




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

February 19, 2020




Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: 
Reference: #20-079

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 January 2, 2020, the MSDE received a complaint from Ms.  hereafter “the complainant,” on behalf of her daughter, 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 allegation that the MCPS did not ensure that the student received fifteen (15) hours of specialized instruction per week that is required by the Individualized Education Program (IEP), between January 2, 2019 and December 19, 2019, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Multiple Disabilities under the IDEA, including Autism and an Other Health Impairment. She has an IEP that requires the provision of special education and related services and attends 



SUMMARY OF FINDINGS AND CONCLUSION:

The MCPS acknowledges that a violation occurred with respect to the allegation. The MSDE concurs and appreciates the MCPS's acknowledgment 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 timeframes below to ensure that noncompliance is corrected in a timely manner.¹ 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.² Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MCPS proposes, and the MSDE concurs, with the following:

The IEP team will convene a meeting for the following purposes:

- Review the student's progress, determine the specialized instruction that she requires based on her identified needs; and revise the IEP as appropriate; and
- Determine "whether as a result of the violation, compensatory services or another remedy is required to remediate the violation."

¹ The United States Department of Education, Office of Special Education Programs (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 public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

The MSDE requires the MCPS to provide documentation by April 1, 2020, that the MCPS proposed corrective action above has been completed.

If the IEP team determines that the violation had a negative impact on the student's ability to benefit from the education program, the MCPS must also provide documentation that it has determined the amount and nature of compensatory services or other remedy, and has developed a plan for the provision of those compensatory services within one (1) year of the date of this Letter of Findings.

School-Based

The MCPS proposes, and the MSDE concurs, with the following:

The MCPS will conduct training of the Clarksburg ES staff on "how to appropriate[ly] determine and document special education hours on the IEP based upon the data regarding student's needs."

The MSDE requires the MCPS to provide documentation by April 15, 2020, that the MCPS proposed corrective action above has been completed. The documentation must include a description of how the MCPS will evaluate the effectiveness of its training and monitor to ensure that the violations do not recur.

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.

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 timeframes 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,

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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/ksa

c: Jack R. Smith
Kevin Lowndes
Julie Hall
Tracee Hackett
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum