



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

February 27, 2019

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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: #19-083

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 January 2, 2019, the MSDE received a complaint from Mr. Steven Ney, Esq., hereafter “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. 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, from January 2018 to May 2018, the Individualized Education Program (IEP) team developed an IEP that addresses the student’s reading needs, in accordance with 34 CFR §§300.101, .320 and .324. In this case, the complainant specifically alleges that the IEP team’s decision in January 2018 that the student does not require a separate special education classroom throughout the school day to address his reading needs was not consistent with the data.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with a Specific Learning Disability (SLD) under the IDEA. He has an IEP that requires the provision of special education and related services. During the time period covered by the investigation, the student attended

the XXXXXXXXXXXXXXXXXXXX. On September 5, 2018, the MCPS placed the student at XXXXXXXXXXXX, a nonpublic separate special education school.

FINDINGS OF FACTS:

1. On January 5, 2018, the IEP team convened in response to parental concerns about the student's progress to review the IEP that was developed on September 6, 2017. The September 2017 IEP included the following information:
 - a. That the student's disability affects his involvement in the general education curriculum as follows:

The student's "specific learning disability in the area[s] of dyslexia, dysgraphia and dyscalculia impacts phonemic awareness, phonological processing, memory, attention and executive functioning skills. This impacts his present level of academic performance across the curriculum and requires specialized instruction and evidence-based interventions to address his lack of foundational skills, These deficits impact his ability to gain and retain basic skills in reading and math, plan and respond to writing prompts, understand multi-step directions and tasks, attend to and sustain attention without reminders which all impacts his ability to access and make progress in the general education curriculum."
 - b. That the student, who was in the seventh (7th) grade, is functioning at the first (1st) grade instructional level in the areas of reading phonics and reading comprehension. In the area of written language mechanics, the IEP reflects that the student is functioning at the second (2nd) grade level. The IEP also reflects that the student is functioning at the third (3rd) grade level in the areas of math calculation and math problem solving.
 - c. That the student was working on two (2) reading phonics goals to improve his decoding of single and multi-syllable words in isolation and in text, as well as unfamiliar words using chunking, blending and contextual clues, and a reading comprehension goal to improve his use of strategies to gain meaning from text. The student was also working on a written language mechanics goal to write one paragraph with correct grammar, spelling, punctuation, capitalization and structure, three (3) math goals, and goals to improve his attention and self-management skills.
 - d. That the student was being provided with seven and one-half (7.5) hours per week of specialized instruction in a separate special education classroom in reading and resource, as well as eleven hours and fifteen minutes (11.25) per week of specialized instruction in a general education classroom in math and world studies.
2. A review of the audio recording of the January 2018 IEP team meeting reflects that the parent, the complainant, and the parent's educational advocates expressed concern about

the amount of the student's progress and that his performance in reading is five (5) grade levels behind his grade level. They also expressed concern that the student's rate of progress towards skills growth is not sufficient, and that the IEP goals are not sufficiently "challenging" and "ambitious" in order to close gap in the student's skills and performance when compared to nondisabled peers.

3. At the January 5, 2018 IEP team meeting, the complainant requested more intensive special education services in order to accelerate the rate of the student's progress, including, specifically, placement in small classes for all subjects in a separate special education classroom.
4. A review of the audio recording of the January 5, 2018 IEP team meeting reflects that the school-based members of the team reported that the student was making progress on the goals, although the progress was not as fast as they would like, and that based on this information, the complainant's request was denied. The written summary of the meeting states that the decision was based on the student's present levels of performance and expected progress. However, a review of the audio recording reflects that the IEP team did not consider data about whether the student's abilities and individual circumstances were such that the rate of progress could be improved with the provision of the more intensive services that were requested by the complainant in order to narrow the gap between his performance and grade level expectations.
5. In May 2018, the IEP team convened to address the April 2018 reports that the student was not making sufficient progress towards mastery of the annual IEP goals. The IEP team discussed that the student's progress had been "limited" and that he was showing a "regression" in skills. The IEP team agreed that the student requires more intensive special education services than the XXXXXXXXXXXX School can offer, and referred the student to the Central Office staff for placement considerations where the student could receive specialized instruction in a separate special education classroom for all classes.
6. On September 5, 2018, the IEP team determined that the student requires thirty-two (32) hours per week of specialized instruction in a small group setting in in a separate special education school in order to make progress, and the IEP was revised to reflect placement at The Chelsea School.

CONCLUSIONS:

Based on the Findings of Facts #1 - #6, the MSDE finds that the IEP team did not address the complainant's and the parent's concern about the rate of the student's skills growth and request to accelerate the student's progress, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES

Student-Specific

The MSDE requires the MCPS to provide documentation by May 1, 2019, that the IEP team has convened and determined whether the student's rate of progress increased between September 5, 2018 and January 2019, following the provision of more intensive services, at a greater rate than the progress made between September 2017 and January 2018. If the progress has increased at a greater rate with the provision of more intensive services, the team must also have determined the compensatory services or other remedy needed for the delay in addressing the complainant's and parent's concerns about the student's rate of progress. The IEP team must also have developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the MCPS to provide documentation, by the end of the 2018 - 2019 school year, of the training provided at the XXXXXXXXXXXXXXXXXXXX to ensure that the IEP team determines whether the services proposed are reasonably calculated to enable the student to make progress that is appropriate in light of the student's circumstances based on the individual student data.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. 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 and Special Education Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE 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. Pending this office's decision on a request for reconsideration, the public agency 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 complainants maintain the right to request mediation or to file a due

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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:ksa

c: XXXXXX
 Jack Smith
 Kevin Lowndes
 Julie Hall
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