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State Superintendent of Schools

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April 29, 2015

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Dr. Susan Austin
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #15-059

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 March 26, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, the student’s mother, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the XXXXXXXXXXXXXXXXXXXX (XXXX) and the Harford County Public Schools (HCPS) have not ensured that the student’s needs have been properly identified and addressed through an Individualized Education Program (IEP) since November 2014, in accordance with 34 CFR §§300.34, .101, .301 - .305, .320, .324, and COMAR 13A.03.05.04, 13A.05.01.06, and 13A.05.01.10.

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INVESTIGATIVE PROCEDURES:

1. On March 26, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. XXXXXXXX, President, XXXX, Ms. XXXXXXXX, Director of Education, XXXX, and Dr. Susan Austin, Director of Special Education, HCPS.
2. On March 26, 2015, Ms. Anita Mandis, Section, Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant in order to clarify the allegation to be investigated.
3. On March 31, 2015, 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 XXXX and the HCPS of the allegations and requested that they review the alleged violation.
4. On March 31, 2015 and April 6, 2015, the complainant provided the MSDE with documentation to be considered during the investigation.
5. On April 22, 2015, the complainant provided the MSDE with additional information to be considered during the investigation.
6. On April 14, 2015, Ms. Mandis and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a review of the student's educational record at XXXXXXXXXXXXXXXX XXXXXXX (XXXX), and interviewed the following school system staff:
 - a. Ms. XXXXXXX, Health Services Manager, XXXX;
 - b. Ms. XXXXXXX, Principal, XXXX;
 - c. Ms. XXXXXXX, speech/language pathology clinical fellow, XXXX;
 - d. Ms. XXXXXXX, teacher of the visually impaired, XXXX; and
 - e. Ms. XXXXXXX, Assistant Principal, XXXX.

Ms. XXXX and Ms. Eileen Watson, Coordinator of Compliance, HCPS, attended the site visit as representatives of their respective public agencies and to provide information about their 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. Individualized Education Program (IEP), dated February 25, 2014;
 - b. Feeding order, dated August 13, 2014;
 - c. Electronic mail (email) correspondence among the XXXX staff, dated November 4, 2014;

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- d. Email correspondence from the complainant to the XXXX staff, dated November 6, 2014;
- e. Feeding order, dated November 6, 2014;
- f. Invitation to the November 18, 2014 IEP team meeting;
- g. Written summary of the November 18, 2014 IEP team meeting;
- h. The speech/language therapy provider's notes from the November 18, 2014 IEP team meeting;
- i. Correspondence from the HCPS staff to the complainant, dated December 23, 2014;
- j. Email correspondence from the complainant to the HCPS staff, dated December 29, 2014;
- k. Correspondence from the student's private physician to the XXXX staff, dated January 7, 2015;
- l. Notes from the January 15, 2015 meeting between the complainant and the XXX staff;
- m. Parent Contact Log from February 2-10, 2015;
- n. Invitation to a February 17, 2015 IEP team meeting;
- o. Parent Contact Log from February 19-27, 2015;
- p. Correspondence from the student's private physician to the XXXX staff, dated February 20, 2015;
- q. Email correspondence from the complainant to the XXXX staff, dated February 27, 2015;
- r. Invitation to a March 2, 2015 IEP team meeting;
- s. Email correspondence between the complainant and the XXXX staff, dated March 10 and 11, 2015;
- t. Parent Contact Log from March 10-12, 2015;
- u. Invitation to the March 16, 2015 IEP team meeting;
- v. Written summary of the March 16, 2015 IEP team meeting;
- w. IEP, dated March 16, 2015;
- x. Email correspondence from the complainant to the XXXX staff, dated March 17, 2015;
- y. Correspondence from the XXXX staff to the student's private physician, dated March 18, 2015;
- z. Consent for assessments, signed and dated March 26, 2015;
- aa. Correspondence from the student's private physician to the XXXX staff, dated March 30, 2015;
- bb. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on March 26, 2015;
- cc. Correspondence from the student's private physician to whom it may concern, dated April 13, 2015;
- dd. The student's attendance record for the 2014-2015 school year;

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- ee. The speech/language therapy provider's service logs for the student for the 2014-2015 school year;
- ff. Invitation to the March 23, 2015 IEP team meeting; and
- gg. Email correspondence between the complainant and the HCPS staff, dated April 21 and 22, 2015.

BACKGROUND:

The student is eight (8) years old, and is identified as a student with Multiple Disabilities under the IDEA, including Intellectual Disability, Speech/Language Impairment, Visual Impairment, and an Orthopedic Impairment (Doc. w).

During the time period covered by this investigation, the student has been enrolled at the XXXX, but has not regularly attended school (Doc. cc).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a, f, v, and w).

FINDINGS OF FACTS:

1. The IEP in effect in November 2014 was developed on February 25, 2014. The IEP states that the complainant was providing daily puree lunch for the student and that the speech/language therapist and other school staff had been trained in spoon-feeding her. It also states that the speech/language therapist was monitoring the student's swallowing skills (Doc. a).
2. At the start of the 2014-2015 school year, there was an order from the student's private physician that required that the student be fed at 9 a.m. and at noon each day, hereafter, the "feeding order" or "diet order" (Doc. b).
3. The speech/language therapy provider's notes reflect that, since the start of the 2014-2015 school year, the student has been observed to have had experienced multiple seizures during the school day along with frequent "vocalizations." The documentation further reflects that the student was observed to become fatigued following seizure activity. It also reflects that the school staff were concerned about the possibility of aspiration when these episodes occurred during feeding, and that they would discontinue feeding when this occurred (Docs. c and ee).
4. On November 4, 2014, the school staff shared their concerns with the complainant, who informed them that this also occurred when the student is fed at home, and that the complainant felt comfortable continuing with feeding during these episodes (Doc. ee).

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5. On November 4, 2014, the complainant provided the school staff with the results of the most recent swallow study and follow-up appointments with the student's private physician, which were from July and November 2012. Upon receipt of those results, the speech/language therapy provider expressed concern to the XXX Health Center Manager that it appeared that there was a "discrepancy between the recommendations of [the student's] last follow-up appointment after her swallow study and her current diet order" (Docs. c and ee).
6. On November 6, 2014, the complainant expressed concern to the XXXX staff that the student had not been fed all of the food that was sent into school for her on the previous day. In a meeting held later that day between the complainant and the XXX staff, including the XXXX Health Center Manager, the XXX staff reiterated concerns about feeding the student by mouth when she is vocalizing due to the possibility of aspiration. The documentation of the meeting reflects that the complainant agreed to send into the school formula for use with a gastrostomy feeding tube (G-tube); this was to be used when it appeared unsafe to feed the student by mouth until an updated feeding order was obtained (Docs. d, e, and ee).
7. There is no documentation that the XXXX staff sought clarification of the feeding order from the student's private physician following the November 6, 2014 meeting (Interviews with the XXXX staff).
8. On November 18, 2014, the IEP team convened to conduct a reevaluation planning meeting. The documentation of that meeting reflects that the IEP team recommended that updated educational, expressive/receptive language, and fine and gross motor assessments be conducted. The documentation reflects that the complainant reported that the student had new dietary requirements and that she had decided to provide the student with home instruction for "one year of intense cleansing at home and the appropriate medical care," before returning her to the XXXX. The team documented that "with [the student's] change in placement these assessments will be placed on hold" (Docs. f, g, and h).
9. The IEP team documented that, at the November 18, 2014 IEP team meeting, the school-based members of the team expressed concern that the student would not receive the special education and related services that she requires if she is provided with home instruction. The HCPS representative indicated that she would follow-up with the complainant on her decision (Doc. g).
10. The complainant did not withdraw the student from the XXXX following the November 18, 2014 IEP team meeting. However, there is no documentation that attempts were made to obtain the complainant's consent to conduct the assessments that were recommended at the meeting or clarification of the feeding order from the student's private physician. There is documentation that the HCPS staff provided the complainant

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with information on how to apply for home and hospital teaching (HHT) services (Docs. i, j, dd, and interviews with the XXXX and HCPS staff).

11. On December 23, 2014, the HCPS sent the complainant correspondence stating that an application she had made for HHT services was being preliminarily denied. The letter states that the physician who provided the school system with information about the student's need for the services clarified that he had no first-hand knowledge about the student. The letter, which is copied to the XXX, indicates that the complainant should provide the XXXX with updated feeding orders so that a determination could be made regarding whether the student's needs can be addressed at the XXXX (Doc. i).
12. On January 8, 2015, the student's private physician provided the XXXX staff with documentation that the vocalizations during feeding do not pose a risk of aspiration (Docs. k and ee).
13. On January 15, 2015, the complainant met with the XXX staff to plan for the student's return to the XXXX. At that time, the complainant reported that she believes that the student is "nutritionally deficient" and that the student requires a significant increase in the amount of food that she receives per feeding. The complainant indicated that she would be returning the student to the XXXX on January 20, 2015. The complainant and the school staff discussed that the IEP team would convene on February 17, 2015 to conduct an annual IEP review and that the school staff intended to again request that additional assessments be conducted. However, there is no documentation that the school staff sought the complainant's consent for the assessments that were recommended on November 18, 2014 or attempted to obtain clarification from the student's private physician about the amount of food the student is to be provided with during each feeding in preparation for her return to school (Doc. e and interviews with the XXXX staff).
14. The complainant did not return the student to the XXXX on January 20, 2015. The student's attendance data reflects that she has been present at school on the following dates since January 20, 2015:
 - January 29, 2015;
 - February 4 – 6, 2015; and
 - February 9, 2015 (Doc. dd).
15. On January 23, 2015, the complainant informed the school staff that she was obtaining physical and occupational therapy services for the student to be provided "outside of school" in addition to the therapy provided to her at school, but that she was unable to obtain a recommendation for additional speech/language therapy beyond what was being provided at school. The complainant inquired about whether the school staff could provide such a recommendation, and was informed that they could only provide

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recommendations for services that are needed for educational purposes, which would be provided at school (Doc. ee).

16. On March 16, 2015,¹ the IEP team met to conduct the annual IEP review. At the meeting, the complainant reported that the student would be unable to attend school two (2) days per week due to her need to receive occupational and physical therapy outside of the school setting. The HCPS representative indicated that the complainant would need to provide documentation of the student's inability to attend school in order for her to be excused from school twice per week. The team recommended that updated educational, communication, functional/adaptive performance, vision, and motor skills assessments be conducted, and the complainant provided consent on March 26, 2015 (Docs. u - w and z).
17. At the March 16, 2015 IEP team meeting, the complainant provided an order from the student's private physician that directs that the student be provided with a feeding regimen of both pureed food and G-tube feeding at 9:00 a.m., 11:30 a.m., and 1:30 p.m. However, the order did not indicate that the amount of food should be increased for each feeding, as the complainant reported was required in her January 15, 2015 meeting with the XXXX staff (Doc. p).
18. At the March 16, 2015 IEP team meeting, the IEP team discussed that there was not sufficient time in the school day for the student to be provided with the amount of special education and other related services required by the IEP and receive three (3) feedings per day. The team decided that clarification was required from the private physician about the amount of food to be given at each feeding and whether there is any flexibility in the feeding schedule, and that a conference call would be conducted in order to obtain the needed information (Docs. u - w).
19. On March 17, 2015, the complainant sent an electronic mail (email) message to the XXX staff stating that she "would not allow a conference call with [the student's] doctor" and requesting that they address their concerns to the physician in writing (Doc. x).
20. On March 18, 2015, the school staff requested, in writing, clarification from the student's private physician about the amount of food to be administered during each feeding and whether there was any flexibility in the feeding schedule (Doc. y).
21. On March 30, 2015, the student's private physician provided the school staff with a feeding order specifying the amount of food to be administered during each feeding and clarifying that there was no flexibility in the feeding schedule that was previously provided (Doc. aa).

¹ The meeting was rescheduled from February 17, 2015 and March 2, 2015 due to school closures (Docs. m - o and q - t).

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22. On April 13, 2015, the complainant provided the HCPS staff with documentation from the student's private physician requesting that she be excused from school twice per week in order to receive private physical and occupational therapy. The complainant's request for HHT services was denied by the HCPS and the complainant is in the process of attempting to resolve the dispute (Docs. cc and gg).
23. An IEP team meeting was held on April 23, 2015 in order to conduct a review of the IEP with the updated medical information; at this time, there is no documentation of the IEP team's decisions (Doc. ff).

DISCUSSION/CONCLUSIONS:

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 (34 CFR §§300.101, .320, and .324).

If the IEP team determines that a reevaluation is needed to ensure that all of 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 within ninety (90) days (34 CFR §300.305 and COMAR 13A.05.01.06).

The public agency must obtain informed parental consent prior to conducting any reevaluation. This consent need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent and that the parent failed to respond to the requests. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue a reevaluation through a due process hearing (34 CFR §300.300).

The public agency must ensure that the reevaluation is 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 has been classified. Therefore, a variety of assessment tools and strategies must be used to gather sufficient relevant functional, cognitive, developmental, behavioral, academic, and physical information, and information provided by the parent (34 CFR §300.304).

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In this case, the complainant alleges that the XXXX has not ensured that the student's needs related to feeding and occupational and physical therapy have been addressed (Doc. bb).

Feeding Needs

Based on the Findings of Facts #1 - #7, #10 - #14, and #17 - #20, the MSDE finds that, while the XXXX had reason to be concerned about the student's feeding orders, it did not take steps to obtain clarification of those orders from the student's private physician in a timely manner to ensure that the student was provided with appropriate related services until March 16, 2015. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation from November 2014 until March 2015. However, based on the Findings of Facts #21 and #23, the MSDE finds that, since March 16, 2015, the XXX has taken appropriate steps to obtain the data needed to identify and address the student's needs.

Occupational and Physical Therapy Needs

Based on the Finding of Fact #8, the MSDE finds that the XXX did not take immediate steps to obtain consent from the complainant for updated motor needs assessments recommended by the IEP team on November 18, 2014 because it was led to believe that the complainant was withdrawing the student from the school and providing home instruction. However, based on the Findings of Facts #9 #11, #13, #15, and #16, the MSDE finds that the XXX did not attempt to obtain consent for the reevaluation in a timely manner once it was aware that the student was not withdrawing. As a result, based on those Findings of Facts, the MSDE finds that it has not completed the November 18, 2014 reevaluation within the required timelines, and that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #16, #22, and #23, the MSDE finds that, since March 16, 2015, the XXXX has taken appropriate steps to obtain additional data needed to ensure that the student's physical and occupational therapy needs are identified and addressed. Therefore, this office finds that the violation related to ensuring that the occupational and physical therapy needs are identified and addressed occurred from November 2014 until March 2015.

Need for Services in the Home

In this case, the complainant also alleges that the HCPS has not taken appropriate steps to address the student's needs at home (Doc. bb).

Each public agency must make instructional services available to students, including students with disabilities, who are unable to attend the school of enrollment due to a physical or emotional condition (COMAR 13A.03.05.03). The need for Home and Hospital Teaching (HHT) services is determined through the verification of a physical condition by a licensed physician or a certified nurse practitioner, or through the verification of an emotional condition

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by a certified school psychologist, licensed psychologist, or licensed psychiatrist which states that the student has 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 #8 - #10, the MSDE finds that the HCPS has provided the complainant with information on how to obtain HHT services. Based on the Findings of Facts #11, #15, #16, and #22, the MSDE further finds that there is no data that the student is unable to attend a school-based program, and therefore requires HHT services. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the XXX to provide documentation by the end of the 2014-2015 school year that, if the student remains enrolled in the school or is enrolled in another public agency, the reevaluation has been completed and the IEP has been reviewed and revised, as appropriate, based on the reevaluation results.

The XX must also provide documentation that the IEP team has determined the services needed to compensate the student for the violations identified in this investigation, to be provided to the student within one (1) year of the date of this Letter of Findings if the student remains enrolled in the XXX or another public agency.²

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties from Dr. Kathy Aux Dispute Resolution Specialist, MSDE at (410) 767-7770.

Please be advised that the complainant and the public agencies 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

² If the student is enrolled in a public agency other than the XXX, the XXX must take the corrective action through consultation and collaboration with the public agency in which the student is placed.

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request for reconsideration, the public agencies 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 parties 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 a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:am

c : Barbara P. Canavan
Eileen Watson
XXXXXXXX
Dori Wilson
Anita Mandis
Kathy Aux