



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

November 17, 2020

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Ms. Michelle Concepcion
Director of Instruction and Student Performance
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: [REDACTED]
Reference: #21-017

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention 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.

ALLEGATIONS:

On September 18, 2020, the MSDE received correspondence from Ashley S. VanCleaf, Esq., hereafter, “the complainant” on behalf of Mr. [REDACTED] and Ms. [REDACTED] and their daughter, the above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) 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 FCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s reading, math, written language, speech/language, assistive technology, and communication needs, from September 2019 to March 16, 2020, in accordance with 34 CFR §§300.101, and .323.
2. The FCPS has not followed proper procedures to offer a Free Appropriate Public Education (FAPE) since March 16, 2020, in accordance with 34 CFR §§300.101, .323, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and*

Secondary Schools While Serving Children with Disabilities, United States Department of Education, dated March 21, 2020, and the MSDE Technical Assistance Bulletin, *Serving Children with Disabilities Under IDEA During School Closures Due to the COVID-19 Pandemic*, dated March 30, 2020.

BACKGROUND:

The student is ten (10) years old, is identified as a student with Multiple Disabilities, including a Speech/Language Impairment and an Other Health Impairment due to Attention Deficit and Hyperactivity Disorder, under the IDEA. The student has an IEP that requires the provision of special education instruction and related services.

The student attended [REDACTED] until March 16, 2020, when there was a Statewide closure of all school buildings and initiation of virtual learning due to the national COVID-19 pandemic.

FINDINGS OF FACTS:

IEP IN EFFECT IN SEPTEMBER 2019

1. The IEP in effect in September 2019 was developed on April 17, 2019. At the April 17, 2019 IEP team meeting, the team considered data from a private assessment that the student's intellectual ability is in the "very low" range, and that her Full Scale Intelligence Quotient was found to be 55. The team considered information that the student had needs in all areas of academic and adaptive functioning, including areas of communication, reading, math, written language, executive functioning, assistive technology (AT) and articulation skills. At that time, the student was performing three (3) years below grade level in all academic areas.
2. At the April 17, 2019 IEP team meeting, the student's teacher reported that, based on progress monitoring data, the student made "minimal" progress with the reading intervention used to improve decoding and comprehension skills. The team decided to use a multi-sensory approach to teaching the student decoding skills with the use of sand, magnetic letters, and kinesthetic movements. In addition, the team added supports to the IEP to assist in obtaining as much information as possible about what the student was comprehending of the information provided to her. These supports included a human reader, a scribe, multiple break accommodations, visual prompting, and picture clues when reading.
3. At the April 17, 2019 IEP team meeting, the teacher reported that the student was making "minimal" progress on the math calculation and problem solving goals despite the fact that the math intervention that was utilized was being individualized for the student's specific learning needs. Based on this information, team decided to add accommodations of extended time, use of manipulatives, a human reader and text-to-speech for math activities in an attempt to increase the student's ability to understand higher level math concepts.

4. At the April 17, 2019 IEP team meeting, the teacher reported that progress in written language was “inconsistent” on writing samples and suggested an increase of using visual supports when writing. Based on this information, the IEP team decided to add text-to-speech for writing, a human reader, a scribe, and multiple break accommodations, visual prompting, and picture clues.
5. At the April 17, 2019 IEP team meeting, the IEP team considered information about the student’s communication, speech/language, and AT needs. The private speech/language assessment report documented deficits in expressive, receptive and articulation skills. The school-based speech pathologist reported that the student achieved the annual goal for pronouncing targeted sounds, but that she demonstrated inconsistent application in spontaneous utterances, recall of information related to directions, and retelling of a short story using more words. The IEP team decided that the student requires AT to assist with reading, writing, and communication skills, and that the student would be provided with an *iPad* with application supports, a keyboard with word prediction capabilities, and an application to build sentences. The IEP team also decided to increase speech/language therapy services for the student’s articulation and expressive language skill development.
6. The IEP team revised the annual goals based on reports of the student’s progress in each area.

OCTOBER 2, 2019 IEP

7. On October 2, 2019, the IEP team convened in response to the parents’ request. At the meeting, the team considered that the student was experiencing “limited success” with the AT device, which was recommended to promote her intelligibility when communicating because she prefers to communicate verbally. The teacher reported that the student is a verbal communicator, but she requires articulation support because she is not easily understood by staff and peers. The AT staff recommended that the IEP team provide additional support to the teachers on utilizing the communication device in the classroom and increased the student’s speech/language services. In addition, the IEP team recommended the AT staff conduct classroom observations and a needs assessment to determine how the student views her communication and what is meaningful and important to her.
8. At the October 2, 2019 meeting, the IEP team also considered that the student continued to make “little progress” with the reading, and that her reading and written language performance on benchmarks were “very low.” Based on this information, the team decided to provide the student with teacher notes, and implement a home-school communication system for her parents to reinforce reading at home.
9. At the October 2, 2019 meeting, the IEP team also considered information that the student made “little progress” with the math interventions being used and that her performance on benchmark assessments was “very low.” The team documented the

decision to provide the student with a math resource binder, graphic organizers, additional manipulatives, and pictures to support her math skills.

FEBRUARY 5, 2020 IEP

10. On February 5, 2020, the IEP team met to review the student's progress. At the meeting, the team considered information from teacher reports, informal assessments, and progress monitoring that reflected that the student was not making "significant" progress in reading. Based on this information, the team revised the IEP goals and decided to develop an individual reading intervention program designed by the literacy specialist focused to address the student's specific unique reading needs that included several phonics based interventions and incorporated the strategies from the previous interventions that were deemed successful for the student.
11. At the February 5, 2020 IEP team meeting, the team also considered information that the student was not successful with the math intervention being used. The teacher reported that she has had to augment the math intervention with manipulatives, flow charts, and other strategies to provide the student with additional support. The team decided to use a slower-paced math intervention program, revise the IEP goals, and increase the amount of specialized math instruction to assist the student with achieving the IEP goals.
12. At the February 5, 2020 IEP team meeting, the team considered information from the school staff that the student required text-to-read AT, which involves a computer reading words on the screen to the user. The team also decided to conduct training of the student's teachers on her AT devices to enable them to support her to readily use the device in the classroom and to develop an awareness plan to cue the student when others around her are unable to understand her speech.
13. At the February 5, 2020 IEP team meeting, the teacher reported that the student does not meet standards on grade level writing assessments, stating that the student is better at pulling information from the text rather than creating her own ideas to write. The teacher reported that the student does not readily tell the scribe her ideas and when to capitalize and use punctuation. Based on this information, the IEP team decided to increase the amount of support for written language within the general education classroom and change the primary provider to the special education teacher.
14. At the February 5, 2020 IEP team meeting, the team further decided that all special education instruction would be provided using a multi-modality approach which includes learning strategies that tap into the visual, auditory, and kinesthetic strengths of the student.
15. At the February 5, 2020 IEP team meeting, the speech pathologist reported that the student is hesitant to speak out in class due to her lack of understanding of the concepts but is more likely to engage in activities during speech/language therapy sessions. The speech pathologist also reported that the student needs continued instruction with language tenses, emotional terminology, noun and verb agreement, and the organization

of her spoken sentences since her sentence length has increased. The IEP team revised the speech/language goals based on reports of the student's progress.

April 27, 2020 IEP Team Meeting

16. On April 27, 2020, the IEP team met to determine the services to be provided virtually as a result of the closure of school buildings due to the COVID-19 pandemic. The student's mother expressed concern that the virtual learning format could not meet the student's needs. The IEP team responded to her concerns by stating that all of the student's academic goals would be addressed through the provision of modified instructional materials, recorded lessons, and extension activities geared towards the student's IEP goals.

May 7, 2020 and May 13, 2020 IEP Team Meeting

17. On May 7, 2020 and May 13, 2020, the IEP team conducted an annual IEP review. The school staff reported that the student achieved the receptive language goal but did not achieve the remaining IEP goals for speech/language, reading, math, and written language skills. The IEP team revised the annual goals based on reports of the student's progress. The mother again expressed concerns that virtual learning was not meeting the student's instructional needs, and requested an increase in math services to address lack of progress in that area. The IEP team decided to increase the amount of virtual instruction as well as small group instruction time for math to be provided.
18. The IEP team determined that the student requires Extended School Year (ESY) services, and the parents requested that those services address reading comprehension and receptive language skills. The IEP team denied the request based on the report that the student had achieved the receptive language goal and the school staff's report that ESY services should focus on maintaining the student's skills with phonics, which she needs in order to improve her reading comprehension. The parents also requested additional weeks of ESY services. The IEP team denied the request, documenting that the basis for the decision was that there was a "lack of data" of the need. However, there is no documentation of the data that demonstrates the nature of this data.

September 10, 2020 IEP Team Meeting

19. On September 10, 2020, an IEP team again considered how the IEP will be implemented through virtual learning. The student's mother again expressed her concern that virtual learning was not meeting the student's instructional needs. However, the documentation reflected that the student was continuing to make progress towards achievement of the annual goals. Based on that information, the team decided that the student would continue to participate in virtual learning as she had the previous school year.

October 19, 2020 IEP Team Meeting

20. On October 19, 2020, the IEP team convened at the request of the parents to review the student's progress. The teacher reported that the student was making progress on the reading, math, and written language goals. The IEP team denied the parents' request for additional services in these areas based on the reports of the student's progress, but agreed to begin using a new reading intervention requested by the parents. The team also decided to increase the amount of speech/language therapy and to require consultation between the provider and teachers to support the generalization of the student's skills. The IEP team discussed that the student's progress would continue to be monitored and that if the student experiences regression in skills growth during the period of virtual learning, recovery services would be provided.

DISCUSSION/CONCLUSIONS:

Allegation #1 IEP Addressing the Student's Reading, Math, Written Language, Speech/Language and Communication Needs from September 2019 to March 16, 2020

Based on the Findings of Facts #1 - #15, the MSDE finds that the IEP team met continuously and made revisions to the IEP based on the data about the student's progress and that the IEP was designed to address the student's needs in light of her unique circumstances, in accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 Following Proper Procedures to Provide FAPE Since March 16, 2020

Based on the Findings of Facts #16 - #20, the MSDE finds that the IEP team determined the student's needs during the period of virtual instruction and that the decisions made were consistent with the data, in accordance with 34 CFR §300.324.

However, based on the Finding of Fact #18, the MSDE finds that there is no documentation of the data used as a basis for the IEP team's denial of the request for the provision of additional ESY services. As a result, based upon this same Finding of Fact, this office finds that there is not documentation that the team's decision was consistent with the data, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance

(34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the FCPS to provide documentation that the IEP team has reviewed the data used as a basis for the decision to deny an increase in ESY services for the summer of 2020 and determined how it supports the decision that was made. If the IEP team determines that the data does not support the decision, it must determine the amount and nature of compensatory or other services need to remediate the violation.

School-Based

The MSDE requires the FCPS to provide documentation of the steps taken to at [REDACTED] [REDACTED] to ensure that IEP team decisions are consistent with documented data. Please be advised that both the complainant and the FCPS 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.

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

¹ The OSEP states that the public agency must correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

² The MSDE will notify the Directors of Special Education of any corrective action that has not been completed within the required timelines.

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on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

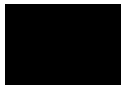
The parents and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. 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: sf

c:



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