



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

July 24, 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: #19-164

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.

ALLEGATION:

The MSDE received a complaint from Ms. XXXXXXXXXXXXXXX, hereafter “the complainant,” on behalf of her 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 has not ensured that the student’s need to independently move within the school environment has been addressed, since May 9, 2018, in accordance with 34 CFR §§300.39 and .324.

BACKGROUND:

The student is sixteen (16) years old and attends the XXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA related to CoQ10¹ deficiency with

¹ CoQ10, or Coenzyme Q10, is an antioxidant produced naturally in the body and used by cells for growth and maintenance (www. mayoclinic.com).

associated cerebellar ataxia,² and has an IEP that requires the provision of special education and related services.

FINDINGS OF FACTS:

1. There is correspondence from the student's XXXXXXXXXXXXXXXX (XXX) physician, dated November 10, 2017, that states that the student has a mitochondrial disease that causes fatigue on a daily basis, and that "it is not uncommon for [him] to display inconsistent cognitive abilities, short term memory deficits, variability in concentration or difficulty with reading and writing." The correspondence reflects that the student may struggle with focusing and have difficulty completing fine and gross motor skills tasks when he is fatigued. It further states that the student requires a full time aid for support in school for "directional and awareness queues when appropriate and also to help limit his falls."
2. The IEP in effect at the start of the investigation period was developed on March 16, 2018 and identifies that the student has gross motor skills needs. In describing his functioning in this area, the IEP states that he "continues to be independent in ambulation given standby assistance in case of balance loss due to ataxia." The IEP reflects that the student "sometimes" rushes on stairs and that he needs to regulate his speed and not rush when walking. It also reflects that the student requires "frequent" reminders not to rush ahead of his assigned support staff, and that when rushing, his walking becomes more unstable and he "appears to be at greater risk for a fall."
3. The IEP states that the student requires "one to one adult support throughout the day to insure his safety due to balance issues related to functional mobility (sitting, standing, walking, transition, bending, etc." The IEP also reflects that the student requires clear hallways to transition safely between classes and the use of an elevator to transition to different levels of the building.
4. The IEP contains a gross motor skills goal stating that "given fading physical and verbal cues and consult with staff, [the student] will improve his functional mobility skills." The objectives within the goal require the student to "walk at a constant pace throughout the school regulating his speed," and to "transition slowly to stand and back down to sit." The IEP requires physical therapy once a month.
5. On November 19, 2018, the complainant observed the student while walking up and down the stairs at school. Based on her observation, the complainant requested that the student be allowed to use the stairs school instead of requiring him to use the elevator at school.

² Ataxia describes a lack of muscle control or coordination of voluntary movements, such as walking or picking up objects (mayoclinic.org/diseases-conditions/ataxia). Ataxia is a neurological disease related to the degeneration of the cerebellum, the portion of the brain that is responsible for coordinating movement. Symptoms vary by person, and the onset and progression can vary as well. These can include lack of coordination, slurred speech, trouble eating and swallowing, eye movement abnormalities, deterioration of fine motor skills, difficulty walking, gait abnormalities, tremors and heart problems (ataxia.org).

6. On November 26, 2018, a physical therapist observed the student walking up and down stairs at school and informed the complainant that she believed it was not safe for the student to use the stairs.
7. On November 27, 2018, the complainant sent an email to the school staff expressing concern that the student was not being prepared for mobility independence by being restricted from using the stairs at school. The complainant requested that the school staff assist with preparing the student for independence, and requested an IEP team meeting.
8. On November 30, 2018, another physical therapist³ observed the student walking up and down the stairs. This therapist also concluded that, due to “significant safety concerns,” the student should not use the stairs.
9. On December 5, 2018, the complainant reported that the student goes up and down the stairs in his home. She requested an IEP team meeting to address her concerns about the student’s need for independence and using the stairs at school.
10. On December 20, 2018, the IEP team convened. The student’s parents requested that the one to one support be discontinued and that the student be permitted to use the stairs at school in order to gain more independence. Also at the meeting, the student reported that “his biggest accomplishment since his last IEP meeting has been to improve his walking and his balance.”
11. The IEP team discussed that the student independently walks around the building with standby assistance, requires standby assistance when transferring from sitting to standing to sitting, and “has periods when he is weaker and less stable” with his walking and transferring. The school-based members of the IEP team reported that the student is at an increased risk for falls “due to the steepness of the stairs, his ataxic gait and his continued tendency to sometimes rush on the stairs.”
12. At the December 2018 meeting, the IEP team rejected the parents’ requests based on a determination that the student continues to require one to one staffing as well as the use of an elevator in order to safely navigate and transition throughout the school building. However, there is no documentation that the IEP team considered any other options for addressing the complainant’s concern for increasing the student’s independence.
13. On April 9, 2019, the IEP team convened. The IEP team considered correspondence, dated April 9, 2019, from the student’s XXX physician. In this correspondence, the XXX physician describes the student’s mitochondrial disease and concludes that his “gait is stable and, perhaps, has slightly improved.” The team also considered correspondence

³ The second (2nd) physical therapist is school system staff who supervises other physical therapists.

dated April 8, 2019, from a doctor of chiropractic (D.C.) following a physical assessment and analysis of the student's gait and balance. In this correspondence, the D.C. reported that the student "performed all tests presented, with the exception of single leg balance with eyes opened. The DC states that the student is "clear[ed]" to walk between classes without assistance, and he is also "cleared to do modified MMA⁴ workouts."

14. At the April 2019 IEP meeting, the complainant reported that the student walks alone at home and in the community. She also reported that the student will not have the one to one support that is currently being provided to him after he leaves high school. In addition, the complainant expressed her belief that the student "needs to learn how to pick himself up when he falls," and requested that the team discontinue the one to one support staff in order to increase his independence for life after high school.
15. The school-based members of the IEP team reported that "at times" the student walks quickly which increases the potential for him to fall and cause injury to himself. They also discussed that the student stumbles and trips more when he is fatigued, and does not communicate any challenges he may have while walking. Based on this information, the IEP team rejected the complainant's request to discontinue the one to one support "due to safety concerns."
16. The written summary of the April 2019 IEP meeting documents that the IEP team agreed that the student needs prompting to think about and discuss potential challenges when walking. The written summary also states that the IEP team attempted to further discuss how the current one to one staff was being provided to the student in order to address the complainant's concern for increasing the student's independence. However, the IEP meeting was not completed due to the contentiousness of the discussion between the school staff and the complainant's advocate.

CONCLUSION:

Based on the Findings of Facts #1 - #16, the MSDE finds that, in December 2018 and April 2019, the IEP team convened in response to the complainant's requests to discontinue the student's one to one support, permit him to use the stairs at school, and increase his mobility independence.

Based on the Findings of Facts #6, #8, #11, #12 and #15, the MSDE finds that there is data documenting the safety concerns to support the IEP team's refusals of the complainant's requests to discontinue the student's one to one support and to permit him to use the stairs.

⁴ The parties explained that MMA is an acronym for Mixed Martial Arts. Mixed Martial Arts is a full-contact combat sport that allows striking and grappling, both standing and on the ground, using techniques from various combat sports and martial arts (wikipedia.org).

However, based on the Findings of Facts #7, #9, #10, #12 - #14 and #16, the MSDE finds that, there is no documentation that the IEP team has addressed the complainant's concern about increasing the student's mobility independence, in accordance with 34 CFR §300.324. Therefore, this office finds a violation.

CORRECTIVE ACTION/TIMELINES:

The MSDE requires the MCPS to provide documentation by September 30, 2019, that the IEP team has convened with the participation of a mobility specialist and considered the complainant's request to increase the student's mobility independence.⁵

If the IEP team determines that the student's mobility independence can be increased at this time, the team must develop a plan to accomplish this and the MCPS must provide documentation that the IEP team has convened an IEP team meeting at the end of the second (2nd) and third (3rd) quarters of the 2019 – 2020 school year with the participation of a mobility specialist. At each meeting, the IEP team must review the student's progress on the plan to increase his mobility independence, and review and revise the plan, as appropriate, based on the 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 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.

⁵ If the complainant's advocate and school-based members of the team are unable to discuss the issue in a respectful manner, thereby making it impossible to complete this action, the complainant must be given the opportunity to continue the meeting without the participation of the advocate.

XXX

Mr. Philip A. Lynch

July 24, 2019

Page 6

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

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