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October 2, 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: #18-016

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 August 28, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, 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 has not ensured that the Individualized Education Program (IEP) accurately reflects the team’s February 9, 2017 decision to provide the student with one-to-one (1:1) adult support, which has resulted in the support not being provided, in accordance with 34 CFR §§300.320 and .323.
2. The MCPS did not ensure that the Behavior Intervention Plan (BIP) that was revised in June 2017 was provided within the required timelines, in accordance with COMAR 13A.05.01.07.

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3. The MCPS has not ensured that a copy of the IEP developed on July 24, 2017 has been provided, in accordance with COMAR 13A.05.01.07.

BACKGROUND:

The student is 10 years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. On February 9, 2017, the IEP team convened to review and revise the student's IEP, as appropriate. The team determined that a 1:1 adult support staff was needed to assist the student in all settings throughout the school day.
2. The electronic mail (email) correspondence between the complainant and the MCPS staff reflects that the complainant expressed concern that the student's IEP did not document the team's February 9, 2017 decision regarding his need for 1:1 adult support throughout the school day. The emails further reflect that the MCPS staff assured the complainant that the student was being provided with 1:1 adult support throughout the school day and that the IEP would be revised to reflect this information.
3. On June 5 and 30, 2017, an IEP team meeting was held. The meeting summary reflects that the complainant again raised concern about the 1:1 adult support staff not being documented in the student's IEP, as determined at the February 9, 2017 IEP team meeting. The meeting summary further reflects that the complainant wanted assurances that the same school staff member would serve as the 1:1 adult support staff at all times. The school-based members of the IEP team explained that they could not ensure that the same school staff member would always serve as the 1:1 adult support. However, at that time, the IEP was revised to reflect that the student requires the support. The IEP team also decided to revise the student Behavior Intervention Plan (BIP).
4. On July 24, 2017, the IEP team met at the request of the complainant to discuss classes, related services, and compensatory services for the student. The complainant expressed that she believed the student should be awarded compensatory services because the 1:1 adult support had not been provided and documented in the IEP. However, the school staff determined that compensatory services would not be awarded because they indicated that adult support had been provided, even though it was not documented in the IEP until June 30, 2017.

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5. The email correspondence, dated August 2, 2017, between the complainant and the MCPS staff, reflects that the staff again revised the student's IEP to include 1:1 adult support throughout his school day, and indicated that the support will be provided by an identified set of staff who are familiar with the student's IEP and BIP.
6. On August 23, 2017, the complainant emailed the school staff to inform them that she had not received a copy of the student's revised BIP. There is documentation that the school staff finalized and provided the complainant with a copy of the BIP on August 23, 2017.
7. On August 29, 2017, the complainant emailed the school staff to inform them that she had not received a copy of the student's IEP from the July 24, 2017 IEP team meeting. There is documentation that the school staff provided the complainant with a copy of the IEP on August 29, 2017.
8. Although the MCPS staff indicate that they have been providing the student with 1:1 adult support services since February 9, 2017, there is no documentation that the student has been provided with 1:1 adult support.

DISCUSSION/CONCLUSIONS:

Allegation #1: Provision of 1:1 Adult Support

Based on the Findings of Facts #1 - #3 and #5 - #8, the MSDE finds that there is no documentation that the student was provided with a 1:1 adult support staff since February 9, 2017, as required by 34 CFR §§300.320 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #2: Provision of Documents after an IEP team meeting (BIP)

Based on the Finding of Fact #4, the MSDE finds that the complainant was not provided with a copy of the BIP following the June 5 and 30, 2017 IEP team meeting, as required by COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to this allegation,

However, because the BIP was in place by the start of the 2017-2018 school year and was provided to the complainant, no student-specific corrective action is required to remediate the violation.

Allegation #3: Provision of Documents after an IEP team meeting (IEP)

Based on the Findings of Facts #3 and #7, the MSDE finds that the complainant was not provided with a copy of the IEP following the July 24, 2017 IEP team meeting, as required by

COMAR 13A.05.01.07. Therefore, this office finds that a violation occurred with respect to this allegation.

However, because the IEP was subsequently provided to the complainant, and because a violation of this requirement does not result in a loss of a Free Appropriate Public Education (FAPE) to a student, no student-specific corrective action is required to remediate the violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires MCPS to provide documentation by November 30, 2017, that the IEP team has determined the compensatory services or other agreed upon remedy for the delay in the provision of 1:1 adult support to the student.

School-Based

The MSDE requires MCPS to provide documentation by November 30, 2017, of the steps taken to ensure that the XXXXXXXXXXXX School staff follow proper procedures for including all required services on the IEP in order to make sure that those services are provided, and providing parents with the IEP within the required timelines. The documentation must include a description of how the MCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 both the complainant and the MCPS 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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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: Jack Smith
Kevin Lowndes
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Anita Mandis
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