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April 1, 2016

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Ms. Rae Record
Director of Special Education
Worcester County Public Schools
6270 Worcester Highway
Newark, Maryland 21841

RE: XXXXX
Reference: #16-072

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.

ALLEGATION:

On February 5, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, the student's mother, hereafter, "the complainant," on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Worcester County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the WCPS has not ensured that the student received special education instruction and related services, as required by the Individualized Education Program (IEP), while the student was to receive Home and Hospital Teaching services, since February 2015,¹ in accordance with 34 CFR §§300.101 and COMAR 13A.05.01.10.

¹ In correspondence dated February 5, 2016, the MSDE identified June 2015 as the start date of the alleged violation. During the course of the investigation, it was clarified that the correct date was February 2015.

INVESTIGATIVE PROCEDURES:

1. On February 8, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rae Record, Director of Special Education Services, WCPS.
2. On February 10, 2016, Ms. Sharon Floyd, Education Program Specialist, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant in order to clarify the allegation to be investigated.
3. On February 24, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the WCPS of the allegation and requested that they review the alleged violation.
4. On February 25, 2016, Ms. Floyd and Ms. K. Sabrina Austin, Education Program Specialist, Complaint Investigation Section, MSDE conducted a telephone interview with Ms. Record. On the same date, the MSDE requested documentation from the WCPS.
5. On March 2 and 10, 2016, the WCPS provided documentation to the MSDE for consideration.
6. On March 14, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXXXXXX, Ms. Eloise Henry-Gordy, Home and Hospital Coordinator, WCPS, and Ms. XXXXXXXXXXXX, Principal, XXXXX XXXXXXXXXXXXXXXXXXXX. Ms. Record participated as a representative of the WCPS 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. Correspondence from the student's primary care physician to the school staff, dated September 18, 2015, February 4, 2015, February 24, 2015, March 12, 2015, and February 23, 2016;
 - b. Electronic (email) correspondence between WCPS staff, dated September 30, 2015 through January 27, 2016;
 - c. Correspondence from the school staff to the complainant, dated November 4, 2015;
 - d. IEP, dated November 30, 2015, and Prior Written Notice, dated November 30, 2015;
 - e. IEP, dated January 7, 2016, and Prior Written Notice, dated January 7, 2016;

- f. Correspondence from the school staff to the student's primary care physician, dated February 9, 2016;
- g. Prior Written Notices, dated March 3, 2016 and April 13, 2015;
- h. Amendments to the IEP without an IEP Team meeting, dated June 7, 2015, June 23, 2015, September 17 and 22, 2015, March 15, 2016;
- i. The WCPS Home and Hospital Teaching Guidelines, dated September 2009;
- j. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on February 8, 2016;
- k. Home and hospital instruction reimbursement forms, dated September 29, 2015 through February 26, 2016; and
- l. Related services logs, dated September 21, 2015 through January 6, 2016.

BACKGROUND:

The student is thirteen (13) years old and is enrolled at XXXXXXXXXXXXXXXXXXXX, a public, separate, special education school. She has been identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. Since May 28, 2015, the student has been receiving Home and Hospital Teaching (HHT) services (Docs. b, d, e and h, and interview with the school system staff).

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

FINDINGS OF FACTS:

1. On March 3, 2015, the IEP team convened to consider the complainant's request for HHT services for the student. At the meeting, the IEP team reviewed a letter dated February 24, 2015 from the student's primary care physician stating that, the student was going through a change in medication that was making her "more agitated, provoking her to hit herself and others and become more vocal," and that she could not return to school until March 9, 2015. Based on this documentation, the IEP team determined the student could be provided with HHT services. The IEP team determined that the student would be provided with one (1) hour per week of HHT services (Docs. a, g, k, and l).
2. On March 12, 2015, the student's primary care physician provided the school staff with another letter requesting that HHT services be extended to April 12, 2015 due to "the continuing behavioral issues the student is experiencing." Based on the documentation, the WCPS decided that the student would continue to receive HHT services, which would be increased to three (3) hours per week. An IEP team meeting was scheduled for April 14, 2015, but was not held because the student returned to school on April 13, 2015 (Docs. a and g).

3. On June 7, 2015,² the IEP team considered a May 27, 2015 letter from the student's primary care physician indicating that the student needed to be provided with instruction in the home for the remainder of the school year, stating that "the student's behavior and demeanor is worsening." However, the physician did not indicate that the student's need continued to be linked to an adjustment to her medication. Based on this documentation, it was decided that the student would receive five (5) hours of HHT services for the remainder of the year. The IEP team did not develop a plan to return the student to school (Docs. a, h and k).
4. On August 19, 2015, the student's primary care physician sent correspondence to the school staff indicating that the student would no longer be attending school because her "social anxiety has increased so much that the student is self-mutilating and lashing out at others." Based on this documentation, it was decided that the student would be provided with six (6) hours of HHT services per week until November 20, 2015. The IEP team did not develop a plan to return the student to school (Docs. a and h).
5. On November 30, 2015, the IEP team considered documentation from the student's primary care physician that was received on September 18, 2015, stating that the student requires "permanent home tutoring" due to a diagnosis of Autism and social anxiety disorder. Based on the documentation, the WCPS decided that the student would be provided with HHT services for sixty (60) days. The IEP team decided to continue the amount of HHT being provided and did not develop a plan to return the student to school (Docs. a and d).
6. On January 7, 2016, the IEP team convened to conduct an annual review, at which time the IEP team decided to extend HHT for another sixty (60) days based upon the September 18, 2015 documentation from the private physician. There is no documentation that the IEP team developed a plan for the student's return to school (Docs. a and e).
7. On March 3, 2016, the IEP team convened to consider correspondence from the student's primary care physician, dated February 23, 2016, requesting HHT for the student based on his opinion that the student's social anxiety disorder, severe Autism and intellectual disability are worsening, resulting in the request to continue HHT. However, the IEP team determined that the correspondence does not establish proper verification for HHT services, and did not agree to the request to continue HHT services. The IEP team determined that the student's appropriate placement is XXXXXXXXXXXXXXXXXXXX.

² The last day of school for the WCPS was June 16, 2015 (WCPS 2014-2015 school year calendar).

A transition plan to facilitate the student's gradual return to school over a four week period beginning March 4, 2016 and ending April 4, 2016³ was developed. The complainant was not in agreement with the discontinuation of HHT services, and expressed her refusal to return the student to school (Docs. a and g).

8. The "WCPS Home and Hospital Teaching Guidelines" state that "any child of school age who is physically or emotionally unable to attend a regular or a special class for a period of more than one month shall be provided with a home teacher." It further states that a request for home instruction should be signed by a licensed physician, certified psychiatrist, or licensed psychologist "verifying the disability and that the student will be able to benefit from the instructional services." The "WCPS HHT Guidelines" do not specify that the verification of an emotional condition is to be provided by a certified school psychologist, a licensed psychologist, or a licensed psychiatrist. The "WCPS HHT Guidelines" also do not indicate that HHT services for a student with an emotional condition may not exceed sixty (60) consecutive school days (Doc. i).
9. The school system staff acknowledges that the WCPS has not developed procedures that address disagreements or disputes that may arise with respect to the implementation of HHT services (Interview with the school system staff).
10. The WCPS staff acknowledges that since June 7, 2015, the documentation from the student's primary care physician did not satisfy the verification requirements to demonstrate the need for the student's HHT services (Docs. a and i, and interview with the school system staff).

LEGAL REQUIREMENTS:

In order to ensure the provision of a Free Appropriate Public Education (FAPE), the public agency must offer each student with a disability an IEP that requires the provision of special education and related services needed to address the individual needs of the student in the Least Restrictive Environment (LRE) in which the IEP can be successfully implemented (34 CFR §§300.101, .320, and .323). If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

In Maryland, Home and Hospital Teaching (HHT) services may be provided only when there is verification from a licensed physician of a physical condition or from, a certified school psychologist, a licensed psychologist, or a licensed psychiatrist of an emotional condition that

³ The transition plan includes adult support to address the student's educational, behavioral and social needs in the classroom (Doc. g).

prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.03 and .04). Without such verification, a student's educational placement may not be in the home (COMAR 13A.05.01.10).

Each public agency is required to develop a review process to resolve any disagreement that arises regarding the provision of HHT services (COMAR 13A.03.05.03).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10). When determining the instruction to be provided in the home, the IEP team must ensure that the decision is based on the individual student's needs, and that a student in a full-day school program receives at least six (6) hours of HHT services per week (COMAR 13A.03.05.03).

Continuation of HHT services beyond sixty (60) calendar days after the initial determination of eligibility requires re-verification that the student continues to be unable to attend school due to a physical or emotional condition (COMAR 13A.03.05.04). Educational placement in the home for a student with a disability who is provided with HHT services due to an emotional condition may not exceed sixty (60) consecutive school days (COMAR 13A.05.01.10). When the period of treatment or convalescence ends, the IEP team must determine the appropriate school-based educational placement in the LRE (COMAR 13A.05.01.10).

The intent of the COMAR is to ensure that no student with a disability under the IDEA receives educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students and denies the student access to the general curriculum. If the student is able to attend a school-based program, the public agency must ensure that the increased supports necessary to implement the IEP is made available in such a placement (34 CFR §§300.320 and .324).

Prior to the enactment of the COMAR, a significant number of students with disabilities remained in their homes and received a minimum amount of education services solely on the basis of a one-time statement by a school psychologist. Often this occurred for students when the school system was unable or unwilling to identify an appropriate day or residential placement needed for the student to receive a FAPE. Therefore, public agencies are required to make HHT services available to students consistent with both the LRE requirements of the IDEA and the requirements of the COMAR (34 CFR §§300.114-.116 and COMAR 13A.05.01.10).

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1-#8, the MSDE finds that, the student was initially placed on HHT services due to a reported medical condition related to a medication adjustment. However, subsequent information from the student's physician revealed that the student's inability to attend school was based solely on social, emotional, and behavioral difficulties.

Based on those Findings of Facts, the MSDE finds that the WCPS did not have documentation from a licensed psychologist, psychiatrist, or a school psychologist verifying the student's need for HHT services due to an emotional condition that prevented her from attending school from June 7, 2015 through March 3, 2016. Therefore, the MSDE finds that a violation occurred, and that the student was denied a FAPE, from June 7, 2015 to March 3, 2016 because she did not have an appropriate educational placement where the IEP could be implemented.

Based on the Findings of Facts #1-#3, the MSDE finds that the WCPS did not ensure that at least six (6) hours of HHT services was provided in the home. Additionally, based on the Finding of Fact #7, the MSDE finds that the WCPS has not developed procedures to resolve disputes concerning the implementation of HHT services. Therefore, the MSDE finds an additional violation, and that the violation is ongoing.

Based on the Findings of Facts #2-#6, the MSDE finds that the WCPS did not ensure that a plan was developed for returning the student to a school-based program until March 3, 2016. Based on those Findings of Facts, the MSDE also finds that the IEP team failed to convene to consider interventions, supports, and strategies in order to address the student's social, emotional, and behavioral needs until March 3, 2016 when the IEP team revised the student's IEP. Therefore, the MSDE finds that additional violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the WCPS to provide documentation, by May 1, 2016, that the complainant has been offered a process to resolve her dispute concerning the IEP team's decision, on March 3, 2016, to discontinue its approval of HHT services.

The MSDE also requires the WCPS to provide documentation, by June 1, 2016 that the IEP team has convened and determined the amount and nature of compensatory services required to remediate the denial of a FAPE to the student from June 7, 2015 to March 3, 2016. The IEP team must also develop a plan for the provision of those services within one (1) year of the date of the Letter of Findings, to be provided upon the student's return to school.

Systemic

The MSDE requires the WCPS to provide documentation by the start of the 2016-2017 school year, of the steps it has taken to ensure compliance with the State requirements for the provision of HHT to students who have an emotional condition that prevents them from attending school, in accordance with (COMAR 13A.03.05.01, .03, .04 and COMAR 13A.05.01.10), including the following:

1. That HHT for an emotional condition is only provided upon verification of need from a licensed psychiatrist, a licensed psychologist, or a certified school psychologist;
2. That parents have access to a review process to resolve any disagreement concerning the provision of HHT services;
3. That the IEP team develops and implements a plan for returning the student to school;
and
4. That the IEP team determines the services to be provided in the home based on the student's needs but that provide for a minimum of six (6) hours per week of services for students who are in full time educational programs.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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.

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.

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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: Jerry B. Wilson
Rae Ann Record
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Dori Wilson
Anita Mandis
Sharon Floyd