




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

November 1, 2019





Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE:   
Reference: #20-024

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/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 September 4, 2019 the MSDE received a complaint from Mr.  and Mrs.  hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) 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 MCPS did not provide the student with the support and accommodations required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323. It was specifically alleged that:
  - a. The MCPS did not provide the student with the organizational support required by the IEP during the 2018 - 2019 school year; and

- b. The MCPS did not provide the student with the “small group” instructional and assessment accommodations required by the IEP during the 2018 - 2019 school year.
2. The MCPS did not ensure that the decisions made regarding the student’s progress towards achievement of the executive functioning and organizational goal, during the 2018 - 2019 school year, was consistent with the data, in accordance with 34 CFR §§300.101 and .324.

### **BACKGROUND:**

The student is fourteen (14) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

During the 2018 - 2019 school year, he attended [REDACTED] School. He has attended [REDACTED] School since the start of the 2019 - 2020 school year.

### **FINDINGS OF FACTS:**

1. The student’s IEP in effect at the start of the 2018 - 2019 school year requires that he be provided with organizational support, such as a personal computer, *MyStudyApp*, pre-writing conferences with teachers, and assistance with organizing his binder and recording assignments in his planner. The IEP includes goals for the student to improve his organizational skills, and special education instruction to assist him in achieving the goals. The IEP also requires that testing be conducted in a small group setting. It does not specify a limit to the number of students who are to be in the group. The IEP also requires that observation records be used to measure progress on a quarterly basis, during the school year, consistent with the data.
2. The MCPS acknowledges that the documentation does not demonstrate that the student was consistently provided with organizational support required by the IEP, and that the progress reported on the annual executive functioning and organizational goal was not consistent with the evaluation method and measurement criteria required by the IEP.
3. In May 2019, the complaints raised concern with the school staff about the student’s “small group” testing accommodation not being implemented as required by the IEP. Specifically, that the complainants stated that the student was being tested with “two, maybe three groups of approximately twenty” students in the media center during standardized testing sessions. In response, the school staff indicated that the student was tested in a “separate location with a small group of students with matching accommodations, consistent with the Maryland Assessment, Accessibility, and Accommodations Policy Manual, MSDE, October 2017 (MSDE Policy Manual).

4. On June 17, 2019, the IEP team convened to discuss the student's transition to high school for the 2019 - 2020 school year. At the meeting, the team determined that executive functioning and organizational skill assessments would be conducted.
5. On October 14, 2019, the school staff met with the complainants and provided them with the results of the assessment that was determined at the IEP team meeting in June 2019. However, there is no documentation that the IEP team convened to review the assessment results, and revise the IEP, as appropriate.

## **CONCLUSIONS:**

### **Allegation #1: Provision of Supports**

#### **Organizational Support**

Based on the Findings of Facts #1, #2, #4, and #5, the MSDE appreciates the MCPS acknowledgement that there is no documentation to demonstrate that the student was consistently provided with organizational supports required by the IEP during the 2018 - 2019 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office concurs with the MCPS conclusion and finds that a violation occurred with respect to the allegation.

#### **“Small Group” Testing Accommodation**

In this case, the complainants assert that the IEP requires that the student be tested in a group of no more than five (5) students, based on the MSDE Policy Manual, “small groups are to be five (5) individuals.”

The MSDE Policy Manual specifies that student's requiring “human reader or human signer should be placed in small groups of five (5) students.” It does not specify the number of students for a small group setting.

Based on the Finding of Fact #3, the MSDE does not find that the student's IEP requires testing in a group of no more than five (5) students. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **Allegation #2: Progress Reports Consistent with the Data**

Based on the Findings of Facts #1 and #2, the MSDE appreciates the MCPS acknowledgement that the decisions made regarding the student's progress towards achievement of the executive functioning and organizational goal, during the 2018 - 2019 school year, was not consistent with the data, in accordance with 34 CFR §§300.101 and .324. Therefore, this office concurs with the MCPS conclusion and finds that a violation occurred with respect to the allegation.

### **CORRECTIVE ACTIONS/TIMEFRAMES:**

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.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.<sup>1</sup> This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the timeframes below may not be met, or if either party 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.<sup>2</sup> Dr. Birenbaum can be reached at (410) 767-7770.

#### **Student-Specific**

The MSDE requires the MCPS to provide documentation of the consistent provision of organizational support on a quarterly basis for the remainder of the 2019 - 2020 school year. The MSDE requires documentation that progress on the executive functioning and organizational goal is being measured as required by the IEP, and reported consistent with the data.

The MSDE also requires the MCPS to provide documentation by January 31, 2020 that the IEP team has convened to review the assessment data, and review and revise the IEP, as appropriate. The team must also determine whether the violation related to the lack of the provision of supports progress on the goals had a negative impact on the student's ability to benefit from the education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violations and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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<sup>1</sup> The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency 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.

<sup>2</sup> The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

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### **School-Based**

The MCPS has proposed to conduct training for the school staff at [REDACTED] School on proper progress monitoring, and how to appropriately determine and document the provision of supports and services. The MSDE concurs with this corrective action and requires documentation of its completion by February 28, 2020.

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/Special Education Services, MSDE.

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.

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

MEF:ac

c:	Jack R. Smith	[REDACTED]
	Philip A. Lynch	Dori Wilson
	Kevin Lowndes	Anita Mandis
	Tracee Hackett	Albert Chichester
	Julie Hall	Nancy Birenbaum