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State Superintendent of Schools

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December 20, 2016

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Mr. Philip A. Lynch
Director of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #17-039

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 October 21, 2016, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. 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 student.

The MSDE investigated the following allegations:

1. The MCPS did not ensure that the student was provided with the reading intervention program required by the Individualized Education Program (IEP) from August 29, 2016 until October 10, 2016, in accordance with 34 CFR §§300.101 and .323;
2. The MCPS has not ensured that the student was provided with the math intervention,

XXX

Mr. Philip A. Lynch

December 20, 2016

Page 2

accommodations, supplementary aids and services and modifications required by the IEP since August 29, 2016, in accordance with 34 CFR §§300.101 and .323; and

3. The MCPS has not ensured that the student's teachers had access to the student's IEP and, as a result, did not ensure that the student's IEP has been implemented since August 29, 2016, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On October 21, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Philip A. Lynch, Director of Special Education, MCPS.
2. On November 2, 2016, Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a telephone interview with the complainant about the allegations to be investigated.
3. On November 9, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mr. Lynch of the allegations to be investigated and requested that his office review the alleged violations.
4. On November 22, 2016, Ms. Floyd and Ms. Nicole Green, Dispute Resolution Data Specialist, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Special Educator;
 - b. Ms. XXXXXXXX, Speech/Language Pathologist;
 - c. Ms. XXXXXXXXXXXXXXXX, Special Education Teacher; and
 - d. Ms. XXXXXXXX, Special Education Department Chairperson.

Ms. Patricia Grundy, Paralegal, Resolution and Compliance Unit, MCPS and Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, MCPS participated in the site visit as representatives of the MCPS and to provide information on the school system's policies and procedures, as needed.

5. On November 28, 2016 the complainant provided the MSDE with additional documentation for review.
6. On November 30, 2016, the complainant called Ms. Floyd to verify the receipt of documents.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

XXX

Mr. Philip A. Lynch

December 20, 2016

Page 3

- a. IEP, dated June 6, 2016, snapshot IEP, notice and written summary of the IEP team meeting;
- b. IEP, dated October 18, 2016, snapshot IEP, notice and written summary of the IEP team meeting;
- c. The student's schedule and schedule changes, for the 2016-2017 school year;
- d. The MCPS calendar for the 2016-2017 school year;
- e. Reading Grade 6 Course, Digital Literacy Overview;
- f. Reading intervention course, an effective research-based instructional strategy for decoding multi-syllabic words that frequently appear in grade level text, and student workbook samples;
- g. The student's attendance for the 2016-2017 school year;
- h. Teacher reports, dated October 4, 2016;
- i. Communication log, dated August 23, 2016 through November 9, 2016;
- j. Accommodations matrices, dated August 29, 2016 through November 4, 2016;
- k. Electronic mail (email) messages between the school staff, dated August 23, 2016 through November 7, 2016;
- l. Email messages between the complainant and the MCPS staff, dated August 23, 2016 through November 10, 2016; and
- m. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on October 21, 2016.

BACKGROUND:

The student is eleven (11) years old and is in the sixth (6th) grade at XXXXXXXXXXXXXXXX XXXXXX (XXXXXXXXXXXX). She is identified as a student with a Specific Learning Disability (SLD) under the IDEA and has an IEP that requires the provision of special education and related services (Docs. a and b).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a and b).

ALLEGATION #1 READING INTERVENTION PROGRAM

FINDINGS OF FACTS:

1. The IEP in effect on August 29, 2016 requires that the student be provided with "research-based reading intervention" that is focused on decoding, reading fluency and reading comprehension skills in a small group setting (Doc. a).
2. The MCPS staff acknowledges that the student was not provided with the reading intervention required by IEP and that the violation occurred (Doc. k).

3. The written summary of an IEP team meeting held on October 19, 2016, states that the IEP team determined the compensatory services to remediate the violation for the student (Doc. b).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 - #3, the MSDE finds that the student was not enrolled in the reading intervention program required by the IEP. Therefore, this office finds that a violation has occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that compensatory services have been determined. Therefore, no additional corrective action is required to remediate the violation.

ALLEGATION #2 ACCOMMODATIONS, SUPPLEMENTARY AIDS AND SERVICES AND MATH INTERVENTION

FINDINGS OF FACTS:

4. The IEP in effect on August 29, 2016 requires the following instructional and testing accommodations:
 - A human reader or audio recording for verbatim reading of the entire test;
 - Text to speech software;
 - Visual cues;
 - Notes and outlines;
 - Scribe;
 - Electronic word processors;
 - Monitoring of test responses;
 - Calculator;
 - Visual organizers;
 - Extended time; and
 - Multiple/frequent breaks.

The IEP states that the student “requires a human reader and text to speech software to access grade level text due to difficulties with fluency, decoding and processing the text.” She requires notes, outlines and visual cues to “keep pace with instruction and maintain her attention to the text.” The student is “reading more than two years below grade level” (Docs. a and b).

5. The IEP also requires the supplementary aids, services, program modifications and supports and the frequency of provision for each of the following:
- Periodic use of manipulatives;
 - Daily provision of organizational aids;
 - Daily provision of checking for understanding;
 - Daily provision of frequent and/or immediate feedback;
 - Daily allowance of the student to repeat and/or paraphrase information;
 - Daily monitoring the student's independent work;
 - Periodic provision of alternative ways for the student to demonstrate learning;
 - Daily provision of assistance with organization, as needed;
 - Daily provision of repetition of directions;
 - Daily use of a word bank to reinforce vocabulary and/or when extended writing is required;
 - Daily provision of paraphrasing of directions;
 - Daily provision of visual cues for decoding;
 - Daily provision of visual cues to assist the student in maintaining her attention;
 - Daily provision of visual cues for word problems or multi-step problems in math;
 - Periodic provision of the cloze procedure¹ for extended writing of paragraphs;
 - Periodic use of exemplars of the task;
 - Periodic use of sentence starters;
 - Daily text to speech and speech to text applications, as needed;
 - Periodic altered/modified assignments;
 - Daily provision of assignments that are broken down into smaller units;
 - Home-school communication system, as needed; and
 - Daily provision of preferential seating.

The IEP states that the student “requires the supplementary aids and services in order to access the curriculum and account for her learning style and needs.” The student will be provided with the supplementary aids and services “across academic settings as determined by the teacher when as needed is indicated” (Docs. a and b).

5. While there is documentation, including accommodation matrices and teacher reports, that demonstrate that the student is being provided with the accommodations and supplementary aids and services required by the IEP, they reflect that the student is not receiving the services that are to be provided “daily” in every class each day except for in English class (Docs. h, i, and j).

¹ This is a reading comprehension instructional strategy that allows students to use their knowledge, experience and context clues to fill in the blanks within a paragraph or extended writing (www.elt.oxfordjournals.org).

XXX

Mr. Philip A. Lynch

December 20, 2016

Page 6

7. The IEP in effect at the start of the 2016-2017 school year states that “the math intervention is the daily provision of visual cues for word problems or multi-step problems in math” (Doc. a).
8. On October 18, 2016, the IEP team revised the math support to state that the “the use of visual organizers will help organize the content in order for the student to access the curriculum and it is be provided on an as needed basis” (Doc. b).
9. There is no documentation that the student has been provided with the math support as required by the IEP (Review of the educational record).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #4 - #9, the MSDE finds that, while there is documentation that the student received the accommodations, supplementary aids, services, and supports required by the IEP periodically, there is no documentation that they were provided with the frequency required by the IEP. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #3

TEACHER’S ACCESS TO THE IEP

FINDINGS OF FACTS:

10. The first day of the 2016-2017 school year for the MCPS was August 29, 2016 (Doc. d).
11. There is documentation, dated August 24, 2016, that the student’s teachers were provided with the student’s “snapshot” IEP,² IEP accommodations, and supplementary aids and services prior to the start of the 2016-2017 school year (Doc. k).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the MCPS did not ensure that the student’s teachers were provided with the student’s IEP in order to ensure that the IEP was implemented (Doc. m).

² A “snapshot” IEP is a summary of the IEP which includes the primary disability, special considerations, accommodations, supplementary aids, services, test scores, present levels of educational performance, and goals (Docs. a and b).

XXX
Mr. Philip A. Lynch
December 20, 2016
Page 7

Based on the Findings of Facts #10 and #11, the MSDE finds that the student's teachers were informed of the student's IEP prior to the start of the 2016-2017 school year. Therefore, no violation is found with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by February 1, 2017 that the student is being provided with supports with the frequency required by the IEP.

The MSDE also requires the MCPS to provide documentation by March 1, 2017 that the IEP team has determined whether the violation related to the frequency with which the supports were provided had a negative impact on the student's ability to benefit from the special education services. If the IEP team finds a negative impact, the MCPS must provide documentation that the IEP team has determined the remedy to redress the violation and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

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

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the MCPS 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 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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

XXX

Mr. Philip A. Lynch

December 20, 2016

Page 8

Questions regarding the findings and conclusions 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 (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 Special Education/Early Intervention Services

MEF:sf

c: Jack Smith
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