



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

May 4, 2018

Ms. Jessica Williams
Education Due Process Solutions
711 Bain Drive #205
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Mr. Philip A. Lynch
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Montgomery County Public Schools
850 Hungerford Drive, Room 230
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RE: XXXXX
Reference: #18-116

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 March 6, 2018, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. XXXXXXXXXXXX. 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 student’s Individualized Education Program (IEP) has addressed her academic, behavioral, sensory, and fine motor needs, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.101, .320 and .324.
2. The MCPS has not ensured that the student’s progress toward achieving the annual IEP goals have been measured in the manner required by the IEP, in accordance with 34 CFR §§300.301 and .323.

3. The MCPS has not ensured that proper procedures were followed when responding to a request for an Independent Educational Evaluation (IEE) during the 2017 – 2018 school year, in accordance with 34 CFR §300.502.

BACKGROUND:

The student is ten (10) years old and is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). She has an IEP that requires the provision of special education and related services and attends XXXXXXXXXXXX XXXXXXXXXXXX (XXXXXXXXXX).

FINDINGS OF FACTS:

1. The IEP developed on August 31, 2017 documents that the student's primary disability is an Other Health Impairment "due to anxieties/attention issues impacting learning," but that that she also has a Specific Learning Disability (SLD). The IEP states that the student's "disability of Other Health Impairment ADHD/Anxiety and Specific Learning Disability affects her ability to attend to learning experiences and her ability to complete a task independently in math computation and math problem solving, reading response and writing expression and mechanics within the given time expectation independently."
2. The IEP identifies that the student, who is in the 5th grade, is performing at the following instructional grade levels:
 - In reading fluency, at the 3rd grade instructional level;
 - In reading comprehension, at the 4th grade instructional level;
 - In math calculation and math problem solving, at the 3rd grade instructional level;
 - In written language, at the 3rd grade instructional level;
 - In social, emotional and behavior skills, at the 4th grade instructional level; and
 - In organization and task completion behavioral skills, "below grade level expectancy." The IEP reflects that the student "can become stressed when she has to solve a problem that is difficult, either academically or socially," and at times needs a break when she "gets stressed." It states that her "disability of anxiety affects her ability to self regulate across all content areas and all school environments."
3. The parental input in the IEP documents the parent's concerns about the student's struggle with math homework, frustration when required to write, and the student's reports that "she does not understand the material."
4. The IEP documents that, due to the student's inattention and the level of her distracted behavior, she requires accommodations to sustain her engagement and participation in instruction and to access the curriculum. These include extended time, assistive technology for typing, frequent breaks, graphic organizers, extended time and reduced distractions.

5. It also documents that she requires twenty-six (26) supplementary supports, including wait time for processing directions and formulating responses, opportunities for reteaching, word banks, sentence starters, verbal prompts, checks for understanding, copy of student or teacher notes, monitoring of independent work, multiple opportunities to show what she knows and she is about to do, breaking down assignments into smaller units, social stories, strategies to initiate and sustain attention, and a home-school communication system requiring a weekly written academic and behavior summary.
6. The IEP includes annual goals to address reading fluency, reading comprehension, math problem solving, math calculation, written language expression, organization and task completion, and social, emotional and behavior skills.
7. The IEP requires three (3) hours and twenty (20) minutes per week of specialized instruction in reading comprehension and fluency, and two (2) hours per week for specialized instruction in math, each to be delivered by a special educator in a separate special education classroom. It also requires twelve (12) hours and fifty-five (55) minutes per week of specialized instruction, delivered primarily by a general educator in a general education classroom, “for support and instruction with written language, math, reading [and] organization.” Fifteen (15) minute counseling services by a guidance counselor are required twice a month “to work on [the student’s] social and emotional skills.”
8. On November 9, 2017, the school staff documented that the student was making sufficient progress towards mastery of all of the IEP goals, but also documented the following information about the student:
 - She has “recently begun to exhibit school avoidance,” reporting physical symptoms to the parent “in order to stay home;”
 - She “occasionally” requests to visit the school nurse due to stomach aches;
 - She has had four (4) “wetting accidents” and has exhibited inappropriate “chewing behaviors.”
9. On November 16, 2017, the IEP team convened. The IEP team considered the mother’s concerns that the student has sensory and motor needs that impact her ability to write, and decided that an observation would be conducted. The IEP team discussed that the student was having incidents of wetting herself and chewing on items, and considered the mother’s concern that it was related to anxiety about school work. The team decided that a Functional Behavioral Assessment (FBA) would be conducted.
10. The mother reported her belief that the student’s needs are not being met. She specifically expressed concern that the student’s struggles with school work may be related to Dyslexia and requested that the team explore whether this is the underlying condition causing the SLD. The school-based members of the team reported that the school psychologist could not assess for Dyslexia but that the IEP team had already identified the student with a SLD and developed an IEP to address the needs arising out of the disability. However, the IEP team did not address the mother’s concerns about whether the student demonstrates the characteristics of Dyslexia and how that might impact how

special education instruction is delivered. The PWN states that the IEP “team did not agree to assessments for Dyslexia.” The mother requested an independent educational evaluation (IEE), but there is no documentation that her request was considered.

11. On January 18, 2018, the IEP team convened. The IEP team considered the results of the classroom observation that was conducted, which reflect that the student was observed to be rocking, chewing, inattentive and in need of redirection.
12. The IEP team discussed the results of the FBA that was conducted to look at the student’s chewing, wetting and school refusal interfering behaviors. The FBA documents that the functions of the behaviors are to obtain sensory input and adult attention, as well as to avoid participating in an activity. The FBA does not identify an antecedent or “trigger condition” for any of the behaviors. However, it contains recommendations to offer the student gum, remind her of scheduled bathroom breaks, and to talk to her about the importance of attending school.
13. The team considered information from the school staff that they had been implementing the recommendations from the FBA and that they had observed improvements in the student’s behaviors. While the IEP team revised the IEP to include the additional supplementary support of a sensory diet requiring the student to be offered gum to prevent inappropriate chewing, the IEP team did not decide how to address the wetting and school refusal behaviors.
14. The IEP team discussed the student’s difficulty with reading phonics where she is functioning at the 4th grade instructional level. The IEP was revised to identify reading phonics as an area affected by the student’s disability and a reading phonics goal was added to the IEP.
15. The IEP team also added a goal for the student to improve writing mechanics, and agreed to have an occupational therapy assessment conducted at the mother’s request.
16. A review of the IEP developed on January 18, 2018, reflects that the team discontinued the requirement for two (2) hours per week of specialized instruction in math, to be provided by a special educator in a separate special education classroom. There is no documentation of the basis for this decision.
17. At the January 2018 IEP meeting, and following the meeting, the mother reiterated her request for an IEE. The MCPS denied the request based on the fact that the reevaluation was not completed.
18. On March 13, 2018, the IEP team reconvened. There is documentation that the MCPS conducted the occupational therapy assessment that was recommended by the team in January 2018, and prepared a report dated March 5, 2018. However, there is no documentation that the IEP team has considered the results of the occupational therapy assessment.

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19. There is also documentation that, on February 12, 2018, the school staff received the report of a privately obtained auditory processing evaluation that was conducted on January 23, 2018. However, there is no documentation that the IEP team has considered the report and the recommendations included in the report.
20. A review of the reports of the student's progress towards achievement of the annual IEP goals since the start of the 2017 - 2018 school year reflects that the data used to develop the reports is not consistent with the data that the IEP team determined would be used to measure progress.

DISCUSSION/CONCLUSIONS:

ALLEGATION #1 ADDRESSING THE STUDENT'S ACADEMIC, BEHAVIORAL, SENSORY AND FINE MOTOR SKILLS NEEDS

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability. Therefore, in developing the IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101 and .324).

The IEP must include a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §300.320).

A SLD is the largest disability category. Dyslexia is recognized as a condition that may underlie a student's SLD. A SLD, regardless of the underlying condition, may manifest itself in a number of ways, with varying degrees of severity. Therefore, the IEP team must rely upon multiple sources of information and data, and plan for specially designed instruction that targets the identified needs of the student. A determination that a student fits into a particular disability category, such as a SLD, does not dictate a particular set of services or placement. However, the IEP team may find it helpful to include information about the specific condition underlying the student's disability for the purpose of instructional planning and appropriate IEP implementation (MSDE Technical Assistance Bulletin: Specific Learning Disability and Supplement, July 1, 2017).

Based on the Findings of Facts #1 - #19, the MSDE finds that the IEP team did not consider the mother's concern that the student's underlying condition may have instructional implications for addressing her academic needs, in accordance with 34 CFR §300.324. Therefore, this office finds that the MCPS has not ensured that the student's academic needs have been appropriately identified and addressed and that a violation occurred with respect to this aspect of the allegation.

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Based on the Findings of Facts #8, #9, and #11 - #13, the MSDE finds that the MCPS has not ensured that the IEP addresses all of the behavioral needs that have been identified for the student, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #11, #15 and #18, the MSDE finds that the MCPS has not ensured that the results of the occupational therapy assessment has been considered by the IEP team within the required timelines, in accordance with COMAR 13A.05.01. Therefore, this office finds that the school system has not ensured that the student's sensory and fine motor needs have been identified and addressed and that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #19, the MSDE further finds that the MCPS has not ensured that the private evaluation data provided by the parent in February 2018 has been considered by the IEP team, in accordance with 34 CFR §§300.301 - .305 and .324. Based on the same Finding of Fact, the MSDE finds that the school system has not ensured that the IEP team has reviewed all existing data to ensure that the student's needs have been identified and addressed, and that proper procedures were followed when conducting a reevaluation. Therefore, this office finds that violations occurred with respect to these aspects of the allegation.

ALLEGATION #2 PROGRESS TOWARDS ACHIEVING THE ANNUAL IEP GOALS

Based on the Finding of Fact #20, the MSDE finds that the MCPS has not ensured that reports of the student's progress towards mastery of the annual IEP goals has been made, in accordance with 34 CFR §§300.301 and .323. Therefore, this office finds violations occurred.

ALLEGATION #3 REQUEST FOR IEE

Based on the Findings of Facts #16, # 18 and #19, the MSDE finds that the reevaluation has not been completed, and therefore, the right to an IEE at public expense does not apply at this time, in accordance with 34 CFR §§300.304, .305, .324 and .502. Therefore, this offices does not find that a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the MCPS to provide documentation by the end of the 2017 - 2018 school year that the IEP team has convened and taken the following actions:

1. Considered the mother's concerns that Dyslexia may be the underlying cause of the student's SLD and the impact on the type of instruction that is required to address the needs related to Dyslexia; and

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2. Reviewed the results of the March 2018 occupational therapy assessment, and the report of a private auditory processing assessment that was provided to the MCPS in February 2018, to ensure that the IEP is designed to address the student's needs; and
3. If the IEP is revised, the IEP team must also determine compensatory services or other remedy for the delay in the provision of services, and develop a plan for the provision of those services within one (1) year of this Letter of Findings.

The MSDE also requires the MCPS to provide documentation by December 1, 2018, of reports of the student's progress towards mastery of the IEP goals for the first quarter of the 2018 - 2019 school year that measure progress consistent with the goals as written.

School-Based

The MSDE requires the MCPS to provide documentation by the start of the 2018 - 2018 school year, of the steps it has taken, including training, to ensure that the XXXXXXXXXXXXXXXXXXXX staff comply with the requirements for the development of an appropriate IEP, evaluation procedures and timelines, and progress reporting on IEP goals.

The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does 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 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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parents 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 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/ksa

c: Jack Smith
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