



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

June 7, 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: #18-139

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 April 10, 2018, the MSDE received a complaint from Mr. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his 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 student has consistently been provided with the weekly check-ins by the case manager, 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;

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2. The MCPS has not ensured that the student has been provided with special education instruction to assist her in achieving the annual IEP goals, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §300. §§300.101 and .323;
3. The MCPS has not ensured that reports of the student’s progress towards achievement of the annual IEP goals have been provided, as required by the IEP, since the start of the 2017 – 2018 school year, in accordance with 34 CFR §§300.101, .320 and .323; and
4. The MCPS did not provide a copy of the completed IEP within five (5) business days after the February 2018 IEP team meeting, in accordance with COMAR 13A.05.01.07D(3).

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). She has an IEP and attends XXXXXXXXXXXXXXXXXXXX High School (XXXXXXXXXX).

ALLEGATIONS #1 AND #2 IEP IMPLEMENTATION

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2017 - 2018 school year was developed in February 2017. It states that the student’s “OHI disability impacts her in the area of maintaining attention in the classroom, which affects her involvement in the general education curriculum. She also requires access to supports that foster and facilitate increased self advocacy and increased positive peer interactions. She requires access to accommodations that assist with maintaining attention in the general education curriculum.”
2. The IEP documents that the student “does not seek out” social interactions with peers at school or “engage in” social interactions with peers outside of school.
3. The IEP includes a behavioral goal requiring that, “Given adult support, [the student] will apply strategies to help reduce feelings of anxiety when in group settings.” The objectives for the goal reflect that the student will do the following:
 - “initiate conversations with peers and have reciprocal conversations;”
 - “become involved in a school club and/or lunch time activity;” and
 - “spend time with a peer outside of the academic setting.”

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4. The IEP also documents that “at times,” the student has difficulty obtaining needed information in class because she does not ask questions or seek out the school staff for the information.
5. The IEP includes a second (2nd) behavioral goal requiring that, “Given adult support, [the student] will seek out information related to academic and non-academic tasks/activities and take action to participate in activities of interest.” The objectives for the goal reflect that the student will do the following:
 - “proactively seek out staff when she has a question related to academics or non-academic activities;”
 - “proactively identify areas of interest to her and pursue information related to those interests;” and
 - “follow through on participating in activities of interest by showing up and consistently engaging in them.”
6. The IEP documents that the student requires fifteen (15) minutes per week of special education in the general education classroom by a special educator. Under the discussion of this service, the IEP describes the service as “once a week 15 minutes meeting with case manager for check-in.”
7. On February 9, 2018, the IEP team convened to conduct a reevaluation and complete the annual review of the student’s educational program. The IEP team determined that no additional information was needed. The Prior Written Notice of the meeting documents the IEP team’s decision that the student “will continue to receive special education services due to issues with anxiety and her OHI coding” and continue working on behavioral goals.
8. The behavioral goal addressing the use of strategies to reduce anxiety was revised to address anxiety “with peers” instead of “in group settings,” and to require practice opportunities. The behavioral goal requiring the student to seek out information related to academic and non-academic tasks was continued, but “check-ins with adults” was added to the goal.
9. A third (3rd) behavioral goal addressing self-management skills was added to the February 2018 IEP. It requires that, “Given adult support, visits to the career center and meeting with transition teacher, [the student] will increase preparedness with her post-secondary goals (i.e. college).” The objectives reflect that the student will do the following:
 - “increase using strategies to process feelings of anxiety related to post-secondary goals and decrease becoming withdrawn or overwhelmed;”
 - “actively practice for the SAT;” and
 - “actively explore post-secondary degree and career options.”

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10. While the IEP team continued the requirement of fifteen (15) minutes per week of special education in the general education classroom through check-ins with a special educator, the team added a career and technology teacher as an additional provider of the service in the February 2018 IEP. Under the discussion of this service, the IEP states that the student “will check in with her case manager or staff from the IEP team weekly for check-ins.”
11. The MCPS acknowledges that there is no documentation that the student has consistently been provided with the fifteen (15) minute check-ins per week that is identified as the special education required by the IEP.
12. The documentation reflects that, as of January 8, 2018, the student’s grade point average (GPA) was 4.27. The documentation also reflects that the student earned As in all of her courses for the second (2nd) marking period of the 2017 - 2018 school year. As of February 9, 2018, the student’s grades consisted of As in physical education, Spanish, and computer courses, and a B in honors biology, a C in honors English, and an E in honors geometry courses.

DISCUSSION/CONCLUSIONS:

Allegation #1 Weekly Check-ins by the Case Manager

Based on the Findings of Facts #1, #6, #10 and #11, the MSDE finds that, while the IEP required fifteen (15) minute check-ins per week by a special educator, a career and technology teacher, or other school staff members of the IEP team, there is no documentation that the student has been provided with the check-ins during the 2017 – 2018 school year. Therefore, the MSDE finds a violation with regard to this allegation.

Allegation #2 Special Education Instruction on the Annual IEP Goals

The IDEA requires that a student’s IEP include measurable annual goals that are designed to both meet the needs that arise out of the student’s disability, and enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students 34 CFR §300.320).

The United States Department of Education (USDOE) has explained that the annual goals must be aligned with the State’s academic content standards for the grade in which the student is enrolled, and take into account a student’s present levels of academic achievement and functional performance. The USDOE explained that the IEP team should determine annual goals that are ambitious but achievable, and ensure that the IEP includes “specially designed

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instruction,” which the USDOE defines as an “element of special education instruction,” that includes the following:

Adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children (34 CFR §300.39 and *USDOE Dear Colleague Letter*, dated November 16, 2015 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

In this case, the complainant alleges that the student has not been provided with special education instruction because she completes her work independently without the adaptation of the content, methodology, or delivery of instruction by the teacher.

As stated in Allegation #1 above, this office finds that there is no documentation that the student has been provided with check-ins, which is the special education instruction described in the IEP.

However, based on the Findings of Facts above, the MSDE finds that it is not clear how the check-ins required by the IEP include the adaptation of the content, methodology, or delivery of instruction. Therefore, this office finds that the IEP does not include a clear statement of the special education instruction to be provided, as required by 34 CFR §300.320.

Furthermore, based on the Findings of Facts #3, #5, #8 and #9, the MSDE finds that the IEP does not include goals that are aligned to the academic content standards for the grade in which the student is enrolled, as required by 34 CFR §300.320. Therefore, this office finds that violations occurred.

ALLEGATION #3

PROVISION OF IEP PROGRESS REPORTS

FINDINGS OF FACTS:

13. The IEP requires that reports of the student’s progress towards mastery of the annual IEP goals be mailed home to the complainant after each marking period.
14. There is documentation that the school staff developed progress reports after the first (1st) and third (3rd) quarters of the 2017 - 2018 school year. However, the MCPS acknowledges that the contents of the progress reports developed during the 2017 - 2018 school year do not reflect progress on the goals as written.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #13 and #14, the MSDE finds that the MCPS has not reported on the student's progress towards mastery of the IEP goals during the 2017 – 2018 school year. Therefore, this office finds a violation with regard to this allegation.

**ALLEGATION #4 PROVISION OF COMPLETED IEP AFTER FEBRUARY 2018
IEP MEETING**

FINDINGS OF FACTS:

15. The IEP team convened on February 9, 2018, and revised the student's IEP.
16. While there is a document dated February 14, 2018 that states that the IEP was provided to the complainant, there is documentation that the complainant received the completed IEP dated February 9, 2018 in an envelope that bears a postage stamp date of March 15, 2018.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #15 and #16, the MSDE finds that the completed IEP was not provided to the complainant within five (5) business days of the February 9, 2018 IEP meeting. Therefore, this office finds a violation with regard to this allegation.

However, because the complainant has been provided with the IEP, the MSDE does not require student-specific corrective action.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the MCPS to provide documentation by the start of the 2018-2019 school year that the IEP team has determined whether the student requires special education instruction, and if so, has taken the following steps:

1. Reviewed and revised the IEP to ensure that it includes annual measurable goals that are aligned with the grade level curriculum;
2. Reviewed and revised the IEP to clarify that "check-ins" with a teacher will involve the provision of specially-designed instruction in all academic areas impacted by all areas of need arising from the student's disability; and

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3. Determined the compensatory services to be provided to the student for the loss of an appropriate IEP since the start of the 2017-2018 school year.

School-Based

The MSDE requires the MCPS to provide documentation by the start of the 2018 – 2019 school year of the steps it has taken to ensure that the XXXXXXXX staff comply with the requirements related to each of 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 recur.

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 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 Appropriate Public Education (FAPE) for the student, including issues subject to this State

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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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