



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

August 3, 2018

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Ms. Carol Breeze
Director of Instruction and Student Performance
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #18-176

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 5, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) 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 FCPS has not ensured that the student has been provided with an appropriate education program and placement since June 5, 2017, in accordance with 34 CFR §§300.114 - .116 and .324. Specifically the following was alleged:
 - a. The Individualized Education Program (IEP) has not addressed the student’s identified occupational therapy, counseling, and transportation needs or his needs related to anxiety since June 5, 2017;

- b. The IEP has not addressed the student's identified need for specific teaching methodologies since June 5, 2017;
 - c. The IEP has not addressed the student's identified need for opportunities for direct communications with peers and professional personnel in his language and communication mode since June 5, 2017;
 - d. The IEP team has not conducted a review of the IEP at least annually since June 5, 2017;
 - e. The IEP team has not followed proper procedures when determining the student's educational placement since June 5, 2017; and
 - f. The IEP team has not convened to consider lack of expected progress towards achievement of the annual IEP goals since April 10, 2018.
2. The FCPS has not provided an IEP within five (5) business days of each IEP team meeting that has been held since June 5, 2017, in accordance with COMAR 13A.05.01.07.
 3. The FCPS has not ensured that the IEP has been implemented since June 5, 2017, in accordance with 34 CFR §§300.101 and .323. Specifically the following was alleged:
 - a. The reports have not been made of the student's progress towards achievement of the annual IEP goals on a quarterly basis;
 - b. The student has not been provided with a separate special education classroom setting for test taking;
 - c. The student has not been provided with special education instruction from the required service providers;
 - d. The student has not been provided with the amount of special education instruction required because he is removed from instruction for the provision of counseling services;
 - e. An agenda has not been used for each class assignment to be reviewed and initialed by the student's teachers and parents; and
 - f. The logs have not been provided by the teacher on a monthly basis.
 4. The FCPS has not provided prior written notice of the decisions made by the IEP team since May 22, 2018, in accordance with 34 CFR §300.503.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with a Hearing Impairment under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX, as a result of an administrative transfer requested by the student's parents, and has an IEP that requires the provision of special education instruction and related services.

Prior to attending XXXXXXXXXXXXXXXXXXXX, the student attended XXXXXXXXXXXXXXXXXXXX XXXX. Prior to enrolling in the FCPS, the student attended the Maryland School for the Deaf (MSD). However, the parents withdrew him from the MSD and enrolled him in the FCPS.

FINDINGS OF FACTS:

ALLEGATION #1: IEP DEVELOPMENT

1. On June 5, 2017 the IEP team at XXXXX met to develop an IEP for the student. The IEP team discussed the student's hearing needs and determined that he required an interpreter in the classroom setting and to communicate with peers. The IEP team noted that the student would also "use spoken English at times when needed." The IEP team discussed the student's self-management needs and documented that the student tends to rush through work and sometimes does not follow all directions.
2. The student's parents provided input that "[the student] has shown symptoms and reported some feelings of anxiety within the school setting." The IEP team recommended that the student receive twenty (20) minute counseling sessions twice each month to assist the student with his self-management goals. The IEP team developed two goals self-management goals for the student; one related to organizing and completing assignments based on directions and one related to managing conflicts with staff and peers.
3. The team determined that the student would receive instruction in the general education setting, with the exception of a one (1) hour session with an audiologist once annually and twenty (20) minute counseling sessions twice each month with a guidance counselor or special education teacher to "learn and apply strategies for dealing with conflicts."
4. The IEP team did not identify occupational therapy or transportation needs for the student at the June 5, 2017 IEP team meeting and there is no data that indicated such needs.
5. On October 31, 2017, the IEP team met to review the student's progress and respond to his attendance concerns. The student's parents shared their belief that the student was missing school due to anxiety, and that this anxiety was not present when the student was at home. The IEP team discussed strategies used by the staff to assist the student with his self-management and social needs, including the "lunch bunch" peer group. The complainant suggested that the "lunch bunch" meet daily. The school staff explained that the students decided that meeting once a month was their preference. The team agreed to complete a social/emotional assessment.

6. At the October 31, 2017 meeting, the complainant requested a placement where more deaf and hard of hearing (DHH) students attended. The IEP team explained that they can not control how many DHH students enroll in a particular school, and that students attend their home school whenever possible.
7. On November 16, 2017 the complainant requested that the student be permitted to transfer to XXXXXXXXXXXXXXX based on her belief that there were more DHH students enrolled in that school. The FCPS denied her request due to lack of space availability at that school. However, the FCPS staff agreed to allow the student to enroll in XXXXXXXX XXXXXXXXXXXXXXX, noting that while they could not say how many DHH students attended the school, their FCPS data indicated that it had one of the higher usage rates for sign language interpreter services. The complainant was informed that if she accepted the administrative transfer, she would be responsible for the student's transportation to the new school. There is no documentation that the student required special education transportation services before or after this administrative transfer.
8. On March 13, 2018, the IEP team met to review the assessment data for the student and review and revise, as appropriate, the student's IEP.
9. The occupational assessment¹ completed for the student indicated that the student did not have needs related to a fine motor/dexterity deficit, and that any needs resembling occupational therapy needs may arise out of other reported areas of concern related to his medical conditions or social/emotional needs.
10. The psychological assessment completed for the student indicated that the student exhibited high levels of anxiety and felt socially withdrawn both in the school and home setting. The assessment recommended that the student continue to receive counseling services to assist him in reducing anxiety, and that he be provided with counseling services from a provider with specialized experience. The assessment also recommended working with the student to develop a "bilingual/bicultural identity by exploring this with him in counseling exposing his to DHH models, literature etc." The IEP team discussed the causes of the student's withdrawal behavior. The complainant and the student's father stressed the need for the student to have interaction with DHH peers at school. The school staff stated that there were very few DHH peers in the FCPS, and suggested that the student had and would have such a peer group at the Maryland School for the Deaf (MSD). The complainant stated that she did not want to enroll the student in the MSD. The complainant also raised concerns regarding access to DHH practitioners, but there is no documentation that the school staff responded to the complainant's request for additional DHH staff to work with the student.
11. The team recommended that a speech/language assessment be completed for the student and the IEP team agreed to reconvene once the assessment was completed.

¹ This assessment was recommended by the IEP team in May 2017, but there was a subsequent disagreement between the parties regarding who would conduct the assessment. The assessment was completed in November 2017 by an assessor with experience with the DHH community.

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12. The progress reports completed for the student in April and May 2018, indicated that the student was not making sufficient progress on his self-management goals.
13. On June 27, 2018, the IEP team met to conduct an annual review for the student. The IEP team discussed strategies for reducing the student's anxiety and assisting him with his social skills.
14. At the June 27, 2018 IEP team meeting, the complainant again requested that the student be provided with additional contact with other DHH students. The IEP team discussed the need for the student to increase his social skills. The complainant requested that the student be provided other types of interaction with DHH students, including opportunities for electronic communication by video conferencing. The IEP team discussed this possibility, but dismissed it by noting that the student was unsuccessful in other attempts to socialize the student with non-DHH peers at his school. The student's private therapist attended the meeting and offered to work with the student in the school setting. The team did not discuss other possibilities for the student to interact with other DHH students or DHH trained staff. The team did discuss other supplemental aids available for the student including a crisis pass.
15. The IEP team agreed to reconvene on July 31, 2018 to complete the annual review for the student. To date, there is no documentation that the annual review has been completed for the student.

DISCUSSION/CONCLUSIONS:

Occupational Therapy Needs

Based on Findings of Facts #4 and #9, the MSDE finds that the FCPS ensured that an occupational therapy assessment was completed and determined that the student did not have needs in this area, in accordance with 34 CFR §§300.224. Therefore, this office finds that no violation has occurred with respect to this aspect of this allegation.

Transportation Needs

Based on Findings of Facts #4 and #7, the MSDE finds that there is no documentation that the student required special education transportation services prior to the administrative transfer that occurred as a result of the complainant's request and that she was informed that if the administrative transfer was granted, she would be responsible for providing transportation for the student. Further, based on the same Findings of Facts, the MSDE finds that no special education transportation concerns have been raised since the transfer. Therefore, the MSDE finds that the student's transportation needs have been addressed in accordance with 34 CFR §§300.224. As a result, this office finds that no violation has occurred with respect to this aspect of this allegation.

Social/Emotional Needs

Based on Findings of Facts #1, #3, #5-6, #8 and #10-#15, the MSDE finds that the FCPS has not addressed the student's social/emotional needs and responded to the complainant's request that the student be provided with additional contact with DHH peers and DHH service providers, in

accordance with 34 CFR §§300.114 - .116 and .324. Therefore, this office finds that a violation has occurred with respect to this aspect of this allegation.

Addressing the Lack of Expected Progress

Based on Findings of Facts #12-#14, the MSDE finds that the FCPS did not ensure that the IEP team convened in a timely manner to address the student's lack of expected progress on IEP goals in March and April 2018. Further, based on Finding of Fact #15, the MSDE finds that to date, there is no documentation that the IEP team has determined how to address the student's lack of progress on his behavioral goals, in accordance with 34 CFR §§300.324. Therefore, this office finds that a violation has occurred with respect to this aspect of this allegation.

Annual Review

Based on Findings of Facts #1 and #15, the MSDE finds that there is no documentation that the FCPS has ensured that a timely annual review has been completed for the student, in accordance with 34 CFR §§300.324. Therefore, this office finds that a violation has occurred with respect to this aspect of this allegation.

Educational Placement

Based on Findings of Facts #14 and #15, the MSDE finds that there is no documentation that the IEP team has completed the IEP review for the student and, therefore, has not yet made a placement decision in accordance with 34 CFR §§300.114 - .116. Therefore, this office finds that no violation has occurred with respect to this aspect of this allegation.

ALLEGATION #2: PROVISION OF COMPLETED IEPs

FINDING OF FACT:

16. There is no documentation that the IEP team has completed the review of the student's IEP since June 5, 2017.

DISCUSSION/CONCLUSION:

Based on Finding of Fact #16, the MSDE finds that there is no documentation that there has been a completed IEP for the student since June 5, 2017, and therefore, the FCPS was not required to provide the complainant with completed copies of the IEP, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that no violation has occurred with respect to this allegation.

ALLEGATION #3: IEP IMPLEMENTATION

FINDINGS OF FACTS:

17. The student's IEP, developed on June 5, 2017, requires the following:
 - That progress reports are sent to the student's parents on a quarterly basis;
 - That audiological testing be completed for the student on an annual basis;

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- That he be provided with reduced distractions during assessments and, occasionally, a setting with softer lighting;
 - That he be provided with special education counseling for two twenty (20) minute sessions twice a month and instruction from a teacher for the hearing impaired for thirty (30) minutes a week; and
 - That he use a parent-provided agenda for home school communication.
18. There is documentation that the student's parents have been provided with reports on the student's progress on IEP goals as required.
 19. The parties report that the student has asked for, and was provided with, a setting with softer lighting for completing assignments.
 20. There is documentation that the student has not been made available for annual audiological testing.
 21. There is no documentation that the student has missed special education instruction for the provision of counseling services.
 22. There is no documentation that the student's parents have supplied the agenda required by his IEP for home school communication.
 23. There is no documentation that the student's parents are required to be provided with logs of service delivery or that they were denied a request for such logs.
 24. While there is documentation that the student was provided with instruction from a teacher with certifications in "Generic Special Education 1-8/6-Adult", and that teacher is listed on the FCPS website as a teacher for the Deaf and Hard of Hearing, the teacher's Maryland Educator Certificate does not include a certification to provide instruction for the Deaf and Hard of Hearing.

DISCUSSION/CONCLUSION:

Based on Findings of Facts #17-#24, the MSDE finds that the student's IEP was implemented with regard to the issues raised in the State complaint, with the exception of instruction from a teacher who is certified in special education instruction for the Deaf and Hard of Hearing, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #4: PROVISION OF PRIOR WRITTEN NOTICE

FINDING OF FACT:

25. There have been no amendments to the student's IEP, or changes to educational program since January 16, 2018.

DISCUSSION/CONCLUSIONS:

Based on Finding of Fact #25, the MSDE finds that the FCPS has not proposed to initiate or change the identification, evaluation, or educational placement of the child or the provision of Free Appropriate Public Education (FAPE) to the child or refused to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student. Therefore, the FCPS was not required to ensure that prior written notice was provided to the student's parents, in accordance with 34 CFR §300.503. As a result, this office does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires, the FCPS to provide documentation by November 1, 2018, that the student is receiving instruction from an appropriately certified DHH teacher.

The MSDE further requires the FCPS to provide documentation, by December 1, 2018 of the following:

- 1) That the IEP team has met to complete the annual IEP review for the student, including a consideration of methods by which the student can be provided with services from practitioners that are experienced in DHH students and ways in which the student can interact with DHH peers to address his social/emotional needs.
- 2) That the IEP team has determined whether there was a negative impact on the student as a result of instruction being provided by a staff member who does not hold the required certifications, and if so, the compensatory services necessary to remedy the violation.
- 3) That the IEP team has determined the compensatory services necessary to address the delay in completing the annual IEP review, addressing the student's social/emotional needs and lack of expected progress on IEP goals.

The FCPS must 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 parent refusal of such compensatory services or other remedy.

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 the FCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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

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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, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The 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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF/gl

c: Linda Chambers
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Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum
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