



April 17, 2013

XXX
XXX
XXX

Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #13-061

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 February 20, 2013, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) 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 CCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his identified needs since February 2012,¹ in accordance with 34 CFR §300.324;
2. The CCPS has not ensured that the IEP includes an annual goal related to reading fluency that is measurable since February 2012,¹ in accordance with 34 CFR §300.320;

¹ The complaint included allegations of violations dating to January 2012. The complainant was informed, in writing on March 1, 2013 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, in accordance with 34 CFR §300.153.

XXX

Mr. Russell Gray

April 17, 2013

Page 2

3. The CCPS has not ensured that the student's progress toward achieving the annual goals is measured in the manner required by the IEP since February 2012,¹ in accordance with 34 CFR §300.320;
4. The CCPS has not ensured that the student has been provided with special education instruction designed to assist him in achieving the annual IEP goals related to academics since February 2012,¹ in accordance with 34 CFR §§300.101, .320, and .323; and
5. The CCPS did not ensure that the student has been provided with the services of a one-to-one aide during adaptive physical education (adaptive P.E.) class as required by the IEP since February 2012,¹ in accordance with 34 CFR §§300.101, .320, and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 22, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
3. On February 25, 2013, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On March 1, 2013, 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 Mr. Gray of the allegations and requested that his office review the alleged violations.
5. On March 14, 2013, the MSDE requested the CCPS to provide documentation from the student's educational record, via electronic mail (e-mail).
6. On March 18, 2013, the CCPS provided the MSDE with the requested documentation, via e-mail.
7. On March 21, 2013, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Special Education Teacher;
 - b. Ms. XXXXXXX, IEP Case Manager;
 - c. Ms. XXXXXX, One-to-One Instructional Assistant; and
 - d. Mr. XXXXXX, Adaptive P.E. Teacher.

XXX

Mr. Russell Gray

April 17, 2013

Page 3

Ms. Christine Bechtel, Supervisor of Special Education, Secondary, CCPS; Ms. Linda Walburn, Special Education Instructional Consultant, CCPS; and Mr. Wayne Whalen, Coordinator of Compliance, CCPS, attended the site visit as representatives of the CCPS and to provide information on the CCPS policies and procedures, as needed.

8. On March 22, 2013 and April 2, 2013, the complainant provided the MSDE with documentation and audio recordings to be considered during the course of the investigation, via United States mail.
9. On March 26, 2013, the CCPS provided the MSDE with additional documentation from the student's educational record, via e-mail.
10. On April 4 and 5, 2013, Ms. Stump reviewed the audio recordings provided by the complainant.
11. On April 5, 2013, Ms. Stump conducted a telephone interview with Mr. XXXXXXXXXXXX, Principal, XXXXXXXXXXXX.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on February 20, 2013;
 - b. IEP and team meeting notice, dated January 18, 2012;
 - c. Prior Written Notice form, dated January 18, 2012;
 - d. Adaptive P.E. teacher's service provider log for the 2011-2012 school year;
 - e. IEP progress reports for the 2011-2012 school year;
 - f. IEP team meeting notice for the January 17, 2013 meeting;
 - g. Receipt of Parental Rights Document form, dated January 17, 2013;
 - h. Alt-MSA IEP Team Decision-Making Process Eligibility Tool, dated January 17, 2013;
 - i. Prior Written Notice form, dated January 17, 2013;
 - j. IEP team meeting notice for the February 12, 2013 meeting;
 - k. Receipt of Parental Rights Document form, dated February 12, 2013;
 - l. Prior Written Notice form, dated February 12, 2013;
 - m. IEP and team meeting notice for the March 11, 2013 meeting;
 - n. Prior Written Notice form, dated March 11, 2013;
 - o. Adaptive P.E. teacher's service provider log for the 2012-2013 school year; and
 - p. IEP progress reports for the 2012-2013 school year.

BACKGROUND:

The student is fourteen (14) years old and attends XXXXXXXXXXXX (XXXXXXXXXX). He is identified as a student with an Intellectual Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services. 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. a, b, g, h, k, and m).

FINDINGS OF FACTS:

February 2012 – end of the 2011-2012 School Year

IEP Development, Review, and Revision

1. The IEP in effect in February 2012 was developed at an IEP team meeting conducted on January 18, 2012. The documentation of that meeting indicates that, in its review and revision of the student's program, the team considered reports of the student's progress toward achieving the annual IEP goals and in the general education curriculum, the results of classroom based assessments, the complainant's input, and reports of the student's classroom performance from his teachers and service providers (Docs. b and c).
2. The IEP states that the student requires extensive modifications to all areas of the curriculum, that he is performing "significantly below grade level" in all academic areas, requires a much slower pace of instruction, and a lot of repetition and practice. The IEP states that the student has difficulty explaining ideas, identifying and defining curricular vocabulary, and answering or understanding higher level questions (Doc. b).
3. The IEP identifies needs, consistent with the data, in the areas of phonemic awareness, reading fluency, reading comprehension, math calculation, written language mechanics, written language expression, receptive language, expressive language, pragmatics, physical education, attention, and fine motor skills (Doc. b).
4. In order to address the identified needs, the IEP team developed annual goals for the student to improve skills in each of the areas of identified needs. Each annual goal contains a statement of the specific skills that the student is expected to improve. Each annual goal also contains short-term objectives, an evaluation method, and measurement criteria, including the accuracy rate and the number of trials to be conducted for each activity in which progress will be measured (Docs. b and c).
5. In order to assist the student with achieving the annual goals, the IEP team determined that the student requires special education instruction in reading, math, writing, and independent living skills. The team also determined that the student requires speech-

XXX

Mr. Russell Gray

April 17, 2013

Page 5

language therapy, adaptive physical education, and occupational therapy as related services (Docs. b and c).

6. The IEP team determined that the Least Restrictive Environment (LRE) in which the student's IEP can be implemented is a separate special education classroom due to his need for a small classroom setting with a low teacher-to-student ratio (Docs. b and c).
7. In order to implement the IEP in the LRE, the team determined that the student requires accommodations. These include:
 - a. Large print;
 - b. Verbatim reading;
 - c. Books on tape and/or recorded books;
 - d. Provision of copies of notes, outlines, and instructions;
 - e. A scribe;
 - f. Monitoring of tests responses;
 - g. Use of calculation devices;
 - h. Extended time to complete assignments;
 - i. Multiple breaks; and
 - j. Reduced distractions to the student (Docs. b and c).
8. In order to implement the IEP in the LRE, the team also determined that the student requires supplementary aids and services. These include:
 - a. Use of a systematic, multi-sensory phonetic language program;
 - b. Written materials in enlarged type accompanied by picture representations that help him to visually organize and reduce sensory overload;
 - c. Multi-sensory teaching and assessments;
 - d. Modification of materials to use simplified, concrete language;
 - e. Instruction through a prompt hierarchy system
 - f. Pre-teaching of new concepts;
 - g. "Significant" time for processing;
 - h. Use of a slow rate of speaking to the student and use of short phrases;
 - i. Verbal prompts to stay on task;
 - j. Task completion rewards;
 - k. Preparation for changes in routine;
 - l. Repetition, drill, and review for skill maintenance;
 - m. Direct one-to-one instruction for newly presented materials;
 - n. Social stories;
 - o. Variable interval positive reinforcement schedule;
 - p. Token economy;
 - q. Sensory supports and movement breaks;
 - r. Rephrasing of directions;

XXX

Mr. Russell Gray

April 17, 2013

Page 6

- s. Behavior modification strategies such as calming and relaxation; and
 - t. Assistive Technology devices, including word processing with specialized software (*i.e.*, text-to-speech, static word banks with auditory feedback, and graphic enhancement) (Docs. b and c).
9. The IEP also requires that the student be provided with a “one-to-one instructional assistant at all times to aid in transition periods, group activities, independent work, and any other needs he may have” (Doc. b).

IEP Implementation

10. The student’s one-to-one instructional assistant did not accompany the student when he received adaptive P.E. services between February 2012 and the end of the 2011-2012 school year because the P.E. teacher worked one-on-one with the student (Doc. d and interview with schools staff).
11. There are IEP progress reports for each annual goal, dated February 29, 2012, March 30, 2012, May 4, 2012, June 1, 2012, and July 26, 2012.² The reports indicate that the student was making sufficient progress to meet the annual goals (Doc. e).
12. The reports of the student’s progress toward achieving the annual goals include information related to the short-term objectives and indicate accuracy rates for the objectives. Student work samples and an on-site review of the student’s work indicate that the number of trials required by the IEP were conducted in order to obtain data regarding the student’s progress (Doc. e and on-site review of student’s work).
13. IEP progress reports for the 2011-2012 school year and an on-site review of the student’s work document that the student received special education instruction to assist him in achieving the annual IEP goals related to academics (Doc. e and on-site review of student’s work).

2012-2013 School Year

IEP Development, Review, and Revision

14. On January 17, 2013, the IEP team convened to review the student’s program and progress. The documentation of the meeting indicates that at the meeting, the team made the determinations listed below.
- a. The student’s disability significantly impacts cognitive functioning and adaptive behavior;

² The July 26, 2012 report is only applicable to the goals on which the student worked during the summer of 2012 when he was receiving Extended School Year services (ESY) (Doc. e).

- b. The content learning objectives and expected outcomes for the student are extended to focus on the emerging, readiness, and/or functional application of the general curriculum because the student's performance is substantially below grade level expectations;
 - c. The student requires explicit and ongoing instruction in functional skills because he has substantial deficits in adaptive behavior³ such that the student has difficulty demonstrating independence in everyday living skills, including interpersonal and social interactions across multiple settings;
 - d. The student requires extensive and substantial modification of the general education curriculum. The objectives written for the student in the designated content areas are significantly less complex than grade level expectations, the curriculum is significantly modified, and instructional pacing is significantly reduced;
 - e. The student requires intensive instruction and may require extensive supports to learn, apply, and transfer or generalize knowledge and skills across multiple settings; and
 - f. The student requires extensive support to perform and participate meaningfully and productively in daily activities in school, home, community, and work environments (Docs. f, h, and i).
15. At the January 17, 2013 meeting, the team also considered the reports of the student's progress toward achieving the annual IEP goals and began to review the present levels of academic achievement and functional performance included in the draft IEP. The documentation of the meeting indicates that the complainant expressed her concern about the reports of the student's progress and school staff agreed to "re-compile and summarize data in a more quantitative format to be reflected in a final progress report for the current IEP." The team agreed to reconvene once that report had been completed and provided to the complainant (Docs. f and i).
16. On February 12, 2013, the IEP team reconvened and reviewed the "revised final progress report" that school staff had agreed to generate at the January 17, 2013 meeting. The documentation of the meeting indicates that the team reviewed the reports of the student's progress toward achieving the annual IEP goals, the proposed present levels of academic achievement and functional performance, and the proposed annual goals (Docs. j and l).

³ Adaptive behavior is defined as the skills which are essential for someone to live independently and to function safely in daily life. Adaptive behaviors include "real" life skills such as grooming, dressing, safety, ability to work, and social and personal responsibility (Doc. h).

XXX

Mr. Russell Gray

April 17, 2013

Page 8

17. The documentation of the February 12, 2013 meeting indicates that the complainant disagreed with the level of progress reflected in the progress reports, expressed her belief that an educational assessment is required, and requested an Independent Educational Evaluation (IEE). The complainant expressed concern that the student is performing at the first (1st) grade level, and indicated that she believes that he should be performing at a ninth (9th) grade level. The complainant also requested that the student's progress be monitored using audio and/or video recordings of his verbal responses and computer-based assessments for any written responses. She also requested that all progress be noted in percentage format (Doc. l).
18. At the February 12, 2103 meeting, the complainant requested that the one-to-one instructional assistant accompany the student to adaptive P.E. School staff explained that the student is in a one-to-one setting with the instructor during the provision of adaptive P.E. services and, therefore, does not need additional adult assistance in these settings (Doc. l).
19. At the February 12, 2013 meeting, the complainant also stated that she does not want the student's program to contain any annual goals that are related to independent living skills. She stated that the student requires only annual goals related to reading, math, writing, and related services (Doc. l).
20. The documentation of the February 12, 2013 meeting indicates that, due to time constraints, the team did not complete its review of the student's program and progress. The complainant provided school staff with a list of questions regarding the student's reported progress as documented in the present levels of academic achievement and functional performance proposed by school staff. The team agreed to continue to address the complainant's concerns at the next meeting (Doc. l).
21. On March 11, 2013, the IEP team reconvened. At the meeting, the complainant expressed interest in obtaining an IEE. However, school-based members of the team reported that they were prepared to defend the school system's evaluation through due process, and the complainant decided not to request an IEE at that time (Docs. m and n).
22. The documentation of the March 11, 2013 meeting indicates that the team continued its review of the student's present levels of academic achievement and functional performance and the annual goals proposed by school staff. The complainant expressed her concern that the goals being proposed were identical to the current goals, which the complainant believed indicates that the student did not make the progress reported by school staff. School based members of the team explained that the short-term objectives that describe the specific skills to be improved within each goal were revised to reflect the student's progress (Docs. m and n).

XXX

Mr. Russell Gray

April 17, 2013

Page 9

23. At the March 11, 2013 meeting, the IEP team determined that the student requires additional supports that include:
- a. Use of a weighted pencil and a slant board for writing activities;
 - b. Use of a systemic multi-sensory phonetic language/reading program which may include computer-assisted instruction to support reading;
 - c. Behavioral strategies such as role playing and video modeling;
 - d. Limiting visual distractions on assignments;
 - e. Providing the student with word banks that contain key vocabulary;
 - f. Reducing the complexity of objectives and learning materials;
 - g. Modified content and modified achievement standards;
 - h. Providing the student with alternate ways to demonstrate learning;
 - i. Communication between home and school; and
 - j. Providing the student with a visual schedule of daily activities which includes a behavioral reinforcement (Docs. m and n).
24. At the March 11, 2103 meeting, the school-based members of the team addressed the complainant's concern that the instructional assistant accompany the student to adaptive P.E. by explaining that the one-to-one instruction was provided by the P.E. teacher. The IEP was revised to clarify that the student requires a one-to-one instructional assistant at all times when he is not already in a one-to-one environment with an instructor (Docs. m and n).

IEP Implementation

25. When the student's one-to-one instructional assistant did not accompany the student to his adaptive P.E. services, the P.E. teacher worked one-on-one with the student (Doc. o and interview with schools staff).
26. There are IEP progress reports dated October 30, 2012, December 5, 2012, and January 9, 2013. The reports of the student's progress toward achieving the annual goals include information related to the short-term objectives and indicate accuracy rates for the objectives. Student work samples and an on-site review of the student's work indicate that the number of trials required by the IEP were conducted in order to obtain data regarding the student's progress (Doc.p and on-site review of student's work).
27. The Alt-MSA IEP Team Decision-Making Process Eligibility Tool, IEP progress reports for the 2012-2013 school year, and an on-site review of the student's work document that the student received special education instruction to assist him in achieving the annual IEP goals related to academics (Docs. h, p, and on-site review of student's work).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP That Addresses the Student's identified Needs since February 2012

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. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #1 - #9 and #14 - #24, the MSDE finds that the team has considered data from assessments and the student's teachers and service providers as well as the complainant's concerns when indentifying the student's needs, and determined the services and supports to be provided to address the needs identified in the data. Based on those same Findings, the MSDE finds that the team has monitored the student's progress and continued to meet throughout the 2012-2013 school year in order to ensure that the student's needs are identified and addressed. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #2: Ensuring That the Annual Goal Related to Reading Fluency is Measurable since February 2012

The IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the disability, enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational needs that result from the disability (34 CFR §300.320). The IEP must also include a description of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals will be provided (34 CFR §300.320). The United States Department of Education, Office of Special Education Programs (OSEP) has stated that the specific manner and format in which a student's progress toward meeting the annual goals is reported is best left to State and local officials to determine (*Analysis of Changes to the IDEA*, Federal Register, Vol. 71, No. 156, August 2004, p. 26665).

Based on the Findings of Facts #4, #15, and #22, the MSDE finds that the annual goal contains information on how the student's progress toward achievement of the goal will be measured. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #3: Measuring the Student's Progress toward Achieving the Annual Goals In Accordance With the IEP

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the Findings of Facts #11, #12, and #26, the MSDE finds that there is documentation that the student's progress was measured as required by the IEP. Therefore, the MSDE finds no violation regarding this allegation.

However, if the complainant believes that the documentation in the student's educational record, which was used as a basis for this conclusion, is inaccurate or misleading, she may request an amendment of the record (34 CFR §300.618). If the public agency refuses to amend the information in accordance with the request, it must inform the complainant of the refusal. The public agency must also advise the complainant of the right to a hearing, upon her request, conducted by the public agency to challenge the information in the student's educational record to ensure that it is not inaccurate or misleading (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate or misleading, it must amend the information and inform the complainant in writing. However, if the public agency decides that the information is not inaccurate or misleading, it must inform the complainant of her right to place in the record a statement regarding information in the record or to set forth any reasons for disagreeing with the decision of the agency (34 CFR §300.620).

Allegation #4: Provision of Special Education Instruction Designed to Assist the Student with Achieving the Annual Goals Related to Academics since February 2012

As stated above, the public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student is not being provided with special education instruction that is designed to assist him in achieving the annual goals or to advance in the general education curriculum (Doc. a and interview with complainant).

Based on the Findings of Facts #13 and #27, the MSDE finds that there is documentation that the student has been provided with special education instruction designed to assist him with achieving the annual goals related to academics since February 2012. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #5: Provision of a One-To-One Instructional Assistant during Adaptive Physical Education Class Since February 2012

As stated above, the public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the

XXX

Mr. Russell Gray

April 17, 2013

Page 12

Findings of Facts #10 and #25, the MSDE finds that there is documentation that the student received one-to-one supervision during the time when he received adaptive P.E. services from the adaptive P.E. teacher. Therefore, the MSDE finds no violation regarding 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.

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 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:ks

cc : Stephen H. Guthrie
Wayne Whalen
XXXXXXXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Kathy Stump