



Mohammed Choudhury
State Superintendent of Schools

August 2, 2022

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Education Due Process Solutions
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Hyattsville, Maryland 20785

Trinell Bowman
Associate Superintendent for Special Education
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1400 Nalley Terrace
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RE: [REDACTED]
Reference: #22-183

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 June 7, 2022, the MSDE received a complaint from Ms. Jessica Williams hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Prince Georges County Public Schools violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

As stated in our June 21, 2022, correspondence, the MSDE investigated the following allegations:

1. The PGCPs did not ensure that the student’s progress towards achievement of his annual goals was assessed as described in the in the Individualized Education Program

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(IEP), during the 2021-2022 school year, in accordance with 34 CFR §300.320(a)(3) and COMAR 13a.05.01.09(B).

2. The PGCPs did not ensure that the parents were provided with progress reports for the 2021-2022 school year in accordance with 34 CFR §300.320(a)(3) and COMAR 13a.05.01.09(B) .
3. The PGCPs did not ensure proper procedures were followed in identifying the student as participating in the Alternate Curriculum Framework and Assessments in accordance with CFR §300.320(a)(6)(ii) and COMAR 13a.05.01.09(g).
4. The PGCPs did not ensure that proper procedures were followed in considering the harmful effects and other requirements of the IDEA when determining the student's placement in the least restrictive environment in accordance with 34 CFR §§300.114-116 and COMAR13a.05.01.10.

BACKGROUND:

The student is fourteen (14) years old and attends [REDACTED] School in PGCPs. She is eligible as a student with an intellectual disability under the IDEA and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACT:

1. The student's most recent IEP is dated December 13, 2021. She has goals and objectives in the following areas: reading comprehension; mathematics problem solving; mathematics calculation; pragmatic language; expressive and receptive language; written language expression; reading phonics; and visual motor skills.
2. The student received progress reports on February 22, 2022, April 8, 2022, and June 13, 2022.
3. The student's reading phonics and reading comprehension goals are measurable and the progress reports are aligned with the goals. The student's pragmatic language goals is measurable and the progress reports are aligned with the goal. The student's expressive and receptive language goals are not measurable. Accordingly, quarterly progress reports are not aligned to the goals.
4. The student's progress reports are not responsive to her mathematics problem solving, mathematics calculation, written expression, or visual motor skills goals.

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5. The student receives twenty-five (25) hours of specialized instruction outside of the general education setting, fifteen (15) hours inside of the general education setting weekly, in addition to one hour of occupational therapy and one hour of speech therapy monthly, both outside of the general education setting. The IEP team determined that there were no harmful effects from the student's removal from the general education setting but provided no basis for that decision.
6. There is documentation that the student's family was provided with progress reports on June 14, 2022, in accordance with 34 CFR 300.320(a)(3) and COMAR 13a.05.01.09(B). There is no documentation that the student's family was provided with any other progress reports throughout the 2021-2022 school year.
7. There is documentation that on December 13, 2021, the IEP team completed Appendix A: Participation Criteria and Checklist, as required to determine eligibility for participation in the Alternate Academic Achievement Standards and Alternate Assessment. The required IEP team members were present at that meeting. The team considered the student's most recent assessment information, including standardized assessments and adaptive assessments, as well as information from the student's classroom performance and teacher reports. The consensus of the team was that the eligibility decision was not based on factors that are impermissible according to Appendix A, in accordance with 34 CFR § 300.160.d. The complainant and the parent disagreed with several of the responses, indicating that they felt that the decision was being made based on a disability category or label, low reading and mathematics achievement level, administrator decision, and need for accommodations.
8. The complainant and the parent disagreed with the eligibility determination and refused consent for the student to participate in the Alternate Academic Achievement Standards and Alternate Assessment.

CONCLUSIONS:

Based upon the Findings of Fact #1, #3 and #4, the data in the student's progress reports for mathematics problem solving, mathematics calculation, written expression, or visual motor skills goals do not align with the goals, in accordance with 34 CFR §300.320(a)(3) and COMAR 13a.05.01.09(B). Therefore, this office finds that a violation occurred with respect to allegation #1.

Based upon Findings of Fact #2 and #6, the parent was provided with progress reports on June 14, 2022, however, there is no documentation that the family was provided with any other progress reports throughout the 2021-2022 school year. Therefore, this office finds a violation with respect to allegation #2.

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Based on the Findings of Fact #7 and 8, proper procedures were followed in determining the student's eligibility for participation in the Alternate Academic Achievement Standards and Alternate Curriculum. It is a consensus decision made by the IEP team where any individual disagreements are documented. In this case, the complainant and the parent were able to clarify their disagreements, which were clearly recorded. Therefore, this office finds that no violation occurred with respect to allegation #3 in accordance with CFR §300.320(a)(6)(ii) and COMAR 13a.05.01.09(g).

Based on the Findings of Fact #5, the IEP team did not document the basis for their decision that there were no harmful effects from the removal of the student from the general education setting for twenty-five (25) hours weekly for specialized instruction and one hour monthly for occupational therapy and speech/language therapy. Therefore, this office finds that a violation occurred with respect to allegation #4.

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 non-compliance 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 Diane Eisenstadt, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Ms. Eisenstadt can be reached at (410) 767-7770 or by email at Diane.Eisenstadt@maryland.gov.

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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Student-Specific

By October 1, 2022, the MSDE requires the MCPS to provide documentation that the IEP team has convened and determined whether the violation related to the lack of data in the student's progress reports for mathematics problem solving, mathematics calculation, written expression, and visual motor skills had negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedies to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The IEP team must also reconsider the harmful effects of the student's removal from the general education setting, determine whether there are any, and document the basis for that decision.

The MCPS must ensure that the parents are provided with written notice of the team's decisions. The parent maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the PGCPs to provide documentation by December 1, 2022, that professional development is conducted for the staff at [REDACTED] School related to ensuring goals are measurable and that progress reports provide data that is responsive to what is required by the goal. The professional development must also include information on determining whether there are harmful effects from removing a student from the general education setting and documenting the basis for those decisions. Evidence of this professional development must be provided to the MSDE following the implementation.

Following the professional development session, PGCPs must complete a monitoring of 15 randomly selected IEPs at [REDACTED] School, to ensure that progress on goals is aligned with the requirements of the goal and that the basis for the determination of harmful effects of the removal of the student from the general education setting, if the student is removed, is documented. The monitoring report must also include documentation that progress reports have been provided to student's families, in accordance with 34 CFR 300.320(a)(3) and COMAR 13a.05.01.09(B). The monitoring report must be provided to the MSDE by February 1, 2023.

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

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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/ab

c: Monica Goldson
Barbara VanDyke
Darnell Henderson
Alison Barmat
Gerald Loiacono
Diane Eisenstadt