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December 21, 2016

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Ms. Nancy Fitzgerald
Executive Director of Special Education
and Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #17-060

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.

ALLEGATION:

On October 31, 2016, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the HCPS did not ensure that the student was consistently provided with the supplementary aide of "priming," as required by her Individualized Education Program (IEP), from November, 2015¹ to May, 2016, in accordance with 34 CFR §§300.101 and .323.

¹ While the complainant alleged violations dating to February 2015, she was notified, in writing, that this office has authority to investigate allegations of violations that occurred not more than 1 year prior to the date the complaint is received, in accordance with 34 CFR §300.153.

INVESTIGATIVE PROCEDURES:

1. On November 3, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS.
2. On November 9, 2016, the MSDE requested documents from the HCPS.
3. On November 21, 2016, Mr. Gerald Loiacono, Ms. Sharon Floyd, Mr. Albert Chichester, and Ms. K. Sabrina Austin, Education Program Specialists, MSDE, conducted a telephone interview with the complainant about the allegation.
4. On November 22, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the HCPS of the allegation and requested that the school system staff review the alleged violation.
5. On December 12, 2016, the HCPS provided the MSDE with documents to be considered.
6. On December 15, 2016, Mr. Loiacono reviewed the student's educational record at the student's school.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a) IEP, dated January 12, 2016; and
 - b) Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on October 31, 2016.

BACKGROUND:

The student is 11 years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. She is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education and related services (Doc. a).

During the time period addressed by this investigation, the complainant was provided with notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

1. The student's IEP, in effect since January 12, 2016, requires that the student be provided with "priming for class and small group participation" on a daily basis. The IEP team did not document the basis for including this supplementary aid in the student's IEP or provide a definition of "priming." The parties agree, however, that "priming" involves

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the introducing of subject material to the student that will be presented to the student later in the day (Doc. a).

2. There is no documentation that the student's IEP required the provision of "priming" prior to January 2016 (Review of Student's Record).
3. There is no documentation that the student has been provided with "priming" (Review of Student's Record).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323).

Based on Findings of Fact #2, the MSDE finds that "priming" was not required by the student's IEP prior to January 2016. However, based on the Findings of Facts #1 and 3, the MSDE finds that there is no documentation that the student was provided with "priming" since January 2016, when it began to be required by the IEP. Therefore, the MSDE finds that a violation occurred with the respect to this allegation from January 2016 to the present.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the HCPS to provide documentation by February 1, 2017 that the student is being provided with "priming" as required by the IEP.

The MSDE further requires that the HCPS provide documentation by March 1, 2017, that the IEP team has determined whether this violation negatively impacted the student's ability to benefit from the educational program and if so, the compensatory services necessary to remedy the violation.

If the team determines that the student requires compensatory services, the HCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as the result of this corrective action, or documentation of the complainant's refusal of such compensatory services or other remedy.

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 the HCPS 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

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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 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 due process.

Sincerely,

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

MEF:am

c: Renee A. Foose
Kelly Russo
XXXXXXXX
Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum