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August 23, 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: XXXXXXXXX and similarly-situated students
Reference: #16-156

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 June 24, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of her son, the above-referenced student, and similarly-situated students. 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 students.

The MSDE investigated the allegation that the HCPS did not follow proper procedures when determining whether the student meets the criteria for identification as a student with a Visual Impairment under the IDEA, in accordance with 34 CFR §§300.08, .34, .39, and .301-.306.

INVESTIGATIVE PROCEDURES:

1. On June 28, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegation.

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2. On July 1, 2016, 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 the HCPS of the allegation and requested that the school system staff conduct review of the matter.
3. On July 15, 28 and 29, 2016, the MSDE received electronic mail (email) correspondence and additional documentation from the complainant for consideration.
4. On July 27, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, discussed the allegations with the complainant by telephone.
5. On August 2, 14 and 22, 2016, the HCPS provided the MSDE with documentation for consideration.
6. On August 8, 2016, the HCPS provided the MSDE with a written response to the allegation and documents to be considered.
7. On August 14, 16 and 22, 2016, the MSDE requested additional documentation from the HCPS.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated January 14, 2016;
 - b. Invitation Notice and written summary of the May 5, 2016 IEP team meeting;
 - c. The private report of the student's diagnoses of binocular vision dysfunction and convergence insufficiency, with recommended accommodations, dated April 4 and 6, 2016;
 - d. The report of a private evaluation of the student's ocular health and visual skills, dated May 2, 2016;
 - e. Electronic mail (email) messages from the complaint to the school system staff, dated April 6, 2016, May 5, 2016, June 16, 2016, and July 27, 2016;
 - f. The HCPS review of independent assessment, dated May 5, 2016;
 - g. Invitation Notice of an IEP team meeting scheduled for September 2, 2016;
 - h. The complainant's release authorizing an observation of the student at his private preschool, signed on May 5, 2016;
 - i. Email between the school system staff, dated August 18, 2016;
 - j. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on June 24, 2016; and
 - k. Correspondence from the HCPS to the MSDE, dated August 8, 2016.

BACKGROUND:

The student is five (5) years old and is identified as a student with a Speech/Language Impairment under the IDEA. He has an IEP that requires speech and language services that are provided at XXXXXXXXX Elementary School as specialized instruction (Doc. a).

FINDINGS OF FACTS:

1. The January 14, 2016 IEP identifies that the student's primary disability is a Speech/Language Impairment that impacts speech articulation. The IEP includes one annual goal in the area of speech articulation (Doc. a).
2. On May 5, 2016, the IEP team convened to consider two (2) private assessment reports obtained by the complainant concerning the student's vision. The reports document the student's diagnoses of convergence insufficiency and binocular vision dysfunction, as evidenced by his double vision, dizziness, and headaches. The reports reflect that the student's vision problems interfere with his reading decoding and reading comprehension, and cause difficulty with his ability to locate and track information which affects his processing speed and amount of information that he is able to understand in a given time. In addition, the reports provide detailed information about the "expected" and "potential" impact on the student's school performance, and include numerous recommendations for accommodations to address the student's vision difficulty (Docs. b - e).
3. At the May 5, 2016 IEP team meeting, the IEP team reviewed the private vision reports. The IEP team documented that it did not suspect a Visual Impairment, but did not document the basis for this decision. While the IEP team noted that the private reports had "instructional implications" for the student, it decided that the student does not qualify for accommodations in the area of vision because "at this time, there is no data to support the accommodations" (Docs. b and f).
4. The HCPS acknowledges that its procedures for evaluating students for a Visual Impairment under the IDEA are not consistent with the July 18, 2016 MSDE *Memorandum to Local Directors of Special Education*, which states that students with convergence insufficiency may not be categorically excluded from eligibility under the IDEA. The HCPS proposes to revise its procedures for evaluating students for a Visual Impairment under the IDEA consistent with the MSDE guidance, and will ensure consistency with the recommendations of a Maryland State Steering Committee for Programs Serving Students with Visual Impairments, which is scheduled to address the issue on September 28, 2016 (Doc. k).
5. There is documentation that the school staff have scheduled an IEP team meeting for September 2, 2016. The invitation notice indicates that the purpose of the meeting is to review existing data, review and revise the IEP as appropriate, and to determine whether additional information is needed (Doc. g).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. Therefore, an evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR §§300.101, .304, .320, and .324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

Under the IDEA, a **Visual Impairment** means **impairment in vision that, even with correction, adversely affects a child's educational performance**. The IDEA specifically states that both partial sight and blindness constitute visual impairments. However, the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS) has indicated that **States may not exclude students with convergence insufficiency or other visual impairments from meeting the definition of Visual Impairment under the IDEA if the condition adversely affects their educational performance** [Emphasis added] (34 CFR §300.8 and *Letter to Kotler*, November 12, 2014).

In this case, the complainant alleges that the student requires accommodations to address his vision needs that result from his convergence insufficiency. The complainant further alleges that the HCPS has refused to provide the requested accommodations because the HCPS excludes convergence insufficiency from the definition of a visual impairment under the IDEA (Docs. e and j, and interview with the complainant).

Based on the above Findings of Facts 3 - #5, the MSDE concurs with the HCPS that the IDEA evaluation procedures are not consistent with the MSDE guidance and finds that a violation occurred. The MSDE appreciates the responsiveness of the school system and concurs with the corrective action that is proposed to address this violation.

Based on the Findings of Facts #1 - #4, the MSDE further finds that the IEP team's decision that there is no data that the student requires accommodations to access instruction is not consistent with the information in the private assessment reports. Therefore, the MSDE finds an additional violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the HCPS to provide documentation, by October 1, 2016, that the IEP team has conducted a reevaluation of the student consistent with the July 18, 2016 MSDE guidance, and reviewed and revised the IEP, as appropriate, to ensure that it addresses all of the student's needs, whether or not commonly linked to his disability classification. If the IEP team revises the student's IEP, the IEP team 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.

System-Based

The MSDE requires the HCPS to provide documentation by December 1, 2016 that its procedures for evaluating students for a Visual Impairment under the IDEA have been revised consistent with the MSDE guidance.

Similarly-Situated Students

The MSDE requires the HCPS to provide documentation by January 1, 2017 that notice has been provided to the parents of all HCPS students of the revised procedures for evaluating students for a Visual Impairment under the IDEA and of the right to request an evaluation if they suspect that their children meet the criteria for identification as students with a Visual Impairment under the IDEA.

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 the HCPS and the complainant 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 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.

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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 within the timelines reported in this Letter of Findings.

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:ksa

c: Renee A. Foose
Kelly Russo
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