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December 17, 2015

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

RE: XXXXX
Reference: #16-035

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 19, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX and Mr. XXXXXXXX, hereafter, “the complainants.” In that correspondence, the complainants alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to their son, the above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that the student’s Individualized Education Program (IEP) addresses the student’s academic, social and behavioral needs since October 2014, in accordance with 34 CFR §§300.114 and 324.
2. The HCPS has not followed proper procedures to ensure the provision of Home and Hospital Teaching (HHT) services since September 25, 2015 when the student became unable to attend school due to an emotional condition, in accordance with COMAR 13A.03.05.03(D)(2) and 13A.05.01.10(C)(5).

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INVESTIGATIVE PROCEDURES:

1. On October 20, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On October 22, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's mother about the allegations for the investigation.
3. On October 28, 2015, the MSDE sent correspondence to the complainants 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.
4. On October 29, 2015, Mr. Loiacono contacted Ms. Pamela O'Reilly, Coordinator of Compliance, Department of Special Education, HCPS, to arrange a site visit.
5. Mr. Loiacono received additional documentation from the student's mother, via electronic mail, on October, 22, 26, 28, and 30, 2015.
6. On November 13, 2015, Mr. Loiacono, and Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review records and interviewed Ms. XXXXXXXXXXXX, Principal, XXXXXXXXXXXX, HCPS, and Ms. Melissa Romano, Coordinator of Elementary Special Education, HCPS. Ms. XXXXXXXX attended the site visit as a representative of the HCPS and to provide information on the school system's 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. IEP, dated October 21, 2014;
 - b. IEP, dated November 10, 2015;
 - c. Amended IEP, dated March 24, 2015;
 - d. Amended IEP, dated September 8, 2015;
 - e. Prior Written Notice, dated October 21, 2014;
 - f. Prior Written Notice, dated March 24, 2015;
 - g. Prior Written Notice, dated September 8, 2015;
 - h. Prior Written Notice, dated September 24, 2015;
 - i. Prior Written Notice, dated November 10, 2015;
 - j. Electronic mail (Email) from Ms. Romano to the student's parents, dated November 7, 2014;
 - k. Letter from HCPS staff to the student's parent dated October 12, 2015;
 - l. Email from HCPS staff to the student's parent, dated October 22, 2015;
 - m. Email from the student's parent to HCPS staff, dated October 26, 2015;
 - o. Home and Hospital teacher logs, undated.

BACKGROUND:

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

At the start of the 2015-2016 school year, the student attended XXXXXXXXXXXXXXXX School. On September 25, 2015, the student began receiving Home and Hospital Teaching services. On October 26, 2015, the student was administratively transferred to XXXXXXXXXXXXXXXX School (Docs. a and b).

There is documentation that the complainants 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 ACADEMIC, SOCIAL AND BEHAVIORAL NEEDS

FINDINGS OF FACTS:

Academic and Communication Needs

1. The IEP in effect for the student in October 2014 was developed at IEP meetings held on October 21 and 27, 2014. At that time the IEP team identified needs in reading phonics, reading comprehension, written language mechanics, and speech articulation. The team determined the student's present levels of academic achievement and functional performance, developed goals, and determined that special education instruction would be provided to assist the student with achieving his goals in the following areas:

Reading Phonics

Based on teacher reports of the student's performance, the IEP team determined that the student was functioning at the middle first grade level. The student's private tutor informed the team that by her measurement during the summer of 2014 the student was performing at the kindergarten level. The team identified needs in sounding out word containing digraphs and recognizing syllables within words. Goals were developed to decode words with digraphs and two syllables.

Reading Fluency

Based on teacher reports of the student's performance, the IEP team determined that the student was functioning at the middle first grade level in reading fluency. His lowest scores were in sight word vocabulary. The IEP team developed goals related to reading sight words and reading at appropriate rates.

Reading Comprehension

Based on the results of a classroom-based assessment, the IEP team determined that the student was performing at the middle first grade level in reading comprehension. The IEP team noted that he struggled to finish part of the assessment due to frustration. The IEP team developed goals related to making inferences based on the text and identifying important events and main ideas in stories.

Written Language Mechanics

Based on a writing prompt given to the student and designed to reflect his level of performance, the IEP team determined that the student was performing at the late second grade level in written language mechanics. However, the IEP team also noted that the student struggles with spelling during the completion of exercises where a prompt is provided. In response, the IEP team developed goals related to improving the student's spelling skills.

Speech Articulation

Based on information from the student's speech language therapist, the IEP team determined that the student struggles with producing /r/ and /ch/ sounds and with intelligibility in unstructured settings. The team developed goals related to producing /ch/ and /r/ sounds following prompts and blending sounds (Doc. a).

2. At the October 21 and 27, 2015 meeting, the team decided that the student would be provided with special education instruction and related speech therapy services to assist him with achieving the annual IEP goals. In order to assist the student with achieving the reading goals, the team decided that the student would participate in small group instruction. In response to the complainants' concerns over instructional methods for reading, the Coordinator of Elementary Special Education, HCPS, observed the child during reading instruction. She recommended that the student participate in the Wilson FUNdations reading intervention, due to its "multisensory approach to teaching decoding and encoding." The student was moved into the FUNdations reading group based on this recommendation (Docs. a and j).
3. On March 24, 2015, the IEP team met and determined that the student requires Extended School Year (ESY) services in order to prevent regression of the IEP goal progress in reading phonics, reading comprehension, and speech. The parent disagreed with the team's decision and only agreed to accept ESY services in the areas of speech (Doc. f).
4. The reports of the student's progress towards achieving annual IEP goals, dated January 23, April 10, and June 19, 2015, indicate that the student was making sufficient progress towards the academic goals, as follows:

Reading Phonics

The progress reports indicate that the student's ability to successfully identify diagraphs in reading increased from 5/10 attempts to 8/10 attempts from January 2015 to June 2015. The student was also able to learn new skills to identify known word parts.

Reading Fluency

The progress reports indicate that the student was able to increase his ability to identify and read words from a second grade level word list from 25% accuracy in January 2015 to 82% accuracy in June 2015. The reports also indicate that he was able to demonstrate an appropriate rate of reading fluency on 3 out of 4 occasions.

Reading Comprehension

The progress reports indicate that the student was able to increase his ability to identify the main idea of the story (66% to 71% accuracy), make inferences from the text (from 33% to 80% accuracy). The student showed a minor reduction in his ability to identify important events in the story (60% to 50% accuracy).

Written Language Mechanics

The progress reports indicate that the student was able to increase his ability to spell non-phonetical words, when measured, from 1/10 to 7/10 attempts. He was able to increase his ability to spell phonetic words in writing samples from 1/3 to 3/5 attempts.

Speech Articulation

The progress reports note that the student was substantially able to increase his ability to produce /ch/ sounds both in isolation and when blended with other sounds. The June 19, 2015 progress report indicates that the student was able to produce /ch/ sounds with about "75% accuracy" compared to an IEP objective of 80% accuracy (Doc a.)

5. On November 10, 2015, the IEP team met to determine the student's present levels of performance, and review IEP goals and objectives in the following areas:

Reading Phonics

Based on teacher reports of the student's performance, the IEP team determined that the student was functioning at the beginning second grade level. The team developed goals related to decoding words.

Reading Fluency

Based on teacher reports of the student's performance, the IEP team determined that the student was functioning at the end of first grade level in reading fluency. The IEP team developed goals related reading sight words.

Reading Comprehension

Based on teacher reports of the student's performance, the IEP team determined that the student was performing at the early second grade level in reading comprehension. The IEP team developed goals related to answering questions about the text and identifying the main idea of stories.

Written Language Mechanics

Based on teacher reports of the student's performance, the IEP team determined that the student was performing at the end of second grade level in written language mechanics. In response, the IEP team developed goals related to spelling.

Speech Articulation

Based on information from the student's speech language therapist, the IEP team determined that the student struggled with producing /r/ and /r/ blended sounds. The team developed goals related to producing /ch/ and /r/ sounds at the word level and blended in conversation. (Doc. b).

Behavioral and Social Needs

6. At the October 21 and 27, 2014, IEP team meeting, the team identified needs and developed goals as follows:

Social Interaction

Based on teacher input, the team determined that the student had shown some growth in his social interaction skills, but struggled with being understood by his peers and self-advocacy. To address those needs, the IEP team developed objectives related to appropriate interactions following verbal prompts, in conversation, and during disagreements.

Self-Management

Based on input from the student's parent, the team determined that the student was performing below grade level expectations. The team identified needs in self-advocacy, organization, and developing a plan for complex tasks. To address those needs, the IEP team developed objectives related to determining steps and objects necessary to accomplish goals (Doc. a).

7. The IEP that was completed on October 27, 2014 required the use of verbal prompting and the use of social stories to assist the student in achieving his IEP goals related to social and behavioral needs (Doc. a).

8. The IEP progress reports completed on January 1, April 10, and June 19, 2015, indicate that the student was making sufficient progress towards both social interaction and self-management goals, as follows:

Social Interaction

The progress reports indicate that the student was able to maintain conversations and share his thoughts with peers. They further indicate that by June 19, 2015, the student was able to use conflict resolution skills when in disagreements with peers.

Self-management

The progress reports indicate that the student was able to formulate plans to accomplish goals and identify objects needed in 4 out of 5 observed instances, exceeding objective levels (Doc. a).

9. On August 27, 2015, the first day of the 2015-2016 school year, there was an incident at school where another student threatened the student. The complainants reported that their son was frightened by the incident and, as a result, they did not return him to school (Doc. h).
10. An investigation of the incident was conducted by the school staff and a decision was made that there was a "low risk" of the other student carrying out the threat. Offers were made by the school staff to separate the students into different classes, but the complainants did not agree to return the student to school because they did not agree that this would resolve the matter. Instead, HHT services were initiated following the certification of the need. At that time, the complainants also requested a transfer to XXXXXXXX Elementary School (Docs. g and h).
11. On October 12, 2015, the school staff informed the complainants that XXXXXXXX Elementary School had reached its maximum capacity of students, but that a transfer to another school would be considered, if they wished (Doc. m).
12. On October 22, 2015, HCPS offered to administratively transfer the student from XXXXXXXX Elementary to XXXXXXXX Elementary, because space was now available, and on October 26, 2015, the complainants accepted the transfer (Docs. k and l).
13. On November 10, 2015 an IEP team meeting was held at XXXXXXXX Elementary and the IEP team identified needs and developed goals as follows:

Social Interaction

Based on classroom observations, the team determined that the student was developing age-appropriate friendships with his peers but displayed anxiousness if he did not understand comments made by his peers. To address those needs, the IEP team developed

objectives related to developing coping mechanisms and managing anxiety when interacting with peers.

Self-management

Based on classroom observations, the team determined that the student was able to work with a small group of his peers and determine the steps necessary to accomplish goals and to identify materials needed for assignments when working independently. The IEP team developed objectives related to organizational strategies (Doc. b).

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). 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 #1-13, the MSDE finds that the IEP team developed goals and objectives in October 2014 to address the student's identified needs. In doing so, they considered input from classroom teachers, the student's parents and related service providers. Based on Findings of Facts #1-13, the MSDE further finds that, over the course of the following school year, school staff documented the student's progress towards IEP goals and objectives, and determined that the student was making satisfactory progress without modifications to the IEP.

Further, based on Findings of Facts #9-13, when an incident occurred at the beginning of the 2015-2016 school year which necessitated a change to the student's placement, the IEP team was convened and developed an IEP that addressed the student's identified needs and which could be implemented during the provision of HHT services. Therefore, the MSDE does not find a violation with respect to the allegation.

ALLEGATION #2: PROVISION OF HOME AND HOSPITAL TEACHING (HHT) SERVICES

FINDINGS OF FACTS:

14. On September 8, 2015, following the receipt of verification of the student's need for HHT services, the IEP team decided that the student would be provided with six (6) hours of HHT service per week, to include five (5) thirty (30) minute sessions of phonics instruction per month, five (5) thirty (30) minute sessions of reading comprehension

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instruction per month, and three (3) thirty (30) minute sessions of speech/language therapy. The team decided that the speech/language therapy would be provided on a one-on-one basis at school as part of the plan to return the student to a school-based program (Doc d).

15. The HHT teacher's logs document that she attempted to initiate services on September 24, 2015, but the complainants cancelled the appointment. The logs also document the provision of special education instruction in the areas of reading/phonics and math to the student in his home as follows:

September 24, 2015 - services not provided at mother's request;
September 25, 2015 - two (2) hours of services provided;
September 28, 2015 - services not provided at mother's request;
September 29, 2015 - two (2) hours of services provided;
September 30, 2015 - two (2) hours of services provided;
October 5, 2015 - services attempted, but no one was at home;
October 7, 2015 - two (2) hours of services provided;
October 8, 2015 - the student's mother requested discontinuation of the services for that day after one (1) hour of services was provided;
October 9, 2015 - two (2) hours of services provided;
October 12 and 13, 2015 - services not provided at the mother's request;
October 14, 2015 - two (2) hours of services provided;
October 19, 2015 - two (2) hours of services provided;
October 22, 2015 - services not provided at the mother's request; and
October 23, 2015 - three (3) hours of instruction provided (Doc. o).

16. On October 23, 2015, the student's mother sent correspondence to the school staff requesting the discontinuation of HHT services (Doc. l).

DISCUSSION/CONCLUSIONS:

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 or emotional condition that prevents a student from attending school, in accordance with the State regulations (COMAR 13A.03.05.04). For students with disabilities, the IEP team must determine the instructional services to be provided and must develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10).

In this case, the complainants allege that the HHT teacher did not provide instruction in the area of reading/phonics in the home, as determined by the IEP team, since September 25, 2015. Based on the Findings of Fact #14-16, the MSDE finds that there is documentation that the HHT teacher provided instruction in the area of reading/phonics in the student's home and that the amount of instruction determined by the IEP team was offered to the student. Therefore, the MSDE does not find a violation 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.

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: Barbara P. Canavan
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