



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

March 23, 2018

XXX  
XXX  
XXX

Ms. Michelle Concepcion  
Director of Instruction and Student Performance  
Frederick County Public Schools  
191 South East Street  
Frederick, Maryland 21701

RE: XXXXX  
Reference: #18-080

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 January 22, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The FCPS has not ensured that the Individualized Educational Program (IEP) has addressed the student’s academic needs, since January 2017,<sup>1</sup> in accordance with 34 CFR §§300.320 and .324.
2. The PGCPSS has not ensured that the student was provided with the supplementary aids and supports, since January 2017,<sup>1</sup> as required by the IEP, in accordance with 34 CFR §§300.101 and .323; and

---

<sup>1</sup> While the complainant alleged that the violations have occurred for multiple years, she was informed, in writing, that this office can only investigate allegations of violations that occurred within one year of the filing of a State complaint (34 CFR §§300.153).

XXX

Ms. Michelle Concepcion

March 23, 2018

Page 2

3. The FCPS did not provide prior written notice of the IEP team's placement decisions made at IEP team meetings since January 2017,<sup>1</sup> in accordance with 34 CFR §300.503.

**BACKGROUND:**

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

**ALLEGATION #1: ADDRESSING THE STUDENT'S NEEDS**

**FINDINGS OF FACTS:**

1. The student's IEP, in effect in January 2017, was developed at an IEP team meeting held on August 25, 2016. The IEP team identified areas of academic need for the student in reading phonics, reading comprehension, math calculation, math problem solving, written language mechanics, and written language expression. The IEP team also developed goals in each area of need for the student.
2. The progress reports completed for the student in October 2016, January 2017, and March 2017 indicate that the student was making sufficient progress on in each goal area. The progress reports for the student completed in May 2017 indicated that the student had achieved goals in reading phonics, math problem solving, and written language mechanics. However, the May 2017 progress reports indicated that the student was not making sufficient progress in math calculation and reading comprehension.
3. On May 22, 2017, the IEP team met to address the student's lack of expected progress and to review and revise, as appropriate, the student's IEP. The IEP team determined that the student had made progress in math calculation and reading comprehension, but that he had not yet achieved every objective in those areas. In response, the IEP team drafted new goals consistent with the student's continued progress in the skills targeted by the goals.
4. The IEP team met periodically, including on September 14, 2017, to review the student's progress and added supports such as checklists to assist him with achieving the goals.
5. On January 8, 2018, the IEP team met to respond to the complainant's concerns regarding the student's lack of progress. The team agreed that the student was making little overall progress in academic areas due, in part, to the student's distractibility. The complainant requested a different placement for the student, with a smaller student-to-teacher ratio. To date, the IEP team has not responded to her request.

XXX

Ms. Michelle Concepcion

March 23, 2018

Page 3

**CONCLUSION:**

In this case, the complainant alleges that the IEP team has not addressed the student's lack of expected progress in math and reading and has not responded to her concerns regarding the appropriateness of the student's placement.

Based on Findings of Facts #1-#4, the MSDE finds that prior to January 8, 2018, the IEP team identified and addressed the student's academic needs. However, based on Finding of Fact #5, the MSDE finds that, since January 8, 2018, the IEP team has not addressed the student's apparent lack of progress, nor have they addressed the complainant's concerns regarding the appropriateness of the student's placement, in accordance with 34 CFR §§300.324. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

**ALLEGATION #2: PROVISION OF SUPPORTS**

**FINDING OF FACT:**

6. The student's IEP, developed on August 25, 2016 requires that the student be provided, in part, with scribing services during instruction, that vocabulary be "pretaught" to the student before instruction, with large print text, that his assignments be broken into smaller parts, an "interactive math notebook," and that all staff working with the student be ABA<sup>2</sup> trained.
7. There is documentation that the student has been provided with the supplementary aids and supports as required by his IEP, with the exception of ABA training for staff.

**CONCLUSION:**

Based on Findings of Facts #6 and #7, the MSDE finds that there is documentation that the student has been provided with the supplementary aids and supports as required by his IEP, with the exception of ABA training for staff, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #3: PRIOR WRITTEN NOTICE OF PLACEMENT DECISIONS**

**FINDING OF FACT:**

8. There is documentation that the complainant was provided with prior written notice of IEP team decisions regarding the student's placement since January 2017. This notice included

---

<sup>2</sup> Applied Behavior Analysis (ABA) is an instructional methodology where the instructor uses a variety of behavior analytic procedures, some of which are directed by the instructor and others initiated by the learner; where parents receive training to they can support learning and skill practice throughout the day, where the learner's day is structured to provide many opportunities to acquire and practice skills in both structured and unstructured situations; and where the learner receives an abundance of positive reinforcement for demonstrating useful skills and socially appropriate behaviors ([www.autismspeaks.org](http://www.autismspeaks.org)).

XXX

Ms. Michelle Concepcion

March 23, 2018

Page 4

all of the required content, including the decisions made, the basis for the decisions, the data considered and other options considered.

**CONCLUSION:**

Based on Findings of Fact #8, the MSDE finds that the complainant was provided with prior written notice of IEP team decisions where the IEP team made decisions concerning the student's placement since January 2017, in accordance with 34 CFR §300.153. Therefore, this office does not find that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the FCPS to provide documentation by April 15, 2018, that the IEP team has reviewed and revised the IEP, as appropriate, to address the student's lack of academic progress and has considered the complainant's concerns regarding the student's placement. Furthermore, the IEP team must determine the compensatory services necessary to remediate the violations identified through this investigation.

In addition the FCPS must provide documentation by May 30, 2018 that the staff ABA training required by the student's IEP has been provided.

The FCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

**School-Based**

The MSDE requires that the FCPS provide documentation by June 1, 2018, of the steps taken to ensure the future compliance with requirements for IEP development and implementation at XXXXXXXXXXXXXXXXXXXX. The documentation must describe the actions taken to ensure that the staff properly implement the requirements of the IDEA, and provide a description of how the PGCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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

XXX

Ms. Michelle Concepcion

March 23, 2018

Page 5

**TECHNICAL ASSISTANCE:**

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

Please be advised that both the complainant and the FCPS 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant and the school system 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:gl

c: Theresa Alban  
Carol S. Breeze  
Linda Chambers  
XXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono  
Nancy Birenbaum