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December 24, 2015

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Mr. Daniel Martz
Director of Special Education & Psychological Services
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #16-041

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 28, 2015, the MSDE received a complaint from Ms. XXXXXXXX and Mr. XXXXXXXX, hereafter, “the complainants,” on behalf of the above-referenced student. In the correspondence, the complainants alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The FCPS did not provide the student with the FM amplification system and audiological services required by the Individualized Education Program (IEP) since October 28, 2014,¹ in all subject areas, in accordance with 34 CFR §§300.101. and .323.

¹ On November 6, 2015, the MSDE informed the complainant, in writing, that only those violations that are alleged to have occurred not more than one year prior to the date that the complaint is received can be resolved through the State complaint procedure (34 CFR §300.153).

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2. The FCPS did not develop an IEP that addresses the student's identified speech/ language needs since October 28, 2014,¹ in accordance with 34 CFR §300.324.
3. The FCPS did not ensure that an IEP team meeting that convened on June 22, 2015 included the required participants, specifically, a representative who is knowledgeable about the availability of resources of the public agency, in accordance with 34 CFR §§300.321.

INVESTIGATIVE PROCEDURES:

1. On October 29, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mr. Daniel Martz, Director of Special Education and Psychological Services, FCPS and Ms. Linda Chambers, Supervisor of Special Education and Compliance, FCPS.
2. On November 5, 2015, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted telephone interviews with the complainants and clarified the allegations for investigation.
3. On November 6, 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 FCPS of the allegations and requested that the FCPS review the alleged violations.
4. On November 11, 12, 21 and 24, 2015, the complainants provided documents to the MSDE for consideration.
5. On November 18, 19, 23, 24 and 30, 2015, the FCPS provided documents to the MSDE for consideration.
6. On November 24, 2015 and December 2 and 4, 2015, Ms. Floyd and Ms. Nicole Green, Dispute Resolution Data Specialist, MSDE, conducted a site visit at XXXXXXXX XXXXXXXXXXXX (XXXXXXXX) and XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXX XXXXXX) to review the student's educational record, and interviewed the following:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXX, Principal;
 - c. Ms. XXXXX, Itinerant Teacher for the Deaf and Hard of Hearing;
 - d. Dr. XXXXXXXXXXXX, Itinerant Teacher for the Deaf and Hard of Hearing;
 - e. Ms. XXXXXXXX, Teacher Specialist for Speech and Language Pathologists;
 - f. Ms. XXXXX, Kindergarten Teacher;
 - g. Ms. XXXXXXXX, Kindergarten Teacher;
 - h. Ms. XXXXXXXXXXXX, Principal;
 - i. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - j. Ms. XXXXXXXXXXXXXXXXXXXX, Art Teacher;

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- k. Mr. XXX, Physical Education Teacher; and
- l. Ms. XXXXXX, Media Specialist.

Ms. Chambers and Ms. Katie Turner, Instructional Coordinator, Special Education attended the site visits as representatives of the FCPS and to provide information on the FCPS 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. The student's report cards for the 2014-2015 and 2015-2016 school years;
 - b. The student's enrollment history since August 25, 2014;
 - c. IEP, dated September 2, 2014, amended on November 17, 2014 and progress reports;
 - d. IEP, dated June 22, 2015, amended on September 22, 2015 and progress reports;
 - e. Invitation to the November 17, 2014 IEP team meeting, written summary of the meeting;
 - f. Invitation to the February 25, 2015 IEP team meeting, written summary of the meeting;
 - g. Invitation to the September 8, 2015 IEP team meeting, written summary of the meeting, IEP team eligibility report for speech and language impairment;
 - h. Invitation to the November 17, 2015 IEP team meeting, written summary of the meeting;
 - i. Invitation to the June 22, 2015 IEP team meeting, written summary of the meeting;
 - j. Written summary of the December 18, 2014 IEP team meeting;
 - k. IEP team meeting notice for June 15, 2015 IEP team meeting;
 - l. IEP team meeting notice for November 5, 7 and 17, 2014 IEP team meeting, written summary of the meeting, IEP team eligibility report for speech and language impairment;
 - m. The student's calendar for cleaning batteries and earmolds dated March through June, 2015;
 - n. Email correspondence from the complainants to the school system staff;
 - o. Email correspondence from the school system staff to the MSDE;
 - p. Logs of services provided by the Itinerant deaf and hard of hearing teacher for the 2014-2015 and 2015-2016 school years;
 - q. Email correspondence from the complainants to the MSDE;
 - r. Reports of speech and language observation, September 30, 2015, educational hearing evaluation, September/October 2014, private speech and language evaluation, July 1 and 2, 2015, speech and language assessment, October 29, 2014, Occupational Therapy (OT) assessment, September 10, 17, 2014 and October 8, 2014, audiological assessment, August 26, 2014, and a note from the student's primary care doctor, December 17, 2014;

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- s. Receipt of parental rights, procedural safeguards notice, and explanation, dated November 17, 2015 and signed by the complainants;
- t. Correspondence from the complainants alleging violations of the IDEA, received by the MSDE on October 28, 2015;
- u. Professional development agenda provided by the Itinerant teacher for the deaf and hard of hearing, dated for the 2015-2016 school year;
- v. FCPS regulation number 500-32, equipment and replacement policy;
- w. FCPS process for compensatory services, special education service delivery and programs;
- x. The student checklist for hearing aids for the 2015-2016 school year; and
- y. Log of audiological services for the 2014-2015 and 2015-2016 school years.

BACKGROUND:

The student is six (6) years old. He is identified as a student with a Hearing Impairment under the IDEA, and has an IEP that requires the provision of special education and related services (Doc. d).

The student attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXX) from August 25, 2014 through December 23, 2014. The student attended XXXXXXXXXXXXXXXXXXXX (XXXXXX XXXXXX) from January 5, 2015 through July 6, 2015. The student returned to XXXXXXXX at the start of the 2015-2016 school year (Doc. b).

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

ALLEGATION #1 PROVISION OF FM SYSTEM AND AUDIOLOGICAL SERVICES

FINDINGS OF FACTS:

Provision of the FM System

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1. The IEP in effect since the start of the 2014-2015 school year, dated September 2, 2014, requires that an FM amplification system² is used by students and teachers during all instruction and assessments daily, provided by the student's teachers. When using the

² An FM amplification system is designed to aid receptive language by decreasing the amount of interference from background noise and speech intelligibility. FM systems use a wireless transmitting unit with the purpose of transmitting the speaker's voice to the receiver when worn by the student. The broadcast range is approximately 150 feet. The receiver accepts the voice transmission, amplifies it, and sends this signal through the student's ear mold. FM systems need to be charged daily. In the morning, the student is responsible for putting the hearing aid receivers in his ears. The student then synchronizes the transmitters and receivers (Frederick County Regulation No. 500-32 Equipment Policy and Hearing Services FM Equipment Policy).

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FM device, the teachers are to use the microphone/transmitter which has a direct link to the student's hearing aid (Doc. c).

2. On November 17, 2014, the IEP team convened to review the student's IEP. The team members discussed that the student has consistent access to the FM amplification system during the school day (Doc. h).
3. A log of monthly services provided by the Itinerant teacher for the deaf and hard of hearing from October 28, 2014 through December 19, 2014 indicate three (3) checks of the FM system per week in addition to working with the student within the classroom for thirty (30) minutes per session to ensure access, working condition of the system and continuous training sessions for the students and teachers (Doc. p).
4. There is documentation to demonstrate that the student was provided with the FM system on a consistent basis as required by the IEP in all core academic classes and specials, art, music, physical education and media classes (Docs. c, d, e, f, g, h, i, j and interview with school staff).

XXXXXXXXXX

5. On June 22, 2015, the IEP team convened to review and revise the IEP. The IEP requires that the FM amplification system is used during instruction and assessments daily. The IEP indicates that the teacher will use the microphone/transmitter which has a direct link to the student's hearing aid, which allows for better access to the speaker's voice. The FM microphone can be shared with other speakers, teachers, or when working in groups with peers, including such times as specials, lunch and special events. The FM system is to include a plug-in for the computer with the student's input, as needed, and it would be available at all times during the school day. The IEP further indicates that the FM system will not be provided at lunch and recess for use but will be sent to assemblies, field trips, and all "specials" in addition to classroom instructional time. In assemblies, if the room microphone interacts negatively with the FM system's frequency, the use of the FM will be at the student's discretion. All instructional providers include all of the student's teachers and staff (i.e. specials teachers in addition to the other service providers). At the IEP team meeting on June 22, 2015, the team members discussed the use of the FM system and support for teachers so that the system is used consistently (Doc. i).
6. A log of monthly hearing services indicate three checks of the FM system per week in addition to working with the student within the classroom for two (2) thirty (30) minutes per session to ensure access, working condition of system and continuous training sessions for the students and teachers (Docs. p and u)
7. There is documentation to demonstrate that the student was provided with the FM system on a consistent basis as required by the IEP in all core academic classes, but not on a

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consistent basis in art, music, physical education and media classes (Docs. c, d, e, f, g, h, i, j and interview with school staff).

8. At the June 22, 2015 IEP team meeting the team decided there was no impact on the student's ability to benefit from the educational program by not having consistent provision of the FM services during art, music, physical education and media classes (Docs. i and w).

XXXXXXXXXXXXX

9. On August 24, 2015, the student returned to XXXXXXXXX. There is documentation to demonstrate that the student was provided with the FM system on a consistent basis as required by the IEP in all core academic classes, and specials, art, music, physical education and media classes. There is also documentation that, at the start of the 2015-2016 school year, professional development for teachers and students regarding the use of the FM device was provided (Docs. c, d, e, f, g, h, i, j and interview with school staff).

Audiological Services

10. The IEP requires that audiological services be provided during two (2) sessions a year for one (1) hour per session. The audiologist is to complete an audiological assessment and conduct earmold and hearing aid adjustments (Doc. y).
11. The logs of audiological services document that the audiologist provided the services as required by the IEP (Doc. y).

DISCUSSION/CONCLUSIONS:

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

Provision of the FM System

Based on the Findings of Facts #1-#7 and #9, the MSDE finds that the school system did not consistently implement the FM system, as required by the IEP, in non-core academic classes. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #8, the IEP team found no impact on the student's ability to benefit from the educational program. Therefore, no student specific corrective action is required to remediate the violation.

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Audiological Services

Based on the Findings of Facts #10 and #11, the MSDE finds that the school system implemented the audiological services, as required by the IEP. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

ALLEGATION #2 SPEECH/LANGUAGE NEEDS

FINDINGS OF FACTS:

12. On November 17, 2014, the IEP team convened to review the student's progress and the results of a speech/language assessment. The teachers report that the student is working above grade level in all areas in the classroom. The assessment results indicate that the student exhibits "above average ability in the area of articulation, intelligibility, and conversational speech." The IEP team determined that based on the teacher reports and assessment data, the student did not require speech/language services. Previously, the student received consultative services from the speech/language pathologist that focused on "having the student focus on the speaker" and the services were delivered in a small, separate room with the speech/language therapist. The IEP team determined that the student needed to remain in the classroom to benefit from "hearing good speech models." The IEP team also decided that the itinerant hearing teacher for the deaf and hard of hearing would collaborate with the classroom teacher on having the student attend to the speaker, participate in conversations, and advocate for himself within the classroom (Docs. h and r).
13. On February 25, 2015 an IEP team meeting was held at the request of the complainants. The complainants expressed concerns regarding the student's frustration of having to repeat himself at home and within the community because others are not able to understand his speech. In response, the teacher reported that the student is "communicating effectively and meeting academic benchmarks at this time." The complainants provided the IEP team with a note from the student's primary care physician indicating that the student's intelligibility is of concern and that the student needed speech/language services. The IEP team determined that additional speech/language assessments were not recommended, citing the results of the previous assessment and the student's present functioning within the classroom (Docs. f and r)
14. In July 2015, the FCPS agreed to fund an Independent Educational Evaluation (IEE) for the student to determine whether the student required services and to address the complainants concerns about the student's intelligibility within conversational speech (Docs. g and t).
15. On September 8, 2015, the IEP team convened for an annual review of the IEP and at that meeting they considered the complainants' concerns that the student's speech is not consistently intelligible to them and that he becomes frustrated when he is constantly

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asked to repeat himself. The team also considered information from the school staff that they have no problem understanding the student's speech and that the student is able to initiate and engage in reciprocal conversation. The team further considered the results of the IEE indicating that the student demonstrates "above average" language skills and a "moderate articulation disorder at the connected speech/conversational level." Based on the information, the team determined that the moderate articulation disorder was not impacting the student educationally and therefore the student does not require speech/language services. However, the team agreed to conduct a classroom observation of the student in response to the complainants' concern that the IEE had been conducted in an environment where the noise level was not typical of the student's daily environment. (Docs. g and r).

16. On November 17, 2015, the IEP team convened and considered the results of the classroom observation report which states that the student was observed as being "93% intelligible" during the two (2) hours of observation. The report also notes that while the student exhibits some occasional sound error, it "rarely" impacted his ability to be understood within the classroom. Due to time constraints, the IEP team is in agreement to continue the meeting in December 2015, to determine whether the student is eligible to receive speech/language services because they needed additional time to review all of the data (Doc. r).

DISCUSSION/CONCLUSION:

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).

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 state educational agency 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 to IDEA*, 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 can 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).

The SEA may not, however, overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20).

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The complainants allege that the student requires speech and language therapy services. Based on the Findings of Facts #12-#16, the MSDE finds that there is documentation to support the IEP team's decision about the student's speech/language needs. Therefore this office does not find a violation with respect to this aspect of the allegation.

ALLEGATION #3 REQUIRED IEP TEAM PARTICIPANTS

FINDINGS OF FACTS:

17. The parties agree that they discussed that information would be provided at the June 22, 2015 IEP team meeting about how parents could seek compensatory services for inconsistent provision of FM services during the 2014-2015 school year in art, music, physical education and media room classes (Doc. t).
18. The documentation of the June 22, 2015 IEP team meeting indicates the team included school system staff who provided specific information on the FCPS procedures regarding the determination of compensatory services indicating that the IEP team must determine whether there was a loss of a Free Appropriate Public Education (FAPE) that requires compensatory services (Doc. i).
19. Following the provision of this information, the IEP team made the determination that the inconsistent provision of FM services during art, music, physical education and media room classes had no negative impact on the student's ability to benefit from the educational program, and therefore compensatory services were not required (Doc. i).

DISCUSSION/CONCLUSION:

The IEP team must include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

In this case, the complainants allege that the FCPS should have had school system staff available at the June 22, 2015 IEP team meeting who could make a decision on their request for compensatory services.

Based on the Findings of Facts #17-#19, the IEP team had the members necessary to make a decision at the June 22, 2015 IEP team meeting and that, in fact, the decision regarding compensatory services was made at this meeting. Therefore, this office does not find that a violation occurred with respect this allegation.

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TIMELINE:

Please be advised that both the complainants and the FCPS 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 and conclusions contained in this letter should be addressed to this office in writing. The complainants 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 a due process complaint.

Sincerely,

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

MEF/sf

c: Theresa R. Alban
Linda Chambers
Sharon West
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Dori Wilson
Anita Mandis