



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

July 22, 2019

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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #19-155

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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.¹

ALLEGATIONS:

On April 23, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXX, hereafter “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student was provided with the supervision required by the Individualized Education Program (IEP) on April 24, 2018, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not ensured that the IEP has addressed all of the student’s needs, since April 24, 2018, in accordance with 34 CFR §§300.101, .320 and .324.
3. The BCPS has not ensured that the student’s educational placement is in the Least Restrictive Environment (LRE) in which the IEP can be implemented, since April 24, 2018, in accordance with 34 CFR §300.114.

¹ The parties were informed that, due to exceptional circumstances to this investigation, the period of time for its completion has been extended beyond the 60 day timeline.

BACKGROUND:

The student is eight (8) years old and is identified as a student with Autism under the IDEA. At the start of the investigation period, the student was identified as having a Developmental Delay. The student has an IEP that requires the provision of special education and related services and attends the XXXXXXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

1. The IEP in effect on April 24, 2018, developed on March 14, 2018, identifies that the student has needs in the areas of reading, math, communication, fine motor and behavior skills.). While the IEP includes a description of the tasks the student is able to perform, it does not provide information about the age or grade level in which the student was functioning.
2. The IEP includes the following information about the student's reading functioning:
 - He can identify letters presented in a field of two (2) items and shows emerging skills in identifying pre-primer sight words.
 - He is working on identifying color and number words, but is inconsistent in pointing to a named where in a field of two (2) items.
 - He enjoys books and being read to, and will point to a named picture and turn pages in a book.
 - He has "some difficulty" with answering "WH" questions, where he requires "frequent prompts, modeling and visuals to complete this activity."
 - He needs to identify ten (10) pre-primer words and five (5) to ten (10) high frequency words.
3. The IEP includes the following information about the student's functioning in the area of math:
 - He can count to ten (10) when focused, but has trouble verbalizing the numbers after reaching ten (10). He can identify some numbers in isolation.
 - He can sort objects based on shape and color and is beginning to identify sets of a number.
 - He has a basic numerical understanding of 1:1 correspondence, and, given a model and prompting, can add sets of numbers.
 - He needs to match numbers to a set, create a set of a named number, and identify shapes from a field of two (2) items.
4. The IEP provides the following information about the student's behavioral functioning:
 - Once familiarity is reached, the student enjoys interacting with peers and adults.
 - He has "periods of heightened anxiety especially when he sees [his] mom."

- He cries, screams, jumps up and down and will attempt to leave the classroom, but benefits from “cool down” techniques, including walks, breathing and quiet time with a preferred adult.
 - He has difficulty respecting another’s personal space, as exhibited through hugging, squeezing or touching adults and peers without their permission. Social skills stories and modeling are helping him learn the concept of personal space.
 - His needs are identified as keeping his hands to himself for eight (8) minutes during a transition, and to continue keeping his hands to himself for twelve (12) minutes during transitions or other settings.
5. With respect to the student’s fine motor skills, the IEP identifies that he needs to further develop his visual motor skills needed for tracing and copying, and his visual perceptual skills for more complex visual scanning and discrimination. It reflects that he is working on tracing shapes, tracing and copying the letters in his name, and cutting along lines.
 6. In the area of communication, the IEP reflects that the student follows simple routine classroom directions, uses single word approximations to make requests, label items and to greet, and that, he also uses a device to make comments about an activity, with visual supports and gestural prompts. The IEP states that he has mastered the ability to identify colors, and, when given pre-teaching, can identify words relating to size in 80% of opportunities. It identifies that the student needs to understand spatial and descriptive concepts, and use pragmatic communication for a variety of functions, including making
 7. The IEP includes goals for the student to improve skills in the areas of need, and requires special education instruction, related services, and supplementary aids and services to assist the student with achieving the goals. These services include the requirement for “vigilant adult assistance” and instruction in either one-to-one or small group settings.
 8. At the time the March 2018 IEP was developed, the complainant provided consent for the student to receive instruction using alternate achievement standards. He was placed in a Communication and Learning Support (CALs) program designed for students with complex communication, socialization, and learning needs who have Autism, located at XXXXXXXXXXXXXXXXXXXXXXX, which is not the student’s neighborhood school. The CALs program provides a highly structured learning environment, use of sensory processing techniques, and behavioral strategies. Instruction is provided using alternate achievement standards.
 9. The CALs program is provided in a classroom with one (1) teacher, one (1) instructional assistant, and two (2) adult assistants, and no more than ten (10) students. Instruction in the classroom is typically provided in four (4) groups with one (1) adult assigned to each group of students.
 10. There is documentation that, on April 24, 2018, the student’s classroom teacher was assigned to work with students outside of the classroom during the administration of Statewide assessments, and that a substitute teacher was placed in the student’s classroom to cover for her.

11. Also on April 24, 2018, the complainant requested that the student be able to interact more with nondisabled peers in a general education classroom with the provision of one-to-one support. The team convened on May 2, 2018 and agreed to give the student the opportunity to participate in a general education classroom on a trial basis.
12. On June 6, 2018, the IEP team convened. The IEP team discussed that the student has been participating with nondisabled peers in a general education classroom for calendar math and community circle time. The IEP team agreed to the complainant's request for the student to continue participating in a general education classroom in the following school year.
13. On October 5, 2018, the complainant sent an electronic mail (email) communication to the school staff requesting that the IEP team convene to consider a request for a music therapy evaluation and to determine a specific amount of time for the student's participation in a general education classroom based on the results of his trial.
14. On November 5, 2018, the IEP team convened with the complainant's participation by telephone. The IEP team decided that additional information was needed and recommended assessments.
15. On December 11, 2018, a report of a classroom observation was developed. The purpose of the observation was to determine if additional related services of music therapy would assist the student with achieving the IEP goals. The report states that, based on the student's negative response to the use of music in the classroom, he would not benefit from music therapy.
16. On January 31, 2019, the IEP team convened. The team reviewed the assessment results and determined the student's continued eligibility as a student with Autism. The complainant expressed concern about the rate of the student's learning.
17. On February 28, 2019, the IEP team convened. The team revised the IEP to reflect that the student, who was in the second (2nd) grade, was functioning at a two year two month (2.2) old level in reading and math, and a two year one month (2.1) old level in social, emotional and behavior skills.
18. At the February 2019 IEP team meeting, the complainant expressed concern that the student was not making progress, and noted that he received all "Ns" on his report card.² The written summary of the February 2019 IEP team meeting documents that the school staff reported that the student achieved some of the short-term objectives on the goals and the IEP team decided to revise the goals based on the data. The complainant disagreed with

² The student's report cards for the first (1st) and second (2nd) quarters of the 2018 – 2019 school year document that he received Ns in every subject. The "N" achievement code represents "needs development" and is the lowest achievement code that can be assigned to the report card.

the school-based members' determination that the progress was sufficient, and requested a nonpublic placement for the student based on her belief that he could make more progress in that setting.

19. On April 11, 2019, the IEP team convened. The IEP team discussed that that the student participates in a general education classroom once a week during the morning. The school staff reported that, while the student "is usually up, screaming, and not listening to the teacher" during these times, he "benefits" from the times when nondisabled students are present in his CALS program.
20. At the April 2019 IEP team meeting, the IEP team considered the complainant's concern that the student is not performing at grade level. The school-based members of the team reported that the student is making the progress that they expect for him to make based on the data. The complainant requested that the student receive reading instruction using Orton-Gillingham,³ and the IEP team agreed to the request on a trial basis.
21. On May 30, 2019, the IEP team reconvened to consider the results of the Orton-Gillingham trial. While the school staff reported that the student did not benefit from the Orton-Gillingham program, the documentation reflects that the IEP team agreed to look into other reading programs. At the request of the complainant, the team revised the IEP goals to increase the rigor and the level of expected progress.
22. At the May 2019 IEP team meeting, the complainant again requested a nonpublic placement for the student. The IEP team reviewed the April 2019 progress reports documenting that the student was making sufficient progress towards mastery on all the annual goals, and based on the data, rejected the complainant's request.
23. Also at the May 2019 IEP team meeting, the complainant revoked consent for the student to continue to receive instruction using alternate achievement standards. However, the IEP team did not document a discussion about whether the student can be provided with instruction using regular academic standards in the current placement in a CALS program.
24. During the 2018-2019 school year, the student received instruction in mathematics and English one-to-one setting with a teacher or instructional assistant.
25. The student's reports cards document that he received an "N" in each of his subjects in each quarterly marking period of the 2018 – 2019 school year.

³ The Orton-Gillingham Approach is a direct, explicit, multisensory, structured, sequential, diagnostic, and prescriptive way to teach literacy ([ortonacademy](http://ortonacademy.com)).

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of Supervision on April 24, 2018

In this case, the complainant alleges that, because the assigned teacher was not present in the classroom on April 24, 2018, the student did not receive the adult support required by the IEP. She asserts that, as a result, the student was able to put an inappropriate item in his mouth before one (1) of the adult assistants was able to intervene.

Based on the Findings of Facts #7 - #10, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2 IEP that Addresses the Student's Needs

In this case, the complainant alleges that the student requires a small group of five (5) or fewer students in his class in order to ensure that he has appropriate supervision. She also alleges that, with the provision of additional supports, the student can accelerate his rate of skills growth in order to bring him closer to grade level performance.

Based on the Findings of Facts #1 - #25, the MSDE finds that the IEP in effect from April 24, 2018 until February 28, 2019 did not include sufficient information about the student's levels of performance to measure his skills growth, in accordance with 34 CFR §300.320. Thus, the MSDE finds that there is no data to support the team's decision that the student is making sufficient progress with his skills development, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred from April 24, 2018 until February 28, 2019 with respect to this allegation. Notwithstanding the violation, the IEP was revised in February 2019 and corrected this violation.

Allegation #3 Educational Placement

In this case, the complainant alleges that the IEP team has not followed proper procedures to ensure that the student is receiving instruction in the LRE in which the IEP can be implemented.

Based on the Findings of Facts #18 - #23, the MSDE finds that there is no documentation that the IEP team has considered whether the IEP can continue to be implemented in the current placement since May 30, 2019, when the complainant revoked consent for the student to receive instruction using alternate achievement standards, in accordance with 34 CFR §§300.114 - .116 and .324. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation that the IEP team has convened and determined the placement in which the student can be provided instruction using regular academic standards, to be implemented at the start of the 2019 – 2020 school year. The BCPS must provide documentation to the MSDE by October 1, 2019, that the placement determined by the IEP team has been available since the start of the 2019 – 2020 school year.

The MSDE also requires the BCPS to provide documentation by October 1, 2019, that the IEP team has convened and determined whether the violation related to ensuring that the IEP addresses a student's needs 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 violation and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the BCPS to provide documentation by October 1, 2019, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXX staff comply with the IDEA requirements relating to the violations identified in this Letter of Findings.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education 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.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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The parties maintains 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 Early Intervention
and Special Education Services

MEF/ksa

c: Darryl Williams
Conya Bailey
XXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum