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February 9, 2016

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Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 N. Court St.
Westminster, Maryland 21157

RE: XXXXX
Reference: #16-058

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 11, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) 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. The CCPS has not ensured that the Individualized Education Program (IEP) developed for the student has met her behavioral and social needs, since December 2014, in accordance with 34 CFR §§300.320 and 324.
2. The CCPS did not ensure that the student was provided with the counseling services required, consistent with the IEP, during September 2015, in accordance with 34 CFR §§300.101 and 323.

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3. The CCPS did not ensure that the student was permitted to participate in physical education class, with the provision of accommodations, required by the IEP, in October 2015, in accordance with 34 CFR §§300.101 and .323

INVESTIGATIVE PROCEDURES:

1. On December 11, 2015, MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
2. On December 18 and 21, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to clarify the allegations for the investigation.
3. On December 23, 2015, and January 21, 2016, the complainant provided the MSDE with documentation to be considered.
4. On December 28, 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 CCPS of the allegations and requested that the school system review the alleged violations.
5. On December 31, 2015, Mr. Loiacono contacted Mr. Wayne Whalan, Coordinator of Compliance, CCPS, to arrange a document review and site visit.
6. On January 15, 2016, Mr. Loiacono and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXX School to review records and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Physical Education Teacher;
 - b. Ms. XXXXXXX, Special Education Case Manager;
 - c. Ms. XXXXXXXXXXX, School Counselor;
 - d. Mr. XXXXXXXX, Special Educator;
 - e. Ms. XXXXXXXX, Special Educator;
 - f. Mr. XXXXXXXXXXX, Principal;
 - g. Ms. XXXXXXXX, Intervention Therapist;
 - h. Ms. XXXXXXXXXXXXX, Social Worker; and
 - i. Ms. XXXXXXXXXXX, Special Educator.

Mr. Whalen, Ms. Christine Bechtil, Supervisor of Special Education, CCPS, and Ms. Mary Beth Whalen, Instructional Consultant, CCPS, attended the site visit as representatives of the CCPS and to provide information on the school system's policies and procedures, as needed.

7. On January 20, 2016, the CCPS provided the MSDE with documentation requested at the site visit.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
- a. Individualized Education Program, dated May 22, 2014;
 - b. Individualized Education Program, dated April 20, 2015;
 - c. Amended Individualized Education Program, dated September 29, 2015;
 - d. Prior Written Notice, dated April 20, 2015;
 - e. Prior Written Notice, dated September 17, 2015;
 - f. Prior Written Notice, dated November 23, 2015;
 - g. Behavior Intervention Plan (BIP), dated July 4, 2014;
 - h. XXXXXXXX School Incident Logs, undated;
 - i. School Counselor Contact Logs, undated;
 - j. Counseling Services Logs, dated January 1, 2013 to September 4, 2015;
 - k. Counseling Services Logs, dated August 1, 2015 to January 1, 2016;
 - l. Education Observation Report, undated;
 - m. IEP Team meeting notice dated January 29, 2016;
 - n. Electronic mail (Email) from the complainant to the school staff, sent February 12, 2015;
 - o. Email from the complainant to the school staff, sent November 21, 2015;
 - p. Email from the complainant to the school staff, sent October 22, 2015;
 - q. Email from the complainant to the school staff, sent November 3, 2015;
 - r. Letter from the student's physician, dated July 6, 2015;
 - s. Student Enrollment data, undated; and
 - t. Correspondence from the complainant alleging allegations of violations of the IDEA, received by the MSDE on December 11, 2015.

BACKGROUND:

The student is fourteen years old, and attends XXXXXXXXXXXX School. She is identified as a student with a Specific Learning Disability under the IDEA (Docs. a and b).

There is documentation that the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards during the time period covered by this investigation (Docs. a-f).

ALLEGATION #1: MEETING THE SOCIAL AND BEHAVIORAL NEEDS OF THE STUDENT

FINDINGS OF FACTS:

1. The IEP in effect for the student in December 2014 was developed at an IEP meeting on May 5, 2014. The IEP team identified needs in managing conflict and social interactions in unstructured settings. They further noted that the student was missing instructional time with unscheduled visits to the guidance counseling office. The IEP team

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- recommended that a Functional Behavioral Assessment (FBA) be conducted in order to develop a Behavior Intervention Plan (BIP). The team also developed behavior-social interaction skills goals related to expressing feelings, resolving problems, and demonstrating coping skills when interacting with peers and adults. The IEP team also recommended that the student be provided with 30 minutes of counseling per week as a related service (Doc. a).
2. On June 16, 2014 the FBA was completed. A BIP was developed by the IEP team that required the use of a daily point sheet and other positive behavior interventions to respond to the student's behavior (Doc. g).
 3. The progress reports attached to the IEP, dated October 30, 2014, indicate that "because her behavior has been so good, we have not needed to implement a behavior contract or point sheet" (Doc. a).
 4. The progress reports developed for the student on January 16, 2015 and February 26, 2015 indicate that the student was making sufficient progress towards achieving IEP goals to improve her behavior and social skills. The January 16, 2015 progress report indicates that the student was eating lunch regularly with a small group of peers in the special educator's classroom. The February 26, 2015 report indicates that the student has been able to use skills learned in counseling as well as tools to develop appropriate responses to conflicts with peers (Doc. a).
 5. On March 24, 2015, the counseling service provider indicated that the student had achieved her IEP goal in behavior and social skills. The provider noted that, while the student continued to have difficulty developing relationships, she was able to significantly improve her behavior in response to a peer interaction. Further, she indicated that school staff were able to work with the student to mediate conflicts with peers and were able to use conflict resolution contracts between the student and her peers (Docs. a and n).
 6. On April 17 and 20, 2015, the IEP team met and determined that, based on the student's progress, a BIP was no longer necessary. The team documented its decision that "components of the BIP could be integrated into the IEP." The IEP team further decided that additional counseling, focused on improving the student's social skills, would be provided with weekly 30 minutes individually or in a group setting, and 15 minutes individually (Docs. b and d).
 7. The progress reports prepared by school staff, dated June 6, 2015, stated that the student was making progress, having missed class time only for medical reasons in all but one week during the reporting period (Doc. b).
 8. On September 29, 2015, the IEP team revised the IEP to discontinue the requirement that a specific amount of counseling be provided on an individual basis. The team decided that the counseling service provider would determine whether the 45 minutes of

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counseling services would be provided individually or in a group therapy sessions “based on the student's needs and the discretion of the clinician” (Doc. e).

9. On November 23, 2015, the IEP team considered the complainant’s concerns over the method utilized for measuring progress towards the IEP behavioral goal. Based upon their discussion, the IEP team agreed with the complainant’s recommendation to revise the method of measuring progress on the IEP goals. The team also revised the progress report to reflect that the student was not making the progress initially reported towards behavioral goals (Doc. f).
10. At the meeting, the complainant also raised concerns that counseling services were not being provided in a group setting, but solely on an individual basis. In response to the complainant's request for additional counseling services, particularly her belief that the student required counseling in a group setting, and the newly documented lack of expected progress towards the behavioral goal, the team recommended that classroom observations be conducted in order to consider additional strategies to address the student’s needs (Doc. f).
11. The classroom observations were completed on December 9, 11, 16, and 22, 2015. The IEP team was scheduled to review the results on January 27, 2016, but the IEP team meeting was rescheduled for February 5, 2016 due to inclement weather. There is no documentation of the IEP team’s decisions to date (Docs. l and m).

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 this case, based upon Findings of Facts #1-11, the MSDE finds that the IEP team considered the data when responding to the behavioral and social needs of the student. Based on these same Findings of Facts, the MSDE further finds that the decisions concerning the necessary supports and interventions have been consistent, to date, with that data. Therefore, the MSDE does not find a violation with respect to the allegation.

ALLEGATION #2: PROVISION OF COUNSELING SERVICES

12. On September 29, 2015, the IEP determined that the student's counseling services can be provided by a Licensed Clinical Professional Counselor (LCPC), Licensed Certified Social Worker - Clinical (LCSW-C), school psychologist, guidance counselor, or social worker. Prior to September 29, 2015, the IEP stated that the services would be provided by a social worker (Docs. b, c and e).
13. There is documentation that counseling services have been provided, as required by the IEP, by a school-based social worker, and a LCPC. However, the documentation reflects that two sessions were provided by an LCPC during the period of time that the IEP required the services be provided solely by a social worker (Docs. i, j and k).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education services required by the IEP (34 CFR §§300.101 and .323 and COMAR 13A.05.01.09).

In this case, the complainant alleges that counseling services have not been provided by the type of provider required by the IEP. Based on Findings of Facts #12 and 13, the MSDE finds that a violation occurred with respect to two of the counseling sessions provided.

Notwithstanding the violation, based on the same Findings of Facts, this office finds that the IEP team subsequently determined that services could be provided by an LCPC. Therefore, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the counseling services provided, and no corrective action is required.

ALLEGATION #3: REMOVAL FROM PHYSICAL EDUCATION CLASSES IN SEPTEMBER AND OCTOBER 2015

14. In September 2015, the student sprained her ankle during a physical education class. As a result of the sprained ankle, the complainant and the school staff agreed to move the student from the physical education class to an art class. At that time, the complainant and the school staff were already in the process of amending the IEP to include accommodations for the student to be provided during the physical education class (Docs. c, f, and r).
15. On November 21, 2015 the complainant requested that the student be returned to her physical education class. In response, the school staff placed the student back into the physical education class (Doc o).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability be afforded the opportunity to participate in the regular physical education program made available to nondisabled students unless the student is enrolled full time in a separate facility or the student needs specially designed physical education, as prescribed in the student's IEP (34 CFR §300.108).

In this case, the complainant alleges that the student was not permitted to participate in physical education with the provision of accommodations. Based on Findings of Facts #14-15, the MSDE finds that the documentation does not support the allegation, and that no violation occurred with respect to the allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the CCPS to provide documentation by May 1, 2016 that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at the XXXXXXXXX School. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

TECHNICAL ASSISTANCE:

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

Please be advised that the CCPS 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.

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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 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: Stephen H. Guthrie
Wayne Whalen
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Dori Wilson
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