



July 7, 2014

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Ms. Patty Daley
Executive Director of Special Education & Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #14-089

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 8, 2014,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegations listed below:

1. The HCPS has not ensured that the student’s Individualized Education Program (IEP) has addressed her need for a small class setting with more one-to-one support since May 8, 2013,² in accordance with 34 CFR §300.324.

¹ On May 2, 2014, the MSDE received correspondence from the complainant containing allegations of violations of the Individuals with Disabilities Education Act (IDEA). On May 8, 2014, the complainant provided this office with the requested remedy, which is required to initiate the complaint investigation (Doc. a)

² While the complaint alleges violations that occurred more than one (1) year ago, the complainant was informed, in writing, that the MSDE has authority to investigate allegations of violations that occurred no more than one (1) year from the date the complaint was received (34 CFR §300.153(c)).

2. The HCPS has not ensured that the student has been provided with the supplementary aids and services required by the IEP since May 8, 2013,² in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 8, 2014, Ms. Mandis conducted a telephone interview with the complainant to clarify the allegations to be investigated. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Executive Director of Special Education & Student Services, HCPS, and Ms. Judith Pattik, Coordinator of Special Education, HCPS.
3. On May 14, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
4. On June 4, 2014, the HCPS provided the MSDE with information and documentation, via hand delivery.
5. On June 6, 2014, Ms. Hartman and Dr. Kathy Aux, Consultant, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXX, Special Educator; and
 - c. Ms. XXXXXXXX, HCPS.

Ms. Kelly Russo, Resource Teacher, HCPS, attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.
6. On June 18, 2014, Ms. Hartman conducted an additional review of the student's educational record at XXXXXXXXXXXXXXXX. Ms. Russo and Ms. XXXXX were present at the record review.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on May 2 and 8, 2014;

- b. IEP, dated April 16, 2013;
- c. IEP, dated August 2, 2013;
- d. IEP, dated October 4, 2013;
- e. IEP Team Meeting Report, dated November 1, 2013;
- f. IEP Team Meeting Report, dated December 12, 2013
- g. IEP, dated April 10, 2014;
- h. Report of Private Psychological Assessment from XXXXXXXXXXXXXXXX
XXXXX, dated April 17, 2013;
- i. Review of Independent Assessment, dated July 8, 2013;
- j. Report of Psychological Assessment, dated September 27, 2013;
- k. Teacher Reports for the 2013-2014 school year;
- l. Email correspondences between the HCPS staff and the complainant, dated
May 31, 2013; August 29, 2013; October 21, 2013, December 13 and 18, 2013,
and January 15, 2014; and
- m. Student work samples.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with an Other Health Impairment under the IDEA based on a diagnosis of XXXXXX syndrome (XXXX).³ She attends XXXXXXXXXXXXXXXX, where she receives special education 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-m, and interviews with the HCPS staff and the complainant).

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S NEED FOR A SMALL CLASS SETTING WITH MORE ONE-TO-ONE SUPPORT

FINDINGS OF FACTS:

1. The IEP in effect at the start of the time period covered by this investigation was developed on April 16, 2013. It indicated that the areas affected by the student's disability include reading comprehension, written expression, mathematics, and expressive/receptive language skills. When developing the IEP, the team considered information from the student's teachers that her poor memory and poor reading comprehension impact her retention of concepts, even with repeated review of the information. The student's teachers also shared that the student enjoys working in groups, but can work independently with prompts and checking for understanding (Doc. b).

³ XXXXXX syndrome (XXXX) is a chromosomal abnormality which presents with varying conditions including heart defects, cognitive problems, and severe "immunologic dysfunction" (The XXXXXX Syndrome Educational Foundation, Inc., http://xxxsef.org/about_xxxs.php?parent_id=2#what).

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2. The documentation of the April 16, 2013 IEP team meeting reflects that the team considered concerns expressed by the complainant about the student's inability to achieve higher than a score of "basic" on the Maryland School Assessments (MSAs), and that this history of poor performance on standardized tests indicates that she may have difficulty passing the requirements for a Maryland High School Diploma. The documentation further reflects that the school-based members of the IEP team provided the complainant with information regarding the various options for meeting graduation requirements (Doc. b).
3. The IEP contained annual goals for the student to improve her foundational reading skills, skills related to reading comprehension, written language, math reasoning and applications, and self-advocacy. The IEP required the provision of special education instruction to assist the student in achieving these goals. The IEP team determined that, with the provision of supplementary aids and services, the least restrictive environment in which the student's IEP could be implemented was the general education classroom. The supplementary aids and services determined necessary by the IEP team be enable to the student to participate in the general education classroom were designed to assist the student with her poor memory, comprehension difficulties, and lack of organizational skills (Doc. b).
4. The IEP also included postsecondary transition activities related to the student being prepared to work independently, demonstrate initiative and responsibility, and develop organizational and time management skills (Doc. b).
5. On July 8, 2013 and August 2, 2013, the IEP team convened to review the results of a private psychological assessment obtained by the complainant, which indicates that the student is "cognitively impaired," having both low cognition and low adaptive skills. The documentation reflects that the IEP team concluded that the results were inconsistent with the information provided by the student's teachers regarding her adaptive skills, and recommended that the school system conduct its own psychological assessment (Docs. c, h, and i).
6. On October 4, 2013 and November 1, 2013, the IEP team convened to review the results of the psychological assessment conducted by the HCPS. The assessment report indicates that the student has "executive functioning deficits," particularly with regard to "metacognition," as well as adaptive skills which fall in the "low range." However, the evaluator did not believe that the student's adaptive skills were low enough to identify her with an Intellectual Disability (Docs. d, e, and j).
7. At the meeting held on October 4, 2013 and November 1, 2013, the complainant expressed concerns because the student had not achieved the annual IEP goals, was not gaining new skills, was not independent, and could not apply skills learned in class to her homework assignments (Docs. d and e).

8. The complainant requested that the student be provided with instruction in a class with a smaller student to teacher ratio where she could receive more one-to-one support. The IEP team considered information from the student's teachers that, with the current supports, she had made steady progress toward achievement of the goals, even though she did not master them, and denied the request (Docs. d, e, and k).
9. On December 12, 2013, the IEP team convened at the request of the complainant to consider her continued concerns that the student requires more one-to-one support. The documentation reflects that the school-based members of the IEP team informed the complainant that the student is "leveling off with her cognitive IQ," cannot gain abstract skills, and that, while, with time, she is learning new concepts, she "cannot retain them." The IEP team decided upon a trial use of an assistive technology device (iPad) as a resource for the student to use at home and at school in order to determine whether it will be helpful to her as the instruction begins to cover more complex concepts (Docs. f and k).
10. On April 10, 2014, the IEP team convened and documented that the student continues to get average grades in her classes with the provision of the current supports, and continues to make progress towards achievement of the IEP goals (Docs. g and k)

DISCUSSION/CONCLUSIONS:

Special education services are based on the educational needs of a student, and not on the disability category in which the student is identified. The IEP must address all of the student's needs, whether or not commonly linked to the disability category (34 CFR §§300.304 and .320, and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46549, August 14, 2006).

In 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 (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency must review the procedures used by a school system to reach determinations about the program. Additionally, the State Educational Agency must review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

In this case, the complainant alleges that, since the IEP team decided that the student does not have a cognitive disability, the provision of additional supports that she requested should enable

the student to retain information and improve her skills (Doc. a and interview with the complainant).

Based on the Findings of Facts #1 – #10, the MSDE finds that the IEP team considered the complainant's request for additional supports and that its decision was consistent with the data provided by the student's teachers about the student's needs related to low cognition. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

ALLEGATION #2: IMPLEMENTATION OF SUPPLEMENTARY AIDS AND SERVICES REQUIRED BY THE IEP

FINDINGS OF FACTS:

11. The IEP in effect during the time period covered by this investigation requires that the student receive accommodations and supports to assist her in achieving the annual goals in the general education setting. These accommodations and supports include verbatim reading of tests, the use of a scribe, the provision of notes and outlines, and the use of a word processor, graphic organizers and manipulatives, and a calculator. The IEP also requires that the student be provided with extended time to complete assignments, multiple breaks, frequent checks for understanding, repetition of directions, the provision of reduced homework assignments, re-teaching of concepts and skills, proofreading checklists, word banks, frequent feedback, chunking of text, and reduced length and revised format of exams (Docs. a-h).
12. The documentation supports, and a review of the student's work samples confirms, that the HCPS provided the student with accommodations and supports required by the IEP (Docs. a-h and k-m, and review of the student's work samples).

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 and .323). Based on the Findings of Facts #11 and #12, the MSDE finds that there is documentation that the student was provided with the accommodations and supports required by the IEP. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

Please be advised that both the complainant and the HCPS 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.

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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.

Questions regarding the findings and conclusions 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 Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/ch

c: Renee A. Foose
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