



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

April 9, 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: #19-109

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.

On February 8, 2019, the MSDE received a complaint from Mr. XXXXXX, Esq., hereafter “the complainant,” on behalf of the above-referenced student and his parents, Mr. XXXXXXXX and Ms. XXXXXXXXX. 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 that:

1. The MCPS did not ensure that the student’s Individualized Education Program (IEP) addressed his reading, writing and math needs between February 2018 and August 23, 2018, in accordance with 34 CFR §§300.320 and .324.
2. The MCPS did not ensure that the student was consistently being provided with the specialized instruction required by the IEP, between February 2018 and August 23, 2018, in accordance with 34 CFR §§300.101, and .323.

3. The MCPS did not ensure that the reports of the student's progress towards achievement of the annual IEP goals were consistent with the data, between February 2018 and August 23, 2018, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is twelve (12) 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. In September, 2018, the MCPS placed the student at XXXXXXXXXXXX, a nonpublic separate special education school.

FINDINGS OF FACTS:

February 2018 to August 2018

1. The IEP, dated November 2017, in effect at the start of the investigation period identifies that the student's primary disability is Specific Learning Disability, and that it "impacts his functioning in reading comprehension, reading phonics, reading phonics awareness, written language expression and content, and math calculations, and problem solving." It documents that the student's "disability impacts his participation in all areas of the general curriculum when required to independently read, write, and demonstrate grade level tasks."
2. The IEP includes the following information:
 - The student needs direct adult support for all independent activities;
 - The student has difficulties with attention, focusing, and academic delays in all academic areas, resulting in a high activity level and impulsivity;
 - The student's underachievement in reading and writing is likely due to his "below average" ability in phonological processing;
 - The student struggles to decode unknown words and with sounding out two letters together, often reversing them so that he is unable to sound out initial and ending sounds;
 - The student's decoding efforts detract from his ability to extract meaning from the text;
 - The student is able to solve basic whole number operations; and
 - The student needs to be presented with graphic organizers, explicit strategy instruction, models, examples, checklists, content specific rubrics, multiple choice, and opportunities for oral responses and fill in the blank options to be able to achieve goals on an instructional level.

3. The IEP documents that the student, who was in the fifth (5th) grade, was functioning four (4) grade levels below his grade placement, at the first (1st) grade instructional level, in the areas of reading phonics, reading comprehension, written language mechanics, and written language expression. In the areas of math calculation and math problem solving, the IEP reflects that the student was functioning three (3) years below his grade placement, at the second (2nd) grade instructional level.
4. The IEP documents that the student was working on a reading phonics goal to use letter-sound correspondences to read unfamiliar multi-syllabic words, a reading fluency goal to read text accurately and with expression at a second (2nd) grade level, a reading comprehension goal to ask and answer questions demonstrating understanding of the text at the first (1st) grade level, a math problem solving goal to write and interpret expressions and increase math fact fluency, a math calculation goal to compute whole number operations fluently, and a written language goal to use grammar, writing, and spelling rules to demonstrate tasks.
5. The IEP documents that the student was being provided with special education instruction in the general education classroom for six (6) hours, forty (40) minutes, special education instruction in a separate special education math intervention program for two (2) hours, thirty (30) minutes, and a separate special education reading intervention program for three (3) hours, twenty (20) minutes, weekly.
6. On March 15, 2018, the IEP team met and the complainant expressed concerns about the student's program and placement, the student's lack of sufficient progress and the growth of the gap between the student's instructional levels and his grade placement compared to his non-disabled peers. The IEP team determined to revise the student's goals, and increase services in a separate special education classroom setting for reading. However, the goals continued to not reflect grade level standards.
7. On April 9, 2018, the progress reports indicated that the student was not making sufficient progress in written language and math problem solving. The explanation of the data used to report the student's progress was inappropriately written to report on the student's achievement of some of the objectives but not all or the annual goals. There was no other documentation of the provision of special education instruction required by the IEP.
8. On April 26, 2018, the IEP team met and the student's IEP was revised to include additional services in math, social studies and science to reflect the individualized services the teachers and support staff were providing to the student.
9. On May 26, 2018, the IEP team met and conducted a reevaluation. The goals were revised to reflect the current assessment information, however, were not aligned with grade level standards. The IEP team determined that the student's IEP would be referred to the MCPS Central Office for consideration of placement due to the student's need for

specialized instruction throughout the day in a non-public separate special education school.

10. On August 3, 2018, the IEP team convened and determined that the student requires thirty-two (32) hours per week of specialized instruction in a small group setting in a private separate day school in order to make progress in reading, written language, and math, and the IEP team recommended referrals be sent to XXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX.
11. In August 2018, MCPS conducted system-wide training on IEP development, including writing standards-based IEP goals and writing IEP goals progress reports.

CONCLUSIONS:

Allegation #1: IEP that Addresses Reading, Math and Writing Needs

Based on the Findings of Facts #1-#3, #6, #8 and #9, the MSDE finds that the IEP team did not address the student's reading, writing, and math needs, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds that a violation occurred.

Allegation #2: Provision of Specialized Instruction

Based on the Findings of Facts #1, #4, #5, #7, #8 - #11, the MSDE finds that while there is documentation of the specialized instruction to be provided, there is no documentation that the student was provided with it, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred.

Allegation #3: Progress Reports

Based on the Finding of Fact #7, the MSDE finds that the MCPS did not ensure that the reports of the student's progress towards achievement of the annual IEP goals were made as required by the IEP, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation by the end of the 2018 – 2019 school year, that the student is being provided with the special education instruction required by the IEP and that progress reports are being written based on the student's progress, as required by the IEP. The MCPS must also ensure that the IEP team has convened and revised the IEP to include goals that are aligned to grade level standards.

The IEP team must also have determined the compensatory services or other remedy to redress the violations. 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 start of the 2019 - 2020 school year of the steps taken, including training, at the XXXXXXXXXXXXXXXXXXXX to ensure that each IEP includes goals aligned with grade level standards and each IEP team develops the goals that are reasonably calculated to enable the student to narrow the gap that is 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 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.

Steven Ney, Esq.
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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: XXXXXXXXX
 XXXXXXXXX
 Jack Smith
 Kevin Lowndes
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 Dori Wilson
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 Sharon Floyd