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February 2, 2016

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

RE: XXXX
Reference: #16-055

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 December 4, 2016, the MSDE received a complaint from Mrs. XXXXXXXXXX and Mr. XXXXXXXXXX, the student's parents, hereafter, "the complainants," on behalf of their daughter, the above-referenced student. 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 the student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that interpreting services have been consistently provided, as required by the Individualized Education Program (IEP) since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.

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2. The HCPS did not provide prior written notice of the IEP team's December 1, 2015 decision to reject the complainants' request to maintain the student's speech and language services, in accordance with 34 CFR §300.503.
3. The HCPS did not ensure that the student received the special education instruction in reading as required by the IEP while the student was to receive Home and Hospital Teaching (HHT) services from the start of the 2015-2016 school year until November 11, 2015, in accordance with 34 CFR §§300.101 and .323 COMAR13A.03.05.03D.

INVESTIGATIVE PROCEDURES:

1. On December 7, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education Services, HCPS.
2. On December 15, 2015, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainants in order to clarify the allegations to be investigated.
3. On December 17, 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 they review the alleged violations.
4. On January 12, 16, and 19, 2016, the HCPS provided the MSDE with documentation via email.
5. On January 20, 2016, Ms. Floyd and Ms. Nicole Green, Dispute Resolution Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX School (XXXXXXXXXX ES) to review the student's educational record, and interviewed the following HCPS staff:
 - a. Ms. XXXXXXXX, Special Education Teacher;
 - b. Mr. XXXXXXXX, Home and Hospital Teacher;
 - c. Ms. XXXXXXXXXXXX, Principal;
 - d. Ms. XXXXXXXXXXXX, Speech and Language Pathologist;
 - e. Ms. XXXXXXXXXXXX, Interpreter; and
 - f. Mr. XXXXXXXX, Assistant Principal.

Ms. Pamela O'Reilly, Coordinator of Compliance, HCPS, and, Ms. Melissa Romano, Coordinator of Elementary Special Education, attended the site visit as representatives of the HCPS and to provide information on the HCPS policies and procedures, as needed.

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6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of procedural safeguards, provided to the complainants on December 1, 2015;
 - b. IEP, dated December 1, 2015, and IEP progress reports;
 - c. IEP, dated December 2, 2014, and IEP progress reports;
 - d. The student's attendance for the 2014-2015 and 2015-2016 school years;
 - e. Application for Home and Hospital Teaching (HHT), dated April 10, 2015 and the physician's statement dated March 25, 2015;
 - f. Prior Written Notice, dated December 1, 2015;
 - g. Prior Written Notice, dated September 29, 2015;
 - h. Prior Written Notice, dated August 31, 2015;
 - i. Prior Written Notice, dated June 12, 2015;
 - j. Prior Written Notice, dated April 14, 2015;
 - k. Prior Written Notice, dated February 3, 2015;
 - l. Prior Written Notice, dated December 2, 2014;
 - m. Electronic mail (Email) from the HCPS to the MSDE, dated January 12, 2016;
 - n. Home and Hospital Brochure, HHT Frequently Asked Questions (FAQ), HCPS;
 - o. HHT weekly reports, dated August 17, 2015 through December 21, 2015, and student work samples while on HHT;
 - p. Interpreter's schedule for the 2015-2016 school year, HHT time report, HCPS emails dated December 16, 2015 and February 16-20, 2015;
 - q. Logs of speech/language services dated September 8, 2014 through December 7, 2015; and
 - r. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on December 4, 2015.

BACKGROUND:

The student is eleven (11) years old and is enrolled at XXXXXXXXXXXXXXXX School. She has been identified as a student with Multiple Disabilities under the IDEA, related to a hearing impairment and a medical diagnosis of XXXXX Syndrome. Since the start of the 2015-2016 school year, the student has been receiving Home and Hospital Teaching (HHT) services.

There is documentation that the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards during the time period addressed by this investigation (Doc. a).

ALLEGATION #1: IEP IMPLEMENTATION OF INTERPRETING SERVICES

FINDINGS OF FACTS:

1. The IEP in effect since the start of the 2015-2016 school year requires that the student be provided with interpreting services (Doc. b).
2. There is documentation that interpreting services have been provided as required by the IEP except for the following:
 - a. On February 18, 2015, the complainant declined the provision of HHT services; and
 - b. The interpreter was absent on one (1) day, which resulted in no HHT services being provided on that day (Doc. p).

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).

Based on the Finding of Fact #2b, the MSDE finds that the HCPS missed one HHT session due to the interpreter's absence. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #2: PROVISION OF PRIOR WRITTEN NOTICE WHEN THE SPEECH/LANGUAGE SERVICES WERE REVISED

FINDINGS OF FACTS:

3. On December 1, 2015, IEP team convened and discussed that the provision of speech/language services to address pragmatic language, which had been delivered in the student's home through use of video communication with the Speech and Language Pathologist (SLP) and students at the school, was not assisting the student. Therefore, the team decided to decrease the amount of speech/language services and decided not to address the pragmatic speech services while the student remains on HHT (Docs. f and l).
4. The IEP team developed a prior written notice document, dated December 1, 2015, that describes this proposed action. However, there is no documentation that the document was provided to the complainants (Docs. b and r).

DISCUSSION/CONCLUSIONS:

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, an explanation of the action, and a description of each evaluation procedure, assessment, record, or report used as a basis for the decision. It also must contain a statement that the parents of a student with a disability have protections under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

In this case, the complainants assert that the HCPS did not provide them with prior written notice of the decision to reduce the student's speech and language services.

Based on the Findings of Facts #3- #4, the MSDE finds that there is no documentation that the complainants were provided with the prior written notice. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #3: PROVISION OF HOME AND HOSPITAL TEACHING (HHT) SERVICES IN READING

FINDINGS OF FACTS:

5. The student's IEP includes a goal for the student to improve reading phonics and two (2) goals for her to improve reading comprehension (Doc. b).
6. The HHT teacher's logs document that special education instruction is being provided to address the IEP goals in reading phonics and comprehension (Doc. o).
7. The weekly reports that were provided by the school staff to the complainants document the provision of reading instruction and highlight the areas of curriculum that was taught (Doc. o).
8. The reports of the student's progress towards achieving the annual reading goals, dated November 6, 2015, document that the goals are being addressed and that the student is making sufficient progress to meet the reading goals (Doc. b).

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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 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 in the home, as determined by the IEP team, since November 11, 2015.

Based on the Findings of Fact #5-#8, the MSDE finds that there is documentation that the HHT teacher provided instruction in the area of reading 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.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the HCPS to ensure that the HHT session that was missed due to the interpreter's absence is provided by March 1, 2016. The HCPS must also ensure that the complainants are provided with the December 1, 2015 prior written notice of the team's decisions by March 1, 2016.

TECHNICAL ASSISTANCE:

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

Please be advised that the HCPS and the parties 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.

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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 Action 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 Free and Appropriate Public Education (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:sf

c: Barbara P. Canavan
Pamela O'Reilly
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Dori Wilson
Anita Mandis
Sharon Floyd