



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

October 1, 2019



Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
P.O. Box 2770
La Plata, Maryland 2064

RE: [REDACTED]
Reference: #20-015

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 results of the investigation.

ALLEGATIONS:

On August 13, 2019, the MSDE received a complaint from Ms. [REDACTED] hereafter “the complainant,” on behalf of her son, 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 following allegations:

1. The CCPS has not ensured that the student was provided with a Free Appropriate Public Education (FAPE) since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101, .320 and .324. It is alleged that the Individualized Education Program (IEP) has not addressed the student’s needs in the area of communication and social/adaptive/behavioral functioning.
2. The CCPS did not ensure that the student has been provided with specialized instruction in the educational placement required by the IEP, in accordance with CFR §§ 300.101 and .323.

BACKGROUND:

The student is six (6) 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 and attended the [REDACTED] School during the 2018-2019 school year. Since the start of the 2019-2020 school year, he has attended the [REDACTED] a public special education school, as a result of a change in educational placement.

ALLEGATION #1 ADDRESSING THE STUDENT'S NEEDS

FINDING OF FACTS:

1. The IEP in effect at the start of the 2018-2019 school year, which was developed in May 2018, identified needs for the student in the areas of expressive and receptive language, self-management, and social interactions skills as well as academic performance. At that time, the student was identified as a student with a Developmental Delay, due to delays in the area of communication. The IEP reflects that the student demonstrates behaviors that interfere with learning and social skills development due to his frustration with being unable to communicate effectively. These behaviors include difficulty following directions to non-preferred tasks, becoming upset and refusing to transition to another activity.
2. The IEP included goals for the student to improve his functioning in the areas of identified need, as well as special education instruction and related speech/language services to assist the student with achieving the goals. The IEP stated that the Least Restrictive Environment (LRE) in which special education instruction could be provided was the general education classroom with the provision of supplementary aids and services, including intensive case management, use of manipulatives, reinforcing appropriate behavior, advanced preparation for change in activities or routine, preferential seating and a speech/language consultation. The team determined that the IEP could be implemented at [REDACTED] School, the school he would attend if not disabled.
3. On September 25, 2018, the IEP team met to address concerns about behaviors being exhibited by the student, including elopement, aggression, refusal to follow adult directives and refusal to follow school rules and procedures. Based on the information, the team recommended a Functional Behavioral Assessment (FBA). The team also increased the amount of speech/language therapy services to be provided, as well as small group testing and reduction of distractions to self and others. In addition, supplemental aids and supports were added including: minimalizing the distance between transitions, use of a visual timer, "check-in and check-out," home/school communication system, adult proximity control and a picture schedule.

4. The IEP team reconvened on December 10, 2018 to review the results of the FBA. The FBA identifies targeted behaviors such as aggression towards others, elopement, refusal to follow adult directives and difficulty following classroom routines and procedures. Also identified were the triggers for the behaviors, including an inability to communicate wants and needs, hyper focus and obsession with particular objects, and a need for constant sensory items in hand at all times. The FBA states that redirection and refocusing strategies had been used to address the behaviors; however, they were not often successful. Based on the FBA, the IEP team developed a Behavioral Intervention Plan (BIP) that requires the school staff to use visual cues, “check in/up/out,” limit choices, chunk tasks individually, use positive reinforcement, and utilize extended time when the student demonstrates the targeted behaviors. The IEP team also determined that the student requires instruction in a small group setting with additional behavioral supports on a trial basis, which would be implemented for forty-five (45) days. The team further decided that it would reconvene to consider the student’s progress in twenty-five (25) days.
5. The reports made of the student’s progress towards achievement of the annual IEP goals, made in February 2019, state that his progress was sufficient at that time.
6. On February 19, 2019, the team met to consider a transition plan from the smaller setting back to the regular classroom. It was agreed that since the student had been doing well going to lunch and recess with the Kindergarten class (with support), staff would build up his time in the regular classroom over time, with behavior supports and adult support adjusted as needed based on his behavior. There is documentation that from January 2, 2019 to April 30, 2019, many inclusion opportunities were attempted. Additionally, there is documentation that a positive behavior management system was implemented in the small group setting, subsequent to recommendations from the CCPS behavior specialist. The team also recommended educational, expressive/receptive language and cognitive/intellectual and behavior assessments.
7. During the period from January 2019 to March of 2019, the documentation indicates that the student had not made sufficient progress in the areas of social emotional behavior and speech/language (expressive and receptive).
8. On April 30, 2019 the team met and considered recommendations contained in assessments conducted by the CCPS and a private assessment obtained by the complainant on April 9, 2019. Based on the recommendations, the team revised the IEP to reflect:
 - a. Services included small group outside of the general education classroom for twenty (20) hours a week.
 - b. Speech/language therapy services were increased to two sessions each week for thirty minutes.
 - c. The student would be inside general education for nonacademic classes and during unstructured time.

- d. Suspected disabilities of Autism and Speech/Language Impairment, Developmental Delay changed to reflect Autism as the primary disability.
 - e. An emergency evacuation plan was added.
 - f. Additional accommodations were added. Those included small group, frequent breaks, monitor test response, extended time, reduced distractions to self and others.
 - g. Supplementary aids were added including: use of a timer, alternative ways to demonstrate learning, intensive case management, chunking, frequent feedback, toileting assistance, access to fidgets, adaptive chairs and sensory diet.
 - h. Reduced audio and visual stimuli.
 - i. Additional goals for social interaction, self-management, academics and expressive language.
 - j. ESY services for the summer of 2019 were added.
 - k. Adult support during inclusion was added.
 - l. An assessment was ordered for adaptive behavioral functioning.
9. On April 30, 2019, a referral was made to the Intra County Individualized Education Plan (ICIEP) team to address concerns regarding the determination of an appropriate placement.
10. On June 4, 2019, the IEP team convened with participation by the CCPS Central Staff. The team added monthly speech/language consultation to the IEP, along with the use of a picture communication system, a health plan, and parental support and training. The school-based members of the team recommended placement in a separate special education school where special education instruction would be provided in a program designed for students with Autism. Based on the complainant's concerns about the placement being too restrictive, the team agreed to continue placement in a separate special education classroom, and recommended another speech/language assessment.
11. On August 19, 2019, the IEP team considered the reports of the results of the speech/language assessment that included a recommendation for the use of an assistive technology device for communication, and added that to the IEP. At that time, the complainant reported that she was having an independent assessment conducted of the student's assistive technology needs.
12. At the August 19, 2019 IEP team meeting, the team, including the complainant, decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a separate special education school that utilizes a program designed for students with Autism.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges the Individualized Education Program (IEP) has not addressed the student's needs in the area of communication and social/adaptive/behavioral functioning.

Based on the Findings of Facts #2-#12, the MSDE finds that the CCPS did ensure that the student was provided with a Free Appropriate Public Education (FAPE), by developing an IEP that addressed the student's social, emotional and communication needs, since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.101, .320 and .324.

Based on the Finding of Fact #2-#12 the MSDE finds that while the student was eventually determined to require a more restrictive placement, the IEP team considered the student's needs and increased services to address those needs throughout the school year. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #2 IEP IMPLEMENTATION

FINDING OF FACTS:

13. The school staff maintained documentation that the student's teachers and service providers signed for receipt of the IEP prior to the start of the 2018-2019 school year.
14. The quarterly reports of the student's progress towards achievement of the annual IEP goals document that special education instruction was provided to assist the student with mastering the goals.
15. There is documentation that the supports required by the IEP were provided in the student's educational placement during the 2018-2019 school year, but that the student requires more supports in a more restrictive educational placement for the 2019-2020 school year.

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the CCPS did not ensure that each teacher was provided with the student's IEP in order to ensure that it was implemented at the start of the 2018-2019 school year.

Based on Finding of Fact #13, the MSDE finds that there is documentation that the teachers and providers were provided with the IEP, in accordance with 34 CFR §300.323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the additional supports determined at the December 10, 2018 IEP team meeting were not provided in the placement required by the IEP.

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Based on Findings of Facts #13 and #14, the MSDE finds that there is documentation that the supports were provided in the placement required by the IEP, in accordance with 34 CFR §300.323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. 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 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/dee

c: Kimberly Hill
LeWan Jones
[REDACTED]
Dori Wilson
Anita Mandis
Diane Eisenstadt