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December 3, 2015

Ms. Bethany Spiker
Continuum Behavioral Health
8950 Rt. 108
Suite 123
Columbia, MD 21045

Ms. Nancy Fitzgerald
Executive Director of Special Education & Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21157

RE: XXXXX
Reference: #16-029

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 October 8, 2015, the MSDE received a complaint from Ms. Bethany Spiker, hereafter, “the complainant,” on behalf of the above-referenced student, and his mother, Ms. XXXXXXXXXX. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) 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. HCPS has not ensured that the student’s Individualized Education Program (IEP) addresses the student’s behavioral needs, since October 2014, in accordance with 34 CFR §§300.114 and 324.
2. HCPS did not ensure that the IEP team met to address lack of expected progress towards achievement of the annual IEP goals since October 2014, in accordance with 34 CFR §300.324.

3. The HCPS did not ensure that the student was provided the services of a dedicated assistant to work with him on a one-on-one basis when he received Extended School Year (ESY) services during the summer of 2015, as required by the IEP, in accordance with 34 CFR §§300.101 and .323.
4. The HCPS did not ensure that the IEP team met in response to the parent's April 2015 request, in accordance with 34 CFR §300.324 and COMAR §13A.05.01.08.

INVESTIGATIVE PROCEDURES:

1. On October 9, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education & Student Services, HCPS.
2. On October 15, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's parent about the allegations for the investigation.
3. On October 15, 2015, Mr. Loiacono conducted a telephone interview with the complainant to clarify the allegations for the investigation.
4. On October 16, 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 HCPS of the allegations and requested that the school system review the alleged violations.
5. On October 20, 2015, Mr. Loiacono contacted Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic Services and Special Education Compliance, HCPS, to request documentation.
6. On October 21, 2015, the MSDE received additional documentation from the HCPS.
7. On October 30, 2015, the MSDE received a response to the complaint from the HCPS.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Educational Program (IEP), dated October 7, 2014;
 - b. IEP, dated January 29, 2015;
 - c. IEP, dated March 19, 2015;
 - d. IEP, dated May 20, 2015;
 - e. IEP, dated June 16, 2015;
 - f. IEP Meeting Notes, dated October 7, 2014;
 - g. IEP Meeting Notes, dated November 25, 2014;
 - h. IEP Meeting Notes, dated January 29, 2015;
 - i. IEP Meeting Notes, dated March 19, 2015;

- j. IEP Meeting Notes, dated May 20, 2015;
- k. IEP Meeting Notes, dated June 16, 2015;
- l. IEP Meeting Notes, dated September 24, 2015;
- m. Electronic mail (email) from the student's parent to the school, dated April 16, 2015;
- n. Email from the school to the student's parent, dated April 24, 2015; and
- o. Email from the student's parent to the school, dated April 27, 2015.

BACKGROUND:

The student is ten years old, and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education services (Doc. a).

There is documentation that the student's parent participated in the education decision-making process and was provided with notice of the procedural safeguards during the time period covered by this investigation (Doc. a).

ALLEGATION #1: ADDRESSING THE STUDENT'S IDENTIFIED BEHAVIORAL NEEDS

FINDINGS OF FACTS:

1. The IEP in effect for the student in October 2014 was developed at an IEP team meeting on October 7, 2014. At that time, the results of classroom observations indicated the student continued to have difficulty with following routines. However, the team noted that he had made progress with improving coping skills and playing with other children. The IEP team determined that the student was working on skills in the 4-5 year age range including demonstrating self-confidence and self-direction. The student's parent shared that the student's doctor had recommended additional work in small groups to improve the student's behavior. The IEP team developed social/emotional IEP objectives involving following routines, working in small groups, initiating greetings, and asking for help. To assist the student in meeting his objectives, the IEP team decided that the school staff would model appropriate greetings, and develop social stories for the student to work with others (Docs. a and f).
2. On November 25, 2014, the IEP team met and the school staff reported that the student was making progress in verbalizing and participating in class, and that he was making progress towards achieving the social/emotional goals. The school staff reported that the student was able to complete routines in the classroom including morning activities, and putting away materials, getting into line, and waiting his turn for a drink of water. Based on the student's progress, the IEP team decided that the IEP remained appropriate (Doc. g).

3. On January 29, 2015, the IEP team met and discussed the student's behavior. The progress reports indicated that the student's ability to seek help was improving. The progress reports reflected that, while he was not able to ask for help when initiating tasks, he was able to ask for help once upset. Based on the student's progress, the IEP team decided that the student's behavioral and social objectives remained appropriate (Docs. b and h).
4. On March 19, 2015, the IEP team met and determined that the student mastered objectives involving routines, but was struggling with expressing his emotions with both peers and adults. New objectives related to addressing the student's weaknesses in skills interacting with adults and peers were developed, including using appropriate volume when expressing emotions and following teacher directions. (Docs. c and i).
5. On May 20, 2015, the IEP team met and at the meeting, the parent requested that the school conduct a Functional Behavior Assessment (FBA) based on her concerns with the student's behavior. The team discussed the issue and decided that based on his progress on behavior and social goals, a FBA would not be necessary. The special educator informed the parent that modified assignments would be provided to the student if he was refusing to complete a task (Doc. j).
6. On September 24, 2015, the IEP team met and discussed emerging "aggressive" behaviors from the student and recommended that a FBA be conducted to assist with addressing this behavior; the results of which are pending (Doc. l).

DISCUSSION/CONCLUSIONS:

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student's identified needs. 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. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

The public agency must ensure that the IEP team reviews the IEP at least annually in order to determine the student's progress towards achievement of the annual IEP goals. In addition, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address lack of expected progress towards achievement of the goals (34 CFR §300.324).

Based on Findings of Facts #1-6, the MSDE finds that the school staff documented the student's progress made towards behavioral objectives, and developed new objectives once objectives were mastered to address emerging concerns. Therefore, the MSDE does not find a violation with respect to the allegation.

ALLEGATION #2: ADDRESSING THE LACK OF EXPECTED PROGRESS

FINDINGS OF FACTS:

7. Since October 2014, the IEP team has met on seven occasions to review the student's progress towards achievement of IEP goals and to address the parent's concerns. (Docs. f- l).
8. At the October 7, 2014 IEP meeting, objectives were developed for the student in reading foundational skills, reading comprehension, written expression, and math (Doc. a)
9. The progress reports prepared for the November 25, 2014 IEP meeting indicate that the student was not making progress in reading foundational skills and reading comprehension. However, they reflect that sufficient progress was being made in all other areas. The special educator explained the lack of progress in reading was attributable to the student's lack of verbalizing. She further stated that the student recently was verbalizing more, and that it should not be a concern in the future. Based on this information, the team decided that the IEP remained appropriate (Doc. g).
10. The progress reports prepared in advance of the January 29, 2015 meeting indicate that the student was making progress in all areas except reading comprehension. At the IEP team meeting, the school-based members of the team explained that the student's bathroom schedule was interfering with instruction in this area. In response, the school made adjustments to the student's schedule to minimize the amount of classroom instruction missed (Docs. b and h).
11. The IEP developed as part of the March 19, 2015 IEP team meeting indicated that the student was making sufficient progress in all IEP areas, but was still missing instruction due to toileting issues. The IEP team discussed methods to improve toileting skills to reduce accidents and maximize instruction time. The team increased the interval of the times that the student would be taken to the bathroom, and added positive rewards when the student successfully used the toilet (Docs. c and i).
12. The IEP developed on May 20, 2015 indicated that the student was making sufficient progress in all areas. The student was able to repeat longer sentences and responded to positive reinforcement to speak independently (Docs. d and j).
13. At the June 16, 2015 IEP team meeting, the IEP team developed new objectives in reading foundational skills, reading comprehension, written expression, and math to replace objectives that the student had mastered. The IEP team further discussed the trial use of assistive technology by the student, and the positive effects seen in progress towards goals. Using a computer tablet, the student was able to form longer sentences than previously measured. Based on this information, the team decided to require the provision of an assistive technology device (Docs. e and k).

14. On September 24, 2015, the team convened at the parent's request. Based on her belief that the student was not making progress, the parent requested that the student be placed in a program designed to address the needs of students with behaviors such as those seen in students with Autism. The team considered this request, and determined that the student was making sufficient progress in the school, and that his current placement was appropriate (Doc. l).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that the IEP team reviews the IEP at least annually in order to determine the student's progress towards achievement of the annual IEP goals. In addition, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address lack of expected progress towards achievement of the goals (34 CFR §300.324).

In this case, the IEP team convened seven times during the course of the last year to discuss the student's progress towards IEP goals and objectives. In each instance when the student was determined to be making insufficient progress, the IEP team discussed and implemented strategies to assist the student. Therefore, based on the Findings of Facts #7-14, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #3: PROVISION OF A DEDICATED ASSISTANT

FINDINGS OF FACTS:

15. The IEP in effect during the 2014-2015 school year requires the provision of additional adult support from an instructional assistant during instruction, transitions, lunch, recess, bus arrival and departure, and while toileting (Docs. a-e).
16. On January 29, 2015, the IEP team met and determined that the student would be provided with services during the summer of 2015. There were no changes made to the supports that the student was to receive during ESY from the regular school year (Doc. h).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction, related services and accommodations, required by the IEP (34 CFR §300.101).

In this case, the complainant alleges that the student should have been provided a dedicated assistant to work with him on a one-on-one basis during the provision of services during ESY.

Based on Finding of Facts #15 and #16, the MSDE finds that while the IEP requires that the student be provided with additional adult support, a dedicated one on one assistant is not

specifically identified. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

ALLEGATION #4: SCHEDULING AN IEP TEAM MEETING UPON PARENT REQUEST

FINDINGS OF FACTS:

17. On April 16, 2015, the parent requested an IEP team meeting be scheduled to address her concerns regarding the student's progress (Doc. m).
18. The school staff scheduled an IEP team meeting for May 8, 2015 in response to the parent's request (Doc. n)
19. On April 27, 2015, the parent contacted the school and requested that the IEP team meeting be rescheduled (Doc. o).
20. In response to the parent's request, the IEP team meeting was rescheduled, and held on May 20, 2015 (Docs. d and j).

DISCUSSION/CONCLUSIONS:

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of a FAPE. (34 CFR §§300.322, .324, .503, and COMAR 13A.05.01.08).

In this case, based on Findings of Facts #17 and #18, the parent requested an IEP team meeting, and the school staff responded by promptly scheduling a meeting. Further, based on Findings of Facts #19 and #20, the school staff promptly rescheduled the meeting at the parent's request. Therefore, the MSDE does not find that an allegation occurred with respect to this allegation.

TIMELINE:

Please be advised that the HCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

Ms. Bethany Spiker
Ms. Nancy Fitzgerald
December 3, 2015
Page 8

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 within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF:gl

c: XXXXXXXXXX
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