




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

October 16, 2019




Mr. Michael Thatcher
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: 
Reference: #20-020

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 August 22, 2019, the MSDE received a complaint from Ms.  hereafter “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that the student was provided with the special education services in the educational placement required by the Individualized Education Program (IEP), from the start of the 2018 – 2019 school year to October 2018, in accordance with 34 CFR §§300.101, .323 and .324.
2. The HCPS did not follow proper procedures when determining the Least Restrictive Environment (LRE) in which the IEP can be implemented in October 2018, in accordance with §34 CFR §§300.114 - .116.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. At the start of the investigation period, the student had an IEP that requires the provision of special education and related services.

The student attended [REDACTED] a nonpublic separate special education school, where he was placed by the HCPS for the 2017 – 2018 school year, until the complainant withdrew him from the school system on October 18, 2018 and began to provide home instruction.

FINDINGS OF FACTS:

1. The August 20, 2018 IEP states that the LRE in which the IEP could be implemented, with the provision of supplementary supports and services such as one-to-one adult support, is a separate special education classroom in a public school. It required that the student be transitioned, at the start of the 2018 – 2019 school year, from [REDACTED] a nonpublic separate special education school, to a regional, therapeutic behavioral program located at [REDACTED] School ([REDACTED] ES).¹
2. There is documentation that following the August 20, 2018 decision, the parties had concerns about the student's transition to a public school placement at the start of the 2018 – 2019 school year. The school system decided to return the student to [REDACTED] in September 2018 until the IEP team could meet to determine the appropriate LRE.
3. On October 5, 2018, the IEP team reconvened. At that time, the complainant requested that the student be transitioned from [REDACTED] to a less restrictive environment with access to nondisabled peers and one-to-one-adult support. In response, the IEP team decided that the student would continue to be placed in a nonpublic placement because the one-to-one adult support required by the IEP was not available in the public school setting.

CONCLUSIONS:

Allegation #1 Provision of IEP Services in the Required Placement

Based on the Findings of Facts #1 – #3, the MSDE finds that the IEP was not implemented in the placement required by the IEP from the start of the 2018 – 2019 school year until October 5, 2018, in accordance with 34 CFR §§300.101 and .323. Therefore this office finds a violation with respect to this allegation.

Allegation #2 LRE Determination

Based on the Finding of Fact #3, the MSDE finds that, on October 5, 2018, the IEP team did not follow proper procedures to determine the educational placement because the decision was based on the lack of available one-to-one support rather than the individual needs of the student, in accordance with 34 CFR §§300.114 - .116. Therefore, this office finds a violation with respect to this allegation.

¹ The IEP team documented “potential harmful effects” of the student’s continued placement in a nonpublic separate special education school.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the HCPS to provide documentation by December 15, 2019, that the IEP team has convened and taken the following actions:

1. Determined the student's present levels of functioning and the levels of functioning and performance that were expected to have been demonstrated by that time;
2. Reviewed and revised the IEP, as appropriate, based on the data;
3. Followed proper procedures to determine the student's placement in the LRE, including considering whether the IEP can be implemented in a public school setting with the provision of one-to-one adult support, if the complainant reenrolls the student in the HCPS; and
4. If the team determines that the student's levels of performance are delayed to the extent that he cannot be educated in a public school setting with supports, the team has determined the amount and nature of compensatory services or other remedy to be provided to the student to accelerate his skills growth to the levels that were expected to be demonstrated at that time, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings, if the complainant reenrolls the student in the HCPS.

School/System-Based

The MSDE requires the HCPS to provide documentation by December 1, 2019, of the steps it has taken to ensure that proper procedures are followed when determining the educational placement for a student being considered for transition from a nonpublic separate special education school to a less restrictive placement.

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

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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 she disagrees 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: Sean Bulson
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