MARYLAND STATE DEPARTMENT OF EDUCATION
Preparing World-Class Students

Lillian M. Lowery, Ed.D.
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

January 11, 2013

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Mr. Daniel Martz
Director of Special Education and
Psychological Services
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #13-025

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 November 13, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her daughter. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegations listed below.

1. The FCPS has not ensured that the student's Individualized Education Program (IEP) addresses her communication and assistive technology needs, since November 2011[1], in accordance with (34 CFR §300.324).

[1] The complaint contained allegations of violations dating prior to November 2011. However, the complainant was informed, in writing, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received (34 CFR §300.153).

2. The FCPS has not ensured that the IEP includes appropriate measurable post-secondary goals, based upon age appropriate transition assessments, related to training, education, employment, and as appropriate, independent living skills, and transition services needed to assist the student in reaching those goals, since November 2011[1], in accordance with (34 CFR §§300.43 and .320).

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.

2. On November 13, 2012, the FCPS sent a copy of the complaint to the MSDE, which it received from the complainant, via electronic mail (email).

3. On November 16, 2012, the MSDE received a copy of the complaint from the complainant, via the United States Postal Service.

4. On November 19, 2012, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.

5. On November 28, 2012, 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 FCPS of the allegations and requested that the FCPS review the alleged allegations.

6. On December 18, 2012, the FCPS sent the MSDE documents to be considered for the investigation, via email.

7. On January 10, 2013, Ms. Williams spoke with the complainant regarding the complaint.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.

    a. Correspondence and attachments from the complainant to MSDE, received on November 16, 2012;
    b. MSDE, Division of Rehabilitation Services Protocol, dated September 2009;
    c. MSDE, Division of Special Education/Early Intervention Services, Transition Planning Guide, dated January 2010;
    d. IEP, dated December 1, 2010;
    e. Augmentative Communication and Technology Team Report, dated July 28, 2011;
    f. MSDE, Division of Rehabilitation Services, Workforce and Technology Center Brochure, dated September 2011;

g. IEP team meeting notes, dated October 5, 2011;
h. IEP, dated November 22, 2011;
i. IEP team meeting notes, dated November 22, 2011;
j. IEP team meeting notes, dated April 16, 2012;
k. IEP, dated November 14, 2012; and
l. IEP team meeting notes, dated November 14, 2012.

BACKGROUND:

The student is twenty (20) years old and is identified as a student with multiple disabilities under the IDEA (intellectual disability, speech/language impairment, and an Other Health Impairment [OHI] related to Attention Deficit Hyperactivity Disorder [ADHD]). The student attends XXXXXXXXXXXXXX (XXXXXXXXXX), where she receives special education and related services. She will be twenty-one (21) years old on August 19, 2013, and it is anticipated that she will earn a Maryland High School Certificate of Program Completion in June of 2013.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. d, g, i, j, and l).

ALLEGATION #1: IEP THAT ADDRESSES COMMUNICATION AND ASSISTIVE TECHNOLOGY NEEDS

FINDINGS OF FACTS:

1. On October 5, 2011, the IEP team reviewed the IEP developed on December 1, 2010. At that meeting, the IEP team revised the IEP to require the use of an iPAD equipped with Proloquo2Go software, which serves as an augmentative communication device (Docs. d, e, and g).

2. Reports of the student's progress towards achieving her IEP goals completed in January, March, May, June, and November 2012 indicate that she has been using the iPAD and making progress toward achieving her goals with its use (Doc. h).

DISCUSSION/CONCLUSION:

In order to ensure that a student with a disability receives a Free Appropriate Public Education (FAPE), the public agency must identify the needs that arise from the student's disability and develop an IEP that addresses those needs. When determining the needs to be addressed, the IEP team must consider whether there are any communication needs and whether the student requires assistive technology devices and services (34 CFR §§300.101, and .324).

In this case, the complainant asserts that the iPAD with Proloquo2Go software provides appropriate assistive technology to meet the student's communication needs, but that the FCPS did not ensure that the IEP required this assistive technology in a timely manner (Doc. a).

Based on the Findings of Facts #1 and #2, the MSDE finds that, during the period of time covered by this investigation, the IEP required the use of this assistive technology, which the complainant believes is appropriate. Based on these Findings of Facts, the MSDE further finds that there is documentation that the student is making progress toward the achievement of the annual goals with the use of the assistive technology. Therefore, the MSDE does not find a violation occurred with respect to this allegation.

Additional Discussion:

At the outset of this investigation, the MSDE staff explained to the complainant that the IDEA confers upon this office the authority to investigate allegations of violations that occurred within one (1) year of the filing of the State complaint (34 CFR §300.153). The complainant has also been informed that, if the MSDE finds that the alleged violations did not occur within the time period covered by the State complaint investigation, the complainant could file a due process complaint to attempt to resolve the dispute through that process. Because the MSDE did not find that the alleged violation occurred during the time period covered by this investigation, the complainant is reminded that a due process complaint can be filed to address her allegation if she believes it occurred within the past two years (34 CFR §300.507).

ALLEGATION #2: TRANSITION PLANNING

FINDINGS OF FACTS:

November 1, 2011 through November 21, 2011

3. The IEP team conducted transition planning on October 1, 2010, when the student was eighteen (18) years old and in the eleventh (11^{th}) grade. At that time the student was identified as a student with OHI related to ADHD and "unknown medical conditions." The IEP stated that the student "has significant communication and intellectual delays, that impact her involvement in the general education curriculum in a variety of ways." The IEP included goals and services to address functional life skills (Doc. d).

4. The transition planning reflects that post-secondary goals in the areas of employment, training, and independent living were developed based on information obtained from the student about her interests and preferences. The IEP reflects that the IEP team also determined the transition services required to assist the student in achieving the goals. The IEP documents that the team determined that referrals would be made for the student to the Division of Rehabilitation Services (DORS) and the Developmental Disabilities Administration (DDA), and that representatives from both agencies had been invited to the IEP team meeting (Doc. d).

November 22, 2011 through November 13, 2012

5. On November 22, 2011, the IEP team reviewed and revised the IEP. There is documentation that, at the meeting, the team reviewed and revised the post-secondary goals and services based on information obtained from the student about her interests and preferences. The IEP team meeting notes reflect that the complainant expressed concerns about whether the student's disability would be a factor that would be considered when determining her eligibility for adult services from the DORS (Docs. h and i).

6. Based on the complainant's concerns expressed at the meeting, the IEP team decided to conduct a reevaluation in order to determine whether the student can be identified with a more significant disability, which is required in order for her to be eligible for services from the DORS. The team decided that the data which was needed to complete the reevaluation was contained in the private psychological assessment that the complainant obtained the previous year and that it would reconvene to consider this data (Docs. h and i).

7. On April 16, 2012, the IEP team convened to consider the report of the private psychological assessment obtained by the complainant. Based on the data obtained from the report regarding the student's cognitive ability, the IEP team determined that the student meets the criteria for identification as a student with multiple disabilities under the IDEA, including an intellectual disability, a speech/language impairment, and an OHI related to a diagnosis of ADHD. No other revisions were made to the student's IEP. The IEP team discussed that the complainant would meet with a DORS representative in order to explore the services they could provide to the student (Doc. j).

Since November 14, 2012

8. On November 14, 2012, the IEP team reviewed and revised the post-secondary goals and services based on information obtained from the student about her interests and preferences. At the meeting, the DORS representative reported that the student will be offered services from that agency, including a vocational assessment. The DORS representative also reported that the complainant was invited to tour the workforce center to determine whether she wished to accept services offered through the center, including community living skills training and assistance with identifying potential employment and applying for positions. Documentation of the meeting states that the team discussed that the family was working with a DDA service coordinator, and that the student is eligible for "extensive supports" from that agency (Docs. k and l).

DISCUSSION/CONCLUSIONS:

Beginning not later than when the student turns fourteen (14) years old, the IEP must include appropriate measurable post-secondary goals related to training, education, employment, and, where appropriate, independent living skills based on the individual student's needs, taking into account the student's strengths, preferences, and interests. The IEP must include a statement of the need of transition services, including, if appropriate, a statement of a public agency's and a participating agency's responsibilities or linkages, or both, before the student leaves the secondary school setting. The public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services to an IEP team meeting in which these determinations are made (34 CFR §§300.43, .320, and .321 and COMAR 13A.05.01.09).

In this case, the complaint alleges that had the IEP team been more knowledgeable about agencies that provide adult services, linkages with those agencies could have been made earlier[2] (Doc. a). Based on the Findings of Facts #3 - #8, the MSDE finds that, during the time period covered by this investigation, the FCPS ensured that transition planning occurred and that post-secondary goals and services were developed based on the student's interests and preferences. Based on the Findings of Facts #4 - #8, the MSDE further finds that the FCPS also ensured that the required linkages were made with other agencies, including inviting agency representatives to the IEP team meetings and making referrals to the agencies on behalf of the student. Therefore, the MSDE does not find a violation occurred with respect to this allegation.

Please be advised that the complainant and the school system 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.

[2] The DORS usually begin working directly with students at the start of their next to last school year, with transition counselors assigned to each secondary school in Maryland. The DORS staff provide services for eligible students with significant disabilities as they transition from secondary school to employment, post-secondary education, or vocational training (Docs. b, c, and f).

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 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:tw

cc: Theresa R. Alban
Linda Chambers
XXXXXX
Dori Wilson
Anita Mandis
Tyra Williams
Tom Barkley