



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

April 19, 2021

Ms. Sara Platenburg
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Educational Advocacy and Consulting
20130 Lakeview Center Plaza, Suite 400
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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: [REDACTED]
Reference: #21-061

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.

ALLEGATIONS:

On March 3, 2021, the MSDE received a complaint from Ms. Sara Platenburg, hereafter “the complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and Mrs. [REDACTED]. 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. This correspondence is the report of the final results of our investigation.

The MSDE investigated the following allegations:

1. The MCPS has not developed an Individualized Education Program (IEP) designed to ensure the student make progress in the general education program, since March 3, 2020, in accordance with 34 CFR §§300.101, .320, and .324.
2. The MCPS has not ensured that the student’s IEP has been implemented since March 3, 2020, in accordance with 34 CFR §§ 300.101 and .323, as follows:
 - a. The student has not been provided with special education instruction and research-based reading interventions required to address the IEP annual goals; and

- b. The student's progress towards achievement of the annual IEP goals has not been measured as described in the IEP.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with a Specific Learning Disability, under the IDEA, based on dyslexia and dysgraphia, and has an IEP that requires the provision of special education and related services.

The student attended [REDACTED] School, until the March 16, 2020 Statewide closure of school buildings and initiation of virtual learning as a result of the COVID-19 pandemic.

ALLEGATION #1 DEVELOPMENT OF THE IEP

FINDINGS OF FACTS:

1. The IEP, dated January 22, 2020, which was in effect at the start of this investigation, identified that the student had needs in the areas of math (calculation, problem solving), reading (comprehension, fluency), writing (content, mechanics), social emotional/behavioral, and physical (visual motor).
2. While there was a present level of performance section to address each area of need identified, the reported present levels of performance in the areas of math, reading and writing did not prioritize, analyze or elaborate specific needs in a way that provides individualized baseline data from which goals could be developed and progress could be monitored.
3. While the IEP contained a goal to address each area of identified need, the goals for math, reading and writing did not derive from needs identified in the present levels of performance and therefore did not allow for objective measurement of the student's progress towards achieving his annual goals.
4. The IEP included services, accommodations, supplemental aids and supports to address the student's identified areas of need.
5. On May 18, 2020, the IEP was amended, based on the results of a speech assessment, to reflect the student's communication needs. While the IEP included present levels of performance in the areas of expressive and receptive language, as well as related speech services, the IEP does not address the student's needs in the area of expressive language.
6. On February 17, 2021, the IEP team met to annually review and revise the student's IEP. The student's present levels of performance were updated with more specificity with regard to skill deficits and needs, and counseling services were added to assist him with achieving the social emotional behavior goal.

7. The student's IEP progress reports denote that the student is making sufficient progress to meet his annual goals and he has been receiving satisfactory grades in the general curriculum. However, he has remained at the same instructional level as the prior year with no documented instructional gains. Further, the student's reading comprehension, written language mechanics, math problem solving, visual motor, and social emotional/behavioral goals remain substantially the same as the prior year and there is no documentation that the IEP team discussed why the goal or objectives have not been achieved within a one year time period.

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #1 - #7, the MSDE finds that, while the student is progressing through the general education curriculum, the MCPS has not ensured that the IEP includes the required content and addresses all areas of the identified needs, since March 3, 2020, in accordance with 34 CFR §§300.101, .320, and .324. Therefore, the MSDE finds there is a violation with regard to this allegation.

ALLEGATION #2 IEP IMPLEMENTATION

FINDINGS OF FACT:

Special Education Instruction and Research Based Intervention

8. The IEP in effect in March 2020 requires the provision of three (3) hours daily of special education instruction in a general education classroom from a general education teacher. It also requires forty-five (45) minutes daily of special education instruction in a separate special education classroom from a special education classroom teacher. The IEP does not require research-based interventions.
9. A Prior Written Notice (PWN) dated April 17, 2020, reflecting an amendment of the IEP for virtual learning, states the student will receive one (1) session weekly of online special education and four (4) sessions weekly of support in English, math, world studies and science. While it reflects the frequency of special education instruction, it does not indicate the amount to be provided, the educational placement in which it is to be provided or the service provider.
10. A PWN dated October 2, 2020, reflecting another amendment of the IEP for virtual learning, states that the student will receive eight (8), sixty (60) minutes classes per week of special education instruction in the general education classroom from a general or special education classroom teacher or paraeducator. Additionally, the student was to receive two (2), sixty (60) minute classes per week of special education instruction in a separate special education classroom from a special education teacher.
11. The IEP, dated February 17, 2021, added a "supported reading intervention."

12. A PWN, dated February 26, 2021, reflecting another amendment of the IEP for virtual learning, states the student will receive eight (8), sixty (60) minute sessions of special education instruction weekly in the general education classroom for math, English, science and social studies from a general education teacher, special education teacher or paraeducator. Additionally, the student was to receive two (2), sixty (60) minute sessions per week of special education instruction in a separate special education classroom from a special education teacher.
13. There is documentation in the form of data reports and distance learning logs, that the reading intervention is being provided as required by the IEP, since February 17, 2021.
14. There is documentation in the form of distance learning logs, that the student has been provided with the special education instruction inside of the general education classroom.
15. There is documentation in the form of student/school/teacher schedules and distance learning logs that the student has been provided with special education instruction in a separate special education classroom, as required by the IEP.

Progress Monitoring

16. The IEP requires that the parents be notified of the student's progress toward the IEP goals quarterly, to be sent home with report cards.
17. While progress reports were issued in April, June, and November of 2020, they do not reflect that progress was measured using the evaluation methods and accuracy requirements described in the IEP goals. Additionally, some progress reports indicate that progress could not be measured due to the "constraints of distance learning." For example, the June 2020 progress reporting for the student's writing goals states that the "goal could not be addressed during virtual learning because to demonstrate the skill this goal requires documentation in the classroom environment."

DISCUSSION/CONCLUSIONS:

Based on Findings of Facts #8 - #12 and #14 - #15, the MSDE finds that the MCPS has ensured that the student has been provided with special education instruction required to address the IEP annual goals since March 3, 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.

Based on Finding of Facts #8, #11 and #13, the MSDE finds that the MCPS has ensured that the student has been provided with research-based reading interventions since February 17, 2021, 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 Finding of Facts #16 - #17, the MSDE finds that the MCPS has not ensured that student's progress towards achievement of the annual IEP goals has been measured as

described in the IEP, since March 3, 2020, in accordance with 34 CFR §§ 300.101 and .323. Therefore, there is a violation with regard to this aspect of the allegation.

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 timeframes below to ensure that noncompliance is corrected in a timely manner. This office will follow up with the public agency to support it in working toward completion of 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. 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 IEP team has reviewed and revised the IEP to ensure it includes the required content and addresses all areas of need. In addition, the team must determine whether the violations identified through this investigation 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 to redress the violations and develop a plan for the provision of those services.

The MSDE also requires the MCPS to provide documentation that the student's progress towards achievement of the goals is being reported to the parent in the manner required by the IEP.

School Based

The MSDE requires the MCPS to provide documentation of the steps it has taken to ensure violations do not recur at [REDACTED] School and how the MCPS will monitor to ensure the effectiveness of those steps.

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

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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 parents and the school system 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/dee

c:

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