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December 30, 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: XXXXX
Reference: #17-054

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 October 31, 2016, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. 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 above-referenced student.

The MSDE investigated the allegation that the HCPS did not ensure that the student was provided with the program and placement that addresses the student’s cognitive needs from February, 2016 to May, 2016, in accordance with 34 CFR §§300.116 and .324.

INVESTIGATIVE PROCEDURES:

1. On November 3, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS.

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2. On November 9, 2016, the MSDE requested documents from the HCPS.
3. On November 18 and 21, 2016, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted telephone interviews with the complainant about the allegations.
4. On November 22, 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 review the alleged violation.
5. On November 22, 2016, the MSDE requested documents from the HCPS.
6. On November 29, 2016, the MSDE received additional documentation from the complainant to be considered.
7. On December 12, 2016, the HCPS provided the MSDE with documents to be considered.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program (IEP), dated August 3, 2015;
 - b. IEP, amended January 12 and 27, 2016;
 - c. IEP, dated February 26, 2016;
 - d. IEP, dated May 13, 2016;
 - e. Meeting summary, dated January 12, 2016;
 - f. Meeting summary, dated February 26, 2016;
 - g. Meeting summary, dated March 18, 2016;
 - h. Meeting summary, dated March 24, 2016;
 - i. Meeting summary, dated May 13, 2016;
 - j. Reports of psychological evaluation, dated January 21, 2016 and February 19, 2016;
 - k. Extended School Year (ESY) services information form, dated May 13, 2016; and
 - l. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on October 31, 2016.

BACKGROUND:

The student is 11 years old and is identified as a student with Autism and an Intellectual Disability under the IDEA and has an IEP that requires the provision of special education and related services. She attends XXXXXXXXXXXXXXXXXXXX (Docs. a - d and j - l).

During the time period addressed by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. a - i).

FINDINGS OF FACTS:

1. On February 26, 2016 and March 18 and 24, 2016, an IEP team meeting was held to review the IEP and the student's progress. At that time, the IEP team identified the student with an Intellectual Disability in addition to the previously identified disability of Autism. The IEP team also decided that the student will participate in alternate State and district-wide assessments based on standards for those students with the most significant cognitive disabilities.¹ These decisions were made based on information that the full scale Intelligence Quotient (IQ) that was reported in the last cognitive assessment was not accurate, and that the student's IQ fell within the criteria that supported her identification with an Intellectual Disability (Docs. b and c).
2. At the IEP team meeting, the existing annual goals, which were designed to address functional life skills within the general education curriculum, were revised based on reports of the student's classroom performance. The student was reported to be making sufficient progress towards achievement of the goals with the provision of the special education and related services and supplementary aids and services required by the IEP. Based on the report of the student's progress, the team added instructional and testing accommodations and supplementary aids and services to the IEP, including a visual schedule and checks for understanding of homework. The IEP team also decided that the student would be provided with opportunities to practice social skills within her social groups. The IEP team decided to reconvene in May, 2016 to review the student's progress and determine whether she required Extended School Year (ESY) services (Docs. a - c).
3. On May 13, 2016, the IEP team reconvened. At that time, the school staff reported that the student continued to make sufficient progress towards achievement of the annual goals, which were revised based on the student's progress. The IEP team revised the IEP to require: (a) that the student be provided with a dedicated assistive technology device; (b) that a familiar staff member ride the bus and take charge of the student's group on field trips; and (c) that the complainant be provided with monthly data on the student's progress and increase the amount of special education instruction to be provided. The team decided that the student required ESY services to address the goals in the area of functional life skills. The IEP team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented and which the provision of

¹ In Maryland, alternate academic achievement standards are performance standards that are based on a limited sample of content that is linked to grade level content standards. This content, however, may not fully represent grade level content and may include content that is substantially simplified [Emphasis added] (MSDE Technical Assistance Bulletin 17, *Understanding the Criteria and Eligibility Process for Students with the Most Significant Cognitive Disabilities Participating in the Maryland Assessment Program*).

these supports is a combination of general and separate special education classrooms, and that the IEP can be implemented at the school the student would attend if not disabled (Docs. d, i, and k).

4. The student was assigned to XXXXXXXXXX School for the provision of ESY services, which has an Academic Intervention Program. These programs are located in selected county schools and are designed for students who receive instruction and assessment on academic and alternate standards. Instruction and related services are provided in a variety of settings to meet the needs of each student. Based on student needs outlined in the IEP, students are provided with special education instruction in general and separate special education classrooms and are provided with access to the general education curriculum and extracurricular school activities as appropriate (Docs. d, i and k, and www.hcpss.org).

DISCUSSION/CONCLUSIONS:

Education Program

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. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

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 (34 CFR §300.324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the IEP team must revise the IEP, as appropriate, to address any lack of expected progress (34 CFR §300.324).

Educational Placement

Each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This is the requirement to educate students with disabilities in the Least Restrictive Environment (LRE) (34 CFR §§300.114 and .116).

Placement decisions must be individually determined on the basis of each student's abilities and needs and each student's IEP, and must be as close as possible to the student's home. Placement decisions may not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of service delivery system, availability of space, or administrative convenience (34 CFR §§300.114 and .116, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46588, August 14, 2006).

Although the IDEA does not require that each school building be able to provide all of the special education and related services for all types and severities of disabilities, the public agency has an obligation to make available a full continuum of alternative placement options that maximize opportunities for students with disabilities to be educated with their nondisabled peers to the extent appropriate (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46588, August 14, 2006). For example, public agencies that do not operate programs for students without disabilities are not required to initiate those programs solely to satisfy the LRE requirement for students with disabilities. However, public agencies that do not have inclusive settings for such students with disabilities must explore alternative methods to ensure that the LRE requirements are met (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46589, August 14, 2006).

In this case, the complainant alleges that the student should have been placed in an Adapted Life Skills program² as soon as she was identified with an Intellectual Disability and the decision was made that she would participate in alternate State and district-wide assessments. The complainant asserts that the school the student would attend if not disabled does not have a program that can address the student's functional life skills needs, and therefore, is not an appropriate placement (Doc. 1).

Based on the Findings of Facts #1 - #4, the MSDE finds that the student was placed in a program that provided instruction in life skills for the provision of ESY services only because that setting was designated by the school system for the provision of those services. Based on those Findings of Facts, this office finds that there is documentation that the IEP team considered information from the student's classroom performance and assessment data and developed an IEP to address the needs identified in that data.

Based on those Findings of Facts, this office finds that there is not documentation that the IEP team consider information from the student's classroom performance and assessment data and SDE finds that during the regular school system, the IEP can be successfully implemented at the school the student would attend if not disabled. Therefore, the MSDE does not find that a violation has occurred with respect to the allegation.

² In Howard County, these programs are similar to the program in which the student was provided with ESY services, but are located in high schools (www.hcpss.org).

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TIMELINE:

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.

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 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:sf

c: Renee A. Foose
Kelly Russo
XXXXXXXX
Dori Wilson
Anita Mandis
Sharon Floyd