



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

July 31, 2020



Dr. Terrell Savage
Executive Director of Special Education
Howard County Public Schools
10910 Clarksville Pike
Ellicott City, 21042

RE: [REDACTED]
Reference: #20-132

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 June 1, 2020, the MSDE received a complaint from Mr. [REDACTED] and Mrs. [REDACTED] hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Howard 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 following allegations:

1. The HCPS did not provide you with a copy of the Individualized Education Program (IEP) document within five (5) business days after the IEP team meeting held on November 8, 2019, in accordance with COMAR 13A.05.01.07.
2. The HCPS has not ensured that the IEP was reasonably calculated to address the student’s identified needs in light of his circumstances during the 2019 - 2020 school year, in accordance with 34 CFR §§300.101, .320, and .324. Specifically, you allege the following:

- a. The IEP has not been designed to allow the student to make sufficient progress in the areas of reading comprehension, handwriting, attention, and social emotional functioning.
- b. The IEP has not addressed the student's phonemic awareness, assistive technology, and fine motor skills.

BACKGROUND:

The student is nine (9) years old and is identified as a student with an Other Health Impairment under the IDEA, related to Attention-Deficit Hyperactivity Disorder (ADHD). He has an IEP that requires the provision of special education instruction and related services.

The student is placed at the [REDACTED] Elementary School, where he attended school until a March 16, 2020 Statewide closure of all schools as a result of the national COVID-19 pandemic.

ALLEGATION #1: PROVISION OF THE IEP WITHIN FIVE (5) BUSINESS DAYS AFTER THE NOVEMBER 8, 2019 IEP TEAM MEETING

FINDINGS OF FACTS:

1. On November 8, 2019, the IEP team convened to review and revise the student's IEP, as appropriate, and to address parental concerns.
2. There is documentation that on November 20, 2019, the revised IEP was provided to the complainants by electronic mail (email).

CONCLUSION:

Based on the Finding of Facts #1 - #2, the MSDE finds that the HCPS did not provide the complainants with a copy of the IEP document within five (5) business days after the IEP team meeting held on November 8, 2019, in accordance with COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #2 ADDRESSING STUDENT NEEDS

FINDINGS OF FACTS:

Reading Comprehension

3. The IEP in effect at the start of the 2019 - 2020 school year was developed on June 6, 2019. The IEP does not indicate the grade level which the student was performing in reading comprehension, but does indicate he was at "level K on the *Fountas and Pinnell* rating scale." At that time, the teacher reported that the student had made one (1) year's

progress in reading comprehension during that school year. Based on the data, the IEP was revised to include goals to address the student's reading comprehension needs and to require special education instruction to assist him with achieving the goals.

4. On November 8, 2019, the IEP team convened. At that meeting, the complainants expressed concerns about the student's reading progress. While the report of the student's progress towards achievement of the annual goal to address reading comprehension reflected sufficient progress was being made, the teacher reported that the student was at the same instructional level in which he was performing at the end of the previous school year. However, there is no documentation that the team addressed the complainants' concern.
5. On January 30, 2020, May 26, 2020, and June 11 and 22, 2020, the IEP team convened. While the report of the student's progress towards achievement of the annual goal to address reading comprehension reflected sufficient progress was being made at each meeting, the teacher reported that the student's instruction level had increased only slightly to level L and that he was "reading around third quarter of second grade, a little more than a year behind." At each meeting, the complainants requested additional support to assist the student with accelerating progress. However, there is no documentation that the team addressed the complainants' request or addressed the lack of skills growth until June 22, 2020.

Phonemic Awareness

6. During the 2019 - 2020 school year, the student participated in a research-based reading intervention. However, the IEP does not indicate which areas of need were being address through the intervention. At the May 26, 2020 IEP team meeting, the complainant raised concern about the student not having a phonemic awareness goal related to reading. The school staff indicated that the intervention the student was going to be provided with during the 2020 – 2021 school year would address phonemic awareness. While the IEP team has not considered the student's weakness in this area and whether he requires specialized instruction, it has agreed to conduct assessments to do so when schools resume normal functioning.

Handwriting, Fine Motor Skills, and Assistive Technology

7. The report of an occupational therapy assessment used to revise the IEP which was in effect at the start of the 2019 - 2020 school year states that the student demonstrates "slightly below expectations for eye hand coordination handwriting and cutting skills." The report indicates that the student would benefit from have a "letter guide for a visual model to check letters, and a trial with a pencil grip or adapted pencil to improve his control.
8. On January 30, 2020, the IEP team considered information from the student's teacher that the student's handwriting was "below expectations," and that he had difficulty with writing

mechanics. The IEP team recommended that a trial of assistive technology be conducted to determine supports for the student's writing.

9. The assistive technology trial has not yet been completed and will not resume until schools resume normal functioning.

Attention

10. The IEP requires small group settings during testing to minimize distractions, as well as frequent breaks, and an adult to be in close proximity to the student to assist him with remaining focused, consistent with teacher reports that these supports that are effective in addressing the student's attention needs.
11. There is no documentation that the student's lack of progress towards achieving IEP goals or skills growth is attributable to the need for increased support for the student to maintain attention to tasks.

Social-Emotional Functioning

12. The data identifies the student with needs in the areas of inattentiveness, executive functioning, and peer relationships. It is reported that the student "initiates topics of conversation that are not on topic or relevant to the activities" when communicating with his peers. The IEP includes goals for the student to improve peer interaction and requires special education instruction to assist him in achieving the goals.
13. At the IEP team meeting held on November 8, 2019, the complainants expressed concern that the student was not making sufficient progress with improving his peer interactions, and requested that he be provided with counseling services to accelerate his progress. The IEP team decided that the student would be provided with "structured playtime during recess to increase social interactions," and that school staff would check in with the student after lunch and recess to discuss any issues that arise. The team also decided that the school staff would provide the complainants with information about peer related issues that arise during the school day.
14. At the IEP team meetings held on January 30, 2020, May 26, 2020, June 11 and June 22, 2020, the complainants reiterated their concerns about the student's progress with peer interactions and raised concern that the annual IEP goals do not target the specific behaviors that the student was exhibiting based on reports provided to the complainant by the school staff. However, the IEP team did not revise the goals consistent with the student's current behaviors and did not add strategies to address the behaviors until June 22, 2020.

CONCLUSIONS:

Reading Comprehension

Based on the Findings of Facts # 3 - #5, the MSDE finds that the IEP in effect at the start of the 2019 - 2020 school year addressed the student's identified needs in reaching comprehension. However, based on those Findings of Facts, the MSDE finds that there is no documentation that the IEP has been designed for the student to make a reasonable amount of progress in reading from November 8, 2019 to June 22, 2020, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation for this time period.

Phonemic Awareness

Based on the Finding of Fact #6, the MSDE finds that the HCPS has not ensured that any needs arising out of weakness in phonemic awareness have been identified and addressed, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation since the start of the 2019 - 2020 school year.

Handwriting, Fine Motor Skills, and Assistive Technology

Based on the Findings of Facts #7 - #9, the MSDE finds that, while supports and occupational therapy services were provided to address handwriting and fine motor skills, the HCPS has not ensured that any need for assistive technology to assist with handwriting has been identified and addressed since January 30, 2020, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office finds that violation occurred with respect to this aspect of the allegation for this time period.

Attention

Based on the Findings of Facts #10 and #11, the MSDE finds that the IEP includes supports to assist the student with his attention needs consistent with the data, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office does not find that violation occurred with respect to this aspect of the allegation.

Social Emotional Functioning

Based on the Findings of Facts #12 and #13, the MSDE finds that the IEP addressed the student's identified social/emotional needs at the start of the 2019-2020 school year, in accordance with 34 CFR §§300.101, .320, and .324.

However, based on the Finding of Fact #14, the MSDE finds that the HCPS did not ensure that the IEP was reasonably calculated to address the student's identified social/emotional

needs from January 30, 2020 until the IEP was revised on June 22, 2020, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, this office finds that a violation occurred during this time period with respect to this aspect of the allegation.

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.¹ 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 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 implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The HCPS must provide documentation that the IEP team has identified any need for special education instruction to address weakness in phonemic awareness and assistive technology to address handwriting needs, and if so, the compensatory services or other remedy to redress the delay in identifying and addressing those needs.

The HCPS must also provide documentation that the IEP team has determined the compensatory services or other remedy to redress the delay in addressing the student's reading comprehension needs from November 8, 2019 to June 22, 2020 and his social/emotional needs from January 30, 2020 to June 22, 2020.

School-Based

The HCPS must provide documentation of the steps taken at the [REDACTED] Elementary School to ensure that each student's needs are identified and addressed, and that parents are provided with a copy of the IEP within five (5) business days of each IEP team meeting.

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.

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
and Special Education Services

MEF:ac

c: Michael J. Martirano
Kathy Stump
Dori Wilson
Anita Mandis
Albert Chichester