



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

June 25, 2021

Ms. Jessica Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

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

RE: [REDACTED]
Reference: # 21-094

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 April 28, 2021, and June 8, 2021, the MSDE received a complaint from Ms. Jessica Williams, hereafter, “the complainant,” on behalf of Mr. [REDACTED] and his 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 student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the IEP has been designed to enable the student to make reasonable progress in the general education curriculum, since April 28, 2020, in accordance with 34 CFR §§300.101, .320, .323, .324, .503 and COMAR 13A.05.01.06 as well as federal and State guidance. This includes the following:
 - a. The IEP has not addressed identified needs in the areas of feeding, social skills, and functional math skills.
 - b. The IEP has not included annual goals that are based on the present levels of academic achievement and functional performance.

2. The MCPS has not ensured that the Individualized Education Program (IEP) has been consistently implemented, in accordance with 34 CFR §§300.101 and 323. This includes the following:
 - a. The student was not provided with the amount of special education in the separate special education classroom required by the IEP since the start April 28, 2020.
 - b. The student has not consistently been provided with the services of a dedicated assistant since April 26, 2021.
 - c. The student has not been provided with the math intervention and writing skills taught in the special education classroom by the special education teacher since May 2020.
 - d. The quarterly progress reports were not evaluated in the method required by the IEP since May 2020.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

The student attended [REDACTED] from the start of the 2019-2020 school year until the March 2020 Statewide closure of school buildings and the initiation of virtual learning as a result of the COVID-19 pandemic.

Since the start of the 2020-2021 school year, the student has been enrolled at [REDACTED] and on April 8, 2021, the student began receiving instruction both in the school building and virtually.

ALLEGATION #1:

IEP DEVELOPMENT

FINDINGS OF FACTS:

Feeding Plan

1. The IEP in effect on April 28, 2020, was developed on June 4, 2019. It does not identify needs in the area of feeding.
2. There is no documentation that the student was identified with the need to improve his feeding skills at this time.
3. On March 25, 2021, the IEP team considered the parent's request that the school staff ensure that the student eats lunch as he has a decreased appetite resulting from his ADHD medication. The team decided to monitor the student in the lunchroom and to provide prompting for him to eat.

4. On April 5, 2021, the parent provided the school staff with medical documentation that the student requires “check-ins” and prompting to encourage him to eat due to a decreased appetite resulting from his ADHD medication and, in response, a health plan was developed for the counselor or the one-to-one aide to prompt and “check-in” with the student during lunch and encourage him to eat.

Social Interaction Skills

5. The June 4, 2019, IEP identifies needs in the area of social interaction and a goal for the student to improve his social interaction skills to address the specific skills deficits described in the statement of his present levels of academic achievement and functional performance. The IEP requires special education instruction by the special education teacher, in a small group setting, to assist the student to learn how to collaborate, seek help when frustrated, express feelings by using words, and demonstrate coping skills.
6. On May 19, 2020, the IEP team considered the parent’s request for the IEP to be revised to include the requirement that the student participate in a social skills group. The team also considered the school staff’s reports that the student was making sufficient progress on the social interaction skills goal with the current IEP services, and based on that information, denied the parent’s request.

Functional Math Skills

7. The June 4, 2019, IEP does not identify needs in the area of functional math skills and there is no data that identifies needs in this area at this time.
8. On May 19, 2020, the IEP team considered the parent’s request that the student improve his ability to count, solve basic math facts, and tell time. There is no documentation that the student required functional math skills to achieve the annual math goals aligned with grade level curriculum. However, based on the parent’s request, the team agreed to add a “resource period” where the school staff could review basic math functions with the student in a separate special education classroom.

Annual IEP Goals

9. The IEP in effect on April 28, 2020, includes goals in additional areas of need identified in the statement of the present levels of performance, including math calculation and problem solving, reading phonics and comprehension, and written language content and mechanics. These goals required the student to improve his skills in each area consistent with the description of the skills deficits described in the statement of the present levels of performance.
10. At the May 19, 2020, IEP team meeting, the team added phonics and written language goals consistent with the school staff’s reports of the student’s performance in these areas.

11. On September 11, 2020, and October 10, 2020, the IEP team revised the annual goals consistent with the school staff's reports of the student's performance in each area.
12. On November 18, 2020, the IEP team addressed the parent's questions about how the annual IEP goals were being addressed through virtual learning. The team considered the parent's request that daily reports be made on the student's progress towards achievement of the goals, and denied the request explaining that student needs to receive instruction and then additional reteaching when needed to master curriculum standards, which cannot be accomplished on a daily basis. Therefore, the team documented that daily reports on progress would not be useful.
13. On March 25, 2021, the IEP team again convened to address the parent's ongoing concerns about how the annual goals were being addressed. A review of the audio recording of the meeting reflects that the school-based members of the team considered and answered all of the parent's questions about progress monitoring of the goals.
14. On May 12 and 28, 2021, the IEP team conducted the annual IEP review. The IEP team revised the annual goals consistent with the school staff's reports of the student's performance in each area.

DISCUSSION/CONCLUSION:

Allegation #1: IEP DEVELOPMENT

Health Plan for Feeding

Based on the Findings of Facts #1 - #4, the MSDE finds that the MCPS did ensure that the IEP team addressed the student's feeding needs, in accordance with 34 CFR §§300.101, .320, .323, .324, .503 and COMAR 13A.05.01.06. Therefore, this office finds that no violation occurred with respect to this aspect of the allegation.

Social Interaction Skills

Based on the Findings of Facts #5 and #6, the MSDE finds that the IEP team has identified and addressed the student's social interaction needs with the IEP goal, in accordance with 34 CFR §§300.101, .320, .323, .324, .503 and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Functional Math Skills

Based on the Findings of Facts #7 and #8, the MSDE finds that the IEP team has considered all of the assessment data, including the parent's concerns when identifying and addressing the student's functional math needs during the resource class, in accordance with 34 CFR §§300.101, .320, .323, .324, .503 and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Annual IEP Goals

Based on the Findings of Facts #9 - #14, the MSDE finds that the IEP has included annual goals based on the student's present levels of academic performance, in accordance with 34 CFR §§300.101, .320, .323, .324, .503 and COMAR 13A.05.01.06. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2 IEP IMPLEMENTATION

FINDINGS OF FACTS:

15. The IEP in effect on April 28, 2020, required that the student be provided with one (1) hour of special education instruction per week in each content area to be provided over a period of two (2) days during each week. This instruction was to be provided in the general education classroom.
16. The IEP also required that the student be provided with one (1) hour of special education instruction per week through a reading intervention to be provided over a period of two (2) days during each week. This instruction was to be provided in the separate special education classroom.
17. The IEP further required that the student be provided with one (1) hour of special education instruction per week through a math intervention to be provided over a period of two (2) days during each week. This instruction was to be provided in the general education classroom.
18. In addition, the IEP required that the student be provided with two (2) sessions of a "resource period" per week to review basic math facts, writing skills and work on incomplete assignments.
19. On May 19, 2020, the IEP was revised to require a daily "resource period" to review basic math skills and writing skills in a separate special education classroom to be provided by the special education teacher.
20. At the May 19, 2020, IEP team meeting, the team also determined that the student requires the support of a dedicated assistant to work with the student on a one-to-one basis throughout the entire day.
21. On October 10, 2020, the IEP was revised to require eight (8) hours per week of special education instruction in the general education classroom for math, math intervention, reading, written language, science, and social studies and four (4) hours per week of special education instruction in a separate special education classroom for written language skills, math skills and the reading intervention.
22. There is documentation that the student was provided with the amount of special education instruction required by the IEP.

23. The summary of the IEP team meeting held on May 12 and 28, 2021 documents that the staff member assigned to serve as the student's dedicated assistant resigned on April 26, 2021, and that paraeducators were being assigned to serve in the vacant position until it was filled. However, the school staff reported that the paraeducators were not available to cover the student's entire class schedule or to provide the type of support the student was being provided with by the dedicated assistant.
24. There is documentation that the student was provided with the math skills practice and writing skills instruction in the separate special education classroom by a special education teacher. The math intervention was provided in the general education class as required by the IEP.
25. The reports of the student's progress towards achievement of the annual goals reflect that the student's progress was measured in the manner described in the IEP and that he made sufficient progress on all goals.

DISCUSSION/CONCLUSION:

Allegation #2: IEP Implementation

Provision of the Amount of Special Education Instruction

Based on the Findings of Facts #15, #16, #18, #19, #21, #22, and #24, the MSDE finds that there is documentation of the provision of the amount of special education instruction in the special education classroom required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Provision of the one-to-one Dedicated Aide

Based on the Findings of Facts #20, and #23, the MSDE finds that the MCPS has not ensured that a dedicated one-to-one aide has been provided since April 26, 2021, in accordance with 34 CFR §§300.301 and .323. Therefore, the MSDE finds a violation occurred to this aspect of the allegation.

Provision of the Math Intervention and Writing Skills in the Special Education Classroom

Based on the Findings of Facts #17, #20, #22, and #24, the MSDE finds that there is documentation that the school staff provided the math intervention in the general education classroom and writing skills instruction in the special education classroom as required by the IEP, in accordance with 34 CFR §§ 300.101 and .323. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Progress Reports Measured in the Manner Required by the IEP

Based on the Finding of Fact #25, the MSDE finds that the MCPS did ensure that IEP

progress reports have been provided with the evaluation method required by the IEP, in accordance with 34 CFR §§300.301 and .323. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

CORRECTIVE ACTION/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.¹

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 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 and nancy.birenbaum@maryland.gov.

Student-Specific

The MSDE requires the MCPS to provide documentation that a dedicated aide is providing one-to-one support to the student and that the IEP team has determined the compensatory services or other remedy to redress the loss of this support since April 26, 2021.

School-Based

The MSDE requires the MCPS to provide documentation of the steps it has taken to ensure that the violation does not recur at [REDACTED]

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not reoccur.

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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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 and Appropriate Public Education 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: sf

c:



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