



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

September 28, 2018

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

RE: XXXXX
Reference: #19-018

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.

ALLEGATION:

On August 9, 2018, the MSDE received a complaint from Dr. XXXXXXXXX, hereafter, “the complainant,” on behalf of his 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 student.

The MSDE investigated the allegation that the MCPS did not ensure that the student has been consistently provided with the para-educator support required by the Individualized Education Program (IEP), from September 24, 2017 to October 19, 2017 and March 13, 2018 to April 20, 2018, in accordance with 34 CFR §§300.101.

BACKGROUND:

The student is eleven (11) years old and attended XXXXXXXXXXXXXXXXXXXX during the 2017-2018 school year. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education and related services. He currently attends XXXXXXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with supports to assist him with achieving the annual IEP goals, including strategies to manage impulsive behaviors, write independently, answer “*wh*” questions, solve math problems, and complete work independently. The IEP states that the student will be provided with the daily services of an instructional assistant in the areas of attention, reading, writing, math, science, social studies, social interactions, and behavior.
2. The student’s classroom schedule and the schedules of instructional assistants assigned to provide adult support in the classrooms at XXXXXXXXXXXXXXXXXXXX document that there were staff members assigned to provide the required supports in the student’s English, math, science, and social studies classes during the 2017-2018 school year.
3. There is documentation that there was an interruption in the daily assistance provided by the para-educators during October 2017.
4. The reports of the student’s progress towards achievement of the annual IEP goals, made on November 9, 2017, April 9, 2018 and June 15, 2018 document that the student was making sufficient progress towards achievement of the goals. These reports document that the student was being provided with adult support, including prompting, reminders to complete work, and an adult “check in” before completion of assignments.
5. The student’s report card indicates all A’s which reflects an outstanding level of performance in all classes during the 2017-2018 school year.

CONCLUSIONS:

In this case, the complainant alleges there was an interruption in the services provided by the instructional assistants from September 24, 2017 to October 19, 2017 and March 13, 2018 to April 20, 2018.

Based on the Findings of Facts #1 - #5, the MSDE finds that there is documentation that support the instructional assistant was provided during October 2017, but that the support was not provided on a consistent basis, in accordance with 34 CFR §§300.101. Therefore, the MSDE finds a violation occurred.

Notwithstanding the violation, based on the Finding of Facts #4 - #5, the MSDE finds that the lack of service provision by the instructional assistant did not have an educational impact. Therefore, the MSDE finds no student-based corrective action is required to remediate the violation.

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CORRECTIVE ACTION/TIMELINE:

School Based:

The MSDE requires the MCPS to provide documentation by December 1, 2018, of the steps taken to ensure the consistent service provision by instructional assistants at XXXXXXXX XXXXXX. The documentation must include a plan to monitor the effectiveness of the actions taken.

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

TECHNICAL ASSISTANCE:

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

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.

The parent 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 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: sf

c: Jack R. Smith Anita Mandis
Tracee Hackett Sharon Floyd
XXXXXXXXXX Bonnie Preis
Dori Wilson