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State Superintendent of Schools

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January 29, 2015

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Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
P.O. Box 2770
La Plata, Maryland 20646

RE: XXXXX
Reference: #15-035

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On December 8, 2014, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Charles County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the CCPS has not ensured that the student has been provided with the accommodations and supplementary aids and services required by the Individualized Education Program (IEP) in his language arts class since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On December 10, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Arden Sotomayor, Director of Special Education, CCPS, and Ms. Marsha Diaz, Director for Special Education Compliance, CCPS.

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2. On December 11, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, confirmed receipt of the complaint with the complainant by telephone.
3. On December 15, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the CCPS of the allegation and requested that the school system review the alleged violation.
4. On December 18, 2014 and January 8, 2015, Ms. Mandis conducted telephone interviews with the complainant.
5. On January 8, 2015, the CCPS provided the MSDE with a written response to the State complaint.
6. On January 22, 2015, Ms. Sandi Marx, Complaint Investigation Consultant, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record. Ms. Diaz and Ms. Shayna Gold, Instructional Specialist for Compliance, CCPS, attended the site visit as representatives of the CCPS and to provide information on the CCPS policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated April 24, 2014;
 - b. IEP, dated December 12, 2014;
 - c. Documentation of a review of the student's IEP by his teachers on August 21, 2014 and December 17, 2014;
 - d. Daily schedule of the student's special education teacher and the instructional assistant in his language arts, math, social studies, and math classes;
 - e. Probationary Contract, signed by the student on December 3, 2014;
 - f. Correspondence from the complainant containing an allegation of violations of the IDEA, received by the MSDE on December 8, 2014;
 - g. The CCPS' written response to the State complaint, received by the MSDE on January 8, 2015; and
 - h. The school system's calendar for the 2014-2015 school year.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with a Specific Learning Disability (SLD) under the IDEA, and has an IEP that requires the provision of special education instruction. The student attends XXXXXXXXXXXXXXXXXXXX (Docs. a and b).

During the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. a and b).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2014-2015 school year was developed on April 24, 2014. It requires the provision of special education instruction in the general education classroom in the areas of language arts, social studies, math, and science by a general education teacher, with the assistance of either a special education teacher or an instructional assistant. It also requires the following instructional and testing accommodations and supplementary aids and services:
 - a. Computer access with software prediction and dictionary;
 - b. Human reader or audio recording for verbatim reading of entire tests with part of all of the text reread to ensure his understanding;
 - c. Extended time to complete classwork and homework in order to process and comprehend information, "limited to time and a half;"
 - d. Reduced distractions by providing instruction in small group settings;
 - e. Chunking of assignments into small steps;
 - f. Use of a home/school communication book;
 - g. Use of one (1) binder for all work to assist with organization of materials; and
 - h. Use of a scribe for lengthy writing assignments (Doc. a and review of the audio recording of the April 24, 2014 IEP team meeting).
2. There is documentation that the student's teachers, including his general education language arts teacher, were informed of the requirements of the IEP on August 21, 2014, and that the 2014-2015 school year began on August 25, 2014 (Docs. c and h).
3. On November 24, 2014, the IEP team convened in response to the complainant's concerns about whether the accommodations and supplementary aids and services were being provided as required by the IEP. A review of the audio recording of the November 24, 2014 IEP team meeting reflects that, in response to the complainant's concerns that the student was not receiving sufficient access to adult support, the Special Education Department Chairperson explained that the student's IEP does not require that he be provided with adult assistance from a staff member who is dedicated to working solely with the student. The Special Education Department Chairperson explained that in addition to the general education teacher, there is either a special education teacher or an instructional assistant available to provide support to the student and other students in the classroom (Doc. d and review of the audio recording of the November 24, 2014 IEP team meeting).
4. The CCPS staff report that, for lengthier assignments, the student is pulled into a small group with other students who require verbatim reading in the classroom. They report that, during daily grammar warm-ups, the initial prompt is read to the student, and the student is expected to raise his hand when he completes that portion of the work that has been read to him. If the teacher is working with another student, the student is expected to move ahead without a staff person reading to him. Once a staff member is free to work with the student, any answers that he completed without being read to will be

reviewed. The student is required to go back and work on the questions again with someone reading to him if the answers are incorrect (Doc. g).

5. The teacher's schedules and a review of the audio recording of the November 24, 2014 IEP team meeting reflect that a special education teacher works with the general education teacher in the language arts class. The audio recording reflects that at the meeting, the school staff acknowledged that there was not additional adult support in the student's language arts class from November 17, 2014 to November 20, 2014, while a substitute teacher was being obtained as a result of the resignation of the special education teacher assigned to that class (Doc. d and review of the audio recording of the November 24, 2014 IEP team meeting).
6. At the November 24, 2014 IEP team meeting, the team also discussed that the student was refusing to use the assistive technology devices in the classroom. Based on information from the complainant that the student uses his personal smartphone when completing homework, the IEP team decided that he would use his personal smartphone for its speech to text and spell check features. However, the school staff report that the student refuses to use his personal smartphone device at school (Interview with the school staff and review of the audio recording of the November 24, 2014 IEP team meeting).
7. A review of the audio recording of the November 24, 2014 IEP team meeting reflects that the IEP team decided that the student would also be provided with modification of "lengthy" classwork and homework assignments. While the IEP team did not decide what constitutes lengthy assignments, when the IEP was revised to include this accommodation, it defined this as written assignments over two (2) paragraphs in length (Doc. b and review of the audio recording of the November 24, 2014 IEP team meeting).
8. At the November 24, 2014 IEP team meeting, the IEP team also decided that the student would be provided with the following additional instructional supports:
 - a. Assistance in preparing for the school day;
 - b. Repetition of directions;
 - c. Having the student repeat or rephrase information to ensure his understanding; and
 - d. Provision of notes generated by the teacher or a peer leader (Doc. b and review of the audio recording of the November 24, 2014 IEP team meeting).
9. The written IEP document was not revised to reflect the decisions made by the IEP team on November 24, 2014 until December 12, 2014, and that the student's teachers were not informed of the revisions to the IEP until December 17, 2014 (Docs. b and c).
10. A review of the lesson plans maintained by the student's general education language arts teacher reflects that the teacher repeats directions for the student's entire class. There is also documentation that the substitute special education teacher in the student's language arts class was provided with information about the supports to be provided to the student

(Review of the general education language arts teacher's lesson plans and plans developed for the substitute special education teacher in the language arts class).

11. On December 3, 2014, the student completed a Probationary Contract required for his continued participation in the Advancement Via Individual Determination (AVID) elective.¹ In that Probationary Contract, the student indicated that the reason why he earned a "D" in language arts was because he could not obtain the assistance he needed in the class. In describing the plan for improving his grade, the student stated, "Now that my IEP is being followed having an aide in this class like my other classes have and had last year I will get all As and Bs like last year" (Doc. e).
12. The school staff report that the student earned a "D" in language arts because he is not turning in assignments as required. However, there is no documentation that the student is consistently being provided with assistance in preparing for the school day, that he is being asked to repeat or rephrase information to ensure his understanding, or that he is consistently provided with notes to assist him in completing assignments (Doc. g and interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability is provided with the special education services required by the IEP. In order to do so, the public agency must ensure that the IEP is written clearly with respect to the services that are required and must ensure that each teacher and service provider are informed of their responsibility for implementation of the IEP (34 CFR CFR §§300.101, .320, and .323).

In this case, the complainant alleges that the student does not receive sufficient assistance with verbatim reading in his language arts class. The complainant also alleges that supports, such as modified classwork and use of a scribe, have been required by the program since the April 24, 2014 IEP team meeting, but that these supports have not been provided. The complainant further alleges that conditions are being placed on the use of a scribe that were not discussed at the IEP team meeting (Doc. f).

Based on the Findings of Facts #1 - #8, the MSDE finds that there is no evidence that the IEP team decided that the student's classwork was to be modified prior to the November 24, 2014 IEP team meeting. However, based on those Findings of Facts, the MSDE also finds that the IEP requires clarification regarding the manner in which the supports, such as verbatim reading, is to be provided.

In addition, based on the Findings of Facts #9 - #12, the MSDE finds that the CCPS has not ensured that, following the November 24, 2014 meeting, the student's teachers and service providers were informed of the IEP requirements in a timely manner. Furthermore, based on

¹ The AVID system is a national program in which participating schools provide selected students with an elective course that is designed to give them the support needed to succeed and prepare for postsecondary opportunities (<http://www.avid.org>).

these Findings of Facts, the MSDE finds that the CCPS has not ensured that the supports required by the IEP have been consistently provided in the language arts class. Therefore, this office finds that violations have occurred with respect to the allegation.

ADDITIONAL ISSUE:

The public agency must ensure that the IEP team reviews the IEP periodically, but at least annually, to determine whether the annual IEP goals are being achieved. In addition, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address information about the student and the student's anticipated needs (34 CFR CFR §300.324).

Based on the Findings of Facts #3, #6, and #11, the MSDE finds that, although there is information, including concerns about the sufficiency of the support that is required by the IEP and the student's refusal to accept some of the supports that are being offered, there is no documentation that the IEP team has convened to address those concerns. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the CCPS to provide documentation, by April 1, 2015, that the IEP team has reviewed and revised the IEP, as appropriate, to ensure that it addresses the student's needs and that it is written clearly with respect to the supports to be provided to the student. The IEP team must also determine the amount and nature of services to be provided to the student within one (1) year of the date of this Letter of Findings in order to remediate the violations identified.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the CCPS by Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Aux can be reached 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. Pending the decision on a

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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 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/am

c: Kimberly Hill
Marsha Diaz
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XXXXXXXXXXXX
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