



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

July 10, 2018

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Mr. Scott Szczerbiak  
Director of Special Education  
St. Mary’s County Public Schools  
23160 Moakley Street  
Suite 109  
Leonardtown, Maryland 20650

RE: XXXXX  
Reference: #18-157

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 May 11, 2018 the MSDE received correspondence from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the St. Mary’s County Public Schools (SMCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The SMCPS has not ensured that supplementary aids, services and supports were provided as required by the Individualized Education Program (IEP) since the start of the 2017-2018 school year, in accordance with 34 CFR §§ 300.101 and .323.
2. The SMCPS has not ensured the confidentiality of personally-identifiable information about the student, in accordance with 34 CFR §§300.610 and .611 and 34 §CFR 99.22.

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**BACKGROUND:**

The student is thirteen (13) years old is identified as a student with Autism, under the IDEA, and has an IEP that requires the provision of special education instruction and related services. The student attends XXXXXXXXXXXXXXXXXXXX.

**FINDINGS OF FACTS:**

1. The IEP requires instructional supports including daily repetition of directions and daily paraphrasing of questions and instructions to allow the student to be able to process information and facilitate understanding.
2. The IEP also requires social/behavioral supports including monthly consultation of the school psychologist with the guidance counselor to provide support as needed. The IEP requires the daily provision of nonverbal cues by the teachers and the student and the use of a debriefing sheet to assist the student to debrief and process when he needs a break or has exited from class. The IEP also requires the daily provision of an agenda book for the student to track assignments, a home-school communication system and daily checks to ensure the student is in the assigned area and reminders to focus and remain on task.
3. The IEP requires physical/environmental supports including a daily quiet place for lunch, and preferential seating in all classes, allowing for the least amount of distractions during instruction.
4. The IEP also requires school personnel/parental support including yearly staff training by the case manager with the student's general education teachers to review best practices for students with Autism.
5. There is no documentation that all of the supplementary aids and services were provided with consistency, as required by the IEP.
6. On November 13, 2017, the IEP team revised the IEP and states that the student's teachers will use nonverbal cues to direct the student to take a "teacher directed break" and then the student will take a break in the COMPASS<sup>1</sup> classroom.
7. On March 16, 2018, the teacher verbally instructed the student to go to the teacher in the COMPASS classroom.

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<sup>1</sup> The COMPASS is the Community Promoting Academic and Social Success Program in which supports are provided to students with behavioral needs arising out of Autism.

**CONCLUSIONS:**

**ALLEGATION #1 PROVISION OF SUPPLEMENTARY AIDS AND SERVICES**

Based on the Findings of Facts #1 - #5, the MSDE finds that the school system has not ensured that the supplementary aids and services required by the IEP have been consistently provided, in accordance with 34 CFR §§300.300.101 and .323. Therefore, this office finds that a violation occurred.

**ALLEGATION #2 CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION**

In this case, the complainant alleges that the use of verbal direction for the student to obtain assistance from the COMPASS teacher amounted to a disclosure to the class that the student has a disability.

Based on the Findings of Facts #6 and #7, the MSDE finds that while the facts do not support the allegation of a breach of the student's confidentiality, the teacher did not use nonverbal cues to direct the student to take a teacher directed break, as the IEP required, in accordance with 34 CFR §§300.300.101 and .323. Therefore, as stated in Allegation #1 above, the MSDE finds that the student has not been consistently provided with supports required by the IEP.

**CORRECTIVE ACTION/TIMELINES:**

The MSDE requires the SMCPS to provide documentation by October 1, 2018, that the IEP team has convened and determined whether the violations related to consistent provision of supplementary aids and services had a 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 remedy to redress the violations and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

The SMCPS 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.

The MSDE also requires the SMCPS to provide documentation by November 2, 2018 school year that the supplementary aids and supports are being consistently provided to the student.

Please be advised that both the complainant and the SMCPS 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.

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**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 SMCPS 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 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 and Appropriate Public Education 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: XXXXXX  
Dori Wilson  
Anita Mandis  
Sharon Floyd