



March 14, 2014

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Mrs. Diane McGowan
Supervisor of Special Education
Queen Anne's County Public Schools
202 Chesterfield Avenue
Centreville, Maryland 21617

RE: XXXXX
Reference: #14-058

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 15, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, "the complainant," on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Queen Anne's County Public Schools (QACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

Based on that correspondence, this office investigated the allegation that the QACPS did not ensure that the student was provided with the accommodations required by the Individualized Education Program (IEP) since the start of the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, it was alleged that:

- The student's marine biology teacher did not provide him with the required accommodations during the first and second marking periods of the 2013-2014 school year; and
- The student's *Read 180*¹ teacher has not provided him with the required accommodations since the start of the 2013-2014 school year.

¹ *Read 180* is a structured reading intervention program. Please see Finding of Fact #13 for a more detailed description of the program.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 16, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Diane McGowan, Supervisor of Special Education, QACPS.
3. On February 6, 2014, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On February 7, 2014, the MSDE received correspondences from the complainant and the QACPS staff resolving the allegation as it related to the student's history class, via electronic mail (email).
5. On February 11, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the QACPS of the allegation and requested that the QACPS review the alleged violation.
6. On February 12, 2014, Ms. Hartman and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, IEP Chairperson/Case Manager;
 - b. Mr. XXXXXXXXXXXX, Science Teacher;
 - c. Ms. XXXXXXXXXXXX, Reading Specialist; and
 - d. Mr. XXXXXXXXXXXX, Principal.

Mrs. Diane McGowan, Supervisor of Special Education, QACPS, and Manisha Kavadi, Esquire, legal counsel for the QACPS, attended the site visit as representatives of the QACPS and to provide information on the QACPS policies and procedures, as needed.
7. On March 4, 12, and 13, 2014, the QACPS provided the MSDE with documents to be considered during the investigation of the allegation.
8. On March 9, 2014, Ms. Hartman conducted a telephone interview with the complainant concerning the allegation contained in the complaint.
9. On March 10, 11, and 12, 2014, the MSDE requested additional documents from the QACPS regarding the allegation contained in the complaint.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

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- a. Correspondence and attachments from the complainant to the MSDE, received on January 15, 2014;
- b. IEP, dated June 5, 2013;
- c. IEP and IEP team meeting notes, dated September 23, 2013;
- d. IEP team meeting notes, dated October 25, 2013 and November 4, 2013;
- e. IEP and IEP team meeting notes, dated February 20, 2014;
- f. Student's class schedule for the 2013-2014 school year and the school's bell schedule;
- g. Email correspondences between the complainant and the QACPS staff, and among the QACPS staff, dated September 5, 6, 11, 12, 17, 23-26, and 30, 2013, October 3, 7-11, 14-17, 22, 23, and 29, 2013, November 6, 7, 20, and 21, 2013, December 6, 2013, and January 9 and 15, 2013;
- h. Paraeducator's log of the provision of accommodations and modifications, dated September 10, 2013 to February 28, 2014;
- i. Copies of study guides for marine biology tests;
- j. Correspondence from the QACPS to the MSDE, dated March 4, 2014;
- k. Copy of an exam given to the student in his marine biology class, dated October 11, 2013, and a copy of the exam after it was re-taken by the student, dated October 23, 2013;
- l. Study Guide for *The Nature of Life* unit in marine biology, and the *Energy Pyramid* assignment;
- m. The student's agenda book, dated August 28, 2013 to March 13, 2014;
- n. Print-outs of the *Read 180*¹ stories provided to the complainant prior to the start of the 2013-2013 school year; and
- o. Print-outs from the QACPS' web-based student information system database.

BACKGROUND:

The student is fifteen (15) years old and attends XXXXXXXXXXXXXXXX. He 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.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-e).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2013-2014 school year was developed on June 5, 2013. It required the provision of special education instruction in all academic areas in the general education classroom by both general education and special education teachers. It also required that the student be provided with, among others, the following accommodations and modifications:

- The provision of “extended time” to complete class work;
 - “Checks for understanding” of assignments;
 - Study guides four (4) days in advance of assessments;
 - The opportunity to re-take class quizzes and tests;
 - The provision of vocabulary lists to assist the student in understanding instructional material; and
 - That school staff “sign-off” on the student’s agenda book to ensure he records his assignments accurately (Doc. b).
2. On September 23, 2013, the IEP team was convened to review the student's IEP. The IEP team considered information about the student's classroom performance from his teachers and information from the complainant. At that meeting, the IEP team revised the IEP to clarify that:
- The accommodations of study guides and vocabulary lists were for “core academic classes;”
 - The “extended time” for the student to complete assignments was to be provided after school by the student's IEP Case Manager;
 - The opportunity to re-take tests was only for “summative”² tests with scores below 60%; and
 - The purpose of the staff monitoring the student's agenda book was to inform the complainant of the student's assignments, projects, and test dates (Doc. c)
3. An IEP team meeting was convened on October 25, 2013 and continued on November 4, 2013 to address the complainant’s concerns regarding the IEP and its implementation. At that meeting, the IEP team:
- Clarified that, because *Read 180*¹ is a reading intervention class, and not a “core academic class,” the teacher was not required to provide the student with study guides and vocabulary lists;
 - Agreed that the complainant would be provided with notice three (3) days in advance of assessments; and

² The QACPS staff report that summative assessments do not include quizzes (Interview with the QACPS staff).

- Determined that the student would receive his “extra time” for assignments at home (Doc. d).
4. On February 20, 2014, the IEP convened to review the student’s program. At that meeting, the complainant expressed concern that the student’s accommodations weren’t being consistently provided to the student, and stated that, in order to check for the student’s understanding, school staff should have the student repeat and rephrase questions. In order to address this concern, the IEP team revised the requirement for school staff to “check for the student’s understanding” to a requirement for school staff to have the student repeat and rephrase questions. At that IEP team meeting, the IEP team also revised the accommodations on the IEP to:
- Clarify that the “extended time” to be provided to the student is time and a half, but remove the requirement that the student be permitted to receive the extended time at home;
 - Clarify that study guides will be required only for summative² tests in mathematical classes;
 - Remove the description of the types of classes for which a vocabulary list will be provided; and
 - Remove the requirement that the student be allowed to re-take summative² tests (Doc. e).

Marine Biology Class

5. The student’s marine biology class was a one semester class, which ended at the end of the second (2nd) quarter of the 2013-2014 school year (Doc. f, and interviews with the complainant).
6. There is documentation that the student was provided with extended time to complete assignments during his marine biology class. There is also documentation that he completed assignments after school with his IEP Case Manager from September 23, 2014 through October 25, 2014, and was allowed to bring work home after the October 25, 2014 IEP team meeting, when the IEP was revised to include this (Docs. g-j, and review of the student’s educational record).
7. There is documentation that the student’s paraeducator “checked” for the student’s understanding of assignments in his marine biology class, but not that it was done on a consistent basis (Docs. f and h, and review of the student’s educational record).
8. There is documentation that study guides were provided to the student for his marine biology tests. However, the documentation reflects that this was not consistently done at least four (4) days prior to the tests (Docs. g, i, and j).

9. There is no documentation that the student was permitted to re-take quizzes from the start of the 2013-2014 school year to September 23, 2013, the date the IEP was revised to allow the student to re-take only summative² tests with scores below 60% (Review of the student's educational record).
10. The documentation reflects that the student was allowed to re-take summative² tests in his marine biology class (Docs. g, k, and o).
11. There is documentation that the student was provided with vocabulary lists at the start of the units in marine biology class, including the unit entitled *The Energy of Life* which included the "Energy Pyramid" assignment for which he was assessed on December 18, 2013 (Docs. a, e, and l).
12. The documentation reflects that the student used an agenda book to record assignments for his marine biology class. However, the documentation does not reflect that school staff consistently checked the student's entries in the agenda book for accuracy (Doc. m).

Read 180¹ Class

13. The student participated in the *Read 180¹* program, which is a structured reading intervention program that uses adaptive technology and individualized instruction designed to improve reading achievement for students reading two or more years below grade level. Students in the program read stories, practice skills, and then get assessed on their mastery of those skills by applying them to a story on which they have not practiced (Docs. d and g, and review of the *Read 180¹* website at <http://read180.scholastic.com/reading-intervention-program/about>).
14. The documentation reflects that the student has not been permitted to take his *Read 180¹* class work home or to his IEP Case Manager's office to complete. However, the documentation also reflects that the *Read 180¹* program is student paced and requires the student to complete one task before going on to the next. Therefore, the student receives all the time he needs to complete assignments in the classroom, and does not have unfinished assignments. The documentation further reflects that the QACPS staff informed the complainant that the structured *Read 180¹* program requires that the student complete all his work in class in order to maintain the fidelity of the program (Docs. b-g, interviews with the QACPS staff and the complainant, review of the student's educational record, and review of the *Read 180¹* website at <http://read180.scholastic.com/reading-intervention-program/about>).
15. There is documentation that the student's paraeducator "checked" for the student's understanding of assignments in his *Read 180¹* class, but no documentation that it was done on a consistent basis (Doc. f and h, and review of the student's educational record).
16. The documentation reflects that, from the start of the 2013-2014 school year until September 23, 2013, study guides and vocabulary lists were required by the student's IEP in his *Read 180¹* class. However, there is no documentation that study guides were provided in this class, and no documentation that vocabulary lists were consistently provided (Docs. b, c, g, and m).

17. The QACPS staff report that the complainant was provided with a book entitled “Timed Reader Plus,” as well as a binder with print-outs of assignments from the *Read 180*¹ program, prior to the start of the 2013-2014 school year. The QACPS staff reports that the book “parallels the instruction provided in *Read 180*”¹ and is meant to be a study guide for the skills and vocabulary to be assessed throughout the year. While the complainant disputes having received this particular book, she does acknowledge, and there is documentation to support, that a binder was provided to her prior to the start of the school year with the *Read 180*¹ stories. However, there is no documentation that this constitutes the study guides or vocabulary lists which are required by the IEP (Docs. b, g, and n, and interviews with the QACPS staff and the complainant)
18. The documentation reflects that, between September 23, 2013 and October 25, 2013, the date on which the IEP team clarified that *Read 180*¹ is not a core academic class, the IEP was unclear as to whether study guides and vocabulary lists were required (Docs. c and d).
19. Since October 25, 2013 the IEP has not required that the student be provided with study guides for assessments in his *Read 180*¹ class (Docs. d and e).
20. From October 25, 2013 to February 20, 2014, vocabulary lists were not required for the *Read 180*¹ class (Docs. d and e).
21. There is documentation that, since February 20, 2014, the student has been provided with study lists for his *Read 180*¹ class (Docs. e and m).
22. There is no documentation that the student was permitted to re-take quizzes from the start of the 2013-2014 school year to September 23, 2013, the date the IEP was revised to allow the student to re-take only summative² tests with scores below 60% (Review of the student’s educational record).
23. The documentation reflects that the student was allowed to re-take summative tests² in his *Read 180*¹ class from the start of the 2013-2014 until February 20, 2014 (Doc. o).
24. The documentation reflects that, while the student used an agenda book to record assignments, the stories he was reading in his *Read 180*¹ class were not consistently entered into the book. Further, the documentation does not reflect that school staff consistently checked the student’s entries in the agenda book for accuracy (Doc. m).

DISCUSSION/CONCLUSIONS:

In order to provide a Free Appropriate Public Education (FAPE), the public agency must ensure that the student receives the special education and related services that are required by the IEP (34 CFR §§300.101 and .323). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and

implementation (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p.12479, March 1999).³

In this case, the complainant alleges that the IEP requires specific accommodations which have not been consistently provided to the student in his marine biology and *Read 180*¹ classes (Doc. a and interviews with the complainant).

Marine Biology Class

Based on the Findings of Facts #1 - #3, #5, #6, and #11, the MSDE finds that there is documentation that the student was provided with the accommodations of extended time to complete assignments and vocabulary lists prior to the start of units in his marine biology class, as required by the IEP. Therefore, the MSDE does not find that a violation occurred with regard to these aspects of the allegation.

Based on the Finding of Fact #1 - #3, #5, and #7, the MSDE finds that there is no documentation that staff consistently “checked” for the student’s understanding of his marine biology assignments, as required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Based on the Finding of Fact #1 - #3, #5, and #8, the MSDE finds that there is documentation that the study guides provided to the student prior to assessments were not consistently provided within the timelines required by the IEP. Therefore, the MSDE finds that violation has occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #1 - #3, #5, #9, and #10, the MSDE finds that, while there is documentation that the student was permitted to re-take summative² tests in his marine biology class, there is no documentation that he was permitted to re-take quizzes from the start of the 2013-2014 school year to September 23, 2013, as required by the IEP. Therefore, the MSDE finds that a violation has occurred with regard to this aspect of the allegation.

Based on the Finding of Fact #1 - #3, #5, and #12, the MSDE finds that there is no documentation that staff consistently signed-off on the accuracy of the student’s entries into his agenda book in order to ensure the complainant was provided notice of the student’s marine biology assignments, as required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Read 180¹ Class

Based on the Findings of Facts #1 - #4, #13, and #14, the MSDE finds that the student was provided with extended time to complete assignments during his *Read 180*¹ class and that, since he finished all assignments in class, he did not have incomplete class work that needed to be brought home for completion. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

³ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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Based on the Finding of Fact #1 - #4 and #15, the MSDE finds that there is no documentation that staff consistently “checked” for the student’s understanding of his *Read 180*¹ assignments, as required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #3, #4, and #19, the MSDE finds that the student’s IEP has not required the provision of study guides prior to assessments in the *Read 180*¹ class since October 25, 2013. Based on the Findings of Facts #3, #4, #20, and #21, the MSDE finds that the student’s IEP did not require the provision of vocabulary words in the *Read 180*¹ class from October 25, 2013 to February 20, 2014, but that they have been provided since February 20, 2014, as required by the IEP.

However, based on the Findings of Facts #1 - #3, #16, and #17, the MSDE finds that there is documentation that the student was *not* provided with study guides and vocabulary lists in his *Read 180*¹ class from the start of the 2013-2014 school until September 23, 2013. Further, based on the same Findings of Facts, the MSDE finds that the IEP was not written clearly with regard to whether these accommodations were required between September 23, 2013 and October 25, 2013. Therefore, the MSDE finds that violations have occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #1 - #4, #22, and #23, the MSDE finds that, while there is documentation that the student was permitted to re-take summative² tests in his *Read 180*¹ class, there is no documentation that he was permitted to re-take quizzes from the start of the 2013-2014 school year to September 23, 2013, as required by the IEP. Therefore, the MSDE finds that a violation has occurred with regard to this aspect of the allegation.

Based on the Finding of Fact #1 - #4 and #24, the MSDE finds that there is no documentation that staff consistently signed-off on the accuracy of the student’s entries into his agenda book in order to ensure the complainant was provided notice of the student’s *Read 180*¹ assignments, as required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the QACPS to provide documentation, by June 15, 2014, that an IEP team has been convened to determine the amount and nature of any *compensatory services*⁴ necessary to remedy the impact of the violations.

The QACPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team’s

⁴ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

determinations, she maintains the right to request mediation or file a due process complaint in order to resolve the dispute, in accordance with IDEA.

School-Based

The MSDE requires the QACPS to provide documentation, by June 15, 2014, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXX High School. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs.

Documentation of all Corrective Actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the QACPS from Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both the complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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 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 Special Education/
Early Intervention Services

MEF/ch

cc: Carol A. Williamson
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
Christine Hartman
Martha J. Arthur