



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

June 10, 2021

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Dr. Terri Savage
Executive Director of Special Education
Howard County Public Schools
10901 Clarksville Pike
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RE: [REDACTED]
Reference: #21-083

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 April 14, 2021, the MSDE received a complaint from Nicole Joseph, Esq., hereafter “the complainant,” on behalf of the above-referenced student and his parents, Mr. [REDACTED] and Mrs. [REDACTED]. In the April 14, 2021 correspondence, the complainant alleged that the Howard County Public School System (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the HCPS did not ensure that the student was provided with the amount of weekly research-based reading intervention using a multi-sensory, small-group, teacher-led approach required by the Individualized Education Program (IEP), since April 14, 2020, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is nine (9) years old and is identified, under the IDEA, as a student with a Specific Learning Disability, based on Dyslexia. He has an IEP that requires the provision of special education instruction.

The student attended [REDACTED] School until the March 16, 2020 Statewide closure of all school buildings, as the result of the national COVID-19 pandemic. The student’s school

reopened in March of 2021, and the student is now receiving both instruction in the school building and virtual instruction.

FINDINGS OF FACTS:

1. Following the closure of schools due to the COVID-19 pandemic, the IEP was amended with parental input on April 17, 2020 to address distance learning as a result of the school building closures. The amendment required one (1) hour per week of an “online research-based intervention for reading,” but does not include the requirement that the intervention be multi-sensory, small group or teacher-led.
2. The IEP team conducted the student’s annual IEP review on May 5, 2020 and June 4, 2020. The IEP was revised to require two (2) and one-half hours in a separate special education classroom to address foundational skills using an evidence-based, systemic, multi-sensory, small-group, teacher-led structured literacy intervention.
3. On June 4, 2020 the IEP was amended again to require one (1) hour and forty (40) minutes of a specifically named online research-based intervention per week, which meets the criteria of: research-based, teacher led, small group and multi-sensory.
4. On September 22, 2020, the HCPS sent a proposed amendment to the student’s parents reflecting a change in services. An IEP team meeting was held on October 1, 2020 to discuss the proposed amendment, and a written summary of the IEP team meeting reflects that there was agreement to the services by the student’s parents. The amendment did not require a weekly research-based reading intervention using a multi-sensory, small-group, teacher-led approach.
5. On March 1, 2021 the IEP was amended again to reflect a revision for learning that combined instruction in the school building and virtual instruction. The amendment did not require a weekly research-based reading intervention using a multi-sensory, small-group, teacher-led approach.
6. While there is documentation that the student was provided with an evidence-based, systemic, multi-sensory reading intervention during the periods of time required by the IEP, there is no documentation that the reading intervention was conducted in a small group. Additionally, while there is documentation that a teacher was involved with the progress monitoring of the reading intervention, there is no documentation that the reading intervention was implemented by a teacher.
7. The written reports of the student’s progress in the areas of reading comprehension and reading foundational skills dated June 23, 2020, November 6, 2020, January 28, 2021, and April 14, 2021 reflect that the student is making sufficient progress in those areas, and achieved several reading foundations objectives. Additionally, the student received “A’s” for Language Arts for the first three quarters of the 2020-2021 school year and was reported to be on grade level in reading.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #7, the MSDE finds that the HCPS did not ensure that the student was provided with a research-based reading intervention using a multi-sensory, small-group, teacher-led approach, required by the IEP, from May 5, 2020 to September 22, 2020, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that there was a violation with respect to this time period 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.¹

This office will follow up with the public agency to ensure that it completes the required action consistent with the MSDE Special Education State Complaint Resolution Procedures. If the public agency anticipates that the timeframe below may not be met, or if any of the parties 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 or by email at Nancy.birenbaum@maryland.gov.

The MSDE requires the HCPSS to provide documentation of the following:

1. The IEP team has convened and determined whether the lack of a weekly research-based reading intervention using a multi-sensory, small-group, teacher-led approach, from May 5, 2020 to September 22, 2020, had a negative impact on the student's ability to benefit from the education program.
2. If the IEP 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 delay.

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 Directors of Special Education of any corrective action that has not been completed within the required timelines.

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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 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 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: [REDACTED] (c/o Nicole Joseph, Esq.)

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