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State Superintendent of Schools

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May 13, 2013

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Mrs. Chrisandra A. Richardson, Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason, Director
Department of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #13-066

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.

ALLEGATION:

On March 14, 2013, the MSDE received a complaint from Dr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the MCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s social and emotional needs, since March 14, 2012¹, in accordance with 34 CFR §300.324.

¹ The complaints included allegations of violations that occurred more than a year before the date it was received. On April 3, 2013, the complainants were advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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INVESTIGATIVE PROCEDURES:

1. On March 14, 2013, the MSDE received correspondence from the complainant, alleging violations of the IDEA, but which did not include a proposed remedy.
2. On March 18, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn J. Mason, Director, Department of Special Education Services, MCPS; and Ms. Julie Hall Director, Division of Business, Fiscal, and Information Systems, MCPS.
3. On March 25, 2013, Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a telephone interview with the student's mother and clarified the allegation to be investigated.
4. On April 3, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Mason of the allegations and requested that her office review the alleged violation.
5. On April 4, 2013, the MSDE requested that the MCPS provide documentation from the student's educational record related to the allegation being investigated.
6. On April 19, 2013, the MCPS provided the MSDE with documentation from the student's educational record.
7. On April 25, 2013 Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Dr. XXXXXXXXXXX, Principal;
 - b. Mr. XXXXXXXX Assistant Principal;
 - c. Ms. XXXXXXXX, Speech/Language Pathologist;
 - d. Ms. XXXXXXXX, 7th Grade Autism Resource Services Teacher;
 - e. Ms. XXXXXXXXXXX, 6th Grade Autism Resource Services Teacher; and
 - f. Ms. XXXXXXXX, Special Needs Counselor.

Ms. Sharon Gooding, Supervisor, Equity Assurance and Compliance Unit, MCPS, and Ms. Emily Rachlin, Paralegal, Attorney, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed. On that same date, the MCPS provided the MSDE with additional documentation related to the allegation being investigated.

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8. On April 29, 2013 the MCPS provided the MSDE with a written response to the complaint including supporting documentation.
9. On May 1, 2013, the MCPS provided the MSDE with additional documentation for review via facsimile.
10. On May 2, 2013, Ms. Moyo conducted a telephone interview with the student's mother regarding the allegation being investigated.
11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Speech/Language assessment report, dated September 28, 2010;
 - b. Educational assessment report, dated September 28, 2010;
 - c. Psychological assessment report, dated September 29, 2010;
 - d. IEP, dated September 19, 2011;
 - e. Class progress reports, dated May 25, 2012;
 - f. Report card and class schedule for the 2011-2012 school year;
 - g. Speech/Language services provider's attendance and encounter logs for the 2011-2012 school year;
 - h. Class progress reports, September 20, 2012;
 - i. IEP, dated September 25, 2012;
 - j. Class progress reports, dated October 29, 2012;
 - k. Reports of progress, dated November 2, 2012;
 - l. Signed permission slip for the XXXXXXXXXXXX, dated November 13, 2012;
 - m. Class progress reports dated January 16, 2013;
 - n. Reports of progress, dated January 18, 2013;
 - o. Bullying reports, dated March 4 and 12, 2013;
 - p. Electronic mail (e-mail) from the student's mother to school staff, dated March 6, 2013;
 - q. E-mail from school staff to the complainant, dated March 6, 2013;
 - r. E-mail from the student's mother to the MCPS staff, dated March 7, 2013;
 - s. Notes from interviews with the student's, dated March 7 and 8, 2013;
 - t. E-mail from school staff to the MCPS staff, dated March 7 and 11, 2013;
 - u. Investigation reports, dated March 8, 10, and 15, 2013;
 - v. Emails between the student's mother and school staff, dated March 12, 13, 14, and 15, 2013;
 - w. Correspondence and attachments from the complainant to MSDE, received on March 14, 2013;
 - x. Reports of progress, dated March 22, 2013;
 - y. Written response to the complaint from the MCPS, dated April 25, 2013;
 - z. Speech/Language service provider's attendance and encounter logs for the 2012-2013 school year;

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- aa. Sample behavior flash cards for the 2012-2013 school year;
- bb. Report card and class schedule for the 2012-2013 school year;
- cc. Social skills group work samples;
- dd. Social skills prompts flash cards;
- ee. Attendance for the 2012-2013 school year; and
- ff. IEP team meeting notice, dated May 2, 2013.

BACKGROUND:

The student is thirteen (13) years old and he attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and he receives special education instruction and related services. During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the IEP team decisions and notice of the procedural safeguards (Docs. d – k, m, n, w, x, z, and w - ee).

FINDINGS OF FACTS:

1. The Individualized Education Program (IEP) in effect since March 2012 indicates that the student has needs in the areas of social skills, attention/focus, and pragmatic and expressive language skills. The IEP includes goals in these identified areas of need to assist the student with improving his social interaction skills with both peers and adults, the ability to focus and remain on task during class time, and understand and demonstrate the use of appropriate language and communication skills when interacting with adults and peers (Docs. a – d).
2. The IEP requires that the student be provided with special education instruction² in both the special education and general education classroom, speech/language therapy to address expressive language and social interaction skills, and with supports, such as positive reinforcement of appropriate behaviors, breaks, and preferential seating (Doc. d).
3. On September 25, 2012, the IEP team convened to review the student's program and progress and to revise the IEP, if appropriate. The team considered reports from the student's teachers indicating that the student has improved his ability to take turns and remain on-topic during conversations. The teachers also noted that while the student is a "well-adjusted student who is eager to please and perform well in school," they also indicated that he seems to have difficulty during "whole group" instruction and needs reminders to stay on task. The complainants reported that the student is very meticulous

² The student participates in the MCPS Middle School Autism Resource Services program which provides services for students with identified social and behavioral needs and includes embedded social skills training during the school day (interview with school staff and <http://www.montgomeryschoolsmd.org/departments/special/>).

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and takes great pride in the things he creates. There is no documentation that the complainants expressed any concerns regarding the student's interaction with peers or anxiety related to attending school (Docs. d and i).

4. The IEP team determined that the student would continue to work on improving his social interaction skills, social language skills, and "learning behaviors" in the classroom. The team revised the IEP to indicate that the student would be provided with speech/language services in the classroom "to facilitate generalization of skills" (Doc. i).
5. On November 13, 2012, the student's mother provided permission for the student to participate in the XXXXXXXXXXXXX, led by the school's special needs counselor. The social skills group met after-school for six (6) weeks to assist students with "fostering mutual respect, caring, and cooperation among students," and to improve "decision making and communication skills" (Docs. l and interview with school staff).
6. Reports of the student's progress towards achieving the speech/language, attention/focus and social/emotional goals since March 2012 indicate that the student has been making sufficient progress to meet all the annual goals in his IEP. The reports indicate that the student is making progress in "decreasing his interrupting of conversation and self-monitoring when he is off topic" and proper "turn-taking," during conversation when given prompts. The report indicates that the student "is maintaining attention the majority of the time in class", but he continues to require "redirection to focus and face the speaker." The report also indicates that while the student has shown improvement, he still requires adult support when he is frustrated. The reports also indicate that the student has made progress interacting with peers and adults (Docs. e, h, k, m, n, and x).
7. The speech/language therapy encounter logs maintained by the speech/language pathologist indicate that the student has been working with the speech/language pathologist on social language and social interaction skills. Specifically, he had been working on understanding body language, decreasing interruptions of the other person, following social scripts, understanding figurative language, staying on topic during conversations, being a good listener, clarifying and explaining his opinion on a topic, and making inferences about feelings based on facial reactions; he has been making progress in these areas (Docs. g and z).
8. On March 4, 12, and 13, 2013, the complainants reported to school staff, in writing, that the student was being bullied by another student. They further reported that the bullying had occurred since March 2012. The complainants indicated that prior to March 4, 2012, they reported their concerns on two (2) occasions, during the 2011-2012 school year. However neither the complainants nor school staff have documentation of these reports (Docs. o, a, q, r, t – v, review of the education record, and interview with school staff).

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9. The complainants indicate that as a result of the bullying by another student, their son has expressed that he is fearful in school and is experiencing bad dreams about school. There is documentation that on three (3) occasions during March 2013, the student's mother removed him from his physical education class. She reports that she took this action to keep her son away from the other student, (Docs. r, w, and review of the sign-in/sign-out log book).
10. On March 8, 10, and 15, 2013, in response to the complainants' concerns regarding this issue, school administrators interviewed this student, the student identified as the alleged offender, other students, and the student's teachers. The school staff also reviewed video recordings of the areas where the incidents were reported to have occurred (Docs. u and t).
11. On March 11, 2013, school staff met with the complainants to discuss their concerns and to share the results of their review of the situation. At the meeting, school staff indicated that they were unable to confirm the complainant's allegations, but, due to the seriousness of the issue, have taken steps to address their concerns. School staff indicated, in the meeting and in a follow-up e-mail, dated March 15, 2013 that they have increased monitoring of the student to ensure his safety and will continue to do so in response to the complainants' concerns (Docs. t - v and interview with school staff).
12. The student report card for the 2011-2012 school year indicates that the student passed his classes and regularly attended school. In addition, the student's report card for the first, second, and third quarters of the 2012-2013 school year, reflect that the student is passing all of his classes and has had regular attendance during the 2012-2013 school year. The report card also indicates that while the student's grade in English lowered during the second quarter, it has improved during the third quarter (Docs. f, bb, and ee).
13. On May 2, 2013, the MCPS sent written notice of the IEP team meeting scheduled for May 29, 2013. The meeting notice indicates that the team will meet in order to review the student's progress and continue to address the complainants' concerns, and review and revise the IEP, as appropriate (Doc. ff).

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DISCUSSION/CONCLUSIONS:

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).

In this case, the complainants report that the student has been bullied in school by a peer, since March 2012, which has resulted in the student becoming fearful and anxious about school. They allege that school staff have not responded to their concerns regarding the student's safety in school and as a result, have not ensured that the student has been provided with a program that addresses his social and emotional needs.

Based on the Findings of Facts #1 - #4, the MSDE finds that the complainants participated in the IEP team meeting and considered information from the student's teachers and based on this information, determined the annual goals, special education instruction, and the supports to address the student's identified social and emotional needs consistent with the data. Further, based on the Findings of Facts #8 - #11, the MSDE finds that school staff have responded to the complainants' concerns, but have not observed the behaviors that the complainants reported.

Based on the Findings of Facts #5 - #7, #12, and #13, the MSDE also finds that the IEP team continues to monitor the student's progress and provide him with instructional and behavioral supports to allow him to continue to make progress toward achieving his goals. Therefore, the MSDE finds no violation regarding this allegation.

Please be advised that the complainants 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. Pending the decision on a request for reconsideration, the school system must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

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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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF/km

cc : Joshua P. Starr
Julie Hall
Sharon Gooding
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Dori Wilson
Anita Mandis
Koliwe Moyo