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State Superintendent of Schools

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March 24, 2017

Ms. Jessica R. Williams
Education Due Process Solutions, LLC
711 Bain Drive #205
Hyattsville, Maryland 20785

Dr. Arden Sotomayor
Director of Special Education
Charles County Public Schools
5980 Radio Station Road
La Plata, Maryland 20646

RE: XXXXX
Reference: #17-087

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 January 25, 2017, the MSDE received a complaint from Ms. Jessica R. Williams, hereafter, "the complainant," on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXX. In that correspondence, the complainant alleged that the Charles 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 did not ensure that proper procedures were followed when conducting a reevaluation of the student in April 2016, in accordance with 34 CFR §§300.303 - .306. Specifically, you express concern that the reevaluation was not sufficiently comprehensive to identify all of the student's special education and related service needs.
2. The CCPS did not ensure that proper procedures were followed when responding to a request for reevaluation of the student in April 2016, in accordance with 34 CFR §§300.303 - .306, .503 and COMAR 13A.05.01.12.

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3. The CCPS did not ensure that the Individualized Education Program (IEP) was reviewed to address any lack of expected progress toward the annual goals, in accordance with 34 CFR §300.324.
4. The CCPS did not ensure that the IEP addressed all of the student's needs from January 25, 2016 to the end of the 2015 - 2016 school year, in accordance with 34 CFR §§300.101, .320, .321, .324 and COMAR 13A.05.01.07. Specifically, it is alleged the the student's academic, developmental, functional, and transition service needs not being addressed during this timeframe.
5. The CCPS did not ensure that the student was provided with the supplementary aids and services required by the IEP, from January 25, 2016 to the end of the 2015 – 2016 school year, in accordance with 34 CFR §§300.101 and. 323. Specifically, you allege that the student did not receive consistent checks for understanding, check in and check out for assignment completion, and agenda book entries.

INVESTIGATIVE PROCEDURES:

1. On January 25, 2017, the MSDE received the State complaint and documentation to be considered.
2. On January 25, 2017, the MSDE sent a copy of the complaint, via facsimile, to Dr. Arden Sotomayor, Director of Special Education, CCPS.
3. On February 9, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On February 23, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Dr. Sotomayor of the allegations to be investigated and requested that her office review the alleged violations.
5. On March 21, 2017, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to the Charles County Public Schools to review the student's educational record, and interviewed Ms. Lewan Hutchison, Compliance Specialist, CCPS, and Ms. Nancy Pirner, Director of Compliance, CCPS.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated November 23, 2015;
 - b. IEP, dated April 4, 2016;
 - c. IEP meeting invitation, dated April 4, 2016;
 - d. IEP meeting summaries, dated April 4, 2016, May 19, 2016, July 8, 2016, August 15, 2016, November 3, 2016, and January 19, 2017;

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- e. Consent for assessments, dated April 4, 2016, May 19, 2016, August 15, 2016, and November 3, 2016;
- f. Educational assessments, dated May 26, 2016 and December 9, 2016;
- g. An observation report, dated May 12, 2016;
- h. Psychological evaluations, dated August 11, 2013, May 31, 2016, and September 12, 2016;
- i. An addendum to the psychological evaluation, dated August 17, 2016;
- j. A Behavior Intervention Plan (BIP), dated June 8, 2016;
- k. A Functional Behavior Assessment (FBA), dated June 8, 2016;
- l. An Occupational Therapy assessment, dated September 29, 2016;
- m. Speech and language assessments, dated October 27, 2016 and January 12, 2017;
- n. CCPS registration and enrollment information for the student;
- o. A request for the student's records from a private school, dated May 25, 2016;
- p. Electronic mail (email), dated between March 2016 and June 2016, among the school staff, complainant, and the student's mother; and
- q. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on January 25, 2017.

BACKGROUND:

The student is 16 years old and is identified as a student with an Other Health Impairment, under the IDEA, related to Attention Deficit Hyperactivity Disorder (ADHD). He has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

The student was enrolled in the CCPS and attended the XXXXXXXXXXXXXXXXX School until July 1, 2016. On July 1, 2017, the student's parent withdrew him from the CCPS and enrolled him into a private school in Prince George's County, Maryland (Docs. a, b, and n).

During the time period covered by this investigation, the student's mother participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a, b, and e).

FINDING OF FACTS:

1. The student's IEP in effect on January 26, 2016, indicates that his disability affects his organization skills, making it difficult to access instruction, and that he requires structured organizational support and other supplementary services in order to make progress on his IEP goals and objectives (Doc. a).
2. The IEP goals were developed for the student to improve his frequency of turning in class assignments and to improve and maintain his organizational skills with classwork and homework. The IEP requires that the student be provided with special education services inside the general education classroom, by the special education teacher or case manager, to assist with organization and to monitor classwork and homework completion, and with maintaining his daily agenda book. The IEP has supports that require the provision of visual reminders, task monitoring, repetition of directions, monitoring of completed

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assignments, reminders to turn in homework, the use of a daily agenda book, movement breaks in the class, an organizational checklist, time for organize his work and materials, teacher consultation to improve rapport, and preferential seating (Docs. a and b).

3. On April 4, 2016, the IEP team convened to conduct a review of the student's program and progress. Although the three year reevaluation was not due to be conducted until November 2016, the IEP team also decided to conduct reevaluation planning in response to a request made by the student's mother in March 2016 (Docs. d and p).
4. The reports of the student's progress towards achievement of the annual IEP goals made on February 1, 2016, March 29, 2016, and June 6, 2016, reflect that the student was making sufficient progress towards achievement of the goals. Information in the progress reports document that the student had been provided with the supports and services required by the IEP (Docs. a, b, and q).
5. At the April 4, 2016 IEP team meeting, the team revised the annual goals. The documentation reflects that the student was reported to have been making sufficient progress towards achievement of the goals; however, it was noted that the student had "demonstrated a bit of decline in progress." The IEP team decided to continue the goals, but revised them to require the student to demonstrate a lower percentage of accuracy in order to achieve the goals. At the same time, the IEP was revised to reflect a reduction in supports and the amount of special education instruction required to assist the student in achieving the goals, from twenty-seven (27) hours each week to thirty (30) minutes each week, without explanation (Docs. a – c, and q).
6. At the April 4, 2016 IEP team meeting, the IEP team recommended that assessments be conducted in response to the request made by the student's mother. There were subsequent IEP team meetings held on May 19, 2016, July 8, 2016, August 15, 2016, and November 3, 2016. At each meeting, the student's mother requested additional assessments, and the results of assessments that were recommended at the previous meetings were considered by the IEP team. The IEP team documented that the school-based members of the team did not believe that additional assessments were needed, but that the team agreed to conduct assessments based on the mother's requests (Docs. d – m, and q).
7. The transition planning in effect in January 2016 was conducted by the IEP team on November 23, 2015. The IEP documents that information about the student's interests and preferences was obtained through a student interview conducted on May 4, 2015, and that his reported that his interests were in information technology, manufacturing, and engineering and technology. Based on this information, postsecondary goals were developed for the student to explore employment in the information technology field. The IEP team reported that the student was currently enrolled in an academic program that would prepare him to work in the information technology field. The IEP team decided that referrals would not be made to other participating agencies because the student did not meet the criteria for those referrals. The student participated in the IEP team meeting (Doc. a).

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8. At the April 4, 2016 IEP team meeting, the IEP team considered information about the student's interests and preferences obtained through a student interview conducted on March 18, 2016. The IEP documents that the student continued to express interest in information technology, manufacturing, and engineering and technology, and was intrigued with the "coding program" which he was learning in his class. The IEP team revised the postsecondary goals for the student to indicate that he would be employed at a local business as a computer programmer. The team decided that the student's course of study would be in art, media, and communication, and that he would research various colleges that have programs of study in computer programming as well as the academic requirements needed to apply to those colleges. The IEP team decided that referrals would not be made to other participating agencies because the student did not meet the criteria. The student did not participate in the meeting and there is no documentation that the student was invited to participate in the IEP team meeting (Docs. b, d, and q).
9. There is documentation that, since March 14, 2017, the student's mother indicated that she intended to place the student in the private school and that she did not intend to return him to CCPS, and since the start of the 2016-2017 school year, the student has been attending a private school. Notwithstanding, on January 17, 2017, the IEP team completed its review of the data from assessments that were recommended at the November 3, 2016 meeting. The assessment data does not reflect that any additional areas of need were identified as a result of the reevaluation. By this time, the student had been parentally-placed at a private school located in Prince George's County since the start of the 2016-2017 school year. (Docs. d – m, o, p, and q).

DISCUSSION/CONCLUSIONS:

Allegations #1 and #2: Proper Procedures for Conducting and Responding to a Reevaluation Request

A public agency must ensure that a reevaluation is conducted if the parent request reevaluation. However, a reevaluation may occur not more than once a year unless the parent and public agency agree otherwise (34 CFR §300.303).

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of disability determined by the IEP team. When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is 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. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student's IEP (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

Upon completion of the administration of assessments and other evaluation measures, in Maryland, it is the IEP team of the student that determines whether the student is a student with a disability. In interpreting evaluation data for the purpose of determining if a student is a student with a disability, and the educational needs of the student, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior, and ensure that information obtained from all of these sources is documented and carefully considered. If a determination is made that a student has a disability and needs special education and related services, an IEP must be developed for the student (34 CFR 300.306).

Based on the Findings of Facts #3, #6, #7, and #9, the MSDE finds that the CCPS followed proper procedures for conducting and responding to a request for reevaluation, and that the reevaluation was sufficiently comprehensive to identify all of the student's special education and related services needs. Therefore, this office does not find that a violation has occurred with respect to the allegations.

Allegation: #3: Addressing the Student's Lack of Progress

Each public agency must ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved, and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals, and in the general education curriculum (34 CFR §300.324)

Based on the Findings of Facts #4 and #5, the MSDE finds that there is documentation that the student made sufficient progress toward achievement of the annual goals. Therefore, this office does not find that a violation has occurred with respect to the allegation.

Allegation #4: An IEP that Addresses the Student's Academic, Developmental, Functional, and Transition Service Needs

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, and younger, if appropriate, and updated annually, the student's IEP must include the following:

- a. Appropriate measurable postsecondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate; and

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- b. A statement of needed transition services, including course of study needed to assist the student with reaching the transition goals and, if appropriate, a statement of the public and participating agencies' responsibilities or linkages before the student leaves the secondary school setting (34 CFR §300.320 and COMAR 13A.05.01.09).

The public agency must invite a student with a disability to attend the student's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the public agency must take other steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

In this case, the complainant alleges that the student was not invited to participate in the IEP meeting, which a purpose was to discuss transition planning for him. Further, the complainant asserts that the CCPS failed to invite representatives from any participating agencies to the IEP meeting that may be responsible for providing transition services for the student (Doc. q).

Based on the Findings of Facts #7 and #8, the MSDE finds that the CCPS did not invite agencies that may be responsible for transition services to attend the IEP meeting on April 4, 2016 because the student was not age eligible to receive services from those agencies. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation the allegation.

However, based on the Finding of Fact #8, the MSDE finds that there is no documentation that the student was invited to participate in the IEP meeting on April 4, 2016, when transition planning occurred. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #8, the CCPS took steps to ensure that the student's preferences and interests were considered, and that the goals and services were based on this information. Thus, this office finds that the violation did not impact the student's ability to benefit from the educational program. Therefore, no student-specific corrective action is required with respect to this aspect of the allegation.

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that address 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 (34 CFR §300.320).

The IEP must include measurable annual goals that are designed to both meet the needs that arise out of the student's disability, and enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students. The IEP must also include a statement of the special education and related services and

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supplementary aids and services to be provided to the student, and a statement of the program modifications or supports that will be provided to enable the student to advance appropriately toward attaining the annual goals. (34 CFR §300.320).

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).

Based on the Findings of Facts #4 and #5, the MSDE finds that while the student was reported to have made sufficient progress to achieve the annual goals in effect prior to April 2016, the IEP team decided to continue the goals, but revised them to require the student to demonstrate a lower percentage of accuracy in order to achieve them. Further, based on the Findings of Facts #4 and #5, the MSDE finds that the CCPS reduced the supports and the amount of special education instruction required to assist the student in achieving the goals, without explanation. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that there is documentation that the student's parent has indicated that she does not intend to enroll the student in the CCPS. Therefore, no student-specific corrective action is required to remediate the violation.

Allegation #5: The Provision of Supplementary Aids and Services

The public agency must ensure that special education services, accommodations, and supplementary aids and services, are provided in accordance with each student's IEP 34 (CFR §300.323).

Based on the Findings of Facts #1, #2, and #4, the MSDE finds that there is documentation that the student was provided with the supplementary aids and services required by the IEP. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the CCPS to provide documentation by May 31, 2017 of the steps taken to ensure that XXXXXXXXX School staff comply with the requirements regarding review and revision of the IEP to ensure that they include goals and services designed to achieve the IEP goals and progress through the general curriculum.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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Please be advised that both the parent and the CCPS 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 within the timelines reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parent 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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:ac

c: Kimberly Hill
Nancy Pirner
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XXXXXXX
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