



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

January 15, 2019

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Mrs. Sally J. Farr
Director of Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 2192

RE: XXXXX
Reference: #19-067

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and 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.

ALLEGATIONS:

On November 16, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Cecil 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 developed an Individualized Education Program (IEP) that addresses the student’s identified academic, functional, occupational therapy, physical therapy, speech/language, and behavioral needs since November 16, 2017, in accordance with 34 CFR §300.324.

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2. The CCPS did not ensure that proper procedures were followed in determining the student's educational placement for the 2018-2019 school year, in accordance with 34 CFR §§300.114 - .116 and .321.
3. The CCPS did not ensure that proper procedures were followed in determining the student's need for Extended School Year (ESY) services for the summer of 2018, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2).

BACKGROUND:

The student is thirteen (13) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services.

ALLEGATIONS #1 AND #2: IEP DEVELOPMENT AND EDUCATIONAL PLACEMENT

FINDINGS OF FACTS:

1. The IEP in effect on November 16, 2017 reflects that the student's reading, writing, and math abilities are between the pre-primer and kindergarten grade levels. The IEP states that the student's ability to compose functional responses is "minimal" and that he often refuses to write. In the area of fine motor, the student is to access and use a keyboard throughout the school day. The student's IEP does not have any documented physical therapy needs.
2. The IEP also reflects that the student's behavioral needs are task completion, independently using a task chart, and following routines given one direction. The IEP reflects that the student is prone to having a "crisis" if given more than one direction at a time. The student engages in "argumentative harmful behavior" that includes inappropriate behavior to those around him. When he becomes frustrated, the student struggles to regulate his emotions in all settings. The IEP also reflects that the student has been determined by the IEP team to be a student with a significant cognitive disability who requires explicit and ongoing instruction in functional skills, extensive and substantially modified curriculum, reduced instructional pacing and broad supports.
3. The IEP includes a goal for the student to independently prepare to attend to his task for twelve (12) minutes, complete his task, and indicate task completion. The IEP also includes a goal for the student to select tasks with regulation strategies and a reward system, and attend to the tasks for a minimum of ten (10) minutes, with no more than three (3) verbal prompts with 70% accuracy, eight (8) out of ten (10) trials. The student is provided with a "feelings board" to identify and regulate his moods, and a "choice board" for when he is angry, frustrated, worried, or disappointed.

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4. The IEP also includes one (1) goal in each of the areas of reading comprehension and phonics, math problem solving, written language, and physical education. The IEP requires sixty (60) minutes per week of specialized instruction in each of reading comprehension, phonics, written language, math problem solving, and two (2) sessions of fifteen (15) minutes per week of adapted physical education to be provided in a separate special education classroom. The IEP also requires speech/communication in a general education classroom for sixty (60) minutes per week.
5. The IEP also requires the use of an augmentative communication device in order for the student to participate in the academic setting and effectively communicate with peers and staff independently. In the area of communication, the student's verbal output is often difficult to understand. His range of vocabulary and utterance length is limited, inhibiting his ability to communicate verbally. Although he has access to an alternative communication device, the speech/language pathologist reports he does not utilize it and prefers to express information verbally." The IEP team determined that the student requires pictures, and visual icons, in order to produce written work on a computing device.
6. The IEP requires accommodations for instruction and testing, which include text-to-speech technology, a human reader, a human scribe, frequent breaks, reduced distractions to self and others, small group testing, and extended time to complete tasks. The IEP also requires supplementary supports, including the daily provision of an explanation of unknown words, alternative assessments, assignments, and grading, a picture schedule, verbal, visual, and physical prompting and cues, a modified day which requires that he arrive at school (1) one hour later than the rest of the population, an alternative curriculum in all academic areas, a positive male mentor, sensory strategies and breaks, adult support, access to a word processor, and a lock and key locker.
7. The IEP reflects that the student requires an additional adult throughout the school day due to his risk of sporadic behavioral outbursts. The IEP also requires the student to receive grades based on the alternative curriculum requirements.
8. The IEP in effect on November 16, 2017 documented the Least Restrictive Environment (LRE) for the student as inside the general education classroom for 80% of the time for reading, written language, math problem solving with supplementary aids, services, program modifications, and accommodations. The IEP team determined that reading phonics, functional math, functional academic skills, and adapted physical education was to be provided in a special education classroom in order for the student to receive educational benefit.
9. On February 2018, April 2018, June 2018, and October 2018, the IEP progress reports indicated that there were areas where the student was making insufficient progress due to his behavior.
10. On October 1, 2018, the IEP team convened and discussed that the student was engaging in task refusal that was impacting his progress. The complainant stated that the student

acts out when he is asked to do something that he doesn't want to do, especially when asked to write. The school staff reported that task refusal is evident in all settings. The IEP team decided to "track the student's behaviors for a month" to determine whether the student needed additional behavioral support.

11. Also on October 1, 2018, the complainant requested that the IEP team consider occupational therapy (OT) services since the student is unable to button his coat and use writing utensils. The IEP team responded to the complainant's concerns by developing a fine motor kit¹ for the student's daily use. The IEP team decided to increase the amount of time the student was instructed outside of the general education because the student continues to demonstrate significant difficulty attending to task and is unable to make educational gains within the general education setting even with the use of supplementary aids, supports and accommodations.
12. On October 1, 2018, the IEP team determined that the student's lack of sufficient progress on his behavioral goal, reading goal, and writing goal were due to his inconsistent behavior. The IEP team decided to continue to track the behaviors in order to develop a goal to address them in the future. At the IEP team meeting, the team determined that even with the supplementary, aids and services, the student was unable to maintain attention to tasks within the general education classroom. However, the IEP team continued the amount of instruction to be provided in the general education setting in math and decreased the amount of instruction to be provided in the separate special education classroom.
13. On December 5, 2018, the IEP team convened again, to discuss the student's struggles with task completion by revising the self-management goal and wrote a social/ emotional goal to address the student's social regulation skills. The IEP team discussed the student's refusal when faced with a writing task. The team discussed that the student had found more success and exhibited fewer behaviors when he received instruction within the general education classes and that overall, the student had made "significant behavioral progress." Even though the IEP states that the student continues to "struggle to regulate his emotions" when he becomes frustrated or angry in all settings, it also states that this does not occur often and is generally the result of being asked to complete a non-preferred task.
14. At the December 5, 2018 meeting, the IEP team increased the service hours for math to be provided in a special education classroom. The IEP team also increased the student's adapted physical education services from one (1) time per week to twice per week as a result of considering the complainant's concerns that the student needed additional exercises for strength building and hand-eye coordination. There is no documentation

¹ A fine motor kit includes items for the student to work on his fine motor skills, embedded throughout the school day, included to increase interest and provide access to different fine motor opportunities including but not limited to shoe tying, buckling, and snaps, buttoning, opening locks, and dressing boards (VanToolkits.pdf).

that the IEP team reviewed the student's behavioral data that was to be collected per the determination of the previous IEP team meeting.

15. On December 5, 2018, the IEP team noted regression in the area of fine motor skills which is the area of greatest concern for the complainant. The IEP team made revisions to the OT consultation services by increasing the services to occur monthly, added direct OT services without writing a goal, and ensured the school staff integrated daily activities to address the student's sensory, fine and visual motor strategies, motor strength and coordination.
16. On December 5, 2018, the team considered a classroom observation by the complainant and a school staff member, current behavioral data, and the complainant's concerns about the student receiving math instruction in the general education classroom. The IEP team decided that the student's math services hours and the amount of time for adapted physical education services would increase within the special education classroom. The IEP team also documented that the student had found success and exhibits fewer distracting behaviors within the general education classroom.

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP Development

Based on the Findings of Facts #1-#3, #5, #7-#14, and #16, the MSDE finds that the IEP team has not considered positive behavioral interventions to address the behaviors that have been interfering with the student's progress in reading and writing, in accordance with 34 CFR §300.324. Therefore, this office finds a violation occurred with respect to this aspect of the allegation.

Allegation #2: Placement Decisions

Based on the Findings of Facts #8, #13, #14, and #16, the MSDE finds that the October 2018 placement decision for math was not consistent with the data, in accordance with 34 CFR §§300.114 - .116 and .321. Therefore, this office finds a violation occurred with this allegation.

ALLEGATION #3: PROPER PROCEDURES FOR ESY DETERMINATION

FINDINGS OF FACTS:

17. The IEP team met on May 30, 2018 and decided that the student required ESY services for the summer of 2018. The IEP team determined that the nature and severity of the student's disability warranted ESY services in the area of speech/communication.
18. There is documentation that ESY services were offered but that the complainant declined ESY services for the summer of 2018.

DISCUSSION AND CONCLUSIONS:

In this case, the complainant alleges that the IEP team did not follow proper procedures when determining that the student does not require ESY services.

Based on the Findings of the Facts #17 and #18, the MSDE finds that the documentation does not support the allegation that the IEP team determined that ESY services were not required, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2). Therefore, this office finds no violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific:

The MSDE requires the CCPS to provide documentation by March 1, 2019 that the IEP team, which includes assistive technology and behavioral specialists, has identified the causes of the student's interfering behaviors of task refusal and refusal to use an augmentative communication device and has considered positive behavioral interventions to address the behaviors.

The CCPS must also provide documentation that the IEP team has identified the reason why the student's behaviors increase with the provision of additional supports in a separate special education classroom. Based on the data, the IEP team must determine the most effective behavioral supports for the student and the LRE in which they can be successfully implemented and review and revise the IEP consistent with those decisions.

The MSDE also requires the CCPS to provide documentation by the end of the 2018-2019 school year that the IEP team which includes assistive technology and behavioral specialists, has considered the student's progress with the provision of the supports determined necessary and reviewed and revised, as appropriate, the IEP to address any lack of expected progress. If at that time, the student has continued to refuse to use an augmentative communication device, the team must determine an alternative means of communication for the student and the services to be provided to accelerate his use of communication.

The MSDE also requires the CCPS to offer to implement the IEP during the summer of 2019 in order to redress the delay in addressing his interfering behaviors and lack of progress during the 2018-2019 school year.

School-Based:

The MSDE requires the CCPS to provide documentation by the end of the 2018-2019 school year of the steps taken to ensure that the identified violations do not recur at XXXXXXXXXXXX XXX. The documentation must include information on how the school system will monitor the effectiveness of the steps taken.

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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.

Questions regarding the findings and conclusions 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, 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 a due process complaint.

Sincerely,

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

MEF:sf

cc: Jeffrey Lawson
Nicole Warner
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Dori Wilson
Anita Mandis
Sharon Floyd
Nancy Birenbaum