancy Pirner
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