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May 27, 2016

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Ms. Nancy Fitzgerald
Executive Director of Special Education
and Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #16-093

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 31, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of his daughter, the above-referenced student. 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 student.

The MSDE investigated the following allegations:

1. The HCPS has not ensured that the student’s use of the agenda book has been consistently monitored, as required by the Individualized Education Program (IEP), since March 2015, in accordance with 34 CFR §§300.101 and .323.
2. The HCPS has not ensured that the IEP includes measurable annual goals in the area of organizational skills that are based on the student’s present levels of performance and designed to assist her to progress in the general curriculum, and services as needed to assist her with achieving these goals, in accordance with 34 CFR §300.320.

XXX

Ms. Nancy Fitzgerald

May 27, 2016

Page 2

3. The HCPS has not considered the complainant's concerns about the need for parental notification when the student does not turn in her work, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. On March 31, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education & Student Services, HCPS.
2. On April 5, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On April 7, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
4. On April 11, 2016, and May 24, 2016, the complainant provided additional documentation to the MSDE.
5. On April 15, 2016 and May 5, 2016, the MSDE requested documentation from the HCPS.
6. On April 15, 18 and 28, 2016, and May 6, 2016, the HCPS provided the MSDE with documentation for consideration.
7. On May 6, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXX High School and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Resource Teacher;
 - b. Mr. XXXXXXXXXXX, Special Education Instructional Team Leader;
 - c. Ms. XXXXXXXX, Special Education Teacher; and
 - d. Ms. XXXXXXXX, Assistant Principal.

Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic Services and Special Education Compliance, HCPS, participated in the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.

The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. IEP, dated March 6, 2014;
- b. IEP, dated June 5, 2015, and written summary of the June 5, 2015 IEP team meeting;
- c. Electronic mail (email) communications between the complainant and the school staff, dated March 2015 to May 2016;
- d. The student's attendance history for the 2015 - 2016 school year, as of April 22, 2016;
- e. Notice of the IEP team meeting scheduled for September 11, 2015, written summary of the September 11, 2015 IEP team meeting, and report of reevaluation, dated September 11, 2015;
- f. IEP, dated December 1, 2015, written summary of the December 1, 2015 IEP team meeting, and Specific Learning Disability and Emotional Disability evaluation report supplements, dated December 1, 2015;
- g. The student's report card for the 2015 - 2016 school year;
- h. The student's schedule for the 2015 - 2016 school year;
- i. The 2015 - 2016 syllabus for tutorial class;
- j. The sheet explaining the use of the agenda book, undated.
- k. The student's agenda book, September 14, 2015 to March 27, 2016, and May 2 to May 8, 2016;
- l. The charts of the student's assignments recorded in tutorial class, August 2015 to April 2016;
- m. The school system's description of the Canvas Learning System;
- n. The tutorial teacher's log of the student's individual assignments and grades on Canvas Learning System, dated August 2015 to April 2016;
- o. The English, math, science, and social studies teachers' logs of the student's individual assignments and grades on Canvas Learning System, dated August 2015 to April 2016;
- p. Reports of the student's progress towards achievement of the annual IEP goals, dated June 19, 2015, November 9, 2015, and February 1, 2016;
- q. The report of a psychological evaluation, dated November 6, 2015;
- r. The report of an educational assessment, dated November 16, 2015;
- s. The report of a neuropsychological assessment of the student conducted by an independent evaluator in October and December 2015;
- t. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 31, 2016;
- u. Correspondence from the school system staff to the complainant providing parental rights safeguards notice, dated April 1, 2016;

- v. Notice of IEP team meeting scheduled for May 3, 2016, and written summary of the May 3, 2016 IEP team meeting; and
- w. Notice of IEP team meeting scheduled for May 24, 2016.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXX High School. She is identified under the IDEA as a student with an Other Health Impairment related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and has an IEP that requires the provision of special education and related services (Docs. a, b and f).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. u).

ALLEGATION #1 USE OF THE STUDENT’S AGENDA BOOK

FINDINGS OF FACTS:

1. The student’s IEP in effect at the start of the investigation period, developed on March 6, 2014, and revised on June 5, 2015 and December 1, 2015, requires that she be provided with monitoring of the use of an agenda book as a supplementary support on a daily basis. The purpose of the agenda book is for the student to record assignments, including classwork and homework, so that she can keep track of the work that is due in order to assist her in completing it in a timely manner. The IEP states that the support “will be provided in the student’s general education classes during instruction” (Docs. a, b, f and j).
2. There is no documentation that the student’s use of the agenda book was monitored between March 2015 and the end of the 2014 – 2015 school year (Interview with the school staff).
3. Since the start of the 2015 - 2016 school year, the student’s class schedule has included a tutorial class which is taught by a special education teacher. The goal of the tutorial class is for students to “develop and practice the skills and strategies necessary to be successful in and out of the classroom.” According to the course syllabus, organization, study skills, self-advocacy, and time management are among the skills addressed by the tutorial class. The syllabus also reflects that students are given time during tutorial class to work on outstanding and incomplete assignments, tests and quizzes, as well as time to work on individual goals and objectives. The grades achieved in the tutorial class are based on points that students earn for completing “warm-ups,” class work, homework, quizzes, tests, and projects (Docs. h and i).

4. There is documentation that the special education teacher has monitored the student's use of the agenda book in the tutorial class since the start of the 2015 – 2016 school year,¹ but there is no documentation that the student's use of the agenda book has been monitored in her general education classes, as required by the IEP (Docs. k and l, and interview with the school staff).

DISCUSSION/CONCLUSIONS:

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

Based on the Findings of Facts #1 - #4, the MSDE finds that, while there is documentation that the special education teacher has consistently monitored the student's use of the agenda book, there is no documentation that the use of the agenda book has been monitored in the student's general education classes during classroom instruction, as required by the IEP. Therefore, this office finds a violation occurred, and is ongoing.

ALLEGATION #2 THE STUDENT'S ORGANIZATIONAL GOAL

FINDINGS OF FACTS:

5. The student's IEP in effect at the start of the investigation period, dated March 6, 2014, includes a goal in the area of study and organization skills. The goal states that the student "will develop and maintain study skills needed to meet with success in all classes by earning a minimum of a B (80%) or better." The goal includes objectives that the student will record home assignments and long-term assignments in her agenda book 80% of the time, that she independently take home required materials to complete homework at least 80% of the time, and that she will independently complete and turn in homework assignments 80% of the time (Doc. a).
6. In order to assist the student with achieving the organization and study skills goal, the March 6, 2014 IEP also required that the student be provided with several supplementary supports on a daily basis, including organizational aids, checks for understanding, repetition of directions, extended time for homework, a homework check-in sheet to monitor homework completion, and structured time for organization of materials. The March 6, 2014 IEP also required that the student receive eight and a half (8.5) hours per week of specialized instruction inside the general education classroom, and that she receive four (4) hours and fifteen (15) minutes per week of specialized instruction in a separate special education classroom for a tutorial class (Doc. a).

¹ The complainant provided the MSDE with portions of the student's agenda book that were blank, and asserts that this indicates that the student was not using the agenda book. However, the school staff report that the student has used more than one (1) agenda book during the school year, and the use of the Accountability Wall, where information from the agenda book is inserted, documents that the student was recording her work (Docs. k and l, and interview with the parties).

XXX

Ms. Nancy Fitzgerald

May 27, 2016

Page 6

7. On June 5, 2015, the IEP team convened to conduct the annual review of the student's educational program. The student's present levels of performance in the area of study skills and organization indicate that her completion of assignments is inconsistent, that she is missing assignments, and that she should attend after school help to assist with completing assignments. The IEP team considered reports from the student's teachers that following oral directions, seeking assistance when needed, and staying on task are areas of weakness for the student (Doc. b).
8. The IEP team revised the measurement for mastery of the organization and study skills goal to require that the student earn a minimum of 85% in all classes, instead of 80%, to demonstrate success on the goal. The IEP team also made corresponding revisions in the objectives included in the goal, by increasing the accuracy of the skills to 85%. The IEP team did not revise the supplementary supports, or the specialized instruction that the student requires (Doc. b).
9. At the June 5, 2016 IEP team meeting, the student "shared that she becomes overwhelmed very easily and does not like to ask for help." The written summary of the IEP team meeting reflects that the team would consult with the school psychologist to address the student's "stress issues" (Doc. b).
10. There is documentation that, during the course of the 2015 - 2016 school year, the complainant has repeatedly expressed concern to the school staff that the student was not recording homework assignments, and that she was not completing and turning in homework and classwork. The complainant has also expressed concern that the student's grades were lower than what they should be due to the number of missing, incomplete, and late assignments for which she did not receive credit in her overall grades (Doc. c).
11. On September 11, 2015, the IEP team convened to conduct reevaluation planning for the student. The IEP team considered current information from the student's teachers that she needs to turn in all assignments on time, and that she appears to be disorganized. They also considered the most recent report of the student's progress towards mastery of the annual IEP goals, dated June 19, 2015. While the progress report indicates that the student is using her agenda book to record assignments, it also states that she has "trouble" making up missed assignments, is inconsistent with completing work, is somewhat disorganized, and can be "overwhelmed" when there are changes in her schedule (Docs. e and p).
12. The IEP team documented that additional information is needed in order to determine the student's continued eligibility for special education services, and whether she has a Specific Learning Disability or an Emotional Disability. They also determined that additional information is needed in order to identify the student's present levels of performance, and to identify any instructional strategies and behavioral interventions and supports to assist the student. The IEP team agreed to assessments in the areas of academics and cognitive functioning (Doc. e).

13. On December 1, 2015, the IEP team reconvened to review the results of assessments that were recommended on September 11, 2015. The IEP team considered the following information:
 - a. On the cognitive assessment, the student achieved a full scale IQ of 109, indicating that her intellectual functioning is in the “high average” range. The complainant reported “significant” ratings for the student’s working memory, as well as her ability to plan and organize, and to monitor. He also reported “clinically significant” scores for the student in hyperactivity, somatization, atypical behaviors, attention problems and functional communication skills, and “low average” scores in the areas of functional academics and home living. The student reported “clinically significant” ratings in the areas of internalizing problems, inattention and hyperactivity, and emotional and personal adjustment. The ratings by school staff were inconsistent, as one (1) teacher reported “clinically significant” scores in all areas of the student’s executive functioning and self-regulation, and another teacher reporting all “average” scores.
 - b. On the academic assessment, the student achieved standard scores of 101 in reading, 99 in math, and 107 in writing, indicating “average” educational performance. The assessment report reflects statements by the school staff that the student needs to “keep up with,” and “stay on top of,” missed work, and turn assignments in on time.
 - c. There is documentation that the IEP team determined that the student does not meet the criteria for identification as a student with either a Specific Learning Disability or an Emotional Disability (Docs. f, q and r).
14. At the December 1, 2015 IEP team meeting, the IEP team determined that the student continues to be eligible for special education services as a student with an Other Health Impairment based on a diagnosis of ADHD. The IEP team revised the student’s IEP to update her continued eligibility. The student’s present levels of performance in organization and study skills were revised to reflect reports from her teachers that she does not submit homework consistently, her homework is often late, and that she struggles with long-term assignments. The present levels of performance also state that, while the student does not make up missed work in a timely fashion after absences, “signing the agenda book is beneficial” (Doc. f).
15. The December 1, 2015 IEP documents that the IEP team determined that no additions or modifications to special education and related services are needed to enable to student to meet the annual goals in the student’s IEP and to participate, as appropriate, in the general education curriculum (Doc. f).

XXX

Ms. Nancy Fitzgerald

May 27, 2016

Page 8

16. On May 3, 2016, the IEP team convened to conduct the annual review of the student's IEP and to review the report of a neuropsychological assessment of the student, conducted in October and December 2015, that the complainant privately obtained. The evaluator noted reports by the student's teacher of "clinical" levels of anxiety and depression in the classroom, and attentional difficulties reflected in the student's failure to finish work. The report reflects that the student has "borderline clinical levels of anxiety and depression," and that her anxiety presents both somatically, through exhaustion and stomach pains, and psychologically, through restlessness and distractibility. The evaluator diagnosed the student with ADHD and Generalized Anxiety Disorder (Docs. s and v).
17. At the May 3, 2016 IEP team meeting, the IEP team also considered information from the school staff that, while the student can complete assignments independently, she does not ask for assistance, she is not consistent with turning in missed assignments, she is missing instruction, and that she needs to have her agenda book consistently to ensure that assignments are documented. The IEP team recommended that the complainant and the student regularly review the Canvas Learning System, and determined that the student's tutorial class teacher will support her after school with meetings with teachers regarding assignments (Doc. v).
18. The IEP team discussed proposed revisions to the student's IEP, and agreed to reconvene to complete the review of the student's IEP. An IEP team meeting was scheduled for May 24, 2016, however there is no documentation of this meeting (Docs. v and w).
19. The school staff maintain data, as documented in the Canvas Learning System,² of the student's completion of homework and classwork. The documentation reflects that the student has not been completing and turning in homework at the rate required by the IEP during the 2015 - 2016 school year. In addition, the student's transcript reflects that she has not earned a minimum grade of "B" in each class during the 2015 - 2016 school year (Docs. g, n and o).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of academic achievement and functional performance. The IEP must also include measurable annual goals for the student to be involved in and make progress in the general curriculum and special education and related services to assist with achieving them (34 CFR §300.320 and COMAR 13A.05.01.09).

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,

² The Canvas Learning System provides parents and students with electronic access to class information and assignments (Doc. m).

the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

Based on the Findings of Facts #5 - #19, the MSDE finds that the student's IEP contains a measurable annual goal to address her needs in the area of organization and study skills. Based on the same Findings of Facts, the MSDE finds that the organization and study skills goal is based on the student's present levels of performance and how her disability impacts involvement in the general curriculum. Therefore, this office does not find a violation occurred.

ADDITIONAL ISSUE: THE FOLLOWING WAS IDENTIFIED DURING THE COURSE OF THE INVESTIGATION

The public agency must ensure that the IEP team reviews the IEP periodically, not less than annually, to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address the results of a reevaluation, any information about the student provided to, or by, the parents, and the student's anticipated needs. When conducting an IEP review, the IEP team must consider the use of positive behavioral interventions and supports and other strategies needed to address any behaviors of the student that interfere with learning (34 CFR §300.324).

Based on the Findings of Facts #1 - #19, the MSDE finds that, while the IEP team has reviewed the IEP to address the reevaluation results, there is no documentation that it has considered information that the use of the agenda book has not provided the student with the assistance needed to assist her in achieving the annual IEP organization and study skills goal through the completion of her work. Based on those Findings of Facts, the MSDE finds that the IEP team has not considered the use of different strategies and supports to assist the student in this area, and that a violation occurred.

ALLEGATION #3 PARENTAL NOTIFICATION WHEN THE STUDENT DOES NOT TURN IN WORK

FINDINGS OF FACTS:

20. There is documentation that the student does not consistently complete her assignments, and that she does not consistently turn in homework and classwork (Docs. b, c, e, f, n - r).
21. There is documentation that, on numerous occasions during the period covered by this investigation, the complainant communicated with the school staff to request the student's missing, late and incomplete assignments (Doc. c).
22. There is documentation that the school staff regularly responded to the complainant's requests, to provide information about the student's missing, late and incomplete assignments. The documentation also reflects that the Canvas Learning System that lists the student's assignments in each class is available to the complainant (Docs. c and v).

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #20 - #22, the MSDE finds that there is documentation that the school staff have been responsive to the complainant's request for information when the student does not turn in her work. Therefore, the MSDE does not find a violation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the HCPS to provide documentation by August 1, 2016, that the IEP team has convened and considered additional strategies to address the student's need to consistently complete homework and classwork. The HCPS must also provide documentation by August 1, 2016, that the IEP team has determined whether the inconsistent monitoring of the agenda book negatively impacted the student's ability to benefit from her education program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

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 both the complainant and the HCPS 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 requirement 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 parties maintain the right to request mediation or to file a due process

XXX

Ms. Nancy Fitzgerald

May 27, 2016

Page 11

complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education 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

c: Renee A. Foose
Janet Zimmerman
XXXXXXXXXX
Dori Wilson
Anita Mandis
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Nancy Birenbaum