



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

January 7, 2019

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #19-061

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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.

ALLEGATION:

On November 8, 2018, the MSDE received a complaint from Dr. XXXXXXXXX, hereafter, “the complainant,” on behalf of his son, 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 above-referenced student.

The MSDE investigated the allegation that the MCPS did not ensure that the student has been consistently provided with the para-educator support required by the Individualized Education Program (IEP) from September 4, 2018 to October 5, 2018, in accordance with 34 CFR §300.101.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with “adult support” in his general education classes, daily, to assist him with maintaining attention to tasks. The support is to be provided primarily by an instructional assistant, but may also be provided by a special or general education teacher.
2. There is documentation that, in addition to the assigned teacher, there is an instructional assistant who has been available in all of the student’s general education classes except for physical education and an elective technical education class.
3. There is documentation that the student is receiving an “A” grade in all of his classes.
4. There is no evidence that the student has demonstrated interfering behavior that has not been successfully addressed in the physical education and elective technical education classes.
5. While the IEP does not specifically require that school staff be assigned to work exclusively with the student on a one-to-one basis, there is documentation that the school staff have been seeking to obtain for an individual to work exclusively with the student for four (4) hours per day. There is also documentation that the student’s mother has observed the student receiving adult support in class, but that the complainant believes that additional one-to-one support is required for the student.

CONCLUSION:

Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that an instructional assistant has been assigned to provide the adult support to the student in his physical education and elective technical education classes as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #3 and #4, the MSDE finds that the violation did not impact the student’s ability to benefit from his education program.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation by March 1, 2019, that the IEP team has clarified the level of adult support required in each of the student’s classes, consistent with the data, and that there is staff assigned to the student’s classes consistent with that determination.

The MCPS 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.

School-Based

The MSDE requires the HCPS to provide documentation by April 1, 2019 of the steps taken to ensure that the violation identified does not recur at XXXXXXXXXXXXXXXXXXXX.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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.

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 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/Special Education Services

MEF:ac

- c: Jack R. Smith
- Kevin Lowndes
- Tracee Hackett
- XXXXXXXXXXXX
- Dori Wilson
- Anita Mandis
- Albert Chichester
- Bonnie Preis