




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

November 9, 2020



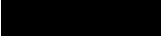

Mr. Philip A. Lynch  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE:   
Reference: #21-013

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 10, 2020, 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 complainant 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 ensure that the student was provided with specialized instruction or supports to assist in addressing his behavior goals, including notes and outlines, exemplars for math and extended writing assignments, and alternative ways to demonstrate learning, as required by the Individualized Education Program (IEP) from the start of the 2019 - 2020 to April 2020, in accordance with 34 CFR §§300.101 and .323.

2. The MCPS did not ensure the IEP addressed the student's needs in the areas of written language from the start of the 2019 - 2020 school year to April 2020, in accordance with 34 CFR §§300.101 and .324.

**BACKGROUND:**

The student is fifteen (15) 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.

The student attended [REDACTED] until the March 2020 closure of school buildings and initiation of virtual learning due to the national COVID-19 pandemic.

**FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2019 - 2020 school year was developed on February 9, 2019 while the student was attending [REDACTED]. It reflects that the student is identified with a Specific Learning Disability that impacts his written language, attention, self-advocacy, executive functioning, and organization. It states that the student requires support to ensure that his work includes sufficient detail to reflect his knowledge of the material. It further states that, when he takes his time, his work is "exemplary," but that he often rushes through words, making capitalization and spelling errors, which can be caught through proofreading and editing.
2. The February 9, 2019 IEP included annual goals for the student to:
  - a. Demonstrate learning strategies to initiate and sustain attention in order to complete tasks, given supports such as alternative ways to demonstrate learning;
  - b. Self-advocate for his needs in classes and resource;
  - c. Support claims in writing with logical reasoning and relevant, accurate data to demonstrate understanding; and
  - d. Demonstrate conventions of grammar and usage when writing, and keeping his work organized.
3. The February 9, 2019 IEP required the provision of special education instruction in a separate special education classroom by a special education teacher (resource) to assist the student with achieving the goals. It also required the provision of guided notes and outlines during class and a complete copy of notes from each day's instruction, as well as the use of "exemplars" which are standards-based performance tasks and assessments, in all areas of academics, in all areas of academics.
4. On June 14, 2019, reports were made on the student's progress towards achievement of the goals that reflected that the student had achieved the goals to self-advocate for his needs in classes and resource, support claims with logical reasoning and relevant,

accurate data to demonstrate understanding, and demonstrate conventions of grammar and usage when writing. However, the information in the progress report on the goal to support claims with logical reasoning and relevant, accurate data to demonstrate understanding reflects that he had met only two (2) of the five (5) short-term objectives, within the goal, by that time. Therefore, the documentation that the goal was achieved is not consistent with the data reported.

5. On January 28, 2020, the IEP team at [REDACTED] revised the goals based on reports of the student's progress. At that time, the IEP team added back into the IEP a goal for the student to thoroughly answer questions in paragraph responses that cite correct textual evidence and include reasonable conclusions. The IEP team also added a goal for the student to take notes during class in order to create an accurate representation of the notes created by teachers for the class.
6. At the January 28, 2020 IEP team meeting, the goal to demonstrate learning strategies to initiate and sustain attention in order to complete tasks was revised to reflect that the student would no longer be provided with alternative ways demonstrate learning. However, the supports of the provision of notes and outlines and the use of exemplars remain in the IEP.
7. There is a report of the student's progress towards achievement of the annual goal to demonstrate learning strategies to initiate and sustain attention in order to complete tasks, given supports such as alternative ways to demonstrate learning IEP goals, dated November 8, 2019. This document demonstrates that the student was provided with special education instruction to address this annual goal.
8. There are no progress reports or other documentation to demonstrate that the student was provided with special education instruction on the remaining goals that were in effect from the start of the 2019 - 2020 school year until January 28, 2020.
9. There are reports of the student's progress towards achievement of the goals developed on January 28, 2020, dated April 17, 2020 and June 15, 2020 that demonstrate that the student has been provided with special education instruction to address the IEP goals since January 28, 2020.
10. There is no documentation of the provision of notes or outlines to the student or the use of exemplars since the start of the 2019 - 2020 school year.

**CONCLUSIONS:**

**Allegation #1            IEP Implementation**

Based on the Findings of Facts #1 - #3, #6, #7, and #9, the MSDE finds that there is documentation that the student was provided with special education instruction to address the goal to demonstrate learning strategies to initiate and sustain attention in order to complete tasks,

and that he was provided with alternative ways to demonstrate learning IEP goals, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #4 and #8, the MSDE finds that there is no documentation that the student was provided with special education instruction to address the remaining goals from the start of the 2019-2020 school year until January 28, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #6 and #9, the MSDE finds that there is documentation that the student has been provided with special education instruction to address the annual goals in effect since January 28, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #3, #6, and #10, the MSDE finds that there is no documentation that the student has been provided with notes and outlines or that exemplars were used, as required by the IEP since the start of the 2019 - 2020 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**Allegation #2            Addressing Written Language Needs**

Based on the Findings of Facts #2, #5, and #9, the MSDE finds that the IEP has included goals for the student to improve his performance in written language and services to assist him with achieving those goals since the start of the 2019-2020 school year, in accordance with 34FR §§300.101 and .324.

However, based on the Findings of Facts #1 - #4, and #8, this office finds that, because the report of the goal being achieved was not consistent with the data, the MCPS did not ensure the IEP addressed all of the student's needs in this area from the start of the 2019 - 2020 school year to January 28, 2020, in accordance with 34 CFR §§300.101 and .324 Therefore, this office finds that a violation occurred with respect to the allegation for this time period.

**CORRECTIVE ACTIONS/TIMELINES:**

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 time frames 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 or by email at nancy.birenbaum@maryland.gov.

**Student-Specific**

The MSDE requires the MCPS to provide documentation that the student is being provided with the notes and outlines required by the IEP and that exemplars are being used as required by the IEP.

The MSDE also requires the MCPS to provide documentation that the IEP team has determined the compensatory services or other remedy for the violations identified through this investigation.


**School-Based**

The MSDE requires the MCPS to provide documentation of the steps taken to ensure that the staff at [REDACTED] implement each student's IEP in its entirety, and that the staff at [REDACTED] report IEP annual goals consistent with the data.

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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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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  
Philip A. Lynch  
Kevin Lowndes  
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Julie Hall  
  
Dori Wilson  
Anita Mandis  
Albert Chichester