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November 17, 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: #18-024

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 September 29, 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 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 proper procedures were followed when exclusion, seclusion, and physical restraint were used with the student from September 29, 2016 to December 16, 2016, in accordance with COMAR 13A.08.04.
2. The CCPS did not ensure that the student’s Behavioral Intervention Plan (BIP) was implemented from September 29, 2016 to December 16, 2016, in accordance with 34 CFR §§300.101 and .323.

XXX

Mr. Nicholas Shockney

November 17, 2017

Page 2

BACKGROUND:

The student is 7 years old and is identified as a student with Autism under the IDEA. He attended XXXXXXXXXXXXXXXXXXXX “XXXX” program¹ from September 29, 2016 to December 16, 2016. He currently attends the XXXXXXXXXXXXXXXXXXXX, a nonpublic, separate, special education school, where he was placed by the CCPS. He has an IEP that requires the provision of special education instruction and related services.

FINDINGS OF FACTS:

1. The Behavior Intervention Plan (BIP) requires that the student be provided with supports, including strategies to assist the student with managing his behaviors in the classroom. There is no documentation that the student was consistently provided with those supports during his time in the classroom.
2. There is documentation that, on some occasions, from September 29, 2016 to December 15, 2016, the student was provided with supports required by the IEP while in the support room. However, there is also documentation that he was in the support room on other occasions without the provision of IEP supports, and the school staff did not ensure that the procedures for exclusion were followed, including documenting the length of time in the support room.
3. There is documentation that the school staff utilized physical restraint with the student on October 26 and 27, 2016, in response to physical attacks on the school staff. There is documentation that physical restraint was used consistent with State regulations.
4. There is no documentation that the school staff used seclusion with the student between September 29, 2016 and December 15, 2016.

CONCLUSIONS:

Allegation #1: Use of Restraint, Seclusion, and Exclusion

Use of Restraint

Based on the Finding of Fact #3, the MSDE finds that proper procedures were followed when physical restraint was used with the student, in accordance with COMAR 13A.08.04. Therefore, this office does not find a violation with respect to this aspect of the allegation.

Use of Seclusion

Based on the Finding of Fact #4, the MSDE finds that seclusion was not used with the student, in accordance with COMAR 13A.08.04. Therefore, this office does not find a violation with respect to this aspect of the allegation.

¹ The XXXX program at XXXXXXXXXXXXXXXXXXXX is an alternative education setting designed to help students reduce disruptive behaviors and increase positive school behavior (<http://www2.carrollk12.org>).

XXX

Mr. Nicholas Shockney

November 17, 2017

Page 3

Use of Exclusion

Based on the Finding of Fact #2, the MSDE finds that proper procedures were not followed when exclusion was used with the student, in accordance with COMAR 13A.08.04. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2: BIP Implementation

Based on the Finding of Fact #1, the MSDE finds that the student was not consistently provided with the supports in the manner described in the BIP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the school system to provide documentation by January 31, 2018, that the IEP team has determined the compensatory services to remediate the violations identified through this investigation and developed a plan for the implementation of compensatory services by the end of the 2017-2018 school year.

School-Based

The MSDE requires CCPS to provide documentation by January 31, 2018, of the steps taken to ensure that XXXXXXXXXXXXXXXXXXXXXXXXXXXX staff follow proper procedures when implementing the supports and services required by the IEP and BIP, and that proper procedures are followed with regard to the use of exclusion. The documentation must include a description of how the CCPS 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 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 be accompanied by a substantial reason as to why it was not made available during the investigation and must be related to the issues identified and addressed in the Letter of Findings.

XXX

Mr. Nicholas Shockney

November 17, 2017

Page 4

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 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 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 a due process complaint.

Sincerely,

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

MEF:ac

c: Stephen H. Guthrie
Wayne Whalen
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XXXXXXXXX
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