



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

August 2, 2019

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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: #19-174

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.

On June 4, and 17, 2019, the MSDE received correspondence from Ms. XXXXXXXXXXXXX, hereafter “the complainant,” on behalf of her 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 student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the Individualized Education Program (IEP) includes present levels of academic achievement and functional performance based on the data, since May 2019, in accordance with 34 CFR §§300.303 - .311, .320, .323, and .324.
2. The MCPS did not ensure that the IEP identifies and addresses the student’s physical therapy and health needs on May 8, 2019, in accordance with 34 CFR §§300.101 and .324.
3. The MCPS did not ensure that the student was consistently being provided with the weekly communication and assistive technology required by the IEP, during the 2018-2019 school year, in accordance with 34 CFR §§300.101, and .323.
4. The MCPS did not ensure that the transportation behavioral protocol has been consistently provided as required by the IEP during the 2018-2019 school year, in accordance with 34 CFR §300.101.

## **BACKGROUND:**

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

## **ALLEGATION #1 PRESENT LEVELS OF PERFORMANCE SINCE MAY 2019**

### **FINDINGS OF FACTS:**

1. The IEP, dated May 8, 2019, identified the areas affected by the student's disability including community skills, math calculation, math problem solving, reading comprehension, reading vocabulary, speech/language expressive and receptive language, written language mechanics, behavioral daily living skills, self-management, social and emotional skills, and fine motor skills.
2. At the May 8, 2019 IEP team meeting, the team determined the student's present levels of academic achievement and functional skills. The team documented that the decisions were based on student observation, classroom data, informal procedures and teacher observations, physical therapy data, consultation with staff, communication with the complainant and the student's behavioral data. These decisions were as follows:
  - The student's reading vocabulary, reading comprehension, math calculation, math problem solving, and written language mechanics was measured at an instructional grade level performance of a "scattered kindergarten level" with needs to continue to identify sight words, answering WH questions, matching numbers 25-50, solve simple addition and subtraction problems with manipulatives, use the dollar up strategy, match times on an analog clock, to write and to write his name independently with correct sizing and spacing;
  - The student's receptive and expressive speech/language skills were measured at an instructional grade level performance of "below grade level expectations" with needs for support when answering questions, sorting and sequencing events from a familiar text, and indicating his needs and wants using 1-2 word structures with sign language and pictures;
  - The student's community, social, emotional/behavioral, and self-management skills were measured at a level performance of "atypical" with needs to work on exchanging money with a cashier and waiting for change, to work on decreasing aggression, and work up to a two-hour bathroom schedule;
  - The student's daily living skills, fine motor, and functional mobility skills were measured at a level performance of "below grade level expectancy" with needs to work on job skills in and outside of the classroom and zip a larger jacket independently.

3. At the May 8, 2019 IEP team meeting, the complainant expressed concerns about the present levels of academic achievement and functional performance, questioning the validity of the data sources and baseline percentages. The IEP team worked with the complainant from May 8, 2019 until July 8, 2019 to revise the IEP to ensure that it includes the specific information about the data sources and baseline percentages requested by the complainant.

### **CONCLUSION:**

Based on the Findings of Facts #1 - #3, the MSDE finds that the IEP has included a statement of present levels of performance based on the data, in accordance with 34 CFR §§300.303 - .311, .320, .323, and .324. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **ALLEGATION #2 ADDRESSING PHYSICAL THERAPY AND HEALTH NEEDS ON MAY 8, 2019**

#### **FINDINGS OF FACTS:**

##### Physical Therapy Needs

4. There is documentation that the student has an atypical gait and can lose his balance when standing or walking too quickly. The IEP requires the provision of adult support to assist him with his balance as well as thirty (30) minutes of physical therapy per month.
5. On May 8, 2019, the IEP team convened and considered information from the physical therapist that, with the provision of these supports, the student has successfully participated in physical education and used the treadmill and rowing machine, and achieved the annual IEP goal to improve the ability to descend the bus steps independently while wearing his backpack.
6. At the May 8, 2019 IEP team meeting, the complainant expressed concern that, despite this, the student continues to have problems with balance in the home, and that the student needs to stretch after sitting on the bus for periods of time. She requested that school staff be trained to add stretch exercises to the services provided to the student.
7. Based on this information, the IEP team decided on May 8, 2019 to discontinue physical therapy, but to have the physical therapist provide the requested training on stretch exercises to the school staff. However, the complainant's concern about the student's need to stretch before getting off the bus was not addressed. The complainant disagreed with the decision to discontinue physical therapy, and requested a physical therapy assessment. The team agreed to the assessment, which has been conducted, but has not yet been reviewed by the IEP team.

8. On July 8, 2019, the IEP team revised the protocol used for transportation to include wait time before exiting the bus so that the student could stretch after sitting for periods of time.
9. There is no documentation that the student has not been able to successfully enter and leave the bus during the 2018-2019 school year.

#### Health Needs

10. Although the complainant had informed the school staff that the student is lactose intolerant earlier in the school year, this information was not reflected on the IEP until July 8, 2019.
11. There is no documentation that the student was unable to access instruction during the 2018-2019 school year due to the information not being reflected on the IEP, but there is documentation that he had several incidents of diarrhea.

#### **CONCLUSIONS:**

Based on the Findings of Facts #4 - #8, the MSDE finds that, while there was documentation to support the IEP team's discontinuation of physical therapy services, the IEP team did not address the complainant's concerns about the student's need to stretch until July 8, 2019, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation regarding this aspect of the allegation.

Notwithstanding, based on the Finding of Fact #9, the MSDE finds that the violation did not impact the student's ability to benefit from the education program. Therefore, no student specific corrective action is required.

Based on the Finding of Fact #10, the MSDE finds that the IEP team did not address the student's lactose intolerance until July 8, 2018, in accordance with 34 CFR §§300.101 and .324. Therefore, this office finds a violation regarding this aspect of the allegation.

Notwithstanding, based on the Finding of Fact #11, the MSDE finds that the violation did not impact the student's ability to benefit from the education program. Therefore, no student specific corrective action is required.

### **ALLEGATION #3 PROVISION OF COMMUNICATION AND ASSISTIVE TECHNOLOGY**

#### **FINDINGS OF FACTS:**

##### Home-School Communication

12. The IEP in effect during the 2018-2019 school year required that service providers were to provide the complainant with a brief note/sentence about services provided to the

student for that week. In addition, the special education teacher was to provide the complainant with weekly behavior datasheets that included behavioral data collected two (2) to three (3) times per week.

13. At the May 8, 2019 IEP team meeting, the complainant expressed concern that she was not receiving communication as required by the IEP. However, her concern was not addressed until June 17, 2019, when the parties agreed to amend the IEP to revise the home-school communication to include antecedent, behavior, and consequence (ABC) data from the classroom teacher and behavioral observations when the student is receiving related services. The MCPS agreed to provide a point of contact person, the student's case manager, who is to be responsible for ensuring that the complainant receives a response within twenty-four (24) to forty-eight (48) hours of her email inquiries. The complainant was provided with the names of supervisory staff to contact in the event of problems with the designated point of contact.

#### Assistive Technology

14. The IEP in effect during the 2018-2019 school year required that the student be provided with a dimensional picture communication exchange and voice output device and services to support of his daily functional communication at school and in the community.
15. There is documentation that the student uses the augmentative communication methods and strategies required by the IEP throughout the school day for communication. However, there is documentation that the school system staff have acknowledged that the voice output device was not consistently utilized by the speech/language therapist, as required by the IEP.
16. The IEP goal reports reflect that the student made progress on the communication goal during the 2018-2019 school year, but did not achieve the goal by the end of the year in which it was in effect, and therefore, the goal has been continued.

#### CONCLUSIONS:

Based on the Findings of Facts #12 and #13, the MSDE finds that there was inconsistent implementation of the home-school communication plan, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation regarding this aspect of the allegation.

Notwithstanding, based on those Findings of Facts, the MSDE finds that appropriate steps have been taken to remediate the violation. Therefore, no additional corrective action is required.

Based on the Findings of Facts #14 - #16, the MSDE finds that the student was not consistently provided with the assistive technology required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation regarding this aspect of the allegation.

## **ALLEGATION #4 IMPLEMENTATION OF TRANSPORTATION BEHAVIOR PROTOCOL**

### **FINDINGS OF FACTS:**

17. The IEP in effect during the 2018-2019 school year included a transportation protocol to be utilized on the bus to address the student's behavioral needs.
18. On July 8, 2019, the IEP team updated the bus protocol in response to the June 27, 2019 concerns raised by the complainant, with the MCPS Transportation Office staff, about the implementation of the protocol.
19. The MCPS acknowledges that the protocol was not being followed, consistent with the IEP, because it was unclear until it was revised on July 8, 2019.
20. There is no documentation that the student was unable to access instruction as a result of the need for clarification of the bus protocol.

### **CONCLUSIONS:**

Based on the Findings of Facts #17 - #19, the MSDE finds that the transportation behavior protocol was not consistently followed, as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation occurred.

Notwithstanding, based on the Finding of Fact #20, the MSDE finds that appropriate steps have been taken to remediate the violation and that the violation did not impact the student's ability to benefit from the education program. Therefore, no student-based corrective action is required.

### **CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the MCPS to provide documentation by November 1, 2019 that an IEP team has convened and taken the following actions:

- a. Determined whether the violation related to the inconsistent provision of assistive technology had a negative impact on the student's ability to benefit from the educational program, and
- b. If the IEP team determines that there was a negative impact, the team has determined the amount and nature of compensatory services or other remedy to redress the violation identified in this investigation, and developed a plan for the provision of the compensatory services within one (1) year of the date of this Letter of Findings.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education 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.

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 complainants 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 and  
Special Education Services

MEF/sf

c: Jack Smith  
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