



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

July 12, 2013

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Mrs. Chrisandra A. Richardson
Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #13-090

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.

ALLEGATIONS:

On May 13, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXXXXXX and Mrs. XXXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter. In that correspondence, the complainants 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 has not followed proper procedures to identify and address the student’s behavioral needs since the start of the 2012-2013 school year, in accordance with 34 CFR §300.324;

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2. The MCPS has not ensured that the Individualized Education Program (IEP) contains a clear statement of the manner in which the annual IEP goals will be measured since the start of the 2012-2013 school year, in accordance with 34 CFR §300.320;
3. The MCPS has not ensured that the student's IEP was implemented during the 2012-2013 school year, in accordance with 34 CFR §300.101. Specifically, the complainants allege that the following were not provided:
 - a. Special education instruction designed to assist the student with achieving the annual IEP goals;
 - b. Services of a dedicated one-to-one aide;
 - c. "XXXXXX safety protocol;"
 - d. Hourly restroom breaks;
 - e. Speech-language therapy;
 - f. Occupational therapy;
 - g. Augmentative communication devices;
 - h. Home-school communication; and
 - i. A "XXXXXX"
4. The MCPS did not ensure that the student was provided with the special education instruction required by the IEP from a highly qualified special education teacher during the first (1st) and second (2nd) quarters of the 2012-2013 school year, in accordance with 34 CFR §§300.18 and .156; and
5. The MCPS did not ensure that the complainants were provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the May 6, 2013¹ IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010) and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 15, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Gwendolyn J. Mason, Director of Special Education Services, MCPS; and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.

¹ The time frame for the allegation was originally identified as May 10, 2013. During the course of the investigation, this office discovered that the date of the meeting was actually May 6, 2013.

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3. On May 21, 2013, Ms. Stump conducted a telephone interview with the complainants and clarified the allegations to be investigated.
4. On May 23, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Mason of the allegations and requested that her office review the alleged violations.
5. On June 12, 2013, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX) to review the student's educational record, and interviewed the following MCPS personnel:
 - a. Ms. Leslie Cox, Speech-Language Pathologist, MCPS;
 - b. Ms. Pamela DeFosse, Speech and Language Services Supervisor, MCPS;
 - c. Ms. XXXXXXXXX, Speech-Language Pathologist, XXXXXXXX;
 - d. Ms. XXXXXXXXXXXXX, Occupational Therapist, XXXXXXXXX;
 - e. Ms. XXXXXXXXX, Special Education Teacher, XXXXXXXXX;
 - f. Ms. XXXXXXXX, Autism Program Specialist, MCPS;
 - g. Ms. XXXXXXXXX, Autism Instructional Specialist, MCPS; and
 - h. Ms. XXXXXXXXXXXXX, Speech-Language Pathologist, XXXXXXXXX.

Ms. Emily Rachlin, Attorney, MCPS, and Ms. Patty Grundy, Paralegal, Equity Assurance and Compliance Unit, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed.

6. On that same date, the MCPS provided the MSDE with additional documentation from the student's educational record, via electronic mail (e-mail).
7. On June 19, 20, 21, 24, and 25, 2013, the MCPS provided the MSDE with additional information and documentation from the student's educational record, via e-mail.
8. On June 20, 2013, the MCPS provided the MSDE with a written response to the complaint, via United States mail.
9. On July 2, 2013, the complainants provided the MSDE with documentation to be considered in the investigation, via e-mail.
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 complainants to the MSDE, received on May 13, 2013;
- b. MCPS Regulation, Substitute Teachers, dated May 8, 2003;
- c. IEP, dated April 12, 2011;
- d. IEP, dated May 10, 2012;
- e. IEP, dated June 8, 2012;
- f. E-mail correspondence between MCPS personnel and the complainants regarding the Individual Health Care Plan related to the student's XXXXX, dated between August 23, 2012 and December 5, 2012;
- g. MCPS Individual Health Care Plan related to XXXXX, dated August 27, 2012;
- h. MCPS Individual Health Care Plan related to menstrual cycle care, dated August 27, 2012;
- i. MCPS School Health Services forms, dated August 27, 2012;
- j. Autism Program Specialist's calendar, dated between August 2012 and December 2012;
- k. Parent Conference Notes, dated October 10, 2012;
- l. Daily Communication Checklist forms, dated between October 15, 2012 and May 29, 2013;
- m. XXXX Signs and Symptoms checklist, dated October 25, 2012;
- n. Summary of Parent Conference form, dated November 2, 2012;
- o. E-mail correspondence from MCPS personnel to the complainants regarding the provision of adult support, dated November 8, 2012;
- p. Data charts for the annual IEP goals, dated between January 2013 and the end of the 2012-2013 school year;
- q. Quarterly Progress Report summary, dated March 22, 2013;
- r. Correspondence from school staff to the complainants, dated April 24, 2013;
- s. IEP Team Meeting Response Form, dated May 2, 2013;
- t. IEP Team Meeting Notes, dated May 6, 2013;
- u. XXXX Incident forms, dated May 8 and 21, 2013;
- v. IEP Team Meeting Notes, dated May 24, 2013;
- w. IEP Team Meeting Notes, dated June 10, 2013;
- x. Chronology of Missed Sessions and Make-Up Sessions, dated June 14, 2013;
- y. IEP Team Meeting Notes, dated June 19, 2013;
- z. IEP, dated June 21, 2013;
- aa. Monthly Probe Data forms from the 2012-2013 school year;
- bb. IEP progress reports for the 2012-2013 school year;
- cc. Sensory Schedule for the 2012-2013 school year;
- dd. MCPS Behavior Protocols for the 2012-2103 school year;
- ee. Student's daily schedule for the 2012-2013 school year;
- ff. MCPS School Health Services XXXXX Administration Skills Checklist forms for the 2012-2013 school year;

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- gg. Assistive Technology service provider log for the 2012-2013 school year;
- hh. Speech-Language service provider logs for the 2012-2013 school year; and
- ii. Occupational Therapist service provider log for the 2012-2013 school year.

BACKGROUND:

The student is fifteen (15) years old and attends XXXXXXXXXXXX (XXXXXXX). She 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 complainants were provided with written notice of the procedural safeguards (Docs. a, c, d, e, r, s, t, v, w, y, and z).

ALLEGATION #1: IDENTIFYING AND ADDRESSING THE STUDENT'S BEHAVIORAL NEEDS SINCE THE START OF THE 2012-2013 SCHOOL YEAR

Findings of Facts:

1. The IEP in effect during the 2012-2013 school year identifies needs for the student in the areas of adaptive behavior and social skills. The IEP states that the student engages in “tantrums,” “head snapping,” rapid hand movements paired with “hysterical laughter” or “loud vocalizations,” and that she leaves her seat or assigned work area. The IEP includes an annual goal for the student to improve her ability to demonstrate self-control during all activities. In order to assist the student with achieving the annual goal, the IEP requires that the student be provided with special education instruction, assistive technology services, and occupational and speech-language therapy as related services. The IEP requires that the student be provided with accommodations, including frequent breaks, changes in her schedule or in the order of activities, and reduced distractions. It also requires that the student be provided with supplementary aids and services, including visual schedules, positive reinforcement that includes the use of rewards, frequent positive feedback, a “XXXXXX,”² and “adult support” (Doc. e).
2. The IEP indicates that the Least Restrictive Environment (LRE) in which the program can be implemented with the provision of supplementary aids and services is a separate special education classroom with “intensive, individualized, systematic instruction,” a low student-to-teacher ratio, and behavioral supports (Doc. e).

² A “XXXXXX” is a plan that the school staff develop for the provision of activities to provide the student with sensory input (Doc. e).

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3. The student also had a “behavior protocol” in place during the 2012-2013 school year. The “behavior protocol” identifies the student’s “vocalizations” and her being “out of seat” as the targeted behaviors. The “behavior protocol” includes a list of specific responses, proactive strategies, preferred reinforcers, and a prompt hierarchy to be used by classroom staff to address the targeted behaviors. The “specific responses” include the use of planned ignoring and redirection. The “proactive strategies” include the use of positive reinforcement, use of a “token board” for the provision of rewards, scheduled sensory breaks, visual reminders, and a picture schedule (Docs. e and dd).
4. The student’s educational record includes an *Individual Health Care Plan* related to the student’s XXXXXX disorder, dated August 27, 2012 (“Health Plan”). The Health Plan, which was developed by staff from the MCPS Office of School Health Services, lists signs and symptoms related to the student’s XXXXXXs and describes the steps for school staff to follow to ensure the student’s safety (Doc. f).
5. There is documentation that in March, April, and May 2013, school staff revised the activities and frequency of the provision of sensory input in the “XXXXXX” in order to address the student’s display of increased sensory-seeking behaviors. Beginning in May 2013, the student was encouraged by school staff to “shake her hands, yell, and spin” in order to obtain more sensory input (Docs. aa, cc, dd, ii and interview with school staff).
6. The IEP team convened on May 6 and 24, 2013 and on June 10 and 19, 2013 to review the student’s program and progress. The meeting notes indicate that over the series of meetings, the team determined the student’s present levels of academic achievement and functional performance and considered information from the student’s teachers and service providers that the student made progress toward achieving the annual IEP goals (Docs. r-t, v, w, y, and z).
7. The IEP team meeting summaries indicate that the team considered the concerns of the complainants that the strategies being used to provide the student with sensory input, including encouraging her to shake her hands, yell, and spin, are inappropriate because it was resulting in “increased hyperactivity at home” (Docs. r-t, v, w, y, and z).
8. The IEP team revised the annual goal for the student to improve self-control based on the reports of her progress. In order to address the complainant’s concerns, another goal was developed for the student to demonstrate increased engagement in assigned tasks by requesting replacement sensory activities. The IEP team determined that additional behavioral supports were needed, including providing the student with advanced preparation for schedule changes, encouraging the student to ask for assistance when

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needed and providing the student with frequent changes in activities or opportunities for movement (Doc. z).

9. The complainants also expressed concern that the student was demonstrating overly-active behavior in class and their belief that the student was not able to control her behavior in the classroom. They expressed their belief that the student's behaviors were interfering with her ability to learn, and that they may be a sign of an impending XXXXXX. The complainants requested that a Functional Behavioral Assessment (FBA) be conducted and a Behavioral Intervention Plan (BIP) be developed in order to identify the cause of the behavior to ensure that it is appropriately addressed (Docs. s, t, v, w, and y).
10. The IEP team rejected the complainants' request for an FBA and a BIP based on information from school staff that the supports in place, including the "behavior protocol," were meeting the student's behavioral needs, and because the *Individual Health Care Plan* provides school staff with information on the signs and symptoms of the XXXXXX disorder and the steps for school staff to follow to ensure the student's safety. The IEP team decided that the student's progress would be monitored with the provision of these supports, and that it will reconsider the need for additional data if the student is found to not be making sufficient progress (Docs. t, v, w, and y).

Discussion/Conclusions:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of academic achievement and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals.

Therefore, when developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

In resolving a State complaint challenging the appropriateness of the IEP, the State Education Agency (SEA) must not only determine whether the public agency has followed the required procedures to reach the determinations made, but also whether the public agency has reached decisions that are consistent with the evaluation data. However, the SEA may not overturn an

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IEP team's decisions (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, August 2006, p. 46601).

In this case, the complainants assert that the student demonstrates behaviors that interfere with her learning and that the MCPS has not ensured that those behaviors are being addressed (Doc. a and interview with the complainants).

Based on the Findings of Facts #1 - #10, the MSDE finds that the IEP team considered the evaluation data, including the concerns of the complainants, and developed an IEP that includes services and supports to address the behavioral needs identified in the data. Based on the Findings of Facts #7 and #8, the MSDE finds that the IEP team considered the complainants' concerns about strategies being used to address the student's sensory seeking behaviors, and made revisions to the strategies in response to those concerns.

Based on the Findings of Facts #9 and #10, the MSDE finds that the IEP team also considered the complainants' concerns that the student's behaviors are interfering with her learning and their request for additional data to be obtained to ensure that those behaviors are properly addressed. The MSDE understands that the complainants disagree with the IEP team's decision that the student's behavioral needs are being appropriately addressed and its rejection of their request for additional data to be collected. However, based on the Findings of Facts #3, #4, #6, and #10, the MSDE finds that the IEP team's decisions were consistent with the evaluation data. Therefore, this office may not overturn those decisions, and does not find that a violation occurred with respect to this allegation.

The MSDE also understands that the complainants believe that the information in the evaluation data about the student's progress is inaccurate. The complainants are reminded of the procedures available to them to challenge the information in the student's educational record, in accordance with 34 CFR §§300.618 - .620, as explained in the correspondence sent to them on May 23, 2013.

ALLEGATION #2:

IEP STATEMENT OF THE MANNER IN WHICH THE IEP GOALS WILL BE MEASURED

Findings of Facts:

11. The IEP in effect during the 2012-2013 school year includes annual goals for the student to increase specific skills in the areas of identified need. Each annual goal also contains short-term objectives that describe the activities in which the student will participate in order to demonstrate progress toward achieving the goals. The goals state that the student's progress will be measured by the percentage of accuracy she demonstrates while participating in those activities (Doc. e).

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12. There are reports of the student's progress toward achieving the annual IEP goals, dated November 2, 2012, January 18, 2013, March 22, 2013, and June 14, 2013. The documentation indicates that the student is making sufficient progress to meet the annual goals based on data about the percentage of accuracy she demonstrated during activities to increase the skills in the areas of identified need (Doc. bb).
13. The documentation of the series of IEP team meetings in May and June 2013 indicates that the complainants expressed concern that school staff were reporting that progress was being made despite the fact that the student continues to demonstrate sensory-seeking behavior. In order to address the complainants' concerns, the IEP team revised the annual goal related to the student's sensory-seeking behavior to clarify that the improvement would be made in reducing the interference with learning caused by the sensory-seeking behaviors and not by reducing the sensory-seeking behaviors (Docs. t, v, w, y, and z).

Discussion/Conclusions:

The IEP must include a statement of measurable annual goals and a description of how the student's progress toward meeting the annual goals will be measured (34 CFR §300.320). In this case, the complainants allege that the only way that progress can be measured on the goal to address sensory-seeking behaviors is by determining whether there has been a reduction in the student's sensory-seeking behaviors. They assert that measuring the reduction in interference with learning caused by the behaviors does not provide accurate information about progress (Doc. a and interview with the complainants).

Based on the Finding of Fact #11, the MSDE finds that the annual goals contain information on how the student's progress toward achievement of the goals will be measured. Based on the Finding of Fact #12, the MSDE further finds that there is documentation that the student's progress was measured as required by the IEP. Based on the Finding of Fact #13, the MSDE finds that when the complainants expressed their concern regarding the manner in which the student's progress was being measured, the IEP team addressed these concerns and revised the IEP to provide clarification for the complainants. Therefore, the MSDE finds no violation regarding this allegation.

As stated above, the MSDE understands that the complainants disagree with the team's decisions. However, because the MSDE has not identified a violation related to the procedures that were followed, this office may not overturn the IEP team's decisions.

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ALLEGATION #3: IEP IMPLEMENTATION DURING THE 2012-2013 SCHOOL YEAR

Findings of Facts:

Allegation #3a: Provision of Special Education Instruction Designed to Assist the Student with Achieving the Annual IEP Goals

14. The IEP in effect during the 2012-2013 school year requires that the student receive special education instruction in the general education and separate special education classrooms from a special education teacher. The IEP clarifies that the student will “participate in lunch and one elective class with her general education peers and will receive the rest of her instruction in the special education setting” (Doc. e).
15. There is documentation that the student received special education instruction and that the student made progress toward achieving the annual IEP goals. However, there is no documentation that special education instruction was provided to address some of the skills in the short-term objectives within the goals. These skills include identifying “same” and “different,” identifying mixed currency to purchase items, preparing food, and putting her shoes on the correct feet and tying them (Docs. l, p, q, aa, bb, gg, hh, and ii).
16. There is no documentation that the parties agreed to amend the IEP without convening an IEP team meeting or that the IEP team determined that the goals required revision until June 19, 2013 (Docs. e, z, and review of educational record).

Allegation #3b: Provision of a Dedicated One-to-One Aide

IEP Requirements

17. The IEP in effect during the 2012-2013 school year was developed on May 10, 2012. At that meeting, the team revised language in the IEP that required that the student be provided with “direct adult supervision throughout her school day.” The IEP was revised to clarify that the adult support is “enhanced staffing to support [the student’s] needs and safety in all school and community settings” (Docs. d, e, and interview with school staff).
18. On September 21, 2012, school staff met with the complainants to review the requirements of the IEP in response to the complainants’ concern that a staff member be assigned to work exclusively with the student. In follow-up to that meeting, school staff sent the complainants e-mail correspondence explaining that the student “has designated adult support throughout the school day,” but that she works in groups of two (2) to three

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- (3) students in a classroom where support is also provided by a teacher and a paraprofessional (Doc. o).
19. At the June 10 and 19, 2013 IEP team meetings, the complainants requested that a dedicated one-to-one aide be assigned to work exclusively with the student, but the request was rejected due to the student's need to learn to work with a variety of school staff (Docs. w and y).
 20. On June 19, 2013, the IEP was revised again in an attempt to further clarify the matter for the complainants. It states that the student requires direct adult assistance to support her participation in instruction in all settings, including community based instruction, lunch, hallway transitions, and general education elective classes. It further states that the student will receive "direct adult supervision to support her Health Plan for feminine hygiene and/or medical needs, including XXXXXXs" (Docs. y and z).

Implementation

21. There is documentation that during the 2012-2013 school year, the student was provided with "adult support" at all times during her school day (Docs. l, o, and ee).

Allegation #3c: Implementation of the "XXXXXX Safety Protocol"

IEP Requirements

22. The Health Plan, which was developed by staff from the MCPS Office of School Health Services to address the student's health needs related to her XXXXXX disorder, describes the steps for school staff to follow to ensure the student's safety (Doc. f).
23. There is documentation that the complainants have expressed concern throughout the 2012-2013 school year about the student's safety and have requested that the specific "XXXXXX safety protocol," which they provided to school staff at the beginning of the school year, be followed. While the IEP team has met several times and considered the complainants' concerns, the team has not included the participants required in order to make determinations regarding this matter. On June 19, 2013, the IEP team decided to schedule another meeting with participation by staff from the MCPS Office of School Health Services in order to address the complainants' concerns (Docs. f, k, l, and m).

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Implementation

24. There is documentation that classroom staff who worked with the student during the 2012-2013 school year, including a substitute teacher, were trained by the school nurse on the Health Plan and on how to administer the student's XXXXXX medication. There is documentation that the classroom staff were provided with "refresher" trainings on medication administration in October and November 2012, January 2013, and May 2013 (Docs. i, m, and ff).
25. There is documentation that when the student has had a XXXXXX during the school day, action was taken consistent with the Health Plan (Docs. l and u).

Allegation #3d: Provision of Hourly Restroom Breaks

IEP Requirements

26. The student's educational record also includes an *Individual Health Care Plan* related to personal hygiene, dated August 27, 2012. This Health Plan requires that the student be provided with "hourly bathroom checks during her menstrual cycle for medical and hygiene purposes." It states that the student may require verbal instruction and may use the "health room" at any time to complete a personal hygiene routine (Doc. h).

Implementation

27. During the 2012-2013 school year, school staff documented the provision of menstrual cycle care on the "daily communication checklist."³ School staff acknowledge, however, that on or about April 5, 2013, at least one (1) hourly restroom break was missed (Docs. k, l, and interview with school staff).

Allegation #3e and #3f: Provision of Related Services

IEP Requirements

28. The IEP in effect during the 2012-2013 school year requires that the student be provided with the following related services:
 - a. Speech-Language Therapy for two (2) forty-five (45) minute sessions weekly; and

³ On October 10, 2012, at a parent-teacher conference, school staff agreed to begin using a "daily communication checklist" to be sent home to the complainants in order to provide them with information about the student's day (Docs. k and l).

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- b. Occupational Therapy (OT) for one (1) thirty (30) minute session monthly (Doc. e).

Implementation

29. The school staff acknowledge that, due to staffing issues, the student was not provided with the amount of speech-language therapy required by the IEP during the 2012-2013 school year. School staff report that they have determined the amount of compensatory services owed to the student and will provide the make-up services during the summer of 2013 or at the start of the 2013-2014 school year (Docs. n, x, hh, and interview with school staff).
30. The school staff also acknowledge that other students were impacted by the staffing issue and that the compensatory services owed to those students has also been determined (interview with school staff).
31. The OT service provider log for the 2012-2013 school year documents that the student was provided with the amount of OT services required by the IEP (Doc. ii).

Allegation #3g: Provision of an Augmentative Communication Device

Requirements

32. The IEP in effect during the 2012-2013 school year requires that the student be provided with the Assistive Technology (AT) services and devices described in the supplementary aids and services and related services (Doc. e).
33. The supplementary aids and services require the use of visual schedules and Picture Communication Symbols (PCS) (Doc. e).
34. At the series of IEP team meetings conducted in May and June 2013, the IEP team clarified that the AT services are to support the student, school staff, and parents with integrating augmentative and alternate communication (AAC) systems (low tech to high tech) and AAC strategies to improve functional communication (Docs. t, v, w, y, and z).

Implementation

35. The "daily communication checklist" includes a section that indicates the methods of communication the student used during the school day. A review of the checklists indicates that the student communicated using speech and gestures on a daily basis. The

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checklists also indicate that the student used “voice output devices” on several occasions beginning in January 2013 (Doc. l).

36. There is documentation that the student had access to visual schedules and PCS throughout the 2012-2013 school year (Docs. p, aa, bb, dd, and gg).
37. There is documentation that a speech-language pathologist provided the AT services by working with the student, the student’s teachers and service providers, and the student’s mother on at least five (5) dates during the 2012-2013 school year. The documentation indicates that during these sessions, the service provider worked to introduce the student and her parents to an augmentative communication device as an additional tool for communication and worked with the student’s teachers and service providers to receive feedback regarding vocabulary that would be beneficial to the student to program into the device (Doc. gg).

Allegation #3h: Provision of Home-School Communication

IEP requirements

38. On October 10, 2012, at a parent-teacher conference related to the student’s XXXXXX disorder, the school staff indicated that they would begin using the “daily communication checklist” to provide the complainants with information about the student’s school day (Doc. k).
39. During the series of IEP team meetings in May and June 2013, the IEP team determined that a daily home-school communication system would be used. There is no documentation that the IEP required the provision of home-school communication previously (Docs. t, v, w, y, and z).

Implementation

40. There is documentation that the “daily communication checklist” was sent home on a daily basis beginning on October 15, 2013 (Doc. l).

Allegation #3i: Implementation of a “XXXXXX”

Requirements

41. The IEP in effect during the 2012-2013 school year states that the IEP team determined that the student requires the use of sensory input and that a “XXXXXX” would be

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developed for that purpose. There is no documentation that the team decided that a particular method of sensory input must be used (Doc. e).

Implementation

42. There is documentation that the student was provided with the sensory input consistent with the "XXXXXX" developed by school staff during the 2012-2013 school year (Doc. cc).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

Allegation #3a: Provision of Special Education Instruction Designed to Assist the Student with Achieving the Annual IEP Goals

As stated above, the IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the disability, enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational needs that result from the disability (34 CFR §300.320). The United States Department of Education, Office of Special Education Programs (OSEP) has stated that while the IDEA does not require that annual goals include benchmarks and short-term objectives, States can determine the extent to which short-term objectives and benchmarks will be used (*Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, August 2006, p. 46663).

In Maryland, each student's IEP must include measurable academic and functional annual goals, *including* benchmarks or short-term objectives related to meeting the student's needs that result from the student's disability (COMAR 13A.05.01.09A(1)(b)) (emphasis added). The MSDE has issued guidance related to the purpose of benchmarks and short-term objectives in the *Maryland Statewide Individualized Education Program (IEP) Process Guide* (Process Guide).

In that guidance, the MSDE has stated that measurable annual goals with accompanying short-term objectives or benchmarks should align with the present levels of academic achievement and functional performance. Annual goals and short-term objectives or benchmarks should relate directly to the information recorded under concerns and needs requiring specialized instruction. Specified annual goals and objectives should align with the grade level general education curriculum standards, functional performance requirements and the Maryland State Curriculum (Process Guide, p. 131).

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The IEP must include measurable annual goals and short-term objectives or benchmarks that describe each student's expected learning outcomes. Annual goals are used to estimate what outcomes a student is expected to achieve in an academic year based on the student's present level of academic achievement and functional performance. Short-term objectives and benchmarks must describe meaningful intermediate outcomes between the student's current performance level and the annual goal (Process Guide, p. 131).

Changes to an IEP must be made either by the IEP team at an IEP team meeting or by agreement of the parent and the school system outside of the IEP team process (34 CFR §300.324).

Based on the Findings of Facts #14 and #15, the MSDE finds that there is no documentation that the student received special education instruction that was designed to assist the student in improving all of the skills to be addressed in the annual goals within one (1) year of the development of those goals. Based on the Finding of Fact #16, the MSDE further finds that there is no documentation that the parties agreed to amend the IEP without holding an IEP team meeting or that the IEP team determined that the annual goals should be revised until June 2013. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Allegation #3b: Provision of a Dedicated One-to-One Aide

In this case, the complainants report that, prior to May 2012, the IEP required that the student be provided with the services of a "dedicated one-to-one aide," but that in May 2012, the language was revised to required "enhanced staffing." They further report that school staff clarified that the change in language would not result in a change in service delivery to the student. However, they allege that a change in service delivery has, in fact, occurred because the student is not being provided with the services of a dedicated one-to-one aide (Doc. a and interview with the complainants).

Based on the Finding of Fact #17, the MSDE finds that there is no documentation that the IEP required that school staff be assigned to work exclusively with the student as a dedicated one-to-one aide, even prior to the revision of the IEP in May 2012. Based on the Findings of Facts #18-#20, the MSDE finds that the IEP team has attempted to clarify the IEP requirements for the complainants and that the MCPS personnel have met with the complainants to review the IEP in order to assist them in understanding the requirements. Based on the Finding of Fact #21, the MSDE finds that there is documentation that the student was provided with "adult support" consistent with the requirement of the IEP. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

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Allegation #3c: Implementation of the “XXXXXX Safety Protocol”

The IEP team must review the IEP at least annually to determine whether the student is making sufficient progress to achieve the annual goals. In addition, the team must review, and revise as appropriate, the IEP to address information provided by the parent (34 CFR §300.324).

The public agency must ensure that the IEP team includes a representative of the public agency who is qualified to provide or supervises the provision of specially designed instruction to meet the unique needs of the student, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency (34 CFR §300.321).

In this case, the complainants allege that throughout the 2012-2013 school year, school staff routinely failed to follow the “XXXXXX safety protocol” and as a result, there have been occasions when the student may have suffered a XXXXXX at school that went untreated and undocumented (Doc. a and interview with the complainants).

Based on the Finding of Fact #22, the MSDE finds that there is no documentation that the IEP team decided that the “XXXXXX safety protocol” proposed by the complainants is required to address the student’s educational needs. Based on the Findings of Facts #24 and 25, the MSDE finds that there is documentation that school staff implemented the Health Plan related to the student’s XXXXXX disorder, which was developed by the MCPS Office of School Health Services, during the 2012-2013 school year. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

However, based on the Finding of Fact #23, the MSDE finds that while the IEP team has discussed the complainants’ concerns about whether the Health Plan sufficiently addresses the student’s needs, the MCPS has not ensured that the IEP team has included the participants needed to address the complainants’ concerns. Therefore, the MSDE finds that a violation has occurred with respect to ensuring that proper procedures were followed to address the complainants’ concerns.

Allegation #3d: Provision of Hourly Restroom Breaks

Based on the Findings of Facts #26 and #27, the MSDE finds that there is documentation that the school staff implemented the hourly restroom break requirement of the student’s Health Plan with the exception of one hourly break on one date. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #27, the MSDE finds that because the school staff have been implementing a procedure to ensure the regular provision of the

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breaks, the violation that occurred with respect to the breaks on one (1) day did not impact the student's access to instruction. Therefore, no corrective action will be required.

Allegation #3e: Provision of Speech-Language Therapy Services

Based on the Findings of Facts #28-#30, the MSDE finds that there is no documentation that the student was provided with the amount of speech-language therapy services required by the IEP during the 2012-2013 school year. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Allegation #3f: Provision of Occupational Therapy Services

Based on the Findings of Facts #28 and #31, the MSDE finds that there is documentation that the student was provided with the amount of OT services required by the IEP during the 2012-2013 school year. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Allegation #3g: Provision of an Augmentative Communication Device

In this case, the complainants allege that the student has not been provided with an augmentative communication device for the production of voice output (Doc. a and interview with the complainants).

Based on the Findings of Facts #32-#34, the MSDE finds that the IEP did not require that the student be provided with an augmentative communication device for the production of voice output until June 2013. Based on the Findings of Facts #35-#37, the MSDE finds that there is documentation that the student has been provided with both low and high tech communication devices as indicated in the IEP. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Allegation #3h: Home-School Communication

Based on the Findings of Facts #38-#40, the MSDE finds that there is no documentation that the IEP required a system of home-school communication prior to June 2013. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Allegation #3i: Implementation of a "XXXXXX"

Based on the Findings of Facts #41 and #42, the MSDE finds that there is documentation that the student was provided with a "XXXXXX" as required by the IEP during the 2012-2013 school year. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

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ALLEGATION #4: HIGHLY QUALIFIED SPECIAL EDUCATION TEACHER

Findings of Facts:

43. There is documentation that a substitute teacher was assigned to the student's class from September 18, 2012 until December 17, 2012, during the special education teacher's extended absence from school (Docs. j, k, and l).
44. The MCPS requires that substitute teachers have earned a Bachelor's Degree (Doc. b).
45. An on-site review of the substitute teacher's personnel file indicates that she has earned a Bachelor's Degree (On-site review of the substitute teacher's personnel file).
46. There is documentation that the Autism Program Specialist provided supervision of the substitute teacher, including assuming case management duties and assisting in the provision of special education instruction. An on-site review of the Autism Program Specialist's personnel records documents that she meets the requirements of a highly qualified special education teacher (Doc. j and on-site review of personnel records).

Discussion/Conclusions:

The IDEA requires that each person employed as a public school special education teacher is highly qualified as a special education teacher (34 CFR §300.156). This means that the teacher must have obtained full State certification as a special education teacher or passed a State special education teacher licensing exam, and has a license to teach in the State as a special education teacher. The teacher must also meet any additional requirements specified in the Elementary and Secondary Education Act (ESEA). School personnel other than those employed as teachers must meet the qualifications established by the State and must be appropriately trained and supervised in meeting the requirements of the IDEA (34 CFR §200.56 and §300.156). In addition, the MCPS requires that its substitute teachers hold a Bachelor's degree.

In this case, the complainants allege that while the special education teacher was on leave for approximately fifteen (15) weeks during the first (1st) and second (2nd) quarters of the 2012-2013 school year, there was no highly qualified special education teacher in the student's classroom (Doc. a and interview with the complainants).

Based on the Findings of Facts #43-#46, the MSDE finds that the individual assigned as the student's substitute teacher meets the MCPS education requirements and was provided with the training and oversight required to ensure that she was qualified to provide special education services to the student. Therefore, the MSDE finds no violation regarding this allegation.

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**ALLEGATION #5: PROVISION OF DOCUMENTS PRIOR TO THE
MAY 6, 2013 IEP TEAM MEETING**

Findings of Facts:

47. There is documentation that, on April 24, 2013, school staff sent the complainants a draft IEP, a “progress summary chart,” a transition guide, a copy of the results of the student’s transition assessment, and the Alt-MSA Decision Making Tool, which were the documents that school staff anticipated would be considered at the May 6, 2013 IEP team meeting (Doc. r).
48. There is no information or documentation that the “raw data” that was used to develop the “progress summary chart” was considered at the May 6, 2013 IEP team meeting (Docs. t, v, w, y, and interview with school staff).

Discussion/Conclusions:

At least five (5) business days before a scheduled IEP team meeting, the student’s parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 [2010] and COMAR 13A.05.01.07).

In this case, the complainants assert that, under the regulation, they were entitled to receive copies of the “raw data,” including samples of the student’s classwork used to develop the progress summary chart considered by the team prior to the IEP team meeting (Doc. a and interview with the complainants).

Based on the Findings of Facts #47 and #48, the MSDE finds that because the documents used to develop the “progress summary chart” were not considered by the IEP team, there was no requirement to provide them to the complainants prior to the IEP team meeting. Therefore, the MSDE finds no violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation by September 15, 2013 that the IEP team has convened, with the proper participants, and ensured that the team addresses the complainants’ concerns about the Health Plan related to the student’s XXXXXX disorder. In addition, at the meeting, the IEP team must determine if the student’s ability to benefit from her program was adversely impacted by:

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1. The lack of special education instruction on the short-term objectives and the delay in revising the annual goals; and
2. The delay in convening an IEP team meeting with the proper participants to address the concerns related to the Health Plan.

If the team determines an adverse impact, then the team needs to determine the nature and amount of *compensatory services*⁴ or other remedy necessary to redress the violations.

The MCPS must provide the complainants 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 complainants disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with IDEA.

The MSDE also requires the MCPS to provide documentation within thirty (30) days of the completion of the provision of the remaining compensatory speech-language services.

Similarly-Situated Students at XXXXXXXXXXXXXXXX

The MSDE requires the MCPS to provide documentation by the start of the 2013-2014 school year that it has identified all of the students who were not provided with the speech-language therapy services required by the IEP during the 2012-2013 school year and that compensatory services have been determined for each of the identified students.

School-Based

The MSDE also requires the MCPS to provide documentation by the start of the 2013-2014 school year, 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 XXXXXXXX.

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

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).

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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 initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Monitoring and Accountability for its consideration during present or future monitoring of the MCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

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

Please be advised that the complainants 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.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The complainants 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

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subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:ks

cc : Joshua P. Starr
Julie Hall
Sharon Gooding
XXXXXX
XXXXXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Kathy Stump