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State Superintendent of Schools

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June 10, 2011

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Mrs. Sarah J. Farr
Director of Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 21921

RE: XXXXX
Reference: #11-083

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 April 15, 2011, MSDE received correspondence from Mr. XXXXXXXXXXXXXXX, hereafter “the complainant,” on behalf of his son. In that correspondence, the complainant alleged that the Cecil County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. CCPS has not ensured that the Individual Education Program (IEP) addresses the student’s identified needs in math since the start of the 2010-2011 school year, in accordance with 34 CFR §300.324; and
2. CCPS has not ensured that the student has been provided with the supports in math required by the IEP since the start of the 2010-2011 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

XXX

Mrs. Sarah J. Farr

June 10, 2011

Page 2

2. On April 18, 2011, MSDE sent a copy of the complaint, via facsimile, to Mrs. Sarah J. Farr, Director of Special Education, CCPS. On the same date, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On May 3, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to the investigation. On the same date, MSDE notified Mrs. Farr of the allegations and requested that her office review the alleged violations.
4. On May 5, 2011, Ms. Hartman contacted Ms. Samantha Wallace, Program Facilitator for Compliance, CCPS, and requested that her office provide MSDE with necessary documents relating to the investigation of the complaint.
5. On May 9 and 13, 2011, Ms. Wallace provided MSDE with the requested documents.
6. On June 1, 2011, Ms. Hartman and Ms. Mandis conducted a site visit at XXXXXXXX XXXXX XXXXXXXXXXXXXXXX, XXXXXXXX (XXXXXXX), and conducted interviews with the following XXXXXXXX staff:
 - a. Mr. XXXXX, Principal;
 - b. Ms. XXXXXXXX, Assistant Principal;
 - c. Ms. XXXXX, Clinical Supervisor;
 - d. Mr. XXXXXXXXXXX, Special Educator; and
 - e. Mr. XXXXXXXX, Special Educator.

Ms. Wallace and Mr. Samuel Katz, Special Education Program Facilitator, CCPS, attended the visit as representatives of CCPS and to provide information on CCPS policies and procedures, as needed.

7. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. IEP, dated October 13, 2009;
 - b. Prior Written Notice, dated October 14, 2009;
 - c. IEP, dated October 7, 2010;
 - d. Prior Written Notice, dated October 9, 2010;
 - e. Prior Written Notice, dated March 21, 2011;
 - f. IEP, amended May 12, 2011;
 - g. Prior Written Notice, dated May 12, 2011;
 - h. Neuropsychological Evaluation, dated 7/28/2009;
 - i. Psychological Assessment, dated June 23 and 25, 2009;
 - j. Behavioral Intervention Plan, dated September 10, 2010
 - k. Memo of Parent/Teacher Conference, dated November 22, 2010;

XXX

Mrs. Sarah J. Farr

June 10, 2011

Page 3

- l. Memo of Parent/Teacher Telephone Conference, dated April 18, 2011;
- m. Monthly Progress Note for September 2010, dated October 7, 2010;
- n. Monthly Progress Note for October 2010, dated November 1, 2010;
- o. Student's Report Card with grades for the first three quarters of the 2010-2011 school year;
- p. Teacher Progress Report, dated March 3, 2011; and
- q. Progress Report on IEP Goals, documenting progress on goals through April 27, 2011.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with autism under the IDEA, and receives special education and related services. He attends XXXXXX, a XXXXXXXXXXXX special education school where he was placed by CCPS. During the period of time covered by this investigation, the complainant has participated in the educational decision-making process and has been provided with notice of the procedural safeguards and of the IEP team's decisions (Docs. a-g).

FINDINGS OF FACT:

1. The IEP in effect during the 2010-2011 school year was revised on October 7, 2010. When developing, reviewing and revising the IEP, the team considered the following:
 - a. The results of the student's CCPS neuropsychological assessment administered in 2009, which indicate that the student is diagnosed with Asperger's Syndrome (on the Autism spectrum) and Attention Deficit Hyperactivity Disorder (ADHD), with "average" to "above-average" cognitive skill. The neuropsychological assessment report also indicates that the student has behavioral and emotional concerns that include escalating behavioral difficulties in school, including threats of aggression, low tolerance to frustration, ease of provocation, tendency to overact, impulsivity and inflexibility, as well as sensory sensitivities (Docs. a-d and h);
 - b. The results of the student's CCPS psychological assessment administered in 2009, which indicate the student's mathematics composite score correlates to "statistically significant academic over-achievement in math reasoning and math calculation," while noting the student has significant needs in behavioral and social/emotional concerns (Docs a-d and i);
 - c. The results of the student's MSAs administered in 2010, which identify him as being "advanced" in math (Doc. c);
 - d. Teacher reports that the student has made progress in socializing with peers, while he struggles with accepting adult directions and staying on-task (Docs. d and m); and

- e. Concerns of the complainant that the IEP contain positive behavioral strategies that are sensitive to the student's needs. The complainant also wanted to ensure that the school put in place strategies to reduce instances of sensory overload for the student (Doc. c).
2. Based on the data reviewed, the IEP team developed goals to address the student's behavioral and social/emotional needs associated with his autism and ADHD. In order to assist the student in achieving the goals, the IEP requires that the student be provided with special education instruction in all academic areas by a special education teacher and an instructional assistant in a special education classroom. It also requires that school staff minimize the distractions to the student and to other students. The IEP team also developed a behavioral intervention plan for him that requires preferential seating, direct modeling of appropriate behavior, and reinforcement strategies to reward him for good behavior (Docs. a-d and j)
3. The student is provided with math instruction through the use of an interactive on-line math program taught remotely by a CCPS general education teacher who is certified in math. The student accesses this instruction through the use of a computer located in a carrel, which is located at the back of the special education classroom in order to reduce distractions. While on-line, he has access to videos of the CCPS teacher solving problems before attempting to solve them himself, and he gets feedback and guidance on his performance daily from the CCPS teacher and participates in on-line chats with the CCPS teacher (Docs. d, e, g and k-p; interviews with CCPS and XXXXXX staff; review of communications logs between the CCPS teacher and the student and the CCPS teacher and the XXXXXXXX teachers; and review of work samples).
4. While the student is participating in the on-line course in the special education classroom, the XXXXXXXX special education teacher and instructional assistant monitor his instruction and provide the student with academic and behavioral supports. There is documentation that the XXXXXX special education teacher and instructional assistant work with the CCPS teacher to keep the student on-task. They also worked with the student toward achieving the goals and objectives of the student's IEP, as well as implemented the student's behavioral intervention plan (Docs. d, e, g and k-p; interviews with CCPS and XXXXXX staff; review of communications logs between the CCPS teacher and the XXXXXXXX teachers; review of work samples; and review of behavioral charts).
5. In March 2011, another IEP team meeting was held to address concerns that the student was not responding to the supports being provided during math instruction in order for him to maintain focus and complete class work. Although the complainant requested that the student receive the services of a one-to-one aide during math, the IEP team instead decided to address this concern by assigning the student to a different teacher's classroom. The complainant was provided written notice of the IEP team's decision, including the basis for its decision, as well as the basis for rejecting the complainant's request, prior to changing the student's classroom assignment (Docs. e and l, and interviews with CCPS and XXXXXXXX staff).

XXX

Mrs. Sarah J. Farr

June 10, 2011

Page 5

6. On May 12, 2011, the IEP team convened and considered information from school staff and concerns of the complainant that the student was still not responding to the behavioral supports provided during math instruction enough to maintain his focus and complete his class work. The team considered the student's IEP Progress Report, as well as information from the student's teachers, that the student's interactions with peers and adults had greatly improved, and that he was making sufficient progress to meet the goals and objectives on his IEP (Docs f, g and q, and interviews with CCPS and XXXXXXXX staff).
7. Based on this information, the team decided that the least restrictive environment in which the IEP can be implemented is a general education classroom. The IEP team developed a plan for the student to transition back to public school in the fall, where he will receive supports relative to maintaining focus and completing class work from a special education teacher on location during math instruction (Docs f and g, and interviews with CCPS and XXXXXXXX staff).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that Addresses the Student's Math Needs Behavioral Needs Since the Start of the 2010-2011 School Year

The IEP must include annual goals and services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance (34 CFR §300.320). In the case of a student whose behavior impedes his learning or that of others, the IEP must include strategies to address that behavior (34 CFR §300.324).

When determining the levels of academic achievement and functional performance, the team must consider the evaluative data. This includes, among other things, assessment results, information from the student's teachers, and the parent's concerns (34 CFR §300.324).

The public agency must ensure that the IEP team reviews the program at least annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the team reviews and revises, as appropriate, the IEP to address lack of expected progress toward achievement of the annual goals (34 CFR §300.324).

In this case, based on Findings of Fact #1-7, MSDE finds that the IEP team considered the evaluative data, including assessment results, MSA results, parent input, teacher reports and progress reports, in developing the IEP, that the team developed an IEP that addresses the student's identified needs, that the team's decisions are supported by the data, and the team reviewed the IEP in accordance with the requirements. Therefore, MSDE finds no violation regarding this allegation.

Allegation #2 Provision of Supports in Math Since the Start of the 2010-2011 School Year

The public agency must ensure that special education and related services are available to each student in accordance with the IEP (34 CFR §§300.101 and .323). In this case, based on

XXX

Mrs. Sarah J. Farr

June 10, 2011

Page 6

Findings of Fact #2-4, MSDE finds that there is documentation that the student was provided with the special education instruction and accommodations and modifications required by the IEP during math instruction during the 2010-2011 school year. Therefore, MSDE finds no violation regarding this allegation.

Please be advised that both 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 LOF. 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 LOF. If additional information is provided, it will be reviewed and 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.

Questions regarding the findings and conclusions 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 free appropriate public education (FAPE) for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH/crh

c: D'Ette W. Devine
Peter Callahan
Samantha Wallace
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Dori Wilson
Christine R. Hartman