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August 10, 2017

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #17-153

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 May 30, 2017, the MSDE received a complaint from Ms. XXXXXXXXX hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant 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 following allegations:

1. The MCPS did not ensure that proper procedures were followed in conducting a reevaluation under the IDEA, specifically, that the Individualized Educational Program (IEP) team did not consider all of the needs of the student, in April and May 2017,¹ in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.

¹ Although initially identified as May and June 2017, the reevaluation in question took place in April and May 2017.

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2. The MCPS did not ensure that the student was provided with the specialized instruction required by his IEP from the beginning of the 2016-2017 school year until June 2017, in accordance with 34 CFR §§300.101 and .323.
3. The MCPS did not ensure that proper procedures were followed when amending the student's IEP in June 2016, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. On May 31, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip A. Lynch, Director of Special Education Services, MCPS.
2. On June 5 and 7, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
3. On June 15, 2017, 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 the MCPS of the allegations and requested that the school system review the alleged violations.
4. On June 19, 2017, the MSDE requested documentation from the MCPS.
5. On July 5, and 10, 2017, Mr. Loiacono contacted Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, MCPS, by telephone to discuss the allegations in the complaint.
6. On July 6, and, 10 2017, the MSDE received additional documentation from the MCPS.
7. On July 20, 2017, the MSDE received a response to the allegations from the MCPS.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated August 26, 2016;
 - b. IEP addendum, dated April 4, 2017 and May 18, 2017;
 - c. Mediation agreement between the MCPS and the complainant, dated July 26, 2016;
 - d. Psychological assessment, dated March 28, 2017;
 - e. Speech/Language assessment, dated March 20, 2017;
 - f. Educational assessment, dated February 14, 2017;
 - g. Teacher progress reports and student work samples, 2016-2017 school year;
 - h. MCPS IEP team consideration of outside report, dated April 4, 2017;
 - i. Input from student's private psychologist, dated December 4, 2016;

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- j. Electronic Mail between complainant and the school staff, dated June 2016 to April 2017;
- k. Correspondence from the MCPS in response to the allegations made in the State complaint, dated July 20, 2017; and
- l. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 30, 2017.

BACKGROUND:

The student is thirteen years old and attends XXXXXXXXXXXXXXXX. On May 18, 2017, it was determined that the student no longer qualifies as a student with a disability under the IDEA. Prior to that date, he was identified as a student with Autism under the IDEA and had an IEP that required the provision of special education instruction (Docs. a and b).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a and b).

ALLEGATION #1:

REEVALUATION PROCEDURES

FINDINGS OF FACTS:

1. On April 4, 2017, and May 18, 2017, the IEP team met to conduct a reevaluation for the student. The team considered information from the student's private physician, informal classroom assessments, the student's grades, speech/language assessments and an observation conducted by an instructional specialist. Based on the data available, the team determined that the student continued to be a student with Autism but that he no longer required specialized instruction, and therefore no longer qualified as a student with a disability under the IDEA (Docs. a-i).
2. The IEP team based its decision on the following factors:
 - "Autism Spectrum Ratings Scales" prepared by the student's school-based psychologist and based on input from the student's classroom teachers indicated that the student did not demonstrate characteristic traits of Autism in the school setting.
 - The speech/language assessment indicated that the student exhibited "age-appropriate communications skills within the classroom."
 - The educational assessment and input from classroom teachers and work samples reviewed by the team indicated that the student had mastered previous IEP goals which demonstrated no further areas of academic need (Docs. a-i).
3. The team considered input from the complainant and the student's father that the student continued to exhibit social/emotional needs, particularly with regard to an incident with a

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peers and their concern that the student doesn't want to attend school. The school-based members of the IEP team disagreed, and stated that the student's social/emotional skills were consistent with his age-appropriate peers. The school-based members of the IEP team reported that the social/emotional supports which are made available to all students would address the student's needs in this area and did not require specialized instruction (Doc. b, j, and review of audio recording of IEP team meeting).

4. The team decided that the student continued to benefit from supplementary aids and accommodations and decided that they could be provided without an IEP (Doc. b, and review of audio recording of IEP team meeting).
5. The team also discussed the student's participation in the TAP² classes at the school. The team agreed that the student benefited from these services, but that they too were not specialized instruction, and were available to every student (Doc. b, and review of audio recording of IEP team meeting).

DISCUSSION/CONCLUSIONS:

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).

In this case, the complainant alleges that the IEP team did not consider information, specifically information from the student's private psychologist, and their concerns regarding the student's

² The "Timberwolf Achievement Program" is a school-wide resource class that "provides more opportunities for reteaching/reassessment, study strategies, and assistance with homework" as well as school-wide initiatives such as anti-bullying lesson (Doc. j)

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social/emotional needs. Based on Findings of Fact #1-#5, the MSDE finds that the IEP team considered all of the data, including information from the private psychologist and the input from the student's parents and made an eligibility determination consistent with the data. Therefore this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #2: AMENDING THE STUDENT'S IEP

FINDING OF FACT:

6. The MCPS and the complainant entered into a settlement agreement in July 2016 that included, in part, an agreement to settle claims related to the amendment of the student's IEP in June 2016 to include the TAP class. The IEP team convened on August 28, 2016 to consider the amendment of the student's IEP to include the TAP class, and included it in the student's IEP (Docs. a and c).

DISCUSSION/CONCLUSIONS:

The IDEA states that an agreement reached through mediation is a legally binding document enforceable in State and federal courts (34 CFR §300.506). The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that such agreements are not subject to the State education agency's approval, and therefore, a State education agency should take no action through a State complaint to resolve a dispute that has been addressed through a mediated settlement agreement (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46605).

Based on Finding of Fact #6, the MSDE finds that this issue was resolved by mediated agreement of the parties in July 2016, and the IEP team acted to amend the student's IEP on August 28, 2016. Therefore, this office does not find that a violation occurred with respect to this violation.

ALLEGATION #3: IMPLEMENTATION OF THE STUDENT'S IEP

FINDINGS OF FACTS:

9. The student's IEP, amended on August 28, 2016, requires that he participate in TAP classes, outside of the special education classroom, three times per week for 25 minutes (Doc. a).
10. There is documentation that the student has received the TAP classes required by his IEP during the 2016-2017 school year (Docs. b and j).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323).

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Based on the Findings of Facts #7 and #8, the MSDE finds that the student was provided with the TAP classes as required by his IEP. Therefore, this office does not find that a violation occurred with respect to this allegation.

TIMELINE:

Please be advised that the MCPS 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.

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:gl

c: Jack Smith
Kevin Lowndes
Tracee Hackett
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Dori Wilson
Anita Mandis
Gerald Loiacono