



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

April 13, 2018

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

RE: XXXXX
Reference: #18-090

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.

ALLEGATIONS:

On February 13, 2018, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) team has addressed concerns for enhancing the student’s education, the student’s lack of progress in the general education curriculum, and the student’s anticipated needs, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.320 and .324.
2. The MCPS has not ensured that the student has consistently been provided with the accommodations and supplementary supports required by the IEP in her career program classes, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.101 and .323.

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3. The MCPS has not ensured that the student has consistently been provided with specially designed instruction adapting the content, methodology, or delivery of instruction to ensure the student's access to the general curriculum in her career program classes, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.39, .101 and .320.

BACKGROUND:

The student is eighteen (18) years old and is identified as a student with an Other Health Impairment under the IDEA, related to XXXXXXXXXXXXXXXX. She has an IEP that requires the provision of special education and related services. The student is in the twelfth grade, and attends classes at XXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2017 - 2018 school year was developed on May 10, 2017, and amended on June 16, 2017. The IEP indicates that her disability affects her in the areas of reading comprehension, math calculation, written expression, communication, peer interactions, and self advocacy.
2. The includes the following information about the student:
 - She requires “significant support across classes for comprehension and breaking down of tasks,” and “finds the greatest success when provided with visual cues and repetition/rephrasing.”
 - She “struggles with communicating with teachers to seek help, [and to] clarify instructions or requirement of academic tasks.”
 - She is functioning at the ninth (9th) grade level in math and written expression, and at the fifth (5th) grade level in reading.
3. The IEP states that the student's “deficits impact her across all curricular areas when asked to independently comprehend information presented orally or in writing, independently respond orally and in writing, interact socially with peers and adults, independently attend to classroom instruction, and process and respond to information presented orally and in writing.”
4. At the time the IEP was developed, the IEP team discussed that the student “struggles with understanding and keeping up with what she is hearing in class and with class readings.”
5. The IEP requires accommodations, including a human reader for verbatim reading of tests, notes and outlines, spelling support, calculator, graphic organizers, monitoring of test responses, 100% extended time, multiple breaks, reduced distractions, and

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preferential seating. Each of the accommodations is required during instructional and assessment settings.

6. The IEP also requires the provision of twenty (20) supplementary supports. These include the daily provision of checks for understanding, frequent and immediate feedback, paraphrasing of questions and instruction, breaking down assignments into smaller units, chunking of text, and monitoring of independent work. These also include the periodic provision of alternative ways to demonstrate learning, assistance with organization, simplified sentence structure, vocabulary and graphics on assignments and assessments, a home set of textbooks, and encouraging to ask for assistance. The supplementary supports are required in all academic settings to be provided by “the IEP team.”
7. The IEP documents that the student requires three (3) forty-seven (47) minute sessions per day of specialized instruction in the general education classroom, to be provided by the “IEP team.” It states that “For the 2017 - 2018 school year, [the student] will receive supported classes in English.” However, it does not identify the content areas in which the remainder of the daily specialized instruction in the general education classroom setting is to be provided to the student.
8. The IEP also reflects that the student requires four (4) hours per week of specialized instruction in a separate special education classroom, primarily by a special educator. It states that the student will “receive extra support outside of general education classes 4 hours weekly in order for her to access general education curriculum.”
9. At the start of the 2017 - 2018 school year, all of the student’s courses were taught at XXXXXXXXXXX (XXXXXXXXXX).
10. Despite the student’s struggle to keep up in classes as reported at the end of the previous school year, and her need for twenty (20) different supplementary aids and services to assist her to access instruction in regular courses, the school system staff agreed to grant the complainant’s request to place the student in an advanced course covering three (3) periods per day, four (4) weeks after the school year started.
11. While the school staff provided the student with tutoring to assist her with her attempt to catch up in the advanced course, she has been unable to do so. While the MCPS reports that the IEP team recently met to consider additional special education services and supports for her during the half-day that she spends in the advanced course, there is no documentation that this has been completed.
12. The IEP requires that the student be provided with special education instruction for approximately one-half day of each school day. There is no documentation that the

special education instruction must be provided during the half of the day in which the student is placed in the advanced course. The reports of the student's progress towards achievement of the annual IEP goals reflect that the goals are being addressed through special education instruction and that the student is making sufficient progress to achieve the goals.

13. While there is documentation that the student was provided with some of the accommodations and supplementary aids required by the IEP in the advanced course, there is no documentation that she has been provided with all of the required accommodations.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the MCPS has not ensured that the IEP includes sufficient special education services and supports to assist the student in progressing through the general education curriculum. She also alleges that the special education instruction and accommodations have not been provided in the advanced course in which the student receives instruction for three (3) periods during each school day.

Allegation #1 IEP Development

Based on the Findings of Facts #1 - #13, the MSDE finds that while the IEP in effect at the start of the school year addressed the student's identified needs, there is no documentation that the IEP team has considered additional special education services and supports to assist the student to progress through the general education curriculum, as required by 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #2 Provision of Accommodations and Supplementary Aids

Based on the Findings of Facts #1 - #13, the MSDE finds that there is no documentation that all of the accommodations and supplementary supports required by the IEP have been provided to the student in the advanced course, as required by 34 CFR §§300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #3 Provision of Special Education Instruction

Based on the Findings of Facts #1 - #8, the MSDE finds that there is no documentation that the IEP requires the provision of special education instruction in the advanced course in which she receives instruction for 3 periods during each school day. Therefore, this office does not find that a violation of 34 CFR §§300.101 and .323 occurred.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by May 30, 2018 that the IEP team has determined whether, with additional special education services and supports, the student can complete the advanced course by the of the 2017 - 2018 school year. If not, the IEP team must determine other options for the student's participation in instruction or activities in areas related to her fields of interest. The IEP team must revise the IEP, as appropriate, based on the determination.

The MSDE also requires documentation that the IEP team has determined the compensatory services needed to remediate the violations identified during this investigation.

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.

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 consistent with the timeline requirement as 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 parent and the MCPS 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

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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/ksa

c: Jack Smith
Kevin Lowndes
Julie Hall
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