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November 1, 2016

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Dr. Susan Austin
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #17-030

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 September 2, 2016, the MSDE received a complaint from Ms. Maureen van Stone, hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. HCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s cognitive needs, since September 2, 2015, in accordance with 34 CFR §§300.101, .320 and .324.
2. HCPS has not ensured that the IEP team convened to revise the student’s IEP in order to address the lack of expected progress towards achievement of the annual IEP goals since April 2016, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. On September 6, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On September 8, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted an interview with the complainant at the MSDE to clarify the allegations to be investigated.
3. On September 16 and 19, 2016, and October 18, 2016, the MSDE received documentation from the complainant for consideration.
4. On September 19, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the HCPS of the allegations and requested that the HCPS review the alleged violations.
5. On October 17 and 18, 2016, the MSDE requested documentation from the HCPS.
6. On October 17 and 19, 2016, the HCPS provided documents to the MSDE for consideration.
7. On October 19, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed Ms. XXXXXXXXXXXX, Assistant Principal, and Ms. XXXXXXXXXXXX, Special Education Teacher. Ms. Pam O'Reilly, Coordinator of Compliance, HCPS, participated in the site visit as a representative of the HCPS and to provide information on the school system's policies and procedures, as needed.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEPs, dated March 4, 2015 and March 16, 2016;
 - b. Prior Written Notices, dated February 3, 2015, March 4, 2015, November 16, 2015 and March 16, 2016;
 - c. Sign-in sheets of attendees at the November 16, 2015 and March 16, 2016 IEP team meetings;
 - d. The report of a psychological evaluation conducted by the XXXXXXXXXXXX XXXXXXXXXXX(XXX), dated February 17, 2012;
 - e. The report of an educational assessment, dated January 26, 2015;
 - f. The report of a psychological assessment, dated February 18, 2015;
 - g. The reports of the student's progress towards mastery of the annual IEP goals, dated November 10, 2015, February 12, 2016, April 22, 2106, and June 15, 2016;

- h. The student's interim progress report for the first quarter of the 2015 – 2016 school year;
- i. The report card progress report, dated February 29, 2016;
- j. The student's report card for the 2015 – 2016 school year;
- k. Notice of an IEP team meeting scheduled for June 6, 2016;
- l. The student's course history worksheet of grades earned for the 2013 – 2014 and 2014 – 2015 school years; and
- m. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 2, 2016.

BACKGROUND:

The student is eighteen (18) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services. The student is in the 11th grade at XXXXXXXXXXXXXXXX (Doc. a).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Docs. a - c).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the period covered by the investigation was developed on March 4, 2015. The IEP identifies that the student's primary disability is an Other Health Impairment and that she is pursuing a Maryland High School Diploma (Doc. a).
2. The March 2015 IEP was developed following a reevaluation of the student conducted in February 2015. During the 2015 reevaluation, the IEP team considered the report of a psychological assessment dated January 21, 2015, and the report of an educational assessment dated January 16, 2015, indicating the following:
 - The student's full scale IQ is in the "very low range."
 - The student's parent and her teacher reported concerns about the student's working memory and organization of materials. The student's teacher also noted concerns about the student's short attention span and her difficulty with concentration.
 - The student struggles with maintaining focus in her classes, and "often" does not complete assignments.
 - In reading, the student is functioning in the "low" range, at approximately the mid-5th grade level, with "significant" weaknesses in reading comprehension and fluency.
 - In writing, the student is functioning in the "very low range," at the 4th grade level, with weaknesses in composition skills and contextual conventions including sentence structure, spelling and grammar.

- In math, the student is functioning in the “very low range,” at the beginning 4th grade level, with weaknesses noted in calculation, problem solving and math fact fluency (Doc. b).
3. During the 2015 reevaluation, the IEP team also discussed that the XXXXXXXXXXXX XXXXX (XXX) had diagnosed the student with an intellectual disability, as documented in the report of a neuropsychological evaluation conducted in 2012. The XXX report indicates the following:
- The student’s full scale IQ is in the “impaired” range.
 - The student’s verbal comprehension, perceptual reasoning, and processing speed abilities are in the “borderline” range.
 - The student struggles with remaining focused.

The XXXX report also reflects that the student’s adaptive skills, based on ratings by her mother, are in the “extremely low” range. The student’s mother also reported “clinically significant” concerns about the student’s behavior in the areas including attention, hyperactivity, and functional communication, as well as distractibility and disorganization. She also reported that the student is frequently nervous, worries about making mistakes and what teachers think about her (Docs. b and d, and interviews with the parties).

4. At the 2015 reevaluation, the IEP team determined the student’s continued eligibility under the IDEA as a student with an Other Health Impairment based on ADHD. However, the IEP team determined that additional data was needed from the student’s teacher about her adaptive functioning in order to determine whether she also meets the criteria for an educational disability of Intellectual Disability (Docs. b and f, and interviews with the parties).
5. On March 4, 2015, the IEP team convened. They reviewed the results of the assessment of the student’s adaptive functioning based on ratings by the student’s teacher. In each of the three (3) domains assessed, conceptual, social and practical, the teacher’s ratings reflect that the student is functioning in the “average” range. Based on the data, the IEP team determined that the student did not meet the criteria for having an educational disability of Intellectual Disability at that time. However, the IEP team documented the XXX diagnosis of the student’s intellectual disability in the March 2015 IEP (Docs. a, b and f).
6. The March 2015 IEP states that the student’s disability “affects all areas of her educational environment,” is “evident throughout the school day[,] and contribute[s] to difficulties with her ready acquisition and retention of new information, sustained attention to task, planning and organization, as well as, to some extent, her social interactions.” It also indicates that the student demonstrates “significant levels of

inattention, learning problems, and executive functioning across settings.” The March 2015 IEP also reflects that the student needs extra response and processing time, selected sections of text read to her in all academic areas in order to understand the content, as well as teacher checks for understanding and “step-by-step instructions whenever possible” (Doc. a).

7. The March 2015 IEP identifies that the student has needs in the areas of reading comprehension, math problem solving, and written language expression, where she is performing at the 4th to 5th grade instructional level. It also reflects that she has behavioral needs relating to self-management, self-control and decision making, and needs in the area of speech and language fluency. The March 2015 IEP includes annual goals to address the student’s needs in each identified area of need, including a behavioral goal requiring the student to complete school tasks (Doc. a).
8. The March 2015 reflects that the student requires accommodations and daily supplementary supports to address not only her academic needs and inattention, but to also address her weaknesses in processing speed and working memory. The supports include the following:
 - Human reader for selected sections of text;
 - Notes and outlines, including class notes prior to lectures;
 - Use of a calculator;
 - Chunking of assignments;
 - Use of a math notebook to refer to for math processes, strategies and formulas;
 - Extended time for assignments and assessments;
 - Reduced distractions;
 - Small group environment for taking tests;
 - Reading of assessment directions for clear understanding;
 - Access to the study skills room to complete independent work in a small group environment; and
 - A study skills pass to access a small class environment when the student “is frustrated by her work or her environment” (Doc. a).
9. The IEP reflects that the student requires specialized instruction consisting of ten (10) sessions per month, thirty (30) minutes each, in reading, math and writing. The IEP clarifies that the specialized instruction is to be provided in the general education classroom, in a “co-taught setting.” The school staff report that both a general education teacher and a special education teacher provide instruction in “co-taught” classes (Doc. a and interview with the school staff).
10. In October 2015, the school staff completed first (1st) quarter interim reports indicating that the student was failing four (4) classes (Doc. h).
11. On November 10, 2015, the school staff documented that the student was not making sufficient progress to achieve the annual IEP goals (Doc. g).

12. On November 16, 2015, the IEP team convened and considered the student's lack of sufficient progress towards achievement of the annual IEP goals. The student's mother expressed concern about the appropriateness of the student's IEP to address her needs. The IEP team discussed that the student was not completing assignments, and decided that the student will use a homework sheet to record any work not completed in study skills class (Doc. b).
13. On February 12, 2016, the school staff documented that the student was not making sufficient progress to achieve the annual IEP goals. The progress reports state the student "is increasingly distracted and [that she is] not doing work in class and for homework," and that "she is not following through with the supports" (Doc. g).
14. There is documentation that, as of February 29, 2016, the student was failing all of her classes (Doc. i).
15. On March 16, 2016, the IEP team convened and considered the student's progress. At the time, the student had not mastered any of the IEP goals that were to be achieved by March 2016. The IEP team updated the student's present levels of performance (Doc. a).
16. The March 16, 2016 IEP reflects that the student's instructional grade levels in reading, writing and math remained unchanged, at the 4th to 5th grade level, and that she has "significant levels of inattention and learning problems." It states that the student has difficulty applying concepts in her independent work, as well as difficulty comprehending text that she independently reads. It also reflects that, while the student is able to retain math skills during class, she is unable to demonstrate the skills in the next class. In addition, it indicates that the student becomes "upset" by new situations and changes in plans (Doc. a).
17. At the March 16, 2016 IEP team meeting, the student's parents expressed concern about the student's increased inattention. The IEP team also discussed the teachers' and parents' shared concern that the student was not completing assignments. In addition, the school staff reported that the student was "responding poorly to prompting," "out of class with increasing frequency," and "distracted by social aspects of school." The IEP team revised the reading and math goals to include the additional support of "selected reading" of text, and revised the written language goal to include the use of a graphic organizer. The IEP team determined that the behavioral goals, as well as the accommodations, supplementary supports and specialized instruction, remained appropriate (Docs. a and b).
18. At the March 16, 2016 IEP team meeting, the IEP team discussed the requirements for earning a Maryland High School diploma, and that the student may require five (5) years of high school based on her current credits and courses (Doc. b).
19. On April 22, 2016, the school staff reported that the student was not making sufficient progress to achieve the annual IEP goals, and that that IEP team needed to meet to address her insufficient progress (Doc. g).

20. On June 15, 2016, the school staff continued to report that the student was not making sufficient progress to achieve the annual IEP goals, and that that IEP team needed to meet to address her insufficient progress. The documentation reflects that three (3) teachers reported that the student is not completing work, and that she “requires consistent prompting,” and directions and materials read to her. It also reflects that the student is often involved in conflicts and “drama” with peers, and that she frequently leaves the classroom to visit guidance or the study skills classroom (Doc. g).
21. There is documentation the school staff scheduled an IEP team meeting for June 6, 2016, there is no documentation that the IEP team has convened in order to address the student’s continued lack of progress towards mastery of the annual IEP goals that was reported in April and June 2016 (Doc. k and interview with the school staff).
22. The student’s report card for the 2015 – 2016 school year reflects that she earned two (2) Es, four (4) Ds, and one (1) C as her final grades (Doc. j).

LEGAL REQUIREMENTS:

In order to provide a student with a Free 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. Therefore, the public agency must ensure that the IEP includes a statement of the student’s present levels of performance, including how the disability affects the student’s progress in the general curriculum. The public agency must also ensure that the IEP includes *measurable annual goals* designed to meet the needs that arise out of the student’s disability *to enable the student to be involved in and make progress in the general curriculum* [Emphasis added].

In addition, the public agency must ensure that the IEP team determines how instruction will be modified based on the student’s levels of performance in order to enable the student to achieve the goals so that the student can and participate and make progress in the general curriculum (34 CFR §§300.101 and .320, Analysis of Comments and Changes to the IDEA regulations, *Federal Register*, Vol. 71, No. 156, p. 46662, August 14, 2006 and *Maryland Statewide Individualized Education Program Process Guide*).

In developing each student’s IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. If a student’s behavior impedes the student’s learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.320, and .324).

The public agency must ensure that the IEP team reviews the IEP at least annually to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress towards achievement of the annual goals (34 CFR §300.324).

In this case, the complainant asserts that, although the student is being awarded credits towards obtaining a Maryland High School Diploma, the student is not mastering the curriculum content needed to earn those credits because she is not achieving the annual goals that are supposed to be designed to enable her to make such progress in the general curriculum. The complainant also alleges that the IEP team has not considered the student's needs relating to her diagnosis of an intellectual disability made by a private evaluator, in developing an appropriate IEP for the student. In addition, the complainant alleges that the IEP team has not convened to address the lack of expected progress towards achievement of the annual IEP goals (Doc. m).

DISCUSSION AND CONCLUSIONS:

Based on the Findings of Facts #1 - #9 and #16, the MSDE finds that the IEP team considered the required data and documented the student's levels of academic and functional performance related to her cognitive ability. Based on the Findings of Facts #6 - #9 and #16 and #17, the MSDE finds that, since September 2015, the IEP team developed an IEP that includes goals, accommodations, supplementary supports and services to address the student's identified needs, including her cognitive needs, consistent with the data.

Based on the Findings of Facts #11 and #12, the MSDE finds that, in November 2015, the IEP team discussed interventions to address the student's lack of expected progress towards achievement of the annual IEP goals. However, based on the Findings of Facts #13 - #22, the MSDE finds that the IEP team has not convened to address the continuing lack of progress towards achievement of the annual goals since April 2016. Therefore, this office finds that violations occurred with respect to the allegations.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the HCPS to provide documentation by January 1, 2017 that the IEP team has completed the following:

The HCPS must provide documentation by January 1, 2017 that the IEP team has done the following:

- a. Determined the student's present levels of functioning and performance;
- b. Determined the levels of functioning and performance that were expected to have been demonstrated by that time;
- c. Determined why the student has not made sufficient progress to achieve the goals and identify the services needed in addition to the provision of accommodations and the use of a study skills class in order to assist the student to achieve the goals; and
- d. Developed a plan for the implementation of the services by March, 2017.

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The HCPS must also provide the MSDE with documentation by November 1, 2017 that the IEP Team convened in March 2017, and every quarter thereafter, until November 2017, to consider the student's progress.

School-Based

The MSDE requires the HCPS to provide documentation by January 1, 2017, of the steps taken to determine whether the violation related to reviewing and revising the IEP to address lack of expected progress is unique to this case or whether they constitute a pattern of violations at XXXXXXXXXXXXXXXX School. 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.

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 HCPS 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 consistent with the timeline requirement as 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 student's parents 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/ksa

c: XXXXXXXXX
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