



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

July 20, 2018

Ms. Ashley S. VanCleaf
Law Office of Brian K. Gruber, P.C.
6110 Executive Boulevard
Suite #220
Rockville, Maryland 20852

Ms. Christina Harris
Supervisor of Special Education
Calvert County Public Schools
1305 Dares Beach Road
Prince Frederick, Maryland 20678

RE: XXXXX and similarly situated students
Reference: #18-163

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 May 21, 2018, the MSDE received a complaint from Ms. Ashley VanCleaf, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Calvert County Public Schools (CCPS) 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 CCPS has not ensured that the Individualized Educational Program (IEP) team for the named student reviewed and revised, as appropriate, the student’s IEP to address lack

of expected progress toward achieving the IEP goals since the start of the 2017-2018 school year, in accordance with 34 CFR §300.324.

2. The CCPS has not ensured that access to the named student's educational record since the start of the 2017-2018 school year, in accordance with 34 CFR §300.613.
3. The CCPS has not ensured the provision of specialized instruction and classroom supports by the providers required by the IEP for the student and similarly situated students, since the start of the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323.
4. The CCPS has not ensured that special education instruction is provided by qualified staff in accordance with 34 CFR §300.156 and the MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, And Assessment*.

BACKGROUND:

The student is twelve (12) years old and attends XXXXXXXXXXXXXXXX. She is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: ADDRESSING LACK OF PROGRESS

FINDINGS OF FACTS:

1. The student's IEP, in effect at the start of the 2017-2018 school year, identified needs in phonics, reading fluency, reading comprehension, math calculation, math problem solving, written language mechanics, and communication. The IEP included goals for the student in reading fluency, reading comprehension, math calculation, math problem solving, written language mechanics and communication. The IEP further required that the student receive instruction in the general education setting to include a co-taught classroom as well as math and reading interventions as specialized instruction.
2. The progress reports for the student completed in the Summer¹ and Fall 2018 indicate that the student was had achieved her reading fluency goal and was making sufficient progress on her goals in reading comprehension, math calculation, math problem solving, written language mechanics and communication.
3. On November 8, 2018 and December 20, 2018, the IEP team met to review and revise, as appropriate, the student's IEP. The IEP team revised the student's present levels of performance to reflect more recent data. The IEP team determined that the student was performing between the fourth and fifth grade levels in reading phonics and reading

¹ The student received Extended School Year services during the Summer of 2017.

fluency, at the fourth grade level for reading comprehension, the third grade level for written language mechanics, written language expression and math calculation, and the second grade level for math problem solving. The team discussed the student's "scatter" of scores in the math areas and her regression in other academic areas. In response to the student's levels of need, the IEP team determined that she would receive instruction in a self-contained classroom for mathematics and English/language arts.

4. The progress reports completed for the student in March 2018 indicate that the student was making sufficient progress on each of her IEP goals
5. On April 9, 2018 the IEP team again met to review and revise the student's IEP, as appropriate. The IEP team reviewed the student's progress on her IEP goals and noted that many objectives had been achieved.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the IEP team did not convene to review the student's lack of progress on IEP goals. Based on Findings of Facts #1-#5, the MSDE finds that the IEP team met to consider the student's progress on IEP goals and performance in math and writing skills. Therefore, this office finds does not find that a violation occurred.

ALLEGATION #2: ACCESS TO THE STUDENT'S RECORD

FINDINGS OF FACTS:

6. During the IEP team meeting held on April 9, 2018, the complainant requested documentation from the student's records that would support the conclusions made in the student's progress reports.
7. There is documentation that the complainant received student work samples related to the student's progress reports.
8. There is no documentation that there are additional documents in the possession of the CCPS related to the complainant's request.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the school staff did not provide the student's parents with documentation supporting the progress reports. Based on Findings of Facts #6-#8, the MSDE finds that the student's parents were provided with copies of records related to their request. Therefore, this office does not find that a violation occurred

ALLEGATION #3 AND #4: PROVISION OF INSTRUCTION BY QUALIFIED STAFF AND IN ACCORDANCE WITH THE STUDENT'S IEP

FINDINGS OF FACTS

9. The student's IEP, in effect at the beginning of the 2017-2018 school year, requires that she receive a fifty-five (55) minute session of special education instruction inside the general education setting, to consist of a math intervention. The service is to be delivered primarily by a special education with the general educator and the instructional assistant as an "other" provider.
10. The CCPS reports that the instructional assistant "provides the math intervention in the same classroom with a special educator." The CCPS further reports that the special educator collaborates with the instructional assistant in the planning of the delivery of these services, and reviews the delivery of these services.
11. While there is documentation that the instruction delivered by the instructional assistant is in addition to math instruction delivered by a special educator and that the instructional assistant was trained in the specific intervention, there is no documentation that the special educator directly supervised the delivery of this instruction.
12. There is documentation from the CCPS that the school system staff, including teachers, receive training on the delivery of specialized instruction with the support of instructional assistants. However, there is no documentation that procedures are in place to ensure that supervision is being provided to the instructional assistants.
13. On April 20, 2018, the student's classroom special education teacher went on extended medical leave. There is no documentation that the teacher identified as the substitute teacher has appropriate teaching certifications or was supervised by a qualified teacher during this time.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the student was not provided with specialized instruction from the service providers identified on her IEP, and that the instruction was not provided by certified staff. The complainant further alleges that there are similarly situated students throughout the CCPS because it is their practice to permit instructional assistants deliver specialized instruction.

Allegation #3: Math Instruction by the Special Educator

Based on Findings of Facts #9-11, the MSDE finds that the student was not provided the specialized instruction through a math intervention primarily by the student's special educator as

required by the IEP, during the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #4: Instruction by Certified Staff

The Instructional Assistant

Based on Findings of Facts #10-12, the MSDE finds that there is no documentation that the specialized instruction delivered by the instructional assistant was supervised by the student's special educator, in accordance with 34 CFR §300.156 and the MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, And Assessment*. Therefore, this office finds that a violation occurred with respect to this aspect of this allegation.

The Substitute Teacher

Based on Finding of Fact #13, the MSDE finds that the substitute teacher who provided instruction from April 20, 2018 to the end of the 2017-2018 did not hold proper certifications, and was not supervised by a teacher holding certification, in accordance with 34 CFR §300.156 and the MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, And Assessment*. Therefore, this office finds that a violation occurred with respect to this aspect of this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the CCPS to provide documentation by October 1, 2018 that the student is receiving instruction by the service provider(s) required by the IEP, and if the student is receiving instruction delivered by an instructional assistant, that it is done in accordance with 34 CFR §300.156 and the MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, And Assessment*.

The MSDE further requires the CCPS to provide documentation by November 1, 2018 that the IEP team has reviewed and revised the student's IEP, as appropriate, and determined the compensatory services or other remedy to remediate the violations identified through this investigation.

School-Based

The MSDE requires the CCPS to provide documentation by November 1, 2018 that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at XXXXXXXXXXXX School. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of

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the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Similarly Situated Students

The MSDE requires the CCPS to provide documentation by November 1, 2018 that steps have been taken to ensure that instructional assistants delivering specialized instruction in interventions within the school system do so in accordance with 34 CFR §300.156 and the MSDE Technical Assistance Bulletin, *Improving Outcomes for Students with Disabilities, Curriculum, Instruction, And Assessment*. Specifically, the CCPS should develop a process to ensure appropriate supervision of the instructional assistants by certified special education teachers.

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 the CCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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, conclusions and corrective actions 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,

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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 due process.

Sincerely,

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

MEF:gl

c: Daniel Curry
Nancy Gregory
Jason Miller
XXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum