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November 17, 2015

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Ms. Sheree Witt
Executive Director of Special Education
and Student Services
Allegany County Public Schools
108 Washington Street
Post Office Box 1724
Cumberland, Maryland 21502

RE: XXXXX
Reference: #16-024

Dear Parties:

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

ALLEGATIONS:

On September 18, 2015, the MSDE received a complaint from Ms. XXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Allegany County Public Schools (ACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The ACPS has not ensured, since October 16, 2014, that the student’s Individualized Education Program (IEP) has included present levels of academic and functional performance and included measurable annual goals in accordance with 34 CFR §§300.320 and .324.
2. The ACPS did not ensure that the student was provided with special education instruction to address the reading goal, as required by the IEP, from October 16, 2014 until the end of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.

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INVESTIGATIVE PROCEDURES:

1. On September 18, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Sheree Witt, Executive Director of Special Education and Student Services, ACPS.
2. On September 24, 2015, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the ACPS of the allegations and requested that the ACPS review the alleged violations.
3. On September 25, 2015, October 13, 2015, and November 5, 2015, the MSDE received correspondence from Ms. Rochelle Eisenberg, legal counsel for the ACPS.
4. On September 29, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant regarding the allegations.
5. On October 9 and 13, 2015, the MSDE requested documentation from the ACPS through electronic communication to Ms. Eisenberg.
6. On October 20, 22 and 23, 2015, the MSDE received additional documentation from the complainant for consideration.
7. On November 5, 2015, the MSDE received documentation submitted on behalf of the ACPS for consideration.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated May 14, 2014, and IEP, dated January 19, 2011;
 - b. IEP, dated October 16, 2014, and Prior Written Notice of the October 16, 2015 IEP team meeting;
 - c. Amended IEP, dated December 3, 2014, and Prior Written Notice of the December 3, 2014 IEP team meeting;
 - d. Amended IEP, dated April 9, 2015, and Prior Written Notice of the April 9, 2015 IEP team meeting;
 - e. Amended IEP, dated April 14, 2015;
 - f. Handwritten note from the school staff to the complainant, dated June 9, 2015;
 - g. Reports of the student's progress towards achievement of the annual IEP goals, dated January 1, 2014, April 4, 2014, June 11, 2014, October 24 and 29, 2014, November 5 and 10, 2014, January 22, 23 and 25, 2015, February 4, 2015, April 3 and 10, 2015, and June 1, 2015;

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- h. Notice of IEP team meeting scheduled for October 5, 2015, and Prior Written Notice of the October 5, 2015 IEP team meeting;
- i. Amended IEP, dated October 5, 2015;
- j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 18, 2015;
- k. Correspondence from Ms. Rochelle Eisenberg, legal counsel for the ACPS, received by the MSDE on September 30, 2015 and November 5, 2015;
- l. Log notes of the occupational therapist, dated between May 2014 and June 2015;
- m. Log notes of the speech-language pathologist, dated between May 2014 and May 2015;
- n. Log notes of the physical therapist, dated between May 2014 and May 2015;
- o. The reports of the educational, speech and language, physical therapy, occupational therapy, swallowing/feeding and psychological assessments conducted for the student's triennial reevaluation in November 2013; and
- p. Electronic mail communication from the school staff to the complainant, dated October 23, 2015.

BACKGROUND:

The student is sixteen (16) years old is identified as a student with Multiple Disabilities under the IDEA, including Intellectual Disability and Other Health Impairment related to XXXXXX Syndrome. The student attends XXXXXXXXXXXXXXXX School and has an IEP that requires the provision of special education and related services (Docs. a - e, and i).

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

Allegation #1

The IEP Does Not Include Present Levels of Academic Achievement and Functional Performance and Does Not Include Measurable Goals Since October 16, 2014

FINDINGS OF FACTS:

Reading Needs

1. The October 16, 2014 IEP reflects that the student has needs in the area of reading vocabulary, and includes an annual goal for her to construct meaning from vocabulary. The IEP indicates that the reading goal was based on classroom reading activities. However, the IEP does not include information on how the student was using reading materials or the level of the reading materials being used by the student. Further, the IEP does not include information on whether the student reads the materials herself, or whether someone is reading the materials to her (Doc. b).

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2. The student's prior IEP, dated May 14, 2014, indicates that the student had needs in the area of reading comprehension. While this IEP included an annual goal for the student to improve her reading comprehension, the reports of her progress towards mastery of this goal reflect that the student was working on answering comprehension questions after having material read to her (Docs. a and g).
3. An IEP previously developed for the student on January 19, 2011, states that the student "reads/signs grade level text at twenty-two (22) to twenty-six (26) words per minute and intervention level text at thirty (30) to thirty-five (35) words per minute with ninety-one to one hundred percent (91% - 100%) accuracy." This IEP also identified that the student was performing at a mid-to-late first (1st) grade instructional level in reading comprehension and vocabulary (Doc. a).
4. The IEP team convened on December 3, 2014, and April 9, 2015, to review the student's IEP. However, the IEP team did not update information about the student's performance in reading or revise the student's reading goal at either meeting (Docs. c - e).

Social Interaction Skills Needs

5. The May 14, 2014 IEP indicates that the student needs to expand her social interactions beyond those mainly with school staff, and includes a goal for her to develop social skills to promote proper interactions with others (Doc. a).
6. The October 16, 2014 IEP indicates that the student continues to be identified with this need. However, the report of the student's progress towards mastery of this goal, dated June 11, 2014, states that the student "continues to display proper social skills" (Docs. b and g).
7. The October 16, 2014 IEP also reflects that the IEP team identified that the student needs to improve the manner in which she initiates interactions, as well as the need to use full sentences rather than single word when she interacts. The IEP team revised the social interaction goal by removing the short-term objective for her to participate in a sporting activity based on documentation of her achievement of this skill. However, the IEP team did not revise the social interaction goal in order to address the identified needs relating to initiating interaction and using complete sentences (Doc. b).
8. While the IEP team convened on December 3, 2014, and April 9, 2015, the IEP team did not revise the student's annual goal addressing her social interaction skills at either meeting (Docs. c - e).

Daily Living Skills

9. The May 14, 2014 IEP indicates that the school staff was working with the student on basic laundry skills and basic cooking skills, and included a goal for her to perform functional skills needed for independent living. The report of the student's progress towards mastery of this annual goal, dated June 11, 2014, states that "this goal is difficult for [the student]" and indicates that work on this goal would continue the following school year (Docs. a and g).
10. In addition to the areas identified in the May 14, 2014 IEP, the October 16, 2014 IEP identified that the student needs to increase her independence with performing classroom activities. The IEP team revised the goal addressing daily living skills by adding an objective requiring the student to assist in getting the proper items needed to complete tasks (Doc. b).

Math Needs

11. The May 14, 2014 IEP reflects that the student needs to consistently count from one (1) to twelve (12), learn patterns, work on time and to sequence using pictures. It also identifies that the student has weaknesses in using "one-to-one correspondence" when counting, analyzing a basic bar graph, and understanding the concepts of "most" and "less" when comparing sets and numbers. The IEP includes a goal for the student to demonstrate functional math skills needed in daily living and independent skills, with objectives in sequencing patterns, and identifying coins and their value. The June 11, 2014 report of the student's progress towards mastery of the goal states that "she's not ready for money and will start next quarter" (Doc. a).
12. In addition to the areas identified in the May 14, 2014 IEP, the October 16, 2014 IEP also reflects that the student cannot add numbers or objects together. The IEP team revised the math goal to require the student to demonstrate her knowledge of groups of numbers to solve problems, and developed objectives addressing counting two (2) sets together for an answer up to ten (10), and to identify which of two (2) sets of groups are "less or greatest." However, the IEP team did not revise the student's math goal to address the student's math needs relating to time, money, bar graphs, patterns and sequencing (Doc. b).
13. While the IEP team convened on December 3, 2014, and April 9, 2015, the IEP team did not revise the student's math goal at either meeting (Docs. c - e).

September 25, 2015 Correspondence

14. On September 25, 2015, the school system, through its legal counsel, responded in writing to the allegations raised by the complaint in this State complaint (Doc. k).
15. The correspondence states that the school system “agrees that [the student’s] present levels are not identified in the area of reading vocabulary” and plans to obtain “more specific information about the student’s educational functioning.” It also states that the school system “agrees that while the present levels of performance address all areas of academic concern, they could be written with greater specificity,” and plans “to conduct a reevaluation of [the student] across the board to obtain more specific information about her educational functioning.” Further, the correspondence reports that the school system has taken steps to provide technical assistance to the school staff to support the development of an improved IEP for the student (Doc. k).

October 5, 2015 IEP Team Meeting

16. The IEP team convened on October 5, 2015 to conduct the annual review of the student’s IEP and revised the student’s IEP (Docs. h and i).
17. While the IEP team revised the student’s annual IEP goals in the areas addressing the student’s fine motor and gross motor skills, the IEP team did not revise any other goals (Docs. h and i).
18. The IEP team determined that updated assessment information is needed about the student in the areas of reading, math, written language, communication, and adaptive behavior in order to develop appropriate goals and objectives, as well as supplementary aids and services, and the complainant provided consent for assessments. The IEP team agreed to continue the current IEP annual goals in these areas while updated assessments are being conducted. An IEP meeting “to review the results of the assessments and projected goals, objectives and services” is scheduled for December 2015 (Docs. h and p).

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 includes a statement of the student’s present level of academic achievement and functional performance. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student’s disability, and the special education instruction and related services required to assist the student in achieving the goals. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to make progress

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in the general curriculum, the annual IEP goals must be aligned with the student's present level of academic achievement and functional performance (34 CFR §§300.101, .320, COMAR 13A.05.01.09, and *Analysis of Comments and Changes*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

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 §300.324).

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p.12479, March 1999).¹

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*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

When the SEA determines that the public agency has not followed proper procedures, it has the authority to require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services (OSEP Letter #00-20).

Reading and Math Needs

In this case, the complainant expresses concern that the student is not being provided with reading materials that are in a format, and at the level, comparable to that which she was previously provided, and able to access, using "chapter books." Therefore, the complainant indicates that she is unable to determine the level at which the student is reading. In addition, the complainant alleges that the IEP does not address all areas of the student's weaknesses in math (Doc. j and interview with the complainant).

Based on the Findings of Facts #1 - #4, and #14 - #18, the MSDE finds that the IEP does not clearly identify the student's needs in the area of reading. Further, based on the Findings of Facts #11 - #18, the MSDE finds that the IEP does not address all of the student's identified needs in math. Therefore, the MSDE finds that violations occurred with regard to these aspects of the allegation, and that the violations are ongoing.

¹ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

Social Interaction and Daily Living Skills Needs

The complainant also expresses concern that the IEP team has not updated the student's annual IEP goals in the areas of social interaction and daily living skills (Doc. j).

Based on the Findings of Facts #5 and #6, the MSDE finds that the IEP team's decision regarding the goal developed to address the student's needs in social interaction skills is inconsistent with the data. In addition, based on the Findings of Facts #5, #7, #8, and #14 - #18, the MSDE further finds that the IEP does not address all of the student's identified needs in the area of social interaction. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation, and that the violation is ongoing.

However, based on the Findings of Facts #9 - #10, the MSDE finds that the documentation does not support the allegation with regard to the goal addressing the student's daily living skills. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Allegation #2 Provision of Instruction to Assist the Student in Achieving the IEP Reading Goal

FINDINGS OF FACTS:

19. The October 16, 2014 IEP includes a reading vocabulary goal for the student to demonstrate understanding of new words by constructing them and using them correctly in sentences, based on observation record. The goal includes objectives that the student construct compound words and choose the correct words for sentences (Doc. b).
20. The October 16, 2014 IEP reflects that the student's instruction is to be aligned with the an alternative educational curriculum² (Docs. b - e).
21. The reports of the student's progress towards mastery of the annual IEP reading goal, dated October 24, 2014 and February 4, 2015, reflect that the student was working on all components of her reading goal in reading class and while working on activities for the Alt-MSA.³ A second report of the student's progress towards mastery of the annual IEP reading goal, dated February 4, 2015, and reports dated April 14, 2015 and June 1, 2015, also reflect that the student was provided with specialized instruction to assist her with working on the objectives of her reading goal (Doc. g).
22. The correspondence from the school staff to the complainant, dated June 9, 2015, indicates that the student's was working on the IEP objectives in reading while preparing

² The IEP states that the student participates in the Alternative Maryland School Assessment (Alt-MSA) and that her educational program targets daily living skills in basic reading, math, science and pre-vocational training (Docs. b-e and i).

³ The Alt-MSA is an alternate State assessment that assesses students with the most significant cognitive disabilities in individually selected objectives in reading, mathematics, and science (See Maryland Public Schools website under "Testing": www.marylandpublicschools.org).

for the Alt-MSA, including, specifically, work on a test document involving compound words which was part of the Alt-MSA portfolio (Doc. f).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students with disabilities receive the special education and related services and supports required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student was only provided with instruction addressing her annual IEP reading goal during the time period when the school staff was submitting work for the student's Alt-MSA (Docs. f and j, and interview with the complainant).

Based on the Findings of Facts #19 - #22, the MSDE finds that there is documentation that the ACPS provided the student with specialized instruction that addresses the annual IEP reading goal throughout the 2014-2015 school year. Therefore, this office does not find a violation with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the ACPS to provide documentation by February 1, 2016 that the IEP team has convened and taken the following actions:

1. Reviewed and revised the IEP, as appropriate, to include current information about the student's present levels of academic achievement and functional performance, including specific information about her strengths and weaknesses and her instructional grade level of performance, in all areas of her identified needs. In addition, the IEP team shall have reviewed and revised the IEP, as appropriate, to develop measurable goals that address all of the student's identified needs.
2. Determined the amount and nature of services needed to remediate the identified violations and has developed a plan for the implementation of those services within one (1) year of the date of this Letter of Findings.

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School-Based

The MSDE requires the ACPS to provide documentation by February 1, 2016, of the steps that the XXXXXXXXXX High School has taken to ensure compliance with the IDEA and related State requirements that students with disabilities be provided with an IEP that includes a statement of their present levels of academic achievement and functional performance, and that includes measurable annual goals designed to meet all of the needs that arise out of the student's disability, in accordance with 34 CFR §§300.101 and .320, and COMAR 13A.05.01.09.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the ACPS 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 requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions 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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the

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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

c: David Cox
XXXXXXXXXX
Rochelle Eisenberg
Dori Wilson
Anita Mandis
Bonnie Preis
K. Sabrina Austin