



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

December 23, 2020



Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: [REDACTED]
Reference: #21-031

Dear Parties:

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

ALLEGATION:

On November 4, 2020, the MSDE received a complaint from Ms. [REDACTED] hereafter “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the CCPS has not ensured that the student has consistently been provided with the special education instruction, accommodations, and supports required by the Individualized Education Program (IEP) from February 6, 2020 to March 5, 2020 and since August 31, 2020, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with Multiple Disabilities under the IDEA, including a Specific Learning Disability and an Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD). She has an IEP that requires the provision of special education services.

The student attended the [REDACTED] until the March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

FINDINGS OF FACTS:

February 6, 2020 to March 5, 2020

1. The IEP in effect from February 6, 2020 to March 5, 2020 included goals for the student to improve her skills in the areas of reading, writing, and math, and her behavioral functioning. It required the provision of special education instruction to assist her in achieving the goals. This included special education instruction each week in English and math classes in a separate special education classroom from a special education teacher. It also included special education instruction each week in science and social studies classes in a general education classroom from both special and general education teachers, with the special education teacher being the primary provider. The IEP further required the provision of numerous accommodations.
2. The IEP also required the use of a Behavioral Intervention Plan (BIP) to address behaviors of impulsivity, argumentative actions towards peers and adults, and work refusal. The BIP required the provision of private conversations with the student about her behavior, adult assistance to problem-solve, praise and positive recognition for appropriate behavior, use of a “time out” pass to leave the classroom when upset, consistent communication between school staff and the complainant, and planned ignoring of inappropriate behavior.
3. There are reports of the student’s progress towards achievement of the annual IEP goals, dated March 15, 2020, which document that special education instruction was provided to address the goals. These reports reflect that the student was making sufficient progress to achieve the goals.
4. The student’s schedule documents that she was provided with special education instruction each week in English and math classes in a separate special education classroom from a special education teacher.
5. While there is documentation that the special education instruction in science and social studies was provided by a general education teacher, there is no documentation that it was primarily provided by a special education teacher, as required by the IEP
6. On June 10, 2020, the IEP team met and discussed the accommodations that had been provided to the student during the 2019-2020 school year. The team documented that the student had been successful with the behavior supports provided through the BIP. The team also documented that some of the accommodations had not been provided consistently, but that this did not negatively impact the student’s ability to benefit from her education program because her grades had improved and she made skills growth based on pre- and post-test scores.
7. The IEP was revised on June 10, 2020 to require that special education instruction be primarily provided by the general education teacher in science and social studies, while

continuing to require the special educator as secondary provider of services to the student.

Since August 31, 2020

8. The IEP in effect since August 31, 2020 continued to require special education instruction to address the IEP goals. However, the IEP did not require implementation of the BIP during this period or special education instruction to assist the student with achieving a goal to improve her behavior.
9. There are reports of the student's progress towards achievement of the annual IEP goals, dated November 6, 2020, which document that special education instruction was provided to address the goals. These reports reflect that the student is making sufficient progress to achieve the goals.
10. The student's schedule documents that she was provided with special education instruction each week in English and math classes in a separate special education classroom from a special education teacher.
11. While there is documentation that the special education instruction in science and social studies was provided by a general education teacher, there is no documentation that it was also provided by a special education teacher, as required by the IEP.
12. There is no documentation that the student was provided with accommodations and supports with the frequency required by the IEP. While checklists were completed by the student's teachers to document the supports and accommodations that were provided, the checklists were not signed by the student's IEP case manager as required by the procedures developed by the CCPS.
13. The student's report card reflects that she is passing all of her classes.
14. On December 8, 2020, the CCPS conducted a training for all teachers at the [REDACTED] and created an action plan to ensure implementation of IEPs.
15. On December 18, 2020 an IEP team meeting was convened virtually to review and revise the IEP and to address the concerns raised by the complainant in this State complaint. The IEP team discussed that services had been provided as required by the IEP and that the student was making sufficient progress towards mastery of her goals and receiving passing grades. Based on this information, the team decided that compensatory services were not required. In order to address the concerns raised in the State complaint, the team added a provision for home-school communication and student self-advocacy.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #11, the MSDE finds that the student has been provided with special education instruction to address the annual IEP goals, in accordance with 34 CFR

§§300.101 and .323. However, based on the Findings of Facts #1, #5, #7, and #11, the MSDE finds that not all of the special education instruction was delivered by the all of the providers required by the IEP, in accordance with 34 CFR §§300.101 and .323.

Further, based on the Findings of Facts #1, #6, and #12, the MSDE finds that the student has not been provided with the accommodations and supports with the frequency required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that violations occurred with respect to this allegation.

Notwithstanding these violations, based on the FOF #3, #6, #9, #13, and #15, the MSDE finds that they did not impact the student's ability to benefit from the education program.

Further, based on the Findings of Facts #14 and #15, the MSDE finds that the CCPS has taken steps to ensure that the violations do not recur. Therefore, no corrective action is required to remediate the violations.

TIMELINE:

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.

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

c:

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