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State Superintendent of Schools

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June 17, 2015

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Mrs. Chrisandra A. Richardson
Associate Superintendent
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Dr. Gwendolyn J. Mason
Director
Department of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #15-066

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 April 23 and 27, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, the student's mother, hereafter, "complainant" on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with

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respect to the above-referenced student. On June 1, 2015, the MSDE received correspondence containing an additional allegation of a violation of the IDEA.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the student has been provided with the special education instruction and related services required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323, as indicated below.
 - a. The MCPS has not ensured that the student has been provided with additional adult support in world studies class since the start of the 2014-2015 school year; and
 - b. The MCPS has not ensured that student has been provided with weekly speech/language therapy services since the start of the 2014-2015 school year.
2. The MCPS has not ensured that the student has been provided with additional adult support in classes other than the student's world studies class, as required by the IEP since January 2015, in accordance with 34 CFR §§300.101 and .323.
3. The MCPS has not ensured that the case manager has consistently "checked in" with the student to provide any needed assistance, as required by the IEP since January 2015, in accordance with 34 CFR §§300.101 and .323.
4. The MCPS has not ensured that the IEP addresses the student's needs in reading since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.320 and .324.

INVESTIGATIVE PROCEDURES:

1. On April 27, 2015, Mr. Kenneth Hudock, Family Support Program Specialist, MSDE, conducted a telephone interview with the complainant and clarified the allegations to be investigated as a result of correspondence received on April 23 and 27, 2015. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Dr. Gwendolyn J. Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
2. On April 30, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the MCPS of the allegations and requested that the MCPS review the alleged violations.

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3. On May 1, 19, 21, 22, 26, and 27, 2015 and June 5, 2015, the complainant provided information for consideration in completing the investigation.
4. On May 4 and 20, 2015, the MSDE requested documents from the MCPS.
5. On May 7, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, discussed the allegations with Ms. Ashley Vancleef, Supervisor, Equity Assurance and Compliance Unit, MCPS, and Ms. Patricia A. Grundy, Paralegal, MCPS.
6. On May 19 and 27, 2015 and June 2, 2015, Ms. Mandis conducted telephone interviews with the complainant about the allegations being investigated.
7. On May 19 and 28, 2015 and June 3, 2015, the MCPS provided documents to the MSDE.
8. On June 1, 2015, the complainant provided the MSDE with correspondence containing an additional allegation of a violation of the IDEA.
9. On June 3, 2015, Ms. Mandis and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, Case Manager;
 - c. Ms. XXXXXXXX, Resource Teacher, Special Education; and
 - d. Mr. XXXXXXXX, Administrator Supervising Special Education.

Ms. Vancleef and Ms. Meryl A. Benko, Paralegal, MCPS, attended the site visit as members of the MCPS and to provide information on the school system's policies and procedures, as needed.

10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated June 4, 2014;
 - b. Teacher reports of the student's classroom performance for October 2014;
 - c. Written summaries of decisions made by the IEP team at a meeting held on November 20, 2014, December 16, 2014, and January 8, 2015;
 - d. Electronic mail (email) message among the school staff, dated November 30, 2014;
 - e. Reports of classroom observations conducted on December 18, 2014 and January 7, 2015 and an informal reading inventory completed on December 23, 2014;

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- f. IEP, dated January 8, 2015;
- g. Correspondence from the MCPS to the school staff, dated January 28, 2015 and the school staff's timesheet;
- h. Email correspondence between the complainant and the school staff, dated March 13 and 20, 2015 and May 26, 2015;
- i. Correspondence from the complainant containing allegations of violations of the IDEA, received on April 23 and 27, 2015 and June 1, 2015;
- j. The case manager's May 2015 calendar;
- k. The student's class schedule for the 2014-2015 school year;
- l. The student's attendance record for the 2014-2015 school year;
- m. The school staff's class schedule for the 2014-2015 school year;
- n. Samples of the student's classwork, a reading strategies checklist, and manipulatives;
- o. The speech/language therapy provider's logs for the 2014-2015 school year; and
- p. A report of the student's scores on Measures of Academic Progress-Reading for 2014 and 2015.

BACKGROUND:

The student is thirteen (13) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. She is identified as a student with an Other Health Impairment under the IDEA related to difficulty with inattention (Doc. f).

During the period of time addressed by this investigation, the complainant was provided with written notice of the IEP team decisions and with notice of the procedural safeguards (Doc. f).

ALLEGATIONS #1, #2, AND #3

IEP IMPLEMENTATION

FINDINGS OF FACTS:

Instructional Supports

1. The IEP in effect at the start of the 2014-2015 school year, dated June 4, 2014, requires that the student be provided with special education instruction in the general education classroom from a general education teacher. The IEP states that the student will be "in supported¹ English, math, science, and world studies" (Doc. a).

¹ "Supported" classes are those in which additional adult support from a paraprofessional or a special education teacher is available to assist the students in the classroom with ensuring their access to instruction (Interview with the MCPS staff).

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2. On November 20, 2014, December 16, 2014 and January 8, 2015, the IEP team conducted an annual review of the IEP. The IEP team documented that the student had not received “supported” world studies during the school year until November 28, 2014 and that tutoring would be provided as compensatory services to redress the violation² (Docs. c and f).
3. The January 8, 2015 IEP requires the provision of support, such as the use of manipulatives on a daily basis. The school staff, however, report that the IEP team did not intend for the supplementary aids and services to be provided each day with each assignment in each class (Doc. f and interviews with the school staff).
4. While the complainant reports that the IEP team intended for each of the supplementary aids and services to be provided each day with each assignment in each class, the January 8, 2015 IEP states that the following supplementary aids and services are to be provided “when needed in all classes:” Lists of common themes in literature;
 - Reading strategies checklist;
 - Prompting to use reading and writing strategies;
 - Pairing visuals with verbal information;
 - Breaking down assignments into smaller units;
 - Checks for understanding;
 - Strategies to initiate and sustain attention; and
 - Check in with the student to ensure that she is provided with any needed assistance (Doc. f and interview with the complainant).
5. On November 30, 2014, a para-educator was assigned to the student’s world studies class. Since that date, this staff member has been absent on three (3) days (Doc. d).
6. There is documentation that there are two staff members assigned to each of the student’s other “supported” classes. Since January 2015, the additional staff member in the student’s English class was absent on seven (7) days, the additional staff member in the student’s math class was absent on seven (7) days, and the additional staff member in the student’s science class was absent on six (6) days. There is no documentation that substitutes were provided on days when the additional adult staff was absent (Doc. m and review of the school staff’s attendance records).
7. Due to the need to staff Statewide assessments, the additional staff member in the student’s English class was unavailable on five (5) days, the additional staff member in the student’s math class was unavailable on four (4) days, and the additional staff

² Tutoring has been provided as compensatory services (Doc. g and Interviews with the complainant and the school system).

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member in the student's world studies class was unavailable on one (1) day (Interviews with the school staff).

8. The student's first (1st) period class is reading. There is documentation that the IEP case manager has checked in with the student at the start of the school day before the first period. However, the student's attendance record reflects that she has been absent from school (5) days since January 8, 2015, and that the student has been tardy on an additional eleven (11) days, which has not allowed for this check in to occur consistently (Docs. j, k, and l).
9. Samples of the student's classwork, a reading strategies checklist, and manipulatives used in the classroom document the provision of supplementary aids and services to the student. However, manipulatives have not been used on a daily basis, as indicated in the IEP (Doc. n).

Related Speech/Language Services

10. The IEP in effect since the start of the 2014-2015 school year states that the student requires one (1) session of speech/language therapy per week, with each session to be forty-five (45) minutes in duration (Docs. a, c, and f).
11. On December 16, 2014, the IEP team discussed that three (3) speech/language therapy sessions had been missed and would be made up (Doc. c).
12. The speech/language therapy logs document the provision of the three (3) speech/language make up sessions that were determined necessary at the December 16, 2015 IEP team meeting (Doc. o).
13. Since December 16, 2015, the speech/language therapy logs document the provision of weekly speech/language therapy, as required by the IEP, with the exception of one (1) session that was missed on June 2, 2015, which the school staff report is also being made up (Doc. o and interviews with the school staff).

LEGAL REQUIREMENTS:

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 IEP must be written in a manner that is clear to all involved in the development and implementation of the program (34 CFR CFR §§300.101 and .323).

The public agency is generally responsible for making alternative arrangements to provide the services required by the IEP when other school-related activities make either the student or the

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service provider unavailable during the time that the service is regularly scheduled. The public agency is not obligated to do so when the student is unavailable for other reasons, such as during student absences from school (*Letter to Balkman*, OSEP, 23 IDELR 646, April 10, 1995).

DISCUSSION/CONCLUSIONS:

Allegation #1a Provision of Additional Adult Support in World Studies Since the Start of the 2014-2015 School Year

Based on the Findings of Facts #1, #2, and #5, the MSDE finds that there was no staff assigned to provide additional adult support in the student's world studies class, as required by the IEP, until November 30, 2014. Therefore, this office finds that a violation occurred from the start of the 2014-2015 school year until November 30, 2014. Notwithstanding the violation, based on the Finding of Fact #2, the MSDE finds that compensatory services were provided to the student to remediate the violation. Therefore, no additional corrective action is required to remediate the violation for this time period.

In addition, based on the Findings of Facts #5 and #7, the MSDE finds that the additional adult support has not consistently been available in the student's world studies class since November 30, 2014, and that a violation has occurred since November 30, 2014 with respect to this aspect of the allegation.

Allegation #1b Provision of Weekly Speech/Language Therapy Since the Start of the 2014-2015 School Year

Based on the Findings of Facts #10, #11, and #13, the MSDE finds that there is documentation that the student has missed speech/language therapy session and that a violation has occurred. Notwithstanding the violation, based on the Findings of Facts #12 and #13, the MSDE finds that additional speech/language therapy is provided to make up for the lost sessions. Therefore, no corrective action is required to remediate the violation.

Allegation #2 Provision of Supports in Classes Other than World Studies since January 2015

In this case, the complainant alleges that the student has not been provided with additional adult support in classes other than the student's world studies class since January 2015, and that as a result, the student has not consistently received the supplementary aids and services required by the IEP (Doc. i).

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Based on the Findings of Facts #3, #4, and #9, the MSDE finds that the IEP is not written in a manner that is clear with respect to the manner in which supplementary aids and services are to be provided. Therefore, this office finds that a violation has occurred.

In addition, based on the Findings of Facts #1, #6, and #7, the MSDE finds that there has not consistently been additional adult staff in the student's classes, as required by the IEP, since January 2015 and that a violation have occurred with respect to this allegation.

Allegation #3 Consistent Provision of Check-Ins with the Student

In this case, the complainant alleges that the student has not met regularly with the case manager who is assigned to check with her to determine whether she requires assistance (Doc. i). Based on the Findings of Facts #4 and #8, the MSDE finds that the case manager has not been able to consistently check in with the student at the start of the day because of the student's absences. Therefore, this office does not find that a violation has occurred with respect to the allegation.

ALLEGATION #4 IEP THAT ADDRESSES THE STUDENT'S READING NEEDS SINCE THE START OF THE 2014-2015 SCHOOL YEAR

FINDINGS OF FACTS:

14. The IEP in effect at the start of the 2014-2015 school year was developed on June 4, 2014. The IEP identified needs for the student in the area of reading comprehension as a result of her distractibility and lack of organization, consistent with teacher reports of her classroom performance. The IEP included an annual goal for the student to analyze how two (2) or more texts address similar themes and topics with the provision of graphic organizers, scaffolding, and reading strategies. In order to achieve the goal, the student was required to explain the likenesses and differences between the main ideas or information from various authors, and support her ideas with relevant evidence (Doc. a).
15. The June 4, 2014 IEP required that the student be provided with special education instruction to assist her in achieving the goal to improve her reading comprehension skills. The IEP included supplementary aids, services, and supports including the use of highlighters and manipulatives, use of a word bank to reinforce vocabulary, breaking down assignments into smaller units, use of strategies to initiate and sustain attention, provision of frequent and immediate feedback, provision of a human reader, and the provision of notes and outlines (Doc. a).
16. The student's class schedule reflects that, in addition to English class, she is provided with another period of reading instruction. This is a class where general education

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reading interventions are utilized to assist students who require additional assistance with reading. This is the student's first class period. Her attendance record reflects that, in addition to missing this class on five (5) days due to school absences, the student has been tardy on eleven (11) days, impacting her ability to receive instruction in this class (Docs. k, l, and interviews with the school staff).

17. The reports of the student's classroom performance by her teachers for the end of the first (1st) quarter of the 2014-2015 school year reflect that the student was having difficulty with punctuation and with differentiating between two (2) or more pieces of text. The reports also state that the student "struggles to summarize a text and/or to find a main idea of a text" (Doc. b).
18. On November 20, 2014, December 16, 2014 and January 8, 2015, the IEP team conducted an annual review of the IEP. The IEP team considered results of classroom-based assessments that indicated that the student's reading scores had dropped. The IEP team also considered the complainant's concerns about whether the IEP adequately addresses the student's reading comprehension needs. The IEP team obtained additional data from classroom observations that were conducted in the student's reading class and an informal reading inventory (Docs. c, e, and p).
19. The report of the classroom observations and reading inventory indicates that the student demonstrates difficulty decoding several multi-syllabic words, which impacts her reading comprehension. The report of the classroom observation contains recommendations for the student to be provided with explicit instruction in reading comprehension strategies, including visualizing, questioning, predicting, making connections, determining importance, and monitoring and understanding. It also contains a recommendation for the student to use visual reminders, such as a reading strategies checklist, to support her use of reading comprehension strategies before, during, and after reading. It further contains recommendations for the student to be provided with opportunity to activate and build background knowledge about text topics and vocabulary before reading. In addition, it contains recommendations for the student to be provided with instruction in effective use of graphic organizers and in word analysis skills (Doc. e).
20. As a result of the IEP review that concluded on January 8, 2015, a goal was developed for the student to use reading strategies to improve reading comprehension, when given a text at her instructional level and a reading strategies checklist. Another goal was developed for the student to determine the theme of stories with the use of graphic organizers and reading strategies by referring to lists of common themes in literature and discussing text and possible themes with other students and staff. A goal was also added to apply phonic skills and word analysis skills to identify words and their meanings, when given words from reading narratives and specific informational text (Doc. f).

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21. Because the student has not demonstrated the progress in reading that was expected, a reevaluation is currently being conducted. The school staff report that the team is considering using different reading interventions with the student in her reading class. The school staff also report that they will be looking at whether the student's late arrivals to school is impacting her attendance in the reading class (Docs. h, p, and interviews with the complainant and the school staff).

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. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

The public agency must ensure that the IEP is reviewed at least annually to determine whether annual goals are being achieved. In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress towards achievement of the goals (34 CFR §300.324).

In this case, the complainant alleges that the student has not made progress in the area of reading comprehension and that the IEP team has refused to utilize specific strategies that have been recommended to address her learning needs (Doc. i).

Based on the Findings of Facts #18 - #20, the MSDE finds that the IEP team has adopted strategies that have been recommended to assist the student with improving her reading skills. Based on the Findings of Facts #14 - #17 and #21, the MSDE finds that, while the student has not made the expected progress in reading, the IEP team continues to consider information from the complainant and the student's teachers, and to obtain additional data to identify the cause of the lack of progress so that it can be addressed. Therefore, this office does not find that a violation has occurred with respect to the allegation.

ADDITIONAL DISCUSSION:

During the course of the State complaint investigation, the complainant has expressed concern that she believes that documentation, such as student work samples, are misleading and do not accurately reflect the student's classwork. The complainant is reminded that, pursuant to the IDEA and the Family Educational Rights and Privacy Act (FERPA), if she believes that

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information contained within the student's education record is inaccurate or misleading, she may request that the school system amend the information.

If the school system refuses to amend the record, it must advise her of that decision and provide her with the opportunity to request a hearing to challenge the content of the student's education record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22). The MSDE does not have authority to review the school system's decision regarding whether or not to amend the student's record. Therefore, that issue is not subject to investigation by this office.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by the start of the 2015-2016 school year that the IEP team has reviewed and revised the IEP to ensure that it is written clearly with respect to the manner in which supplementary aids and services are to be provided.

The MSDE also requires the MCPS to provide documentation by the end of the first (1st) quarter of the 2015-2016 school year that the IEP team has determined the services needed to remediate the violations identified in this investigation and has developed a plan for the provision of those services to the student within one (1) year of the date of this letter.

TECHNICAL ASSISTANCE:

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

Please be advised that the complainant and the school system 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.

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,

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or provision of a FAPE 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: Larry A. Bowers
 Julie Hall
 Ashley Vancleef
 XXXXXXX
 Dori Wilson
 Anita Mandis
 Kathy Aux