




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

April 3, 2020





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

RE:   
Reference: #20-093

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.

**ALLEGATIONS:**

On February 4, 2020, the MSDE received a complaint from Mr.  and Mrs.  hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants 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 following allegations:

1. The MCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s pragmatic language, social/emotional, and math needs from February 4, 2019 to the end of the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .324.
2. The MCPS did not ensure that the parents were provided with proper written notice of the decisions made at the April 2019 IEP team meeting, in accordance with 34 CFR §300.503.

3. The MCPS did not ensure that the student was provided with the supplementary aids required by the IEP, from February 4, 2019 to the end of the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .324.
4. The MCPS did not provide reports on the student's progress toward achieving the annual IEP goals, as required by the IEP, from February 4, 2019 to the end of the 2018 - 2019 school year, in accordance with 34 CFR §300.323.

### **BACKGROUND:**

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. She attends [REDACTED] Middle School and has an IEP that requires the provision of special education instruction and related services. During the timeframe of this investigation, the student attended [REDACTED] Elementary School in MCPS.

The student is currently enrolled at [REDACTED] Middle School. However, since March 16, 2020, there has been a Statewide closure of all schools as a result of a national outbreak of respiratory disease caused by a new coronavirus named coronavirus disease 2019 (COVID-19).

### **FINDINGS OF FACTS:**

1. The IEP in effect on February 4, 2019, reflects that the student has identified needs in areas of written expressive language, social/emotional behavior, social interactions, and self-management. It states that the student was in the fifth (5) grade, "approaching" fifth (5) grade expectations in written language and social interaction skills, and "below" age expectations in social/emotional behavior and self-management. The IEP includes supports, services, and goals for the student in these areas to be achieved by December 2019. The IEP reflects that the student was performing on grade level in math, and there is no documentation indicating that the student demonstrated needs in the area of pragmatic language during the time of this investigation.
2. The reports of the student's progress towards achievement of the annual IEP goals during the second, third, and fourth quarters of the 2018 - 2019 school year, reflect that the student was making sufficient progress toward achieving the annual goals by December 2019. However, there is no documentation that the complainants were provided with IEP progress reports on a quarterly basis, as required by the IEP.
3. On April 16, 2019, the IEP team convened at the complainants' request to discuss the student's progress in her "5/6 grade math class," which utilizes both 5<sup>th</sup> and 6<sup>th</sup> grade content curriculum. The team reviewed the student's assessment scores, observation data, and teacher feedback which reflected that, although the student "had some gaps in content, she is receiving great support," was performing at grade level, and was becoming more "comfortable" with the curriculum. The team determined that the student would remain in the "5/6 grade math class" for the remainder of the 2018 - 2019

school year. The IEP was revised to include additional supports to assist the student throughout the school day. There is documentation that the proper written notice from the IEP team meeting contained all the contents required by the IDEA.

4. The student's IEP requires supports, such as checklist for extended time, check-in with teachers for support, use of a timer during instruction, repetition of directions, monitoring of independent work, frequent feedback, checks for understanding, breakdown of assignments, adult support during social situations, the use of a break pass, specific word banks, advanced warning of transitions, and an instructional aid to provide notes and outlines.
5. On May 21, 2019 and June 11, 2019, the student's father contacted the school staff about the provision of supplementary aids that were to be provided to the student as required by the IEP. There is documentation that the school staff provided the complainant with an explanation of what and how the supplementary aids were being provided to the student, contemporaneously with these requests. The progress reported on the annual goals also documents the provision of supplementary aids required by the IEP.
6. The student's report card for the 2018 - 2019 school year reflects that she received passing grades in all of her core academic classes.
7. On September 20, 2018, the student's middle school IEP team convened to review and revise the IEP, as appropriate. There is documentation that the complainants were provided with the revised IEP following the IEP team meeting, which included reports of the student's annual goal progress reports from the 2018 - 2019 school year.

### **CONCLUSIONS:**

#### **Allegation #1: An IEP that Addresses the Student's Pragmatic Language, Social/Emotional, and Math Needs**

Based on the Finding of Facts #1 - #7, the MSDE finds that the IEP addressed the student's social/emotional needs. Further, based on the Finding of Fact #1, there is no evidence indicating that the student demonstrated needs in the areas of math and pragmatic language, in accordance with 34 CFR §§300.101 and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **Allegation #2: Provision of Proper Written Notice of the April 2019 IEP Team Meeting**

Based on the Finding of Fact #3, the MSDE finds that proper written notice from the IEP team meeting held in April 2019, contained all the contents required by the IDEA, in accordance with 34 CFR §300.503. Therefore, this office does not find that a violation occurred with respect to the allegation.

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### **Allegation #3: Provision of Supplementary Aids Required by the IEP**

Based on the Finding of Facts #1 - #7, the MSDE finds that there is documentation that the [REDACTED] was provided with supplementary aids required by the IEP, in accordance with 34 CFR §300.323. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **Allegation #4: Provision of Progress Reports from February 9, 2019 to the End of the 2018 - 2019 School Year**

Based on the Finding of Facts #2 and #7, the MSDE finds that there is no documentation that the complainants were provided with the student's progress reports on a quarterly basis, as required by the IEP, from February 9, 2019 to the end of the 2018 - 2019 school year, in accordance with 34 CFR §300.323. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #7, the MSDE finds that, after the IEP team meeting held on September 20, 2019, the complainants were provided with the IEP, which included goal progress reports from the 2018 - 2019 school year. Therefore, no further student specific corrective action is required.

### **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.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions.

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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

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<sup>1</sup> 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.

<sup>2</sup> 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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**School-Based**

The MSDE requires the MCPS to provide documentation of the steps taken at [REDACTED] Elementary School to ensure that the violation does not recur.

Documentation of completion of the 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.

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, 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  
[REDACTED]  
Dori Wilson

Anita Mandis  
Albert Chichester  
Nancy Birenbaum