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State Superintendent of Schools

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April 9, 2015

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Mrs. Sarah J. Farr
Director of Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 21921

RE: XXXXX
Reference: #15-045

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 January 28, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Cecil County Public Schools (CCPS) 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 CCPS did not ensure that reports of the student’s progress towards achievement of the annual IEP goals have been made since January 28, 2014, in accordance with 34 CFR §§300.101, .320 and .323.

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2. The CCPS has not ensured that the student has been provided with the special education services required by the Individualized Education Program (IEP) since January 28, 2014, in accordance with 34 CFR §§300.101, .323 and .32. Specifically, it is alleged that:
 - a. The CCPS has not ensured that the student's teachers and service providers had been informed of their specific responsibilities for implementing the IEP at the start of the 2014-2015 school year; and
 - b. The CCPS did not ensure that the student has been provided with the accommodations and supplementary aids and services required by the IEP since the start of the 2014-2015 school year.
3. The CCPS has not ensured that the IEP addressed the student's behavioral needs since January 28, 2014 in accordance with 34 CFR §§300.324.
4. The CCPS did not follow proper procedures when conducting a reevaluation during the 2014-2015 school year and determining that the student no longer meets the criteria for identification as a student with a disability, in accordance with 34 CFR §§300.303-.305.

On March 24, 2015, the MSDE informed the parties in writing of an extension to the complaint investigation timeline to April 10, 2015. The basis for this extension of time resulted from the need to review whether the allegations identified in the original State complaint had been resolved through a settlement agreement reached by the parties during the investigation process. Following this review, the MSDE determined that it remained appropriate to investigate the original allegations identified by the complainant.

INVESTIGATIVE PROCEDURES:

1. On January 28, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations being investigated. On the same date, the MSDE notified the CCPS of the allegations and requested that the CCPS review the alleged violations.
2. On January 30, 2015, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On February 13, 2015, Ms. Floyd conducted a review of the student's educational record at the Cecil County Public Schools Board of Education. Ms. Samantha Wallace, Program Facilitator for Special Education Compliance, CCPS, and Ms. XXXXXXXXXXXX, Special Education Coordinator, XXXXXXXXXXXXXXXXXXXX, CCPS, attended the site visit as representatives of the CCPS and to provide information on the CCPS policies and procedures, as needed.

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4. On February 19, 2015, the CCPS sent a letter to MSDE in response to the State complaint.
5. On February 20, 23, and 24, 2015, the CCPS provided the MSDE with documents to be considered.
6. On February 25, 2015, Ms. Floyd conducted a telephone interview with the complainant about the allegations being investigated.
7. On March 2, 2015, the CCPS provided the MSDE with additional documents for consideration.
8. On March 11, 2015, Ms. Floyd requested additional documents from the CCPS.
9. On March 12, 13, 16, 20, 23-27, and 30 2015, the CCPS provided the MSDE with additional documents for consideration.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Receipt of procedural safeguards, dated October 2, 2014;
 - b. Testing and classroom accommodations charts completed by the case manager;
 - c. Psychological assessments, dated May 14, 2008, December 2, 2009, December 16, 2011, and December 3, 2014;
 - d. Classroom observation report, dated October 22, 2014;
 - e. Sylvan assessment report, dated October 4, 2014;
 - f. Consent for assessments, dated October 2, 2014;
 - g. Assistive technology screening report, dated September 27, 2013;
 - h. Educational assessment report, dated November 30, 2011;
 - i. IEP, dated December 19, 2013;
 - j. Notice of IEP team meetings, dated September 25, 2012, August 27, 2013 and November 7, 2014;
 - k. Parent input forms for IEP team meetings, undated;
 - l. Correspondence from the complainant to the school staff, dated December 11, 2014;
 - m. Electronic (email) correspondence from the school psychologist to the complainant, dated December 5, 2014;
 - n. Notice of documents, dated December 8, 2013;
 - o. Prior written notices, dated September 5, 2013, September 27, 2013, December 19, 2013, October 2, 2014, and December 10, 2014;
 - p. IEP progress reports, dated January 28, 2014, February 26, 2014, April 8, 2014, May 7, 2014, June 13, 2014, September 17, 2014, and October 28, 2014;

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- q. IEP, dated February 1, 2012;
- r. *Response to Intervention Plan*, for the student for the 2012-2013 school year;
- s. The student's discipline reports for the 2013-2014 and 2014-2015 school years;
- t. IEP snapshot and IEP snapshot log for the 2014-2015 school year;
- u. Email correspondence from the school system staff to the complainant, dated January 26, 2015;
- v. Correspondence from the complainant to the MSDE containing allegations of violations of the IDEA, received on January 28, 2015;
- w. Report of the student's attendance in a student organization group, from January 27, 2014 thru February 27, 2014;
- x. Description of the CCPS Positive Behavioral Interventions and Supports for the 2014-2015 school year;
- y. Letter from the private physician, to school staff, dated March 16, 2015;
- z. Email correspondence from the CCPS to the MSDE, dated March 13, 2015;
- aa. Email correspondence from the CCPS to the complainant dated October 10, 2015 through March 13, 2015;
- bb. Correspondence from the complainant to the CCPS, dated August 27, 2014;
- cc. Case access history from the Maryland Online IEP database;
- dd. Receipt of certified mail, from CCPS to the complainant, dated March 17, 2015;
- ee. CCPS parent handbook/calendar, for the 2014-2015 school year; and
- ff. Letter from the CCPS to the MSDE, dated February 19, 2015.

BACKGROUND:

The student is twelve (12) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA, and has an IEP that requires the provision of special education services. During the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. a, and i).

ALLEGATION #1: REPORTS OF THE STUDENT'S PROGRESS

FINDINGS OF FACTS:

1. The IEP requires that the parent be notified of the student's progress toward the IEP goals with a written progress report eight (8) times per year. It does not state the frequency with which those reports will be provided or the manner in which they will be provided¹ (Doc. i).

¹ The school system staff state that progress reports are provided along with each report card and interim report. They further report that these are routinely sent home with the student in his backpack (Interview with the school staff).

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2. There is documentation that the school staff developed eight (8) reports of the student's progress, dated throughout the school year, towards achievement of the IEP goals but no documentation that they were provided to the complainant at the time that each report was developed (Docs. i, p and cc).
3. On January 26, 2015, after receiving the State complaint alleging that progress reports were not provided, the school staff sent the complainant all eight (8) progress reports electronically (Doc. u).
4. Because the complainant reported that she did not receive the progress reports electronically, the school staff re-sent them by certified mail on March 17, 2015. However, the certified mail was returned to the school (Doc. dd).
5. On March 25, 2015, the school staff made arrangements with the complainant and hand-delivered the progress reports to her (Doc. dd).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP is written clearly with respect to the services which will be provided. The IEP document must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.101 and .320).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP is not written clearly because while it indicates that progress reports will be provided eight (8) times per year, it does not indicate the frequency, or how often, progress reports are to be provided. Based on these Findings of Facts, the MSDE finds that, while the progress reports were developed and have

recently been provided to the complainant, there is no documentation that the complainant was provided with the reports with the frequency intended by the IEP team. Therefore, the MSDE finds a violation regarding the allegation.

ALLEGATION #2A:

TEACHERS INFORMED OF THE IEP

FINDINGS OF FACTS:

6. The first day of the 2014-2015 school year for the CCPS was August 21, 2014 (Doc. ee).
7. While all of the student's teachers signed receipt of an IEP "snapshot",² some of the

² A "snapshot" IEP is a summary of the IEP which includes the primary disability, special considerations, accommodations, supplementary aids, services, test scores, present levels of educational performance, and goals (Doc. t).

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teachers did not indicate the date on which it was received. The other teachers indicated that they received it between August 26, 2014 and September 8, 2014 (Doc. t).

DISCUSSION AND CONCLUSIONS:

Each public agency must ensure that students are provided with the special education and related services required by the IEP. In order to do so, the IEP must be accessible to each teacher and service provider who is responsible for its implementation and they must be informed of their specific responsibilities related to implementing the student's IEP (34 CFR §300.101 and .323).

Based on the Findings of the Facts #6 and #7, the MSDE identifies no documentation that teachers and service providers had access and were informed of their responsibilities related to implementing the student's IEP at the start of the 2014-2015 school year. Therefore, MSDE finds that the CCPS did not ensure that the IEP was implemented at the start of the school year and that a violation occurred regarding this allegation.

ALLEGATION #2B PROVISION OF ACCOMMODATIONS, AND SUPPLEMENTARY AIDS AND SERVICES

FINDINGS OF FACTS:

8. The IEP requires that the student be provided with extended time, reduced distractions, assistance with organization and the use of organizational aids and supports (Doc. i).
9. There is documentation that the school staff is providing the student with extra time to complete class work and tests; preferential seating in order to reduce distractions, assistance with organization of assignments, and organizational aids such as supplies to organize his notebooks, including dividers and tabs. Further, in addition to the student's agenda book, there is a separate system for the case manager to record and inform the complainant of the student's assignments, missing assignments and due dates for long range assignments (Doc. b).
10. The IEP does not require services to address reading comprehension and writing skills. It also does not require the use of a behavior plan or, the provision of daily progress reports (Docs. i).

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). In this case, the complainant alleges that the IEP requires the following services, but that they are not being provided:

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- a. Services to address reading comprehension skills;
- b. Services to address written language skills;
- c. Strategies for focusing, maintaining attention, and sitting still;
- d. Strategies for being less distracting to peers;
- e. Strategies for completing assignments;
- f. Assistance with organizational skills;
- g. Extra time to complete tests;
- h. Use of a behavior plan; and
- i. Provision of daily progress reports on behavior and academics (Doc. v).

Based on the Findings of Facts #8 and #9, the MSDE finds that there is documentation that teachers and service providers are providing accommodations, supplementary aids and services that are required by the IEP to meet the student's needs. Further, based on the Finding of Fact #10, the MSDE finds that there is no documentation to support the complainant's assertion that the IEP requires services to address reading comprehension and written language skills, a behavior plan, or daily progress reports. Therefore, the MSDE does not find a violation regarding this aspect of the allegation.

ALLEGATIONS #3 AND #4: STUDENT'S BEHAVIORAL NEEDS AND REEVALUATION

FINDINGS OF FACTS:

11. The IEP documents that the student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and there is documentation that demonstrates difficulties in his ability to stay focused, complete tasks, and remain organized. The IEP also requires the provision of accommodations and supplementary aids and services in all classes (Docs. i and z).
12. The IEP includes a goal for the student to improve reading fluency; it also requires the provision of the special education instruction within the general education setting (Doc. i).
13. On October 9, 2014, the IEP team met to address the complainant's concerns about the student's performance in the area of written language and whether the student's accommodations were being implemented (Docs. j, o).
14. At the meeting, the IEP team recommended psychological and educational assessments be conducted. The complainant provided consent and informed the team that she would also provide the results of a private assessment that she had obtained (Docs. f and o).

15. On December 10, 2014, the IEP team met and the team considered reports that the student was making sufficient progress to achieve the goal to improve his reading fluency. However, there were also weekly reports from the student's teachers to the complainant that the student was not participating in the classroom instruction due to his continuing difficulty with attention and focus. For example, one teacher emailed the complainant that the student was told he could take an assignment "home and fix it during the weekend, turn it back in Tuesday morning for a better grade prior to the report card." In another instance, a teacher reported, "the student has not gotten his work completed today, so he will need to finish that, as well as the rest of the journal, this weekend." A different teacher reported that the student had to struggle to keep focused and required much redirection prior to giving him the additional opportunity to get work done outside of class (Docs. i, j, o, p and aa).
16. At the December 10, 2014 IEP team meeting, the team also considered the results of both school administered and private educational assessments. While the school administered educational assessment results suggest the student is working at or close to his grade level, the private assessment states that he is performing 2 (two) grade levels below his current placement (Docs. e, i, j, o, and aa).
17. The student's disciplinary record since the start of the 2014-2015 school year indicated that the student had four (4) referrals to the office as a result of his behavior. These behaviors were all categorized as "minor disruptions," involving "defiance," "non-compliance," and "refusal to obey school policies," and resulted in lunch detention, after school detention, and contact with the complainant (Doc. s).
18. The report of a classroom observation states that the student was observed to demonstrate "significant problems" in the areas of attention, work habits, task completion, and motivation. The classroom teacher reported that the behavior observed was representative of the usual behaviors of the student in this class (Doc. d).
19. The IEP team determined that the student continues to demonstrate characteristics of ADHD. However, the team determined that special education instruction is no longer required for the student to access instruction because he was performing "at around grade level" and was close to achieving the IEP goal for reading fluency (Doc. o).
20. The team documented that the data used as a basis for its decision included the school administered educational assessment, IEP progress reports, psychological assessment, classroom-based assessments, private educational assessment, information from the student's teachers and the concerns of the complainant. However, the only document that was provided to the complainant prior to the IEP team meeting was the report of the psychological assessment (Docs. o and m).

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21. The complainant disagreed with the IEP team's eligibility determination and requested that an Independent Educational Evaluation (IEE) be conducted. In response, the school staff agreed to continue the provision of special education instruction through an IEP and to reconvene to review the results of an IEE. However, the team did not consider positive behavioral interventions to address the interfering behaviors documented by his teachers (Docs. o, l, and ff).

Allegation #3 Addressing the Student's Behavioral Needs

The public agency is required to develop an IEP that includes special education and related services designed to meet the unique needs of each student that arise from the student's disability. In developing an IEP, the team must consider concerns of the parent, 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 his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §300.324).

In this case, the complainant alleges that the student does not participate fully in classroom instruction and completes all of his classwork at home, and that the school staff have been permitting him to do so, without attempting behavioral interventions to address his behavior.

Based on the Findings of Facts #11 - #15, and #18, the MSDE finds that, while the student is making progress on the annual IEP goal, there is documentation that supports the complainant's assertion that much of the work that is completed by the student is done outside of the class or at home. Further, based on the Finding of Fact #21, the MSDE finds that there is no documentation that the IEP team has considered positive behavioral interventions to address the behavior that interferes with the student's participation in classwork at school. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #4 Reevaluation Procedures

A reevaluation must occur at least once every three (3) years. The purpose of reevaluation is to determine whether the student continues to meet the criteria for identification as a student with a disability under the IDEA and the needs that arise out of the disability (34 CFR §300.301 - .303 and COMAR 13A.05.01.02).

An IDEA evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student is classified. The eligibility determination must be made on an individual basis and be based on the student's specific needs identified through the evaluation data, including assessment results and information from the student's parents and teachers.

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The IEP team must review the evaluation data, and based on that data, determine whether the student meets the criteria for identification as a student with a disability under the IDEA (COMAR 13A.05.01.06).

In order to ensure that data from the student's parents is considered, the public agency must take steps to ensure that the student's parents are afforded the opportunity to participate in the IEP team meeting (34 CFR §300.322 and COMAR 13A.05.01.07). This includes ensuring that parents are provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at an IEP team meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07).

In order to meet the criteria for identification as a student with a disability under the IDEA, a student must have at least one (1) of a list of impairments, including an Other Health Impairment, and who by reason thereof, requires special education and related services. Special education instruction means adapting, as appropriate to the needs of the student, the content, methodology, or delivery of instruction to address the unique needs of the student and to ensure access to the general curriculum (34 CFR §300.8 and .39).

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 (SEA) must review the procedures used by a school system to reach determinations about the program. Additionally, the SEA 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).

Based on the Finding of Fact #20, the MSDE finds that the CCPS did not ensure that the complainant was provided with documents that were considered by the IEP team during the reevaluation prior to its consideration of the data.

Furthermore, based on the Findings of Facts #15, #18, and #19, the MSDE finds that information from the student's teachers about the student's lack of participation in the classroom instruction as a result of his inattention and lack of focus is inconsistent with the IEP team's decision that the student no longer requires special education instruction as a result of his disability in order to access instruction in the general curriculum. Therefore, violations occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation by June 1, 2015, that the IEP team has conducted a reevaluation, and has made an eligibility determination that is consistent with the evaluation data, including the results of the IEE.

If the IEP team finds that the student continues to meet the criteria for identification as a student with a disability under the IDEA, the MSDE also requires documentation that the IEP team has done the following:

- a. Reviewed and revised the IEP to address the student's interfering behaviors;
- b. Revised the IEP to ensure that it contains a clear statement of the frequency with which the complainant will be provided with reports of the student's progress toward achieving the IEP goals and the manner in which she will be provided with the reports in order to make sure that the reports are provided consistent with the IEP team's decisions; and
- c. Determine if compensatory services are needed to redress the violation related to addressing his behavioral needs and if so, develop a plan for the services to be provided within one (1) year of the date of this Letter of Findings.

The CCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

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.

School-Based

The MSDE requires the CCPS to provide documentation by September 1, 2015 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 XXXXXXXXXXXXXXXXXXXX. Specifically, documentation that school staff is ensuring the service providers are aware of the requirements of the IEP for this student.

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In addition, 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.

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. Kathleen Aux, Compliance Specialist, 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. 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.

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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 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:sf

c :

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