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State Superintendent of Schools

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August 8, 2014

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Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #14-106

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 June 10, 2014, the MSDE received a complaint from Wayne Steedman, Esq., hereafter, “the complainant,” on behalf of the above-referenced student, and her parents, Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXXXXXX. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) 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 CCPS did not follow proper procedures when the student was provided with Home and Hospital Teaching (HHT) services from November 2013 through March 2014, in accordance with COMAR 13A.03.05.01 and COMAR 13A.05.01.10. Specifically, the complainant alleges the following:
 - a. The CCPS did not ensure that the need for HHT services was reviewed sixty (60) calendar days after the initial determination of eligibility;

- b. The CCPS did not ensure that the Individualized Education Program (IEP) team developed a plan for returning the student to a school-based program; and
 - c. The CCPS did not ensure that when the period of convalescence ended, the IEP team reviewed and revised the IEP and determined the appropriate placement in the Least Restrictive Environment (LRE).
2. The CCPS did not respond to a request for an IEP team meeting that was made by the student's parents on July 1, 2013, in accordance with 34 CFR §§300.324 and .503 and COMAR 13A.05.01.08.

INVESTIGATIVE PROCEDURES:

- 1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
- 2. On June 10, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
- 3. On June 18, 2014, Ms. Williams conducted a telephone interview with the complainant to clarify the allegations to be investigated.
- 4. On July 3, 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 CCPS of the allegations and requested that the CCPS review the alleged violations.
- 5. On July 8, 2013, the MSDE requested information and documentation related to the allegations contained in the complaint from the CCPS, via telephone and electronic mail (email).
- 6. On July 10, 2014, Ms. Williams reviewed records at the CCPS Central Office with Mr. Wayne Whalen, Coordinator of Compliance, CCPS.
- 7. On the July 10 and 31, 2014 and August 4, 2014, the CCPS provided the MSDE with documents to consider in conducting the investigation, via email.
- 8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Electronic mail (email) correspondence between the student's mother and the school staff, dated July 1, 7, 9, 17, 23, and 24, 2013;

- b. Email correspondence between the student's mother and the school staff, dated August 7, 8, 14, 15, 20, and 22, 2013, and September 3, 2013;
- c. Email correspondence from the student's mother to the school principal, dated August 29, 2013;
- d. Verification of the student's need for Home and Hospital Teaching (HHT) services, made by the student's private psychiatrist on August 30, 2013;
- e. Notes made by the student's mother and the school staff on notices of IEP team meetings, dated September 3 and 9, 2013;
- f. Written summary of the September 9, 2013 IEP team meeting;
- g. Approval of the provision of HHT services to the student by the CCPS, dated September 9, 2013;
- h. Correspondence to the student's parents from the CCPS, dated October 9, 2013;
- i. IEP, dated October 11, 2013 and written summary of the October 11, 2013 IEP team meeting;
- j. Verification of the student's need for HHT services, made by the student's private psychiatrist on November 8, 2013 and recommendations for transitioning the student back to school, with facsimile cover sheet reflecting that the documents were sent to the school staff on November 8, 2013;
- k. Email correspondence from the IEP Case Manager to the student's mother, dated November 8, 12, and 20, 2013;
- l. Email correspondence between the student's mother and the school staff, dated November 24, 2013, December 2, 2013, and January 2, 22, 23, and 24, 2014;
- m. Email correspondence between the IEP Case Manager and the student's mother, dated November 24 and 26, 2013 and December 2, 2013;
- n. Email correspondence between the IEP Case Manager and the student's mother, dated December 4 and 5, 2013;
- o. Email correspondence between the IEP Case Manager and the student's mother, dated January 2, 2014;
- p. Email correspondence between the IEP Case Manager and the student's mother, dated January 8 and 9, 2014;
- q. Email correspondence from the student's mother to the school staff, dated January 24, 2014;
- r. IEP, dated January 31, 2014 and written summary of the January 31, 2014 IEP team meeting;
- s. Receipt of Parents Rights Document, signed by the student's mother and dated January 31, 2014;
- t. Correspondence from XXXXXXXXXXXX to the CCPS, dated February 26, 2014; and
- u. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on June 10, 2014.

BACKGROUND:

The student is seventeen (17) years old, is identified as a student with Autism under the IDEA, and receives special education and related services (Doc. r).

From September 9, 2013 through November 19, 2013, the CCPS approved of the provision of Home and Hospital Teaching (HHT) services to the student based upon an emotional condition that prevented her from attending school (Docs. g and u).

From November 20, 2013 through March 3, 2014, the student was enrolled in the XXXXXXXX XXXXXXXX (XXXXXXXXXX), but did not attend school (Docs. l and u).

Since March 4, 2014, the student has attended XXXXXXXXXX, a nonpublic, separate special education school, where she has been placed by the CCPS as a result of a change in educational placement made by the IEP team on January 31, 2014 (Docs. r, t, and u).

During the period of time addressed by this investigation, the student's parents participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. f, i, r, and s).

ALLEGATION #1A VERIFICATION OF THE NEED FOR HHT SERVICES

FINDINGS OF FACTS:

1. On August 30, 2013, while the student was enrolled in the XXXXXXXXXXXXXXXX, her private psychiatrist provided the school system staff with verification that she was unable to attend school due an emotional condition. The verification states that the psychiatrist was unable to anticipate the date of the student's return to school at that time (Doc. d).
2. On September 9, 2013, the CCPS approved of an application made by the student's parents for her to receive Home and Hospital Teaching (HHT) services based on the verification of need by the student's private psychiatrist (Docs. c and g).
3. On November 8, 2013, the student's private psychiatrist completed a "Reverification Form" stating that the student continued to require HHT services based on an emotional condition, and that it was anticipated that the student would return to school on November 20, 2013 (Doc. j).
4. The student was provided with HHT services until November 20, 2013 (Doc. u).

DISCUSSION/CONCLUSIONS:

The provision of Home and Hospital Teaching (HHT) services is to occur only when a school psychologist, licensed physician or psychiatrist provides verification that a student is unable to attend school due to a physical or emotional condition. The continuation of HHT services beyond sixty (60) calendar days of the initial determination of eligibility requires verification that the student continues to have a physical or emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.04).

Based on the Findings of Facts #1 - #4, the MSDE finds that, while the student was provided with HHT services beyond sixty (60) calendar days of the initial determination of eligibility, there is documentation of verification of the need for those services during the entire period of time that the services were provided. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATIONS #1B AND #1C DEVELOPMENT OF A PLAN TO RETURN THE STUDENT TO A SCHOOL-BASED PROGRAM AND DETERMINATION OF THE EDUCATIONAL PLACEMENT

FINDINGS OF FACTS:

5. On October 11, 2013, the IEP team convened and developed a plan for the student's transition back to XXXXXXXXXXXXX. However, the student's mother expressed concern that the plan may not be successful because the student may not have adjusted to new medication being prescribed within the timeframe anticipated in the plan. The documentation of the meeting reflects that, in response to this concern, the team decided that the school staff would communicate with the student's doctor in order to determine when the transition could begin and to obtain the doctor's input on how the transition should occur. In response to an inquiry by the student's mother, the IEP team also discussed that it would reconvene when the student returned to school in order to review the IEP (Doc. i).
6. Along with the "Reverification Form" submitted on November 8, 2013 reflecting that the student could return to school on November 20, 2014, the student's private psychiatrist submitted recommendations for the student's transition back to school. The recommendations included modification of the student's schedule so that she would begin attending only the first two (2) periods of the school day. On the same date that this information was received, the school staff sent electronic mail (email) correspondence to the student's mother requesting that she provide proposed dates for an IEP team meeting to plan for the student's return to school on November 20, 2013 (Docs. h, j, and k).

7. There is no documentation that the student's mother responded to the November 8, 2013 email correspondence (Review of correspondence between the parents and the school staff).
8. On November 12, 2013, the school staff sent another email correspondence to the student's mother proposing dates of November 15 and 18, 2013 for the IEP team meeting (Doc. k).
9. There is no documentation that the student's mother responded to the November 12, 2013 email correspondence (Review of correspondence between the parents and the school staff).
10. On November 20, 2013, the school staff sent a third email correspondence to the student's mother stressing the need to convene the IEP team and proposing dates of December 4, 5, and 6, 2013. In that correspondence, the IEP Case Manager indicated her understanding that the student was to return to school that day on a modified schedule as was recommended by her private psychiatrist (Docs. j and k).
11. On November 24, 2013, the student's mother responded that December 6, 2013 was a convenient date for the IEP team meeting, and that she had decided that the student would remain home "until there is an approved IEP with a transition plan"¹ (Doc. m).
12. On November 26, 2013, the school staff confirmed the date of December 6, 2013 with the student's mother (Doc. m).
13. On December 2, 2013, the student's mother sent email correspondence to the school staff indicating that she assumed that the date of December 6, 2013 would no longer work for the school staff since she had not received a written meeting notice or copies of documents that would be considered at the meeting. The student's mother requested that the school staff provide her with new proposed dates for the meeting (Doc. m).
14. The IEP team meeting was rescheduled for December 17, 2013. At that meeting, the IEP team began its review and revision of the IEP. The student's parents reported that the student had been exhibiting increased anxiety and requested that the CCPS place the student in a nonpublic separate special education school in order to address her need for a smaller, more structured educational setting. The team decided to reconvene with the participation of CCPS Nonpublic Placement Office staff to consider the parents' request (Docs. n and r).

¹ There is correspondence between the student's mother and the school staff between November 24, 2013 and January 21, 2014, which documents that the student's mother made requests for educational services to be provided to the student in the home. The correspondence reflects that the school staff informed the student's mother that this was not permissible without verification that the student was unable to attend a school-based program (Doc. l).

15. The IEP team was scheduled to reconvene on January 3, 2014. However, on January 2, 2014, the student's mother sent email correspondence to the school staff indicating that she assumed that the January 3, 2014 date would no longer work for the school staff since she had not received a copy of the documents to be considered at the meeting. On the same date, the school staff responded that there were no documents to be considered at the meeting. The student's mother informed the school staff that she would not participate in the scheduled meeting without being provided with an updated draft IEP and transition plan, and requested that the school staff provide her with new proposed dates for the meeting (Doc. o).
16. The IEP team meeting was rescheduled for January 31, 2014. At that meeting, the IEP team considered the report of a private observation of the student, which the parents provided to the school staff on January 24, 2014. Based on the observation report and reports of private evaluations obtained by the parents, the IEP team determined that the LRE in which the IEP can be implemented is a nonpublic separate special education school. The parents expressed concern that the student had not received services since November 19, 2013. However, there is no documentation that the IEP team discussed a plan for transitioning the student to the nonpublic school setting, or that it considered additional supports that could be put into place in a public school setting until the nonpublic school placement was obtained on March 4, 2014 (Docs. p, q, and r).

LEGAL REQUIREMENTS:

Upon receipt of the verification of the need for HHT services for a student with a disability, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit instruction to take place with other students. Therefore, HHT services are intended to be provided for a short time while the IEP team develops a plan to assist the student to return to a school-based program (COMAR 13A.05.01.10).

When the period of treatment or convalescence ends for a student who was provided with HHT services, the IEP team must review and revise the IEP and determine the appropriate placement in the LRE (COMAR 13A.05.01.10).

In order to ensure that parents are present at each IEP team meeting, the public agency must schedule the meeting at a mutually agreed upon time and place. The IDEA does not indicate the extent of the effort that a public agency must make to schedule an IEP team meeting at a mutually agreed upon time and place. However, the only situation that is mentioned in the IDEA in which an IEP team meeting can be conducted without a parent is when the public agency is unable to convince the parent to participate (34 CFR §300.322).

The United States Department of Education, Office of Special Education Programs (OSEP) has stated that the public agency must “make a good faith effort to reach an agreement with the parents concerning the scheduling of IEP team meetings.” However, the OSEP also explained that this does not preclude the public agency from considering its own scheduling needs (*Letter to Anonymous*, 18 IDELR 1303, May 22, 1992).

The Courts have reached different conclusions about the efforts that must be made to schedule an IEP team meeting at a mutually convenient time and place based upon the specific facts of each case. There have been cases where a Court has held that the decision to prioritize strict deadline compliance over parental participation is unreasonable (*Doug C. v. State of Hawaii, Department of Education*, 61 IDELR 91 (9th Cir. 2013)). In other cases, Courts have found that there are circumstances in which accommodating a parent’s schedule would do more harm to the student than proceeding without the parent’s presence at the meeting (*A.M. v. Monrovia*, 55 IDELR 215 (9th Cir. 2010)).

In this case, the complainant alleges that the CCPS never completed a transition plan and “unreasonably delayed the process of reviewing and revising [the student’s] IEP to facilitate her return to school” (Doc. u).

DISCUSSION/CONCLUSIONS:

Allegation #1B Development of a Plan to Return the Student to a School-Based Program

Based on the Finding of Fact #5, the MSDE finds that there is documentation that the IEP team developed a plan for the student’s return to XXXXXXXXXXXXX on October 11, 2013, but at the request of the parents, agreed to revisit the plan after obtaining input from the student’s private psychiatrist.

Based on the Findings of Facts #6 - #16, the MSDE finds that the documentation does not support the allegation that the school system unreasonably delayed holding an IEP team meeting to review the transition plan once input from the private psychiatrist was obtained. Based on those Findings of Facts, the MSDE finds that the delay resulted from the efforts that were made to ensure that the IEP team meeting was held at a time that was mutually convenient to both the school system staff and the parents.

However, based on the Finding of Fact #16, the MSDE finds that there is no documentation that the IEP team considered how the student would transition to a nonpublic special education school after determining that a change in educational placement was required on January 31, 2014. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #1c Determination of the Educational Placement

Based on the Findings of Facts #6 - #16, the MSDE finds that the IEP team determined the student's placement following the provision of HHT services. Based on those Findings of Facts, the MSDE further finds that the documentation does not support the allegation that the school system unreasonably delayed holding an IEP team meeting to determine the student's educational placement.

However, based on the Finding of Fact #16, the MSDE finds that the CCPS did not ensure that the IEP team considered the additional supports needed in the public school setting at the January 31, 2014 meeting in order to offer the student an appropriate educational placement while awaiting a nonpublic placement. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation and that the student was not offered a Free Appropriate Public Education (FAPE) from January 31, 2014 until March 4, 2014, when an appropriate placement was obtained.

**ALLEGATION #2 RESPONSE TO THE JULY 1, 2013 REQUEST FOR
AN IEP TEAM MEETING**

FINDINGS OF FACTS:

17. On July 1, 2013, the student's mother sent the school principal requests for access to the student's educational record and for an IEP team meeting to review the IEP. On the same date, the school principal responded that the IEP Case Manager would be assisting her upon her return from vacation the following week (Doc. a).
18. On July 7, 2013, the student's mother again sent the school principal a request for an IEP team meeting, indicating her belief that she had not been provided with a response to the request made on July 1, 2013 (Doc. a).
19. On July 9, 2013, the school principal responded that the IEP Case Manager was working on obtaining proposed dates for the meeting (Doc. a).
20. On July 17 and 23, 2013, the student's mother reiterated her request for an IEP team meeting to be scheduled (Doc. a).
21. On July 24, 2013, the IEP Case Manager contacted the student's mother and explained that she was awaiting the results of an assessment that had been conducted and that the meeting would be scheduled upon receipt of the assessment report (Doc. a).
22. On August 7, 2013, the IEP Case Manager requested proposed dates for the IEP team meeting from the student's mother, indicating that the assessment report was completed (Doc. b).

23. There is documentation that efforts were made by the school system staff and the student's mother to find a mutually convenient date for the IEP team meeting, which resulted in the meeting being held on September 9, 2013 (Docs. b and e).

DISCUSSION/CONCLUSIONS:

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of a FAPE. As stated above, if the IEP team is convened, the meeting must be held at a mutually agreed upon time and place (34 CFR §§300.322, .324, .503, and COMAR 13A.05.01.08).

In this case, the complainant asserts that the school staff did not respond to the parents' request for an IEP team meeting in a reasonable manner (Doc. u). Based on the Findings of Facts #17 - #23, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific:

The MSDE requires the CCPS to provide documentation by November 1, 2014 that the IEP team has determined the services to be provided to the student within one (1) year of the date of this Letter of Findings to remediate the lack of the offer of an appropriate educational placement from January 31, 2014 until March 4, 2014.

School-Based:

The MSDE requires the CCPS to provide documentation by February 1, 2015 of the steps taken to determine whether the violations identified in this Letter of Findings represent a pattern of noncompliance at the XXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Wayne Steedman, Esq.
Mr. Russell Gray
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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting the Family Support and Dispute Resolution Branch, MSDE at (410) 767-0255.

Please be advised that both the complainant and the CCPS 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents 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: am

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