



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

November 19, 2018

Mr. Brian K. Gruber
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Suite 220
Rockville, Maryland 20852

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

RE: XXXXX
Reference: #19-038

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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.

ALLEGATIONS:

On September 21, 2018, the MSDE received a complaint from Mr. Brian K. Gruber, hereafter, “the complainant” on behalf of the student and her mother, Ms. XXXXXX. 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 provide the student with the Extended School Year (ESY) services required by the Individualized Education Program (IEP) during the summer of 2018, in accordance with 34 CFR §300.101.
2. The MCPS has not ensured that the student has been provided with the special education instruction required by the IEP from a certified teacher since September 21, 2017, in accordance with 34 CFR §300.156 and COMAR 13A.12.02.

3. The MCPS has not ensured that the student has been provided with the supports and services required by the IEP, since September 21, 2017, in accordance with 34 CFR §§300.301 and .323.
4. The MCPS has not ensured that the decisions made regarding the student's progress towards achievement of the IEP goals have been consistent with the data, in accordance with 34 CFR §§300.101 and .324.

BACKGROUND:

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

ALLEGATION #1 EXTENDED SCHOOL YEAR SERVICES

FINDINGS OF FACTS:

1. The IEP required the provision of ESY services from July 10, 2018 to August 4, 2018 for reading instruction.
2. On June 30, 2018, the MCPS provided the parent with information that the ESY services would be provided beginning July 10, 2018. However, the student did not receive ESY due to the parent's inability to make the student available during the periods of time when the services were offered.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1-#2, the MSDE finds that the MCPS did ensure that the ESY services required by the IEP were made available for the student to access from July 10, 2018 to August 4, 2018, in accordance with 34 CFR §300.101. Therefore, the MSDE finds no violation occurred with this allegation.

ALLEGATION #2 CERTIFIED TEACHER

FINDINGS OF FACTS:

3. The IEP requires that reading instruction be provided by a special education teacher through a reading intervention in a separate special education class to address the student's decoding deficits.
4. There is documentation that the teacher who provided the reading intervention holds a special education certification.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #3 and #4, the MSDE finds that the MCPS ensured that the student's teacher was certified to provide the student with specially designed instruction, in accordance with 34 CFR §300.156 and COMAR 13A.12.02. Therefore, the MSDE finds no violation occurred with this allegation.

ALLEGATION #3 PROVISION OF SUPPORTS AND SERVICES

FINDINGS OF FACTS:

5. The IEP requires the provision of daily checklists, daily pairing of oral and written directions, daily encouragement to use self-advocacy skills, daily encouragement of the student to ask for clarification or repetition of orally presented material, and use of visual teaching aids.
6. The IEP also requires that on a daily basis, the student's attention is gained prior to giving directions, good visual attending skills are emphasized, freedom of movement is to be allowed to maximize vision and hearing, reminders to the student to direct her good ear toward the relevant sound, an electronic device is used during instruction, and the implementation of a health plan.
7. The IEP requires the provision of periodic voice to text, graphic organizers, and breaking down of large assignments into manageable parts, daily multiple check-ins, and daily checks for understanding.
8. The IEP also requires the provision of teacher notes, altered or modified assignments to avoid contact with allergens in all classes, a flash pass to be used to access the health room and the school counselor, and a preferential locker location to avoid cross-contamination due to allergy and daily preferential seating.
9. There is no documentation that general education teachers provided the student with the supplementary aids, services, accommodations and supports required by the IEP.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #5 -#9, the MSDE finds that there is no documentation that the MCPS ensured that the student's accommodations, supplementary aids and services were implemented, in accordance with 34 CFR §§300.301 and .323. Therefore, the MSDE finds a violation occurred with respect to this allegation.

ALLEGATION #4

STUDENT PROGRESS DATA

FINDINGS OF FACTS:

10. The IEP reading phonics goal states that given instruction in an evidence-based/researched-based reading intervention program implementing decoding strategies and models of decoding, multiple opportunities for practice, ongoing progress monitoring, verbal and gestural prompts, and visual cues, the student will be able to read and spell multi-syllabic words with no more than two errors.
11. The first objective requires that the student will read text with regular and irregular unfamiliar multisyllabic words in and out of context. The second objective states that the student will read and decode text with syllabication patterns, prefixes, suffixes, and words with vowel sounds. The last objective states that the student will accurately spell multisyllabic words.
12. On November 17, 2017, the MCPS reported that the student was making sufficient progress to meet the reading phonics goal. Assessment results indicated that the student was working above grade level standards. The student's teachers reported that the student was not working at an "independent" reading level for 100% of the time, but when given the opportunity to reassess and self-correct the student was able to obtain 100% when reading multisyllabic words.
13. On January 25, 2018, the MCPS reported that the student continues to demonstrate consistent growth in being able to decode single syllable and multi-syllable words.
14. The student's English teacher reported that the student is able to listen to a story and retain details. The English teacher also reported that the student uses strategies to interpret reading passages to be able to respond to questions and a writing prompt. The teacher also reported that the student's reading fluency is satisfactory, including the accuracy and her ability to understand longer passages. The teacher reported that the student does have difficulty when she has to make inferences because the answers are not apparent within the text. The student is taking an advanced¹ English class.
15. On June 18, 2018, the MCPS reported the student had achieved the goal for decoding and encoding regular and irregular unfamiliar multisyllabic words in and out of context, reading and decoding text with syllabication patterns, prefixes, suffixes, and words with vowel sounds, and was able to accurately spell multisyllabic words. The student's teachers reported that the student was accessing grade level curriculum and demonstrating achievement through consistent growth in being able to decode single-syllable and multi-syllable words in all of her grade level classes.

¹ In the MCPS, advanced classes are for students whose motivation, talent, performance, or potential for performing at high levels of accomplishment are identified to receive accelerated and enriched instruction (www.mcps.org).

16. The progress report further stated that the student was making progress in the evidence-based/research-based reading intervention program which is consistent with the data collected on the student's response to the intervention.
17. On an Informal Inventory Assessment of phonics and spelling, conducted on June 13, 2018, the student was able to spell 22/26 words correctly on the primary spelling inventory, yielding a total score of 75/82. On the Elementary Spelling Inventory, the student was able to spell 24/25 words correctly, yielding a total score of 85/87. On the Upper-Level Spelling Inventory, the student was able to spell 13/31 words correctly, yielding a total score 63/99. On the Dynamic Indicators of Basic Early Literacy Skills, which assess the student's foundational fluency skills, given the opportunity to repeat the words where she substituted sounds, the student was able to say all of the patterns correctly, yielding a score of 52/60 phonetic patterns.
18. The student was administered a Qualitative Reading Inventory to assess her oral reading accuracy, rate of reading, comprehension of a passage read orally and silently, word recognition in isolation and word recognition in context. Levels 6 to upper middle school levels were administered. On all of the word lists, the student scored at the "independent" level. The report indicated the student demonstrated strong reading skills with comprehension, recalling and retelling previously read information. The student did not have difficulty with inferential questions and reading with automaticity at the upper middle school levels.
19. The student's grade seven (7) annual school performance summary indicates that the student earned all A's (demonstrates consistent mastery of the grade level standards) and B's (frequently demonstrates mastery of the grade level standards) and one C (periodically demonstrates mastery of the grade level standards) in Advanced English 7 for the 2017-2018 school year.
20. The student's grade eight (8) annual school performance summary for the first marking period, indicates that the student earned all A's (demonstrates consistent mastery of the grade level standards) and B's (frequently demonstrates mastery of the grade level standards).

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #10 -#20, the MSDE finds that the MCPS ensured that the report on the student's progress towards achievement of the IEP goals was consistent with the data, in accordance with 34 CFR §§300.101 and .324. Therefore, the MSDE finds no violation occurred with respect to this allegation.

CORRECTIVE ACTION/TIMELINE:

Student Specific:

The MSDE requires the MCPS to provide documentation by February 1, 2019, that the IEP team has convened and determined whether the violation related to the implementation of supplementary aids and supports had a negative impact on the student's ability to benefit from the educational program.

If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings. If the IEP team determines that there was no negative impact, it must also determine whether the student continues to require the supplementary aids and supports.

School Based:

The MSDE requires the MCPS to provide documentation by March 1, 2019, of the steps taken to ensure the consistent service provision of supplementary aids, services and supports at XXXXXXXXXXXX School. 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.

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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 Early Intervention and Special Education Services

MEF: sf

c: Erika Vassell
Jack R. Smith
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XXXXXXXXXX
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