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State Superintendent of Schools

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September 14, 2017

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Mr. Nicholas Shockney
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #17-159

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:

The MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXX hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Carroll 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 the student's Individualized Educational Program (IEP) addressed his needs specifically that the team did not convene to address the lack of expected progress towards IEP goals, since November 2016, in accordance with 34 CFR §300.324.

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2. The CCPS did not ensure that the student was provided with instruction required by his IEP, since the beginning of the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323.
3. The CCPS has not followed proper procedures when determining the student's educational placement since June 2016,¹ specifically that the IEP team did not consider the harmful effects of the student's Least Restrictive Environment (LRE) in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

BACKGROUND:

The student is twelve years old and attends XXXXXXXXXXXXX. Prior to the 2015-2016 school year, he attended XXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

There is documentation that the complainants 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.

ALLEGATIONS #1 AND #2: ADDRESSING THE STUDENT'S NEEDS AND PROVISION OF INSTRUCTION

FINDINGS OF FACTS:

1. On March 20, 2017 and March 30, 2017, the IEP team convened to address the student's progress on academic IEP goals and the content of instruction provided to the student.
2. The progress reports completed for the student from March 2016 to March 2017 indicated that the student was only working on some of the objectives in each academic annual IEP goal because the student had not yet attained the skills necessary to work on other objectives. The progress reports indicated that the student was making sufficient progress to achieve the goals by March of 2017.
3. However, the team determined that the student had not, in fact, been making sufficient progress to meet his academic goals by March 2017. The IEP team determined that compensatory services were owed to the student, as a result of not convening an IEP team to address the student's lack of expected progress on academic annual IEP goals. The team recommended that he receive two hours per day of instruction on his academic goals during

¹ While the complainants alleged in their correspondence that the allegations began before this date, they were informed, in writing, that this office only has the authority to investigate claims made within one year of the date that the complaint was received (34 CFR §300.153)

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the 2017 summer months, as compensatory services, in addition to the instruction to be provided through Extended School Year services.

4. The student's IEP, developed on March 31, 2016, required that he receive 22 hours per week outside of instruction outside of the general education setting in reading and math. There is documentation that the student was receiving the instruction required by his IEP, but that he was not making sufficient progress on individual objectives and, therefore, did not receive instruction on all objectives in each goal.

DISCUSSION/CONCLUSIONS:

Allegation #1: Addressing the lack of expected progress

Based on the Findings of Facts, #1- #3, the MSDE finds that the IEP team did not meet to address the student's lack of expected progress towards his annual academic IEP goals as required by 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding that violation, the MSDE finds that, based on the same Findings of Facts, that an IEP team did convene to address the lack of expected progress in March 2017 and determined compensatory services to remedy that violation. Therefore, no additional student-based corrective action is required with respect to this allegation.

Allegation #2: Provision of Instruction

In this case, it is alleged that the student was not receiving instruction on each objective of his IEP goals. Based on Findings of Facts #4, the MSDE finds that the student was receiving the instruction required by his IEP, but the lack of sufficient progress towards his IEP goals resulted in not providing him instruction on each objective as required by 34 CFR §§300.101, .320, and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #3: CONSIDERING THE LEAST RESTRICTIVE ENVIRONMENT

5. The IEP in effect in June 2016 was developed on March 31, 2016, when the student was a rising 6th grade student. The team determined that the LRE in which the IEP could be implemented, with the provision of supplementary aids and supports, was a special education classroom setting with a board certified behavioral specialist, low teacher to student ratio, and high levels of behavioral support. The team considered the behaviors identified in the student's Behavior Intervention Plan (BIP) and observed in the school setting including non-compliance, property destruction, aggression, and self-injurious behaviors. Based on the student's needs, the team recommended that he attend a regional program, which was not located in the school he would attend if not disabled. The team acknowledged that this placement would require a lengthy bus trip, and that his exposure to non-disabled peers in this setting would be minimal. In response, the complainants objected

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to the location of the regional program, and requested that the student be educated in his home school. The school-based and CCPS staff members of the IEP team explained that there was no school closer to the student's home that could address his needs.

6. On March 20 and 30, 2017, the IEP team conducted the annual IEP review and decided that the educational placement remained appropriate, despite the fact that the distance between the school and the student's home was lengthy and the placement resulted in a lack of exposure to non-disabled peers in his community. As a result, the team again decided that his need for behavioral supports in the program outweighed these factors.

DISCUSSION/CONCLUSIONS:

In this case, the complainants allege that the student is not being educated in the LRE, and that the IEP team has not considered the harmful effects of his participation in a regional program located outside of his home school.

However, based on Findings of Facts, #5 and #6, the MSDE finds that the IEP team determined the LRE in which the student could receive the services and supports required by his IEP, and that the team has taken into consideration the harmful effects of transportation and decreased interaction with non-disabled peers in his community as required by 34 CFR §300.116 and COMAR 13A.05.01.10. Therefore, this office does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the CCPS to provide documentation by November 1, 2017 that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at the XXXXXXXXXXXXX.

Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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.

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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 CCPS 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 complainants 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 and Appropriate Public Education (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:gl

c: Stephen H. Guthrie
Wayne Whalen
XXXXXXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum