



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

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November 25, 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: #15-020

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 September 29, 2014, the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants alleged that the Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and applicable State regulations with respect to the above-referenced student.

The MSDE investigated the allegations listed below.

1. The CCPS did not follow proper procedures when amending the student’s October 14, 2013 Individualized Education Program (IEP), in accordance with 34 CFR §§300.322 and .324. Specifically, the complainants alleged that this change was made without convening an IEP team meeting or obtaining their agreement to make the change.

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2. The CCPS has not developed an IEP that addresses the student's academic needs, since September 29, 2013,¹ in accordance with 34 CFR §§300.101 and .324. Specifically, the complainants alleged that the IEP does not include the special education instruction and accommodations and supports necessary to assist the student with progressing in the general education curriculum.
3. The CCPS has not ensured that the student has been provided with the supplementary aids, services, accommodations, and supports required by the IEP since September 29, 2013,¹ in accordance with 34 CFR §§300.101 and .323.
4. The CCPS did not follow proper procedures when determining and providing Extended School Year services for the summer of 2014, in accordance with 34 CFR §§300.101,.106,.114,.323,.324 and COMAR 13A.05.01.03B(26) and .08B.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 29, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
3. On October 3, 2014, Ms. Moyo conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
4. On October 24, 2014, 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 the CCPS of the allegations and requested that the CCPS review the alleged violations.
5. On September 28, 2014, the student's mother sent Ms. Moyo additional documentation, via email, for consideration during the investigation.
6. On October 7 and 9 - 11, 2014, the student's mother sent Ms. Moyo additional documentation, via email, for consideration during the investigation.
7. On October 27, 2014, the student's mother sent correspondence to Ms. Moyo, via email, including information related to the allegations being investigated.

¹ The complaints included allegations of violations that occurred more than a year before the date it was received. The complainants were advised, in writing, on October 24, 2015 that this office may only investigate allegations of violations which occurred not more than one (1) year prior to the receipt of the State complaint (34 CFR §300.153).

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8. On October 30, 2014, Ms. Moyo and Ms. Sharon Floyd, Complaint Investigator, MSDE conducted a site visit at the XXXXXXXXXXXXXXXXXXXX to conduct a review of the student's educational record and interviewed the following school staff:
 - a. XXXXXXXX, Principal;
 - b. XXXXXXXXXXXX, Assistant Principal;
 - c. XXXXXXXXXXXX, Humanities Teacher;
 - d. XXXXXX, Special Education Instructional Consultant; and
 - e. XXXXXX, Special Education Teacher.

Mr. Wayne Whelan, Coordinator of Compliance, CCPS and Ms. Gretchen Rockafellow, Supervisor Special Education Services, CCPS attended the site visit as representatives of the CCPS and to provide information on the CCPS policies and procedures, as needed. On the same date, the CCPS provided the MSDE with documentation from the student's educational record.

9. On November 6, 2014, the CCPS staff provided the MSDE staff with additional documentation from the student's educational record.
10. 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 September 29, 2014;
 - b. IEP and prior written notice, dated January 17, 2013;
 - c. Behavior Intervention Plan (BIP) in effect since January 17, 2013;
 - d. Speech/language services logs maintained since September 2013;
 - e. Correspondence from the school staff to the complainant, dated September 16, 2013;
 - f. IEP and prior written notice, dated October 24 and 31, 2013;
 - g. IEP team meeting notes/amendment and prior written notice, dated March 6, 2014
 - h. IEP and prior written notice, dated May 16, 2014;
 - i. Student's report card from the 2013-2014 school year;
 - j. ESY services log from June 30, 2014 to July 31, 2014;
 - k. Emails between the special education staff and the complainants from December 3, 2013 to September 12, 2014;
 - l. Notice and consent for assessment and IEP team meeting notes, dated September 19 and 28, 2014;
 - m. Prior written notice, dated November 3, 2014;
 - n. Signed receipts of IEP, dated September 3, 2014 and November 3, 2014;
 - o. Daily behavior chart maintained during the 2013 - 2014;

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- p. Samples of modified and unmodified tests, assignments, grade sheets, adapted lessons, and word banks used during the 2013-2014 and 2014-2015 school years;
- q. Excerpts from the student daily behavior log since October 2014;
- r. Excerpts from the student's Edmark reading intervention program lesson plan/record book used during the 2013-2014 and 2014-2015 school years;
- s. Samples of the student's reading intervention assignments completed during the 2013-2014 and 2014-2015 school years;
- t. Sample of the visual aids and graphic organizers used during the 2013-2014 and 2014-2015 school years;
- u. Student class schedules from the 2013-2014 and 2014-2015 school years; and
- v. Excerpts from the special education teachers lesson plan book from the 2013-2014 and 2014-2015 school years.

BACKGROUND:

The student is eleven (11) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX). She is identified as a student with an Other Health Impairment under the IDEA related to the diagnoses of XXXXXXXXX Syndrome and Attention Deficit Hyperactivity Disorder. During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a, b, f - i, l - n, and u).

ALLEGATIONS #1 AND #2: PROPER PROCEDURES WHEN AMENDING THE IEP AND ADDRESSING THE STUDENT'S ACADEMIC NEEDS

Findings of Facts:

1. The January 17, 2013 IEP indicates that while the IEP team discussed that the student's academic skills are significantly below those of her same-aged peers despite the fact that "significant modifications" are made to instruction and assessments, there was no data that documents that the student has a significant cognitive disability (Doc. b).
2. There is documentation that the student has been struggling to understand the material presented and that the school staff have been attempting to convince the complainants to consent to cognitive testing in order to obtain data to determine whether the student has a cognitive disability (Docs. a, b, f, g, k, and l).
3. On September 13, 2013, the school staff met with the complainants and discussed, that without data that the student has a cognitive disability, the student would be required to demonstrate mastery of the general education curriculum. The school staff shared with the complainants that they were concerned that even with accommodations and

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supplementary aids and services that are provided, the student will be unable to demonstrate mastery of the general curriculum as the curriculum becomes more complex. The complainants expressed their desire for the student to be able to earn a Maryland High School Diploma by demonstrating mastery of a modified curriculum, and the school staff explained that if the student is unable to progress through the general curriculum, she will need to work towards earning a Certificate of Program Completion (Doc. e).

4. On October 24 and 31, 2013,² the IEP team convened to review the IEP and to address the student's lack of expected progress towards achieving the annual goals in math and written language. The IEP team meeting notes indicate that the IEP team reviewed the student's IEP "page-by-page" and determined, at that time, the revisions that would be made to the IEP. During the meeting, the team considered information from the complainants and reports from the teachers about the student's difficulty accessing the general education curriculum even with the provision of accommodations and supports. The student's math teacher reported that the student requires assistance with each individual step of a math problem and also with determining the answer to the problem. The student's teachers reported that the student is "shutting down" and struggling with reading even with text and goals adjusted to her level (Doc. f).
5. The school-based members of the IEP team indicated that, without a cognitive assessment, the team was unable to determine the student's cognitive ability, which is information that they believe is necessary to determine whether that the student requires modified achievement standards and content in order to access the general education curriculum as it becomes more advanced. The student's mother indicated that consent would not be provided for a cognitive assessment to be conducted due to concerns that the data will result in changes being made in the student's educational program. She indicated that instead the IEP team should focus on accommodations and encourage the student to do her best (Doc. f).
6. Based on its review of the current data, the team revised the student's annual IEP goals to include additional objectives in the areas of math calculation, written language mechanics, and receptive and expressive language skills. The IEP team also revised the IEP to reflect that the one-to-one adult support was required "to help address the student's challenges with safety, student participation with peers and during instruction, and with maintaining focus." The team also added supports, including chunking and wait time, to allow the student extra time to provide answers to questions. The student's teachers agreed to meet informally with the complainants on a monthly basis to review the student progress in reading (Doc. f).

² There is no documentation that an IEP team meeting was held on October 14, 2013 as alleged in the complaint. However, an IEP team meeting began on October 24, 2013 and was completed on October 31, 2013 (Docs. a, f, and review of the educational record).

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7. On September 19, 2014, the IEP team convened to conduct a three (3) year reevaluation and recommended that the student be tested in the areas of academics, communications, functional/adaptive performance, intellectual/cognitive functioning, motor skills, and assistive technology, and that a classroom observation be conducted. However, the complainants, again, did not consent to cognitive testing for the student (Doc. 1).

Discussion/Conclusions:

Allegation #1 Review and revision of the IEP

The IEP must be reviewed and revised through a meeting of the IEP team unless, after the annual review, the parents and the school system staff agree to revise the IEP without convening the IEP team (34 CFR §§300.305, .321, and .324). In this case, the complainants allege that revisions were made unilaterally by the school system staff following the IEP team meeting held in October 2013. The complainants specifically assert that the school staff unilaterally decided that the student does not require modified achievement standards and content to access the general curriculum (Doc. a).

Based on the Findings of Facts #1 - #7, the MSDE finds that the documentation does not support this allegation and that there is documentation that the decisions the team made were made with the input of the complainants as members of the IEP team. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2 IEP That Addresses the Student's Identified Needs

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. 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. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

If the IEP team determines that a reevaluation is needed to ensure that the student's needs have been identified and addressed, the IEP team must review the existing data, and on the basis of that review and input from the parents, identify what additional data, if any, is needed to determine the student's eligibility and educational needs. If the IEP team determines that additional data is required, the public agency must ensure that results of assessment procedures are used by the IEP team in reviewing and as appropriate, revising the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

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However, the public agency must obtain informed parental consent before conducting assessments as part of a reevaluation. If the parent refuses to consent, the public agency may, but is not required to, seek consent through a due process hearing. If the public agency chooses not to request a due process hearing, it does not violate the obligation to ensure that the IEP team has all of the necessary data to address the student's needs (34 CFR §300.300).

Based on the Findings of Facts #1 - #7, the MSDE finds that the CCPS has ensured that the IEP team has considered the existing data, has determined the additional data needed, and has sought consent from the complainants to obtain that data. Based on the Findings of Facts #1 - #7, the MSDE further finds that the IEP team has reviewed and revised the IEP consistent with the data. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #3: PROVISION OF THE ACCOMMODATIONS AND SUPPORTS REQUIRED BY THE IEP

Findings of Facts::

8. The IEP requires that the student be provided with accommodations and supports to address her academic and behavioral challenges while in school. The IEP specifically requires instructional and testing accommodations, including audio recording or a human reader, scribe, calculation devices, extended time, frequent breaks, and reduced distractions (Docs. a, b, f – h, and m).
9. The IEP also includes supplementary aids, services, program modifications, and supports provided on a daily basis by the general and special education teachers to assist the student with accessing the general curriculum. The instructional supports required by the IEP include the provision of a desk and chair suited for the student's height, additional time to respond to questions, redirection, frequent and immediate reinforcement and advance notice of transitions (Docs. b, f – h, and m).
10. The IEP further requires that the student be provided with the use of a visual timer during all activities, access to a keyboard and provision of visuals, study guides and class notes, graphic organizers, "sentence starter", fill-in-the-blank worksheets, a word bank when completing assignments, verbal prompts, "wait time" to allow the student time before providing answers to questions, and chunking of assignments into smaller units with fewer items, if appropriate. The IEP also requires that the student be provided with "one-to-one" adult support during her classes and during transitions to ensure her with safety, encourage student participation with peers and during instruction, and help her to maintain focus during class (Docs. b, f – h, and m).
11. The student also has behavioral supports included in the Behavioral Intervention Plan (BIP) to assist her with following directions and focusing during class, including breaks

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and rewards. The school staff also agreed to utilize social stories with the student to demonstrate the appropriate behaviors for school and when socializing with peers (Docs. b, c, f – h, and m).

12. The student is also provided with additional support in reading through the use of reading intervention program. There is documentation that the student has been provided with reading support using the Edmark program and the Frame Your Thoughts Program to improve her reading fluency and comprehension (Docs. Docs. a, b, f – h, m, r, s, and v).
13. There is documentation that since September 29, 2013, the student has been provided with the use of word banks, shortened assignments and tests with limited choices, visuals, color-coded posters, use of a calculator, graphic organizers, cues and prompts, chunking of assignments verbatim reading, sentence starters, redirection, and adult support to assist her with completing assignments, remaining focused during class, and displaying appropriate behavior (Docs. a, b, f – i, m, p, and q).
14. There is documentation that a daily behavioral chart is maintained by the additional adult support and documents the student's behavior throughout the day. There is also documentation included in the special education teacher's daily lesson plans indicating the supports that are used with the student and the student's progress on that day with the use of the supports, including the reading intervention programs (Docs. o and q).
15. There is documentation that since the start of the 2014-2015 school year, the student's general education teachers and the special education teacher have received copies of the student's IEP, including any revision that have been made to the IEP. There is also documentation of a "modification/accommodations guide" which was created by the special education teacher and provided to the general education teachers to ensure that they are made aware of the supports that are required by the IEP (Docs. n and interview with school staff).
16. There is documentation that the complainants informed school staff that they disagree with the manner in which the accommodations and supports are being provided to the student in the general education classroom by the general education teachers. The IEP team meeting summaries indicate that the team has considered the complainants' concerns regarding the provision of accommodations and supports and made revisions to how some of the supports are provided in response to their requests (Docs. a, b, f – h, k and m).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that a student with an IEP is provided with the special education and related services required by the IEP (34 CFR §§300.101, and .323). The IDEA does not,

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however, require the IEP to include the particular instructional methodology. Typically, an IEP lacks this type of specificity so that educators can use many different methods and techniques to meet a student's specific educational needs. However, if the IEP team determines that a specific methodology is necessary in order to provide a FAPE, the IEP must include those methods (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46665, August 14, 2006).

As stated above, in developing each student's IEP, the public agency must ensure that the IEP team considers the concerns of the parents for enhancing the education of the student (34 CFR §300.324). In this case, the complainants allege that the general education teachers are not providing the student with the accommodations and supports required by the IEP in the general education classroom in the manner that the complainants feel would be best for the student.

Based on the Findings of Facts #8 - #16, the MSDE finds that there is documentation that the student has been provided with the accommodations and supports required in the general education classroom by both the general and special education teachers and that the IEP team has considered the complainants' concerns about the manner in which the supports are provided. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

**ALLEGATION #4: EXTENDED SCHOOL YEAR (ESY) SERVICES
DETERMINATION FOR THE SUMMER OF 2014**

Findings of Facts::

17. On March 6, 2014, the IEP team met to determine whether the student required ESY services for the summer of 2014. The IEP team documented that it considered the information about the student's classroom performance from her teachers, the concerns of the complainants, and each of the factors listed below:
 - a. whether the student's IEP includes annual goals related to critical life skills;
 - b. whether there was a likely chance of substantial regression of critical life skills;
 - c. the student is demonstrating a degree of progress toward mastery of IEP goals related to critical life skills;
 - d. whether there was a presence of emerging skills or breakthrough opportunities;
 - e. whether there were significant interfering behaviors;
 - f. whether the nature and severity of the student's disability; and
 - g. whether there were special circumstances that require the provision of ESY services (Docs. g and j).

18. At the March 6, 2014 IEP team meeting, the IEP team determined that the IEP includes annual goals related to critical life skills and that, due to the nature and severity of her disability, the student would likely experience a substantial regression in skills achieved

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during the summer break that could not be recovered without the provision of ESY services (Doc. g).

19. The team determined that, during ESY, the student would work on the IEP goals in math, writing, reading and communications and would receive special education instruction for three (3) hours per week for four (4) weeks during the summer. The IEP indicates that the student would be provided with special education instruction in both the special and general education classrooms by the special education teacher and the speech/language pathologist as she does during the regular school year (Docs. g and h).
20. There is documentation and the parties report that the student received ESY services at XXXXXXXXXXXXX from a special education teacher on a one-to-one basis in a separate special education classroom. However, there is no documentation indicating that the student received ESY in both the general and special education classrooms as required by the IEP (Docs. a, j, and interview with school staff).

DISCUSSION/CONCLUSIONS:

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)). When determining whether ESY services are required for the provision of FAPE, the IEP team must consider all of the factors below.

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08B (2) (b)).

After considering the required factors, the IEP team must decide whether the benefits that a student receives from the education program during the regular school year will be *significantly jeopardized* if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002)) (emphasis added). The school system must provide written notice to the parent of the team's decisions regarding the

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student's need for ESY services. This includes informing the parent of the decisions and providing the parent with an explanation of the basis for the decisions (34 CFR §300.503(b)).

Based on the Findings of Facts #17 - #20, the MSDE finds that the IEP team considered all of the required factors and the complainant's concerns, and determined that the student required ESY services. However, based on the same Findings of Facts, the MSDE finds that there is no documentation that the student was provided with ESY services in the placement required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the CCPS to provide documentation by February 1, 2015 that the IEP team convened an IEP team meeting to determine whether there has been any negative impact on the student's ability to benefit from her program as a result of the ESY services violation identified in this Letter of Findings.

If the team determines that there has been a negative impact, then the IEP team must also determine the amount and nature of services necessary to compensate the student for the loss of services resulting from the violation that has been identified. The CCPS must provide to the MSDE, by February 1, 2015 documentation that the above actions have been taken and that the IEP team has determined the services to be provided to the student to remediate the loss of services as a result of the violations identified and a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

The CCPS must ensure that the complainants are provided with proper written notice of the IEP team's decisions, including the basis for those decisions, and a description of the data and the options considered, 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 to file a due process complaint, in accordance with the IDEA.

Documentation of all corrective actions 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 Ms. Bonnie Preis, Dispute Resolution Consultant, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE at (410) 767-0255.

Please be advised that the CCPS and the complainants have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with

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the findings of fact 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 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/km

cc: Stephen H. Guthrie
Russell Gray
Wayne Whalen
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Dori Wilson
Anita Mandis
Koliwe Moyo

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bc: Donna Riley
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Kim Marchman
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File