




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

November 22, 2019




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

RE: 
Reference: #20-036

Dear Parties:


The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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:

On September 23, 2019, the MSDE received a complaint from Mr.  hereafter, “the complainant,” on behalf of his 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 above-referenced student.

The MSDE investigated the allegation that the HCPS has not provided the student with the support required by the Individualized Education Program (IEP) since September 2019, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is twelve (12) years old and attends  School. He is identified as a student with Multiple Disabilities under the IDEA, related to a Specific Learning Disability and Other Health Impairment, and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The student's IEP requires that he be provided with an assistive technology device that provides speech recognition, word prediction, spellcheck, document review, and text to speech to complete written classwork and homework. A review of the data from the student's assistive technology device reflects that on September 3, 2019, the student created a "student profile" using his HCPS issued device, and that subsequent "drive folders" were also created by the student on his device. In addition, the progress reported on the annual goals indicate that the student utilized his assistive technology device to complete school work.
2. The IEP requires that the student be provided with a "safe place" within the classroom that would allow him to manage his behavior rather than eloping from the classroom. The HCPS acknowledges that from September 3, 2019 to September 23, 2019, the student was not provided with a "safe place" within the classroom setting to avoid elopement. The school staff reported that during that time period, the student had two (2) incidents of elopement from class.
3. At the October 4, 2019 IEP team meeting, the IEP team identified a designated "safe space" for the student to utilize in order to decrease his elopement behavior with elopement. The IEP meeting summary reflects that, as of September 23, 2019, the student has been provided with a "safe place" in the classroom, cafeteria, media center, and gym. The team determined that, since the student returned back to class immediately following his two (2) recent incidents of elopement, there was no negative instructional impact. The team also reported that, since a "safe space" was established for the student on September 23, 2019, there have been no further incidents of elopement by the student.
4. The IEP requires that the student be provided with evidence-based interventions to address his reading comprehension needs. The student's class schedule, data from his assistive technology device, and a detailed intervention report reflect that he has been enrolled in a reading intervention class since the start of the 2019 - 2020 school year. The progress reported on the annual reading comprehension goal reflects that as of October 14, 2019, the student achieved the reading comprehension goal.
5. The IEP requires that the student be provided with positive feedback to assist with his motivation on a daily basis throughout the school day when he is seen "working hard and trying his best." There is no documentation that positive feedback is provided as required by the IEP.

6. The IEP requires that the student be provided with a list of study strategies and copies of notes to use “when and if studying.” In a review of the data from the student’s assistive technology device, there is evidence that he has been provided with study strategies and copies of notes for social studies and science through the use of his assistive technology device.
7. The IEP requires that the student be provided with agenda/calendar checks by school staff to ensure he is documenting homework assignments. However, there is no documentation that the student is being provided with agenda/calendar checks by school staff.
8. The IEP requires that the student be provided with copies of additional textbooks to be left at home. In a review of the data from the student’s assistive technology device, there is evidence that he has access to textbooks through the use of his device. However, there is no documentation indicating when the student was provided with access to these textbooks materials.
9. The IEP requires that the student be provided with color-coded stickers on worksheets. There is no documentation that color-coded stickers on worksheets were provided as required by the IEP.
10. On October 4, 2019, the IEP team convened to address the complainant’s concerns about the provision of supports, such as textbooks for home, study strategies, and copies of notes for social studies and science. The school staff reported that these supports are placed on electronic folders in the student’s assistive technology device. Based on this information, the team decided that the IEP was not written clearly with respect to how the student is to access study strategies, copies of class notes, and textbooks, and in response, revised the IEP. In addition, the IEP team discontinued the use of the color-coded stickers, clarified how the agenda/calendar would be monitored, and how positive reinforcement would be provided to the student. However, there is no documentation that the agenda/calendar is being monitored, and that positive reinforcement is being provided.
11. The progress reported on the student’s annual goals, dated October 14, 2019, reflect that he had achieved some of his goals, and was making sufficient progress to achieve the remaining goals within one year. The student’s report card for the first quarter of the 2019 - 2020 school year, reflects that that he had passing grades in all of his classes.

CONCLUSIONS:

Assistive Technology Device

Based on the Findings of Facts #1, #6, #8, and #10, the MSDE finds that an assistive technology device has been provided to the student since September 3, 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

A “Safe Place” within the Classroom Setting

Based on the Findings of Facts #2 and #3, the MSDE appreciates the HCPS acknowledgement that the student was not provided with a safe place to avoid elopement, from September 3, 2019 to September 23, 2019, in accordance with 34 CFR §§300.101 and .323. Therefore, this office concurs with the HCPS conclusion and finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the IEP team convened on October 4, 2019 to clarify the IEP with regard to identifying a “safe place” for the student, and determined that there was not a negative educational impact for the student. Therefore, no student-specific corrective action is required to remediate the violation.

Reading Intervention to Address Comprehension

Based on the Findings of Facts #4 and #11, the MSDE finds that the student has been provided with an evidence-based reading intervention for comprehension since the start of the 2019 - 2020 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Provision of Study Strategies and Copies of Class Notes

Based on the Findings of Facts #6 and #11, the MSDE finds that there is documentation that the student has been provided with study strategies and copies of notes as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Agenda/Calendar Checks by School Staff

Based on the Findings of Facts #7 and #10, the MSDE finds that there is no documentation that the student is being provided with agenda/calendar checks by school staff, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #11, the MSDE finds that the IEP team subsequently revised the IEP with respect to the provision of an agenda/calendar checks. Therefore, this office finds that the violation did not negatively impact the student's ability to benefit from the education program and does not require student-specific corrective action.

Textbooks for Home

Based on the Findings of Facts #8 and #10, the MSDE finds that there is no documentation that the student was provided with textbooks for home, from the start of the 2019 - 2020 school year to October 4, 2019, when the IEP was revised, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation during this time period.

Notwithstanding the violation, based on the Finding of Fact #11, the MSDE finds that the lack of the provision of textbooks for home did not negatively impact the student's ability to benefit from the education program and does not require student-specific corrective action.

Color-Coded Stickers on Worksheets

Based on the Findings of Facts #9 - #11, the MSDE finds that color-coded stickers were not provided, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #11, the MSDE finds that the IEP team subsequently determined that color-coded stickers were not required. Therefore, this office finds that the violation did not negatively impact the student's ability to benefit from the education program and does not require student-specific corrective action.

Positive Reinforcement

Based on the Findings of Facts #5 and #10, the MSDE finds that there is no documentation that the student is being provided with positive reinforcement, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #11, the MSDE finds that the IEP team subsequently revised the IEP with respect to how positive reinforcement will be provided to the student. Therefore, this office finds that the violation did not negatively impact the student's ability to benefit from the education program and does not require student-specific corrective action.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance

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activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.¹ This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the HCPS to provide documentation at the end of each quarter of the 2019 - 2020 school year that the positive reinforcement and the monitoring of the agenda/calendar, as required by the IEP, is being provided to the student.

School Based

The MSDE requires the HCPS to provide documentation by the start of the February 29, 2020 of the steps taken to ensure that these violations do not recur at [REDACTED] School.

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/Special Education Services, MSDE.

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

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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/Special Education Services

MEF:ac

c: Sean Bulson
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