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March 24, 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: #17-088

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 January 24, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX, Mr. XXXXXXXX, and Ms. XXXXXX hereafter, “the complainants,” on behalf of the above-referenced student¹. In that correspondence, the complainants 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 Educational Program (IEP) has addressed the student’s social, emotional and behavioral needs, since August 2016, in accordance with 34 CFR §§300.320 and .324; and
2. The MCPS have not ensured that the student's parents have been permitted to invite individuals with knowledge of the student to IEP team meetings since August 2016, in accordance with 34 CFR §300.321.

¹ The complainants are the student’s grandmother and parents, respectively, who serve as parents under the IDEA.

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INVESTIGATIVE PROCEDURES:

1. On January 24, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip A. Lynch, Director of Special Education Services, MCPS.
2. On January 24, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's father, and identified the allegations for investigation.
3. On February 2, 2017, the MSDE sent correspondence to the complainants 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 February 8, 2017, Mr. Loiacono contacted Ms. Tracee Hackett, Supervisor, Resolution and Compliance Unit, MCPS, to request documentation.
5. On February 26, 2017 and March 6, 2017, the MSDE received additional documentation from the MCPS.
6. On March 9, 2017, the MSDE received a written response to the allegations from the MCPS.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated April 6, 2016;
 - b. IEP, dated November 22, 2016;
 - c. Communication log, dated September 9, 2016 to January 6, 2017;
 - d. "Behavior contracts," daily updates, and home school communication forms, dated October 4, 2016 to January 6, 2017;
 - e. Electronic mail (email) between the complainants and school staff, dated September 2016 to January 2016;
 - f. Correspondence between the MCPS staff and the complainants, dated February 8, 2017;
 - g. MCPS "Complaint from the Public", dated November 2, 2017;
 - h. Written response from the MCPS, dated March 9, 2017; and
 - i. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on January 24, 2017.

BACKGROUND:

The student is eight years old and is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

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Prior to the 2016-2017 school year, the student attended XXXXXXXXXXXXXXXX. At the start of the 2016-2017 school year, as a result of the family's move to a different neighborhood, the student began attending XXXXXXXXXXXXXXXX. In January 2017, the student was administratively transferred back to XXXXXXXXXXXXXXXX at the complainants' request (Docs. a, b, and c).

There is documentation that the complainants were provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-c).

FINDINGS OF FACTS:

1. The student's IEP, developed on April 6, 2016 at XXXXXXXXXXXXXXXX, identifies the student's behavior needs related to maintaining attention to task, and includes behavioral supports including reinforcement of appropriate behavior, strategies to maintain attention, and promote focusing skills. The student was not identified with aggressive or disruptive behavior (Doc. a).
2. On September 8, 2016, the student's grandmother reported to the school that the student had been pushed to the ground and teased by a group of students. The school staff reported back to the student's grandmother that they had not witnessed the incident on September 8, 2016, but would monitor the student's interaction with the peers. The school staff noted in their communication log the student was observed to be playing with a peer during recess the following day, but "didn't engage in conversation" (Doc. c).
3. On September 26, 2016, the student's grandmother contacted the school to report that the student's sister had witnessed the student being hit by another student. The school staff responded on September 27, 2016 with an offer to meet with the complainants, on the same day, to discuss the incidents. The student's grandmother responded that she required "at least 24 hours notice to participate." The school staff responded with an offer to meet on October 4, 2016. The student's grandmother responded that they should "check their schedules," but did not provide available dates to the school staff (Doc. c and e).
4. On October 10, 2016, the school staff contacted the student's father to inform him that the student had kicked a substitute teacher. They invited the student's father to come to the school to speak with the student. After this incident, the school staff began to collect behavioral data which reflects reports that the student was refusing to complete his work, was defiant with classroom teachers and paraeducators, and was "hitting and kicking" staff and peers (Docs. c and d).
5. On November 2, 2016, the complainants filed a MCPS "Complaint from the Public" outlining issues similar to those in the State complaint received by this office. In that MCPS complaint, they requested a transfer of the student to another school as a proposed remedy (Doc. g).

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6. On the same day, the school staff noted that the student was increasingly defiant in the classroom, including screaming at other students and staff, as well as kicking and punching his peers and desks. On the same day, the student's father contacted the school to report an incident of physical aggression towards the student on the bus. On November 3, 2016, school staff again noted that the student was violent towards other students and attempted to contact the student's father and requested an IEP team meeting. The school staff scheduled an IEP team meeting on November 22, 2016 (Docs. c, d and e).
7. On November 9, 2016, the school staff contacted the complainants to discuss recent behavior incidents, including one on the bus. The complainants reported that the student was being bullied by other students, and that his behavior was in retaliation for that action. The school staff reported that the student was "hitting students, shoving teachers and throwing dry erase boards" (Docs. c and e).
8. On November 22, 2016, the IEP team determined that the student had new behavioral areas of need related to refusing to complete tasks and becoming aggressive with his peers and staff members. The team noted that the student required extensive adult support to calm him in these situations. In order to address the student's behavior and social/emotional needs, the IEP team developed two goals for the student to improve "safe school behavior" and classroom productivity. The team also added supplementary aids and services to his IEP including positive behavior reinforcement and a behavior contract for the bus. The student's father and grandmother attended the meeting and share their concerns about the cause of the student's behavior, which included bullying and a new home environment (Doc. b).
9. On December 6, 2016, the school staff invited the complainants to an IEP team meeting scheduled for December 20, 2016 to develop a Behavior Intervention Plan (BIP). On the same date, the complainants informed the school staff that they had requested a change in the student's school assignment (Docs. c and e).
10. On December 16, 2016, the school staff requested access to medical documentation from the complainants for the purposes of addressing the student's behavioral needs (Doc. c).
11. The complainants did not attend the December 20, 2016 IEP team meeting. Since that date, the school staff have been attempting to reschedule the meeting for a mutually beneficial date (Docs. c and e).
12. On January 4, 2017, the school staff emailed the student's father to report that the student "had a rough day" involving crying and a visit to the health suite (Docs. c, d, and e).
13. On January 6, 2017, the school staff again emailed the student's father, and called the student's mother to report that the student did not have a "good behavior day." The student was disciplinarily removed from school for two days as a result of hitting another student (Docs. c, d, and e).

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14. On January 8, 2017, in response to what the school staff characterized as “emails and communication that did not abide by the compact of respect that we strive to adhere to in the MCPS”, the school staff declined to meet with the student’s grandmother, and offered to meet with only the student’s mother and father on January 9, 2017. The student’s mother and father declined that request (Doc. c).
15. On January 9, 2017, MCPS Central Office staff offered to convene a non-IEP team meeting with all of the complainants and school staff at a different school site (Doc. c).
16. On January 13, 2017, the complainants met with the MCPS, school staff, and the representatives from the community invited by the complainants. At the complainants’ request, and to remedy the issues raised in the MCPS “Complaint from the Public,” the MCPS agreed to transfer the student back to XXXXXXXXXXXXXXXX (Docs. c, d, f, and g).

DISCUSSION/CONCLUSIONS:

Allegation #1: Addressing the Student’s Needs

In order to provide a student with a Free and 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 the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior and continue to consider intervention to address the behavior (34 CFR §§300.101 and .324).

Based on the Findings of Facts, #1- #10 and #12-#13 the MSDE finds that the IEP team met to identify and address the student’s emerging behavioral needs. The MSDE further finds that the school staff collected data and the IEP team used that data to establish present levels of performance and develop goals in the student’s areas need related to his behavior. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2: Invited IEP Team Members

Parents may invite individuals to IEP team meetings who have knowledge or special expertise regarding the student, including public agency personnel (34 CFR §300.321).

In this case, the student’s parents allege that they should have also been able to invite others, such as the student’s grandmother, to the parent-teacher meeting that was scheduled for January 9, 2017. While there is no legal authority to support that assertion, the MSDE finds that the parents were permitted to include others in that meeting when it was held on January 13, 2017.

Based on Findings of Facts #1, #8, #11, and #14-#16, the MSDE finds that the MCPS did not prohibit the complainants from inviting individuals to IEP team meetings held since August 2016. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

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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. 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:gl

c: Jack Smith
Chrisandra A. Richardson
Tracee Hackett
XXXXXXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono