

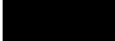


Karen B. Salmon, Ph.D.
State Superintendent of Schools

January 14, 2020



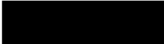
Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: 
Reference: #20-058

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 November 15, 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 Montgomery County Public Schools (MCPS) 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 MCPS has not ensured that the student has been provided with the accommodations required by the Individualized Education Program (IEP) since November 15, 2018, in accordance with 34 CFR §§ 300.101 and .323.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with a Traumatic Brain Injury under the IDEA.

The student is assigned to ██████████ Middle School, but the complainant has not sent him to school since November 1, 2019. He has an IEP that requires the provision of special education instruction and related services.

FINDING OF FACT:

1. There is documentation of the provision of accommodations, through reports of the student's progress towards achievement of the annual IEP goals, which were made between November 2018 and April 2019. However, there were no progress reports from April 2019 to November 2019, and there is no other documentation of the provision of accommodations during this time period.

CONCLUSION:

Based on the Finding of Fact, the MSDE finds that the MCPS did not ensure that the student was provided with the accommodations required by the IEP from April 2019 to November 2019, in accordance with 34 CFR §§ 300.101 and .323. Therefore, this office finds that a violation occurred with respect to the allegation.

The MSDE reminds the parties that, because the student is of compulsory school age, steps must be taken immediately to ensure the student returns to school without delay.

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 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 time frames 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

¹ The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency corrects 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.

implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student Specific

The MSDE requires the MCPS to provide documentation by March 1, 2020 that the IEP team has developed a plan to:

- (a) Ensure that the student is provided with the accommodations required by the IEP;
- (b) Document the provisions of those accommodations; and
- (c) Provide the complainant with such documentation for the remainder of the 2019 - 2020 school year.

The MCPS must also provide documentation that the IEP team determined whether the student made sufficient progress towards achievement of the annual IEP goals from April 2019 to November 2019. If the student did not make sufficient progress during that time period, the MCPS must provide documentation that the IEP team determined the compensatory services or other remedy to be provided to the student to remediate the identified violation.

School Based

The MSDE requires the MCPS to provide documentation by March 31, 2020 of the steps taken to ensure that the violation does not recur at Cabin John Middle School.


TECHNICAL ASSISTANCE:

Technical assistance is also available to the parties by contacting Dr. Nancy Birenbaum

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.

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,

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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consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

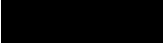
Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Early Intervention/Special Education Services

MEF:ac

c: Jack R. Smith
Kevin Lowndes
Tracee Hackett
Julie Hall

Dori Wilson
Anita Mandis
Albert Chichester