



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

April 12, 2019

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Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
P.O. Box 2770
La Plata, Maryland 20646

RE: XXXXX
Reference: #19-110

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 February 11, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The CCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s reading phonics needs, since February 2018, in accordance with 34 CFR §§300.101, .320, .323 and .324.
2. The CCPS has not ensured that the IEP has addressed the student’s spelling and writing needs, since April 2018, in accordance with 34 CFR §§300.101, .320, .323 and .324.
3. The CCPS has not ensured that a copy of the IEP document was provided within five (5) business days after each IEP team meeting convened since April 2018, in accordance with COMAR 13A.05.01.07.

4. The CCPS has not ensured that proper procedures were followed in response to a request for an Independent Education Evaluation (IEE) in April 2018, in accordance with 34 CFR §300.502.
5. The CCPS has not ensured that proper procedures were followed in response to a request for reevaluation in April 2018, in accordance with 34 CFR §§300.303 - .311 and .503.

BACKGROUND:

The student is nine (9) years old, is identified as a student with an Other Health Impairment (OHI) under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services. The student is in the third (3rd) grade and attends the XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX).

ALLEGATION #1 ADDRESSING THE STUDENT’S READING PHONICS NEEDS SINCE FEBRUARY 2018

FINDINGS OF FACTS:

1. The IEP, dated February 5, 2018, documents that the student has a Specific Learning Disability (SLD) in reading in addition to the primary disability of OHI.
2. While the February 2018 IEP identifies reading comprehension and reading fluency as areas affected by the student’s disability, it does not identify reading phonics as an area that is impacted by the student’s disability. However, the IEP documents that the student has “deficits in phonological awareness” that are addressed through the use of a human reader.
3. On April 10 and 17, 2018, the IEP team convened for the annual review of the student’s IEP. The IEP team discussed that the student’s decoding is an area of concern and that he is participating in a reading phonics intervention program¹ five (5) days per week for forty-five (45) minutes each day focusing on “welded” sounds, blends, and diagraphs.
4. There is documentation that the student was reading on level H, which is four (4) levels below the level expected for his grade at this time, and that he achieved a D in reading on his most recent third (3rd) quarter report card. The IEP team documented that the student’s “ability to decode grade level text is well below expected levels” and that he “has a deficit in applying phonics based skills in decoding and encoding.”
5. While the IEP team did not identify reading phonics as an area affected by the student’s

¹ The student was participating in Foundations, a research-based “explicit and highly systematic word study program” of instruction in critical foundational skills that targets phonemic awareness, decoding, fluency, vocabulary, comprehension, spelling and handwriting. Foundations can be used as a Tier 1 and Tier 2 intervention for students in kindergarten to third (3rd) grade.

- disability, the team revised the IEP to include a supplementary support requiring daily phonics/fluency-based intervention which is described as “a research-based multisensory literacy program that utilizes a systematic and cumulative approach to teach total word structure for decoding and encoding, emphasizing the six syllable types to improve reading phonics and fluency.”
6. To further assist with the student’s difficulty with phonics, the IEP team also added supplementary supports requiring breaking down assignments into smaller parts, use of a spell checking device, and altered or modified assignments. In addition, the IEP team decided to increase the specialized instruction from 1.45 hours per week to 2.15 hours per week.
 7. On July 18, 2018, the IEP team convened. The complainant reported that Dyslexia runs in the student’s family and expressed concern about the student’s processing and whether the IEP “addresses all of his issues.”
 8. The IEP team reviewed the most recent assessment data and discussed concerns about the student’s reading. There is documentation that at this time, the student achieved a D in reading on his fourth (4th) quarter report card. The IEP team also considered that the student who was about to end the third (3rd) grade, was still reading at level H, the equivalent of reading at the third (3rd) quarter of first (1st) grade.
 9. At the July 2018 meeting, the IEP team revised the IEP to identify reading phonics as an area affected by the student’s disability and developed a phonics goal requiring the student to apply grade-level phonics and word analysis skills to decode words. In addition, the IEP team determined that additional data was needed with a focus on the student’s phonological processing, and the complainant provided consent for testing at the meeting. The IEP team also documented that the student would participate in a “more intense” reading intervention program.²
 10. On October 23, 2018, the IEP team convened to review assessment results. The IEP team discussed that the student has “significant” weaknesses in his phonological processing and memory, and documented that his functioning is “consistent with a processing deficit in phonological processing sometimes observed in students with learning disabilities in reading or Dyslexia.” The IEP was revised to reflect the updated assessment results.
 11. The November 2018, February 2019, and March 2019 progress reports document that the student was making sufficient progress towards mastery of the IEP phonics goal.
 12. The student achieved Bs in reading on both the first (1st) and second (2nd) quarter report cards for the 2018 - 2019 school year.

² The student began participating in the Wilson reading program at the start of the 2018 - 2019 school year. Wilson is “an intensive Tier 3 program” for students in grades 2-12 with “word-level deficits who are not making sufficient progress through their current intervention” or “who require more intensive structured literacy instruction due to a language-based learning disability, such as Dyslexia.” Wilson is a structured literacy program that focuses on decoding and encoding skills

13. The student was reading at level H at the end of the first (1st) quarter of the 2018 - 2019 school year, but increased his reading level to J during the second (2nd) quarter and to level K during the third (3rd) quarter of the 2018 - 2019 school year.
14. In April 2019, the school staff documented that the student was reading at level K which represents reading at the second (2nd) quarter of second (2nd) grade, which is four (4) levels below the level O which is the expected reading level for his grade.

CONCLUSION:

Based on the Findings of Facts #1 - #14, the MSDE finds that the CCPS has ensured that the IEP addresses the student's reading phonics needs, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #2 ADDRESSING THE STUDENT'S SPELLING AND HANDWRITING NEEDS SINCE APRIL 2018

FINDINGS OF FACTS:

15. The IEP developed on April 10 and 17, 2018 identifies that the student's disability affects his written language content where he is functioning below grade level. The IEP also identifies that the student's disability affects his fine motor skills, but does not reflect his level of performance in this area.
16. The IEP reflects that the student needs verbal prompts to stabilize paper with his non-dominant hand when writing, and to use the baseline and for spacing between words when writing. It also reflects that he has difficulty generating sentences independently. The IEP states that the student "is hesitant to write because he becomes frustrated when he does not know how to spell a word."
17. The April 2018 IEP requires the use of a spell check device as an accommodation, as well as lined paper, monitoring of independent work and altered/modified assignments as supplementary supports to assist the student with his writing and spelling.
18. The April 2018 IEP includes a fine motor skills goal requiring the student to legibly copy a four (4) sentence paragraph, and a written language content goal requiring the student to independently generate five (5) to seven (7) sentences in response to a writing prompt.
19. Weekly occupational therapy services are also required by the April 2018 IEP.
20. In June 2018, the school staff documented that the student was making sufficient progress towards mastery of both the fine motor skills and written language content IEP goals.
21. On October 23, 2018, the IEP team convened. The school staff reported that the student was having difficulty with spelling and completing written work. The IEP team discussed

that the student was provided with an iPad as of the date of the meeting.³ The IEP team decided that the student requires the use of a word processor with spell check when writing three (3) or more sentences. The IEP was revised to add this as an additional supplementary support. The IEP team also documented that the student would practice keyboard skills thirty (30) minutes per week.

22. At the October 2018 meeting, the IEP team decided to conduct an assistive technology (AT) assessment to gather additional information on how to support the student's writing and spelling. The complainant provided consent for the assessment at the meeting.
23. On January 22, 2019, the IEP team convened and reviewed the results of the AT assessment. Based on the information, the team revised the IEP to reflect that the student requires AT through the use of a tablet device with access to on-screen typing with word prediction, as well as voice recognition for speech to text responses, for written responses on classwork and assessments.
24. The student earned a B in writing for both the first (1st) and second (2nd) quarters of the 2018 - 2019 school year.
25. The November 2018, February 2019 and March 2019 progress reports document that the student was making sufficient progress towards mastery of the fine motor skills goals.
26. The November 2018 and February 2019 progress reports document that the student was making sufficient progress towards mastery of the written language content goals. However, in March 2019, the school staff documented that the student was not making sufficient progress towards the written language goal. The IEP team convened on April 22, 2019 to address the lack of progress and made revisions to the IEP.

CONCLUSION:

Based on the Findings of Facts #15 - #26, the MSDE finds that the CCPS has ensured that the IEP addresses the student's spelling and writing needs, in accordance with 34 CFR §§300.101, .320, .323 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3 PROVISION OF IEP DOCUMENTS

FINDINGS OF FACTS:

27. Since April 2018, the IEP team convened, and made revisions to the IEP on the following dates:

³ The parties report that the school staff received an iPad for the student's use following the complainant's communication in early October 2018 with the CCPS Central Office staff about her belief that the student did not have the appropriate assistive technology to address his needs.

- April 10 and 17, 2018;
- July 18, 2018;
- October 23, 2018;
- January 22, 2019; and
- April 2, 2019.

28. There is no documentation that the school staff provided the complainant with either a draft or a complete IEP within five (5) business days after each IEP meeting.

CONCLUSION:

Based on the Findings of Facts #27 and #28, the MSDE finds that the CCPS did not ensure that the complainant was provided with an IEP within five (5) business days, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATIONS #4 AND #5

**APRIL 2018 REQUEST FOR REEVALUATION AND
REQUEST FOR IEE**

FINDINGS OF FACTS:

29. On April 9, 2018, the complainant sent an electronic mail (email) communication to the school staff. The email requested “an Independent Educational Evaluation for speech and language.” To date, there is no documentation of a response by the school system staff to the complainant’s request for an IEE in speech and language and no information or documentation that the CCPS filed a due process complaint to defend its evaluation.
30. Also included in the complainant’s April 9, 2018 email was a request for “updated educational assessment to be conducted within the school system.”
31. The IEP team convened on April 10 and 17, 2018. However, there is no documentation that the team considered reevaluation planning or addressed the complainant’s request for an updated educational assessment at either meeting.
32. There is documentation that on October 23, 2018 the IEP team convened to conduct reevaluation planning. While the IEP team decided that assessments were needed in the areas of the student’s cognitive functioning and emotional/social/behavior development, the IEP team did not identify the student’s academic performance as an area in which additional information was needed. However, there is no documentation that the IEP team considered the complainant’s request for academic testing or the basis for rejecting the request.

CONCLUSIONS:

Allegation #4 IEE Request

Based on the Finding of Fact #29, the MSDE finds that the CCPS did not follow proper procedures for responding to the request for an IEE, in accordance with 34 CFR §300.502. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #5 Request for Reevaluation

Based on the Findings of Facts #30 - #32, the MSDE finds that the CCPS did not follow proper procedures for responding to the request for a reevaluation, in accordance with 34 CFR §§300.303 - .311 and .503. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires, no later than May 1, 2019, that the CCPS either provide the complainant with information on how to obtain an IEE in the area of speech/language at public expense or file a due process hearing to defend its evaluation.

The MSDE requires the CCPS to provide documentation by June 1, 2019, that the IEP team has convened and addressed the complainant's request for an updated educational assessment.

If the IEP requires revision as a result of information obtained from any additional educational assessment that is conducted or IEE in the area of speech/language, the CCPS must provide documentation by the start of the 2019-2020 school year that compensatory services or another remedy has been offered to the complainant for the delay in identifying and addressing the student's needs.

School-Based

The MSDE requires the CCPS to provide documentation by the start of the 2019-2020 school year of the steps it has taken to ensure that the XXXXXX ES school staff comply with the requirements for providing IEPs within five (5) business days of an IEP team meeting, and for responding to requests for IEEs and for school-based assessments. 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 Dr. Nancy Birenbaum, 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 parties 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/ksa

c: Kimberly Hill
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