



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

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July 12, 2016

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

RE: XXXXX  
Reference: #16-129

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 May 13, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, the student's mother, hereafter, "complainant" on behalf of 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 the MCPS has not ensured that the student's speech and language therapy services have been implemented as required by the Individualized Education Program (IEP), since January 2016, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. On May 13, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the MCPS of the allegation and requested that the MCPS review the alleged violation.
2. On May 19, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, discussed the allegation being investigated with the complainant.
3. On May 19 and 26, 2016, the complainant provided the MSDE with information for consideration in completing the investigation.
4. On May 26, 2016, the MSDE requested documents from the MCPS.
5. On May 26, 2016, June 7, 2016, and on July 11, 2016, the MCPS provided the MSDE with documentation for consideration.
6. On July 11, 2016, Ms. Austin conducted a telephone interview with Ms. Pamela DeFossee, Supervisor, Speech and Language Services, MCPS. Ms. Tracee Hackett, Supervisor, Resolution and Complaint Unit, MCPS, and Ms. Patricia Grundy, Paralegal, MCPS, Resolution and Compliance Unit, MCPS, also participated in the interview to provide information on the MCPS policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated December 15, 2015;
  - b. The speech/language therapy provider's logs for the 2015 – 2016 school year;
  - c. The speech/language therapy provider's log of services submitted to Medical Assistance, dated January to June 2016;
  - d. Electronic mail (email) messages between the complainant and the school system staff, dated January to May 2016;
  - e. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on May 13, 2016; and
  - f. IEP, dated June 10, 2016.

**BACKGROUND:**

The student is fourteen (14) years old and attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with an Other Health Impairment under the IDEA related to difficulty with inattention (Doc. a).

During the period of time addressed by this investigation, the complainant was provided with written notice of the IEP team decisions and with notice of the procedural safeguards (Doc. a).

**FINDINGS OF FACTS:**

1. The IEP in effect from January 2016 until June 2016, dated December 15, 2015, requires that the student be provided with one (1) session of speech/language therapy per week, forty-five (45) minutes in duration, in order to address the student's needs in receptive and expressive communication (Docs. a and f).
2. The IEP requires that the speech/language services are to be provided in a separate special education classroom. However, the IEP does not identify a specific time during the school day when the services are to be provided, nor does it prohibit the removal of the student from class in order to provide the speech/language services. Further, the IEP does not require notification to the complainant of a change in the schedule for the delivery of speech/language services to the student (Doc. a).
3. The speech/language service provider, who delivered the speech/language services to the student during the time period covered by this investigation, maintained logs in which she recorded the dates on which, and the duration of, the speech/language therapy sessions provided to the student (Docs. b and c).
4. The speech/language service provider's logs, together with her electronic mail (email) messages with the complainant, document the following speech/language therapy services to the student, since January 2016:
  - In January 2016, the student was provided with two (2) weekly speech/language sessions, forty-five (45) minutes each. The student did not receive any speech/language therapy in the week of January 26, 2016 due to a weather-related school closure. The student did not receive any speech/language therapy during the week of January 18, 2016 due to the unavailability of the speech/language provider.
  - In February 2016, the student was provided with four (4) weekly speech/language sessions, forty-five (45) minutes each.
  - In March 2016, the student was provided with four (4) weekly speech/language sessions, (45) minutes each. The student did not receive any speech/language therapy during the week that the school was closed for spring break.
  - In April 2016, the student was provided with four (4) weekly speech/language sessions. Two (2) of the sessions were forty-five (45) minutes each. One (1) session ended early, after only thirty (30) minutes. Another session was sixty (60)

minutes in order to make-up for the loss of services in the previous shortened session when the student was “very tired [and] not engaged.”

- In May 2016, the student was provided with three (3) weekly speech/language sessions. One session was forty-five (45) minutes. On May 18 and 27, 2016, the student was provided with extended sessions of speech/language therapy, consisting of sixty (60) minutes, and seventy five (75) minutes each. The added speech/language therapy services provided to the student during these extended sessions (totaling forty-five (45) minutes) was provided in order to make up for the loss of services that were not provided during the week of May 9, 2016.
  - In June 2016, the student was provided with two (2) weekly speech/language sessions, forty-five (45) minutes each. The student was provided with one (1) additional session during the week of June 13, 2016, consisting of (30) minutes (Docs. a – d).
5. The numerous emails between the complainant and the speech/language therapist, exchanged each month from January to May 2016, reflect that the complainant received regular communications about the scheduling of the student’s speech/language therapy sessions, including notification of specific dates, and class times, when the services were provided to the student. The emails also reflect that the speech/language therapist made attempts to coordinate the delivery of schedule speech/language sessions taking into consideration the times that the complainant reported that the student would be unavailable for services, and that she attempted to reschedule a make-up date for the loss of services during the week of January 18, 2016 (Doc. d).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that each student with a disability is provided with the special education services required by the IEP (34 CFR CFR §§300.101 and .323). The public agency is generally responsible for making alternative arrangements to provide the services required by the IEP when other school-related activities make either the student or the service provider unavailable during the time that the service is regularly scheduled. The public agency is not obligated to do so when the student is unavailable for other reasons, such as during student absences from school (*Letter to Balkman*, OSEP, 23 IDELR 646, April 10, 1995).

In this case, the complainant asserts that the student has not received the amount of speech/language services required by the IEP. She also asserts that the IEP prohibits the student from being removed from “her major classes” during the times that she is provided with the speech/language services, and requires that the school staff notify her of any changes in the schedule for the delivery of speech/language services to the student, and she alleges that the school staff have not complied with these requirements (Doc. e and interview with the complainant).

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Based on the Findings of Facts #1 - #4, the MSDE finds that the student was not provided with the required amount of speech/language services during the weeks of January 18, 2016 and June 13, 2016. Therefore, this office finds a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #1 and #2, the MSDE finds that the IEP does not restrict the removal of the student from certain classes when she is receiving speech/language services. Further, based on the Findings of Facts #2 and #4, the MSDE finds that, the IEP also does not require notification to the complainant of the schedule for speech/language services, although attempts have been made to inform the complainant of the schedule. Therefore, the MSDE does not find a violation occurred with respect to these aspects of the allegation.

Additional Discussion:

During the course of the State complaint investigation, the complainant expressed concern that she believes that the speech/language provider's documentation of the student's speech/language sessions is inaccurate.

The complainant is reminded that, pursuant to the IDEA and the Family Educational Rights and Privacy Act (FERPA), if she believes that information contained within the student's education record is inaccurate or misleading, she may request that the school system amend the information. If the school system refuses to amend the record, it must advise her of that decision and provide her with the opportunity to request a hearing to challenge the content of the student's education record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22).

**CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the MCPS to provide documentation by September 15, 2016, that the IEP team has determined whether the loss of speech/language services identified in this investigation negatively impacted the student's ability to benefit from her 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 remedy to redress the violation and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties from Dr. Nancy Birenbaum, Compliance Specialist, MSDE at (410) 767-7770.

Please be advised that the complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the Findings of Facts or Conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise

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available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the Conclusions is necessary. Upon consideration of this additional documentation, this office may leave its Findings and Conclusions intact, set forth additional Findings and Conclusions, or enter new Findings and Conclusions.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. 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 for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:ksa

c: Larry Bowers  
Tracee Hackett  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin