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Interim State Superintendent of Schools

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May 12, 2016

Ms. Jessica Williams, M. Ed.
Education Due Process Solutions, LLC
711 Bain Drive, Apartment #205
Hyattsville, Maryland 20785

Ms. Nancy Fitzgerald
Executive Director of Special Education & Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21157

RE: XXXXX
Reference: #16-082

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 March 15, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student, and his mother, Ms. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) 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 HCPS has not ensured that the student’s Individualized Education Program (IEP) addresses the student’s academic, sensory, assistive technology, functional, communication and fine motor needs, since March 2015, in accordance with 34 CFR §300.324.

2. The HCPS has not provided supplemental aides and services including modified homework, psychologist consultation, toileting protocol, and peer modeling, since March 2015, as required by the student's IEP, in accordance with 34 CFR §§300.101 and 323.
3. The HCPS has not provided special education instruction, occupational therapy and speech language services since March 2015, as required by the student's IEP, in accordance with 34 CFR §§300.101 and 323.
4. The HCPS has not followed proper procedures when determining the student's educational placement since March 2015. Specifically, it is alleged that the IEP team did not consider the harmful effects of the placement on the student, in accordance with 34 CFR §§300.114 - .116.

INVESTIGATIVE PROCEDURES:

1. On March 16, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education & Student Services, HCPS.
2. On March 21, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and Ms. XXXXXXXXXXXX, the student's parent, about the allegations for the investigation.
3. On March 22, 2016, 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 HCPS of the allegations and requested that the school system review the alleged violations.
4. On March 23, 2016, Mr. Loiacono contacted Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic Services and Special Education Compliance, HCPS, to request documentation and to coordinate a site visit.
5. On April 4, 2016, Mr. Loiacono received additional documentation from HCPS.
6. On April 6, 2016, Mr. Loiacono and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXX Elementary School to review records and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Occupational Therapist;
 - b. Ms. XXXXXXXXXXXX, School Psychologist; and
 - c. Ms. XXXXXXXXXXXX, Principal.

XXXXXXX, Instructional Facilitator Elementary Schools, HCPS and Ms. Zimmerman attended the site visit as representatives 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. Individualized Educational Program (IEP), dated March 19, 2015;
 - b. IEP, dated May 20, 2015;
 - c. IEP, dated June 16, 2015;
 - d. IEP, dated November 19, 2015;
 - e. IEP, dated March 22, 2016;
 - f. IEP Meeting Notes, dated March 19, 2015;
 - g. IEP Meeting Notes, dated May 20, 2015;
 - h. IEP Meeting Notes, dated June 16, 2015;
 - i. IEP Meeting Notes, dated September 24, 2015;
 - j. IEP Meeting Notes, dated October 22, 2015;
 - k. IEP Meeting Notes, dated November 19, 2015;
 - l. IEP Meeting Notes, dated February 18, 2016;
 - m. IEP Meeting Notes, dated March 2, 2016;
 - n. IEP Meeting Notes, dated March 22, 2016;
 - o. Occupational Therapy Logs, undated;
 - p. Toileting protocol reports, various dates;
 - q. Speech and Language Therapy Logs, various dates;
 - r. Modified homework samples, various dates;
 - s. Electronic mail (Email) from the school staff to HCPS district staff, dated February 16, 2015;
 - t. Electronic mail (Email) from the school staff to HCPS district staff, dated February 18, 2016;
 - u. Occupational Therapy Assessment and Review Record, undated;
 - v. School Psychologist Consultation Notes, undated; and
 - w. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 15, 2016.

BACKGROUND:

The student is seven years old and attends XXXXXXXX Elementary School. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education services (Doc. a).

There is documentation that the student's parent 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 ACADEMIC, SENSORY, ASSISTIVE TECHNOLOGY, FUNCTIONAL, COMMUNICATION AND FINE MOTOR NEEDS

FINDINGS OF FACTS:

Academic and Functional Needs

1. At the IEP team meeting held on March 19, 2015, the team determined that while the student continued to have needs in reading and math, improvement was needed in his behavior and toileting in order for him to be able to progress in the area of academics. The team added additional social/emotional and behavioral goals related self-management and interacting with others. The IEP team included a toileting plan, as a required support, to decrease the amount of instructional time missed due to toileting issues. The team removed a goal related to feeding because the parent preferred to provide food that did not require utensils (Docs. a and f).
2. At the IEP team meeting held on May 20, 2015, the IEP team addressed the parent's belief that instruction should be focused on improving the student's academic skills. The school-based members of the IEP team reported that the student's interfering behaviors were improving, the student was able to focus more on academic goals and objectives, and was making progress. The team added an objective related to describing the main ideas of reading passages. The IEP team also responded to parent concerns over feeding. The parent shared with the team that the student does not eat foods with utensils. The team responded by suggesting that the parent determine foods that the student enjoys that could be eaten with a spoon. The team also decided to add feeding skills to the student's occupational therapy sessions (Docs. b and g).
3. There is documentation that in October 2015, the student was showing progress in academic areas. While the student was not functioning on grade level, he was demonstrating growth. The student's behavioral issues had receded and he was able to complete more academic work in reading, writing, math and science (Doc. j).
4. There is documentation that in November 2015, while the student was not consistently using the toilet while at school, he was no longer having accidents, or missing instructional time (Doc. k).
5. The IEP team met on February 18, 2016 and discussed the student's goals and objectives in academic areas. The parent and the complainant raised concerns over the repetition of goals and objectives on the student's IEP. The school based members of the IEP team explained that the goals have similar components, but the objectives change as the student demonstrates growth (Doc. l).

Sensory needs

6. On November 19, 2015, the IEP team met and considered the parent's concerns about how the student's sensory needs are being addressed. The parent asked what was being done to assist the student with his needs. The student's IEP requires that he be provided with "objects" during instruction. The school-based members of the IEP team explained that the school staff use tools and techniques such as putty, and taking small walks to calm the student, and assist him in meeting his self-management goals. The parent raised concerns over the student's noise sensitivity she has noticed at home. The school staff explained that they sometimes use headphones with the student to reduce noise and they report that they also try to avoid noisy places for the student at school (Docs. d and k).
7. The IEP team also discussed the sensory needs of the student at the February 18, 2016 IEP team meeting. In response to the parent's request, more sensory items, including a scooter, heavy backpack and more textural items were provided to the student. The student's progress reports for his self-management goal indicate that the student is able to request some of the sensory objects provided to him (Docs. e and l).

Communication and Assistive Technology Needs

8. At the March 19, 2015 IEP team meeting, the IEP team discussed the student's ability to communicate and respond to questions from teachers. The team determined that the student needed assistance expressing his feelings and requests. In response, the IEP team determined that the student would receive services from the speech/language therapist to address reading comprehension objectives through a total of 90 minutes of speech language services. At the IEP team meeting, the team discussed the student's ability to communicate with the use of a device to provide voice output. The IEP team included an assistive technology consultation, to be provided by the speech/language therapist. The IEP team developed goals in reading that would be addressed, in part, by the speech/language therapist (Docs. a and f).
9. At the June 16, 2015 IEP team meeting, the team discussed the device to be utilized and how to best implement its use. The team added an assistive technology consultation to the student's IEP on an "as needed" basis (Doc. h).
10. During the beginning of the 2015-2016 school year, the student transitioned to a device that was easier for him to use at home as he had not been using the device at home assigned to him at school. At the request of the student's private consultant, the school staff modified the use of a device at school to better match the system the student used at home (Docs. k and l).
11. At the November 19, 2015 IEP team meeting, the team discussed the use of a technology based communication device with a simpler interface designed only for communication. The team decided that this method was best to assist the student to communicate. The school staff present at the meeting added that they encourage the student to make verbal

requests rather than relying on the assistive technology, whenever possible (Doc. k).

12. On February 18, 2016, in response to concerns of the parent, the IEP team discussed methods of getting the student to communicate when upset. The school staff present reported that the student most effectively communicates, when upset, with the use of the device. In response to the team's discussion, the speech/language therapist assigned to work with the student contacted HCPS central office staff for assistance in increasing the student's communication when he is upset (Docs. l and t).

Fine Motor Needs

13. On March 19, 2015, the IEP team met to address the student's fine motor needs. The team determined that the student needed prompting when cutting and tracing lines. The student's needs were addressed by the IEP team with a goal in written language, with assistance from the occupational therapist to develop "pre-writing" skills. The IEP team developed objectives related to producing legible letters, using scissors to cut along a line, writing his name and drawing simple figures, and required 45 minutes of occupational therapy services per week (Docs. a and f).
14. In December of 2015, the parent sought an independent occupational therapy assessment. The assessment found that the student exhibited "well below average" skills in fine-motor precision tests. The members of the IEP team reviewed the assessment results and determined that they were consistent with the existing data collected by the school, but noted that some of the information was not collected in a school setting (Doc. u).
15. There is documentation that in February 2016, the IEP team determined that the student was not making sufficient progress towards his IEP goal objectives in written language. The team met to address the lack of progress on February 16, 2016. The team determined that an occupational therapy assessment would be conducted as part of a reevaluation of the student. The results of the evaluation are pending (Doc. l).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it contains a statement of the student's present levels of performance, including how the student's disability affects the student's involvement and progress in the general education curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §300.320).

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 IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the IEP team must review and revise, as appropriate, the IEP to address any lack of expected progress (34 CFR §300.324).

Based on Finding of Facts, #1, 2, 5, 6, 9, 11, and 12, the MSDE finds that the IEP team has considered the parent's concerns and information from school staff when developing the IEP. Based on Findings of Facts, #1, 8, and 13, the MSDE finds that the IEP includes a statement of the present levels of performance that contains information about the specific areas of need that impacts the student's progress in the general curriculum, consistent with the evaluation data. Based on Findings of facts #1, 8, 13 and 18, the MSDE finds that the IEP includes measurable annual goals for the student to improve the specific skills identified as areas of need in the present levels of performance, and the special education instruction and related services to assist the student in achieving those goals.

Based on Findings of Facts, #1-18, the MSDE finds that the IEP team has convened periodically to consider the student's progress, and is obtaining additional data in order to address areas where there is a lack of expected progress. Therefore, the MSDE does not find that a violation has occurred with respect to the allegation.

ALLEGATION #2: PROVISION OF SUPPLEMENTARY AIDS AND SERVICES

FINDINGS OF FACTS:

Modified Homework

16. The student's IEP, developed on March 19, 2015, requires the provision of modified homework (Doc. a).
17. There is documentation that the student displayed aggressive behavior and had toileting issues at the start of the 2015-2016 school year, which made him unavailable for instruction. Because the parent was reporting that the student was exhibiting the same behaviors at home, the school staff did not provide the student with homework for the first month of the 2015-2016 school year (Docs. i-k).
18. In October of 2015, the school staff reintroduced homework assignments for the student because the student was demonstrating improved behavior (Docs. j and r).

Psychologist Consultation

19. The student's IEP, developed on March 19, 2015, requires the provision of a psychologist consultation with the school staff, periodically, to address the student's behavioral issues (Doc. a).
20. There is documentation that the school psychologist has consulted with members of the school staff on issues related to behavior, including observation and development of a Behavior Intervention Plan for the student (Doc. u).

Toileting protocol

21. The student's IEP, developed on March 19, 2015, requires the provision of a toileting protocol (Doc. a).
22. There is documentation, including copies of communication between school staff and the parent, and school staff and HCPS staff, of the implementation and development of a successful toileting protocol from March 2015 to November 2015 (Docs. p and s).
23. In November 2015, the toileting protocol was discontinued after school staff determined that the student was able to successfully use the toilet (Doc. k).

Peer Modeling

24. The student's IEP, developed on March 19, 2015, requires the provision of "peer modeling" to assist the student with self-management and behavioral goals (Doc. a).
25. The student's receives instruction in the general education classroom and participates in recess and lunch with his non-disabled peers. At the May 20, 2015 IEP team meeting, the team considered reports of the school staff that the student was able to observe and interact with his non-disabled peers (Docs. a-n).

DISCUSSION/CONCLUSIONS:

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

In this case, the complainant alleges that special education services and supports required by the IEP were not provided to the student. Based on Findings of Facts #16-25, the MSDE finds that required supports and services were provided to the student. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

**ALLEGATION #3 PROVISION OF SPECIAL EDUCATION INSTRUCTION,
OCCUPATIONAL THERAPY AND SPEECH LANGUAGE
SERVICES**

FINDINGS OF FACTS:

Special Education Instruction

26. The student's IEP, developed on March 19, 2015, requires that the student be provided with special education instruction inside the general education classroom and in a special education classroom (Doc. a).
27. The reports of the student's progress towards achievement of the annual goals reflects that he has been provided with special education instruction to address IEP goals (Docs. a-n).
28. The student's class schedule and teacher reports reflect that the special education instruction is provided in both the general education classroom and by a general education teacher and a separate special education classroom by a special education teacher (Docs. a-n).

Occupational Therapy

29. The student's IEP, developed on March 19, 2015, requires 30 minutes of occupational therapy per week, inside the general education setting, and 15 minutes per week in a special education classroom (Doc. a).
30. The occupational therapy logs document these therapy services have consistently been provided to the student, as required by his IEP (Doc. o).

Speech/Language Therapy

31. The student's IEP, developed on March 19, 2015, requires 30 minutes of speech language therapy per week, inside the general education setting, and one hour per week in a special education classroom (Doc. a).
32. The speech/language therapy logs document these therapy services have consistently been made available to the student, as required by his IEP (Doc. q).

DISCUSSION/CONCLUSIONS:

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

In this case, the complainant alleges that special education services and supports required by the IEP were not provided to the student. Based on Findings of Facts #26-32, the MSDE finds that required supports and services were provided to the student. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #4 DISCUSSION OF THE HARMFUL EFFECTS OF THE LEAST RESTRICTIVE ENVIRONMENT

FINDINGS OF FACTS:

33. At the October 22, 2015 IEP team meeting, the parent made a request to change the student's placement from his current elementary school to an "Autism program". The school staff reported that the current placement was appropriate for the student because he was making progress towards achievement of the annual goals at that time. Based on this information the team decided that the placement remained appropriate (Doc. j).
34. At the February 2016, IEP team meeting, the IEP team considered information that the student was no longer making sufficient progress on his annual IEP goals and the complainant's assertion that the lack of progress was a harmful effect of the student's educational placement because the student should be making progress given his "average cognitive ability" (Doc. l).
35. Because there was data that the student's disability impacts his cognitive functioning, the IEP team decided to conduct additional assessments to address the complainant's assertion that he has "average cognitive ability". The reevaluation results are pending (Doc. l).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team makes a placement decision in conformity with the requirement to provide special education instruction in the Least Restrictive Environment (LRE). This means that, to the maximum extent appropriate, students with disabilities must be educated with nondisabled students. The removal of students with disabilities from the general education classroom may occur only if the nature or severity of the disability is such that education in that setting with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §§300.114 and .116). In determining the LRE, the public agency must ensure that the IEP team gives consideration to any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §300.116).

Based on the Findings of Facts #33-34, the MSDE finds that the documentation does not support the allegation that the team did not consider potential harmful effects when determining the LRE for the student. Therefore, this office does not find that a violation occurred with respect to the allegation.

Ms. Jessica Williams
Ms. Nancy Fitzgerald
May 12, 2016
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TIMELINE:

Please be advised that the complainant and the HCPS 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: XXXXXXXXXX
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