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April 12, 2017

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Ms. Elizabeth Anthony
Supervisor of Special Education
Caroline County Public Schools
204 Franklin Street
Denton, Maryland 21629

RE: XXXXX
Reference: #17-108

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 February 23, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Caroline 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 has not ensured that the Individualized Education Program (IEP) addresses the student’s needs since February 2016,¹ in accordance with 34 CFR §§300.320 and .324.

¹ While the allegation was that the violation occurred prior to this date, the complainant was informed, in writing, that only violations that are alleged to have occurred within one year of the filing of the State complaint can be addressed through the State complaint investigation procedure 34 CFR §300.153).

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2. The CCPS did not ensure that proper procedures were followed when determining that the student does not require Extended School Year (ESY) services since February 2016,¹ in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.

INVESTIGATIVE PROCEDURES:

1. On February 24, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Elizabeth Anthony, Supervisor of Special Education, CCPS.
2. On February 28, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Anthony of the allegations and requested that her office review the alleged violations.
3. On March 13, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations.
4. On March 30, 2017, the complainant provided the MSDE with documents to consider.
5. On April 10, 2017, the CCPS provided the MSDE with documents to consider.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Written summary of an August 18, 2015 IEP team meeting;
 - b. Consent for assessment, dated August 18, 2015;
 - c. Assessment report, dated September 4, 2015;
 - d. Evaluation report, dated September 10, 2015;
 - e. IEP, dated September 10, 2015 and meeting notice;
 - f. Functional Behavioral Assessment (FBA) report and Behavioral Intervention Plan (BIP), dated November 19, 2015;
 - g. Written summary of the November 19, 2015 IEP team meeting and meeting notice;
 - h. Written summary of an IEP team meeting held on April 28, 2016 and May 23, 2016 and meeting notices;
 - i. IEP, dated May 23, 2016 and meeting notice;
 - j. IEP, dated August 30, 2016 and meeting notice;
 - k. BIP, dated August 30, 2016 and meeting notice;
 - l. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on February 23, 2017;
 - m. Report of a Summary Updated, dated March 27, 2017; and
 - n. IEP, dated March 28, 2017 and meeting notice.

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BACKGROUND:

The student is nine (9) years old, is identified as a student with multiple disabilities under the IDEA, including a Speech/Language Impairment and a Visual Impairment. The student has an IEP that requires the provision of special education instruction and related services (Doc. n).

At the start of the 2015-2016 school year, the student attended XXXXXXXXXXXXXXXXXXXX, the school he would attend if not disabled. As a result of a change in educational placement made by the IEP team on September 10, 2015, the student has been attending XXXXXXXXXXXXXXX XXXXXXX (Docs. a - e).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. a – e and g – k and n).

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S NEEDS

FINDINGS OF FACTS:

1. The IEP in effect in February 2016 was developed on September 10, 2015 when the student was in the first grade. At that meeting, the team considered the following results of assessments that were recommended at an IEP team meeting held on August 3, 2015 when the student was first enrolled in the CCPS:
 - a. A preschool language assessment that reflects that the student is unable to identify familiar objects and understand basic verbs, demonstrate functional play, relational play, self-directed or pretend play, or use at least five words to functionally communicate or use gestures or vocalization to request objects.
 - b. An observation of the student's functional communication skills, which indicates that the student can follow one-step commands and imitate words and short sentences in order to request items and help, but that his communication is echolalic in nature and does not serve a pragmatic function.
 - c. An assessment of basic language and learning skills, which indicates that the student is able to manipulate a toy for at least two minutes, to engage in appropriate physical interaction while in close proximity with peers for at least five minutes with multiple verbal prompts, and to follow daily classroom routines with prompting.
 - d. A physical education inventory and functional assessment, which indicates that the student is unable to hop in a stationary spot, jump forward landing on two feet with his knees bent, or toss a ball and catch it, even with the provision of verbal cues and physical prompts. The report indicates that the student is unable to

identify cues to perform a “fundamental movement’ and cooperate with others working on a mutual goal.

- e. A functional vision assessment that reflects underdevelopment of the optic nerve, but indicates that the student has good auditory and tactile skills that assist him in accessing materials. The assessment further indicates that the student is able to safely navigate the classroom and the school without any difficulty, but that but needed to improve his ability to tactually identify objects and materials.
 - f. A sensory processing profile that reflects that the student has “significant oral-sensory processing challenges and increased awareness of sensations with oral and auditory output” including loud and unexpected noises (Docs. d and e).
2. The September 10, 2015 IEP states that informal reading and math assessments were attempted on September 1, and 2, 2015, but could not be completed due the difficulty the student had in attending to tasks. It also states that the student’s teacher reported that the student was unable to identify letters, match colors, or initiate counting. It further states that the complainant reported that the student becomes frustrated because of his difficulty with verbal expression, that he does not use complete sentences, and often repeats the last two words of a question asked. The student was also reported to become frustrated without routine, and becomes overstimulated by loud noise and being told “no,” which triggers him to pinch and bite others. The complainant further reported that the student will follow one and two step directions such as “sit down and shoes off” (Docs. a - e).
 3. On September 10, 2015, an IEP was developed that included goals for the student to do the following by September 9, 2016:
 - a. Follow commands to demonstrate an understanding of a minimum of ten new action words with 75% accuracy given no more than three prompts across ten trials across three out of four data points.
 - b. Demonstrate an increase in functional communication skills through the use of total communication (words, signs, gestures, voice output devices, pictures) to communicate wants and needs in three out of five trials given nor more than one visual or verbal prompt across three out of four sessions.
 - c. Match the image or object with 80% accuracy in four out of five trials when given five objects or pictures.
 - d. “Give one,” and then one more, upon request with the provision of manipulatives for sets up to three in four out of five trials.
 - e. Demonstrate knee flexion-extension, and leaving the floor and landing on the floor with two feet in four out of five trials while jumping in place five consecutive times.

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- f. Attend to the task and participate for five minutes with verbal prompting for four out of five activities when working on a teacher directed activity.
 - g. Make eye contact with a speaker within three seconds with no more than one prompt in four out of five trials when called upon.
 - h. Use toys and school tools in the expected manner throughout the school day given visual demonstration and no more than six prompts (Doc. e).
4. The September 10, 2015 IEP requires that the student be provided with the following in order to assist him in achieving the goals:
 - a. Thirty-three and one-half hours of special education instruction per week;
 - b. Forty-five minutes of adaptive physical education per week;
 - c. One hour of occupational therapy per month;
 - d. Two hours of speech/language therapy for month;
 - e. Orientation and mobility consultation services;
 - f. Use of a picture schedule, picture support, the use of a voice output device, manipulatives, enlarged printed material, extended time, frequent breaks, frequent and immediate feedback, reduced distractions, nonverbal cues, prompts, use of a timer and schedule, sensory activities, adult support to manage behavior, reinforcement and encouragement of positive behaviors; and
 - g. Consultation with the student's teachers by an occupational therapist, speech/language pathologist, and vision specialist (Doc. e).
5. On November 19, 2015, the IEP team reconvened to review the results of a Functional Behavioral Assessment (FBA) that the team recommended at the August 18, 2015 IEP team meeting.² The FBA identifies behavioral concerns including spitting, hitting, kicking, and yelling obscenities when asked to perform tasks. It reflects that verbal redirection has been used that temporarily resolves the behavior, which planned ignoring does not impact, and that playing background music helps to minimize the behavior (Doc. f).

² At the August 18, 2015 IEP team meeting, the IEP team recommended that these assessments be given after the student had time to adjust to his new school. Therefore, the results of these assessments were not available when the IEP team previously met on September 10, 2015 (Docs. a - d).

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6. On November 19, 2015, the IEP team developed a Behavioral Intervention Plan (BIP) that requires the use of prevention and teaching strategies including positive reinforcement involving the provision of social attention and tangible rewards for compliance and for using desired language, graduated prompts including repetition of demands while modeling and using hand over hand prompting, and teaching the student to ask for a break from tasks (Doc. f).
7. On April 28, 2016, the IEP team convened and considered the student's progress. At the meeting, the IEP team decided that the student was making "steady progress on IEP goals," and that the team would reconvene again during the school year to consider the student's progress (Doc. h).
8. On May 23, 2016, the IEP team met again and determined that the student continued to make steady progress on the IEP goals (Doc. h).
9. On August 30, 2016, the IEP team reviewed the student's progress and determined the following:
 - a. The student "has demonstrated significant and functional gains in the area of receptive language skills," and has achieved the goal to improve receptive language skills.
 - b. The student "has demonstrated increased participation in one-on-one interaction for table top activities" and "has been successful in communicating wants/needs and occasionally answering questions with 75-80% accuracy." The team also decided that the student "has shown growth in his ability to follow directions and commands given gestural cues" as well as in his ability to understand a specific word or phrase without given gestural cues. As a result, the team decided that the goal to improve expressive language should be revised to reflect increased difficulty of demand for expression with functional expectations and wider range of communication opportunities.
 - c. The student is able to match specific objects with 80% accuracy on 4 out of 5 trials, and achieved the goal to give one and one more upon request, but he "does not show early literacy awareness" and he is unable to identify numbers and shapes and rote count on demand.
 - d. The student achieved the goal to improve attention to task and maintain eye contact. However, the student's behavior, "as observed by his parent and teacher, show a consistent trend of elevated concerns." The student was reported to seem "disconnected from his surroundings," demonstrating difficulty with skills needed to communicate with others, adapt to different situations and function in daily activities.

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- e. The student jumps while bending his knees on a trampoline, but then continues to bounce with his legs straight, and does not initiate knee flexion-extension upon request or roll over completely even with physical prompts or rotate his body on cue.
 - f. The student continues to do well with using his vision to access materials in the classroom.
 - g. The student continues to demonstrate “significant oral-sensory processing challenges and significant sensitivity to oral and auditory stimuli.” The team discussed that the student uses a chewy tube at home and at school as a calming strategy (Doc. j).
10. At the August 30, 2016 IEP team meeting, the team also considered the results of a cognitive assessment that was administered in November 2015, which was also recommended on August 18, 2015 to be conducted after the student had adjusted to the new school. The results of the assessment indicate that the student’s cognitive ability was in the “well below average” range and that his adaptive skills were in the “extremely low” range (Doc. j).
11. On August 30, 2016, the annual IEP goals were revised to require the student to perform the following by August 29, 2017:
- a. Follow up to two step classroom relevant directions containing a variety of quantity concepts, propositions, and pronouns in four out of five opportunities.
 - b. Communicate verbally, with pictures, and assistive technology device to label, request, state possession, and code recurrence in four out of five opportunities to express daily wants, needs and ideas, using up to four word sentences.
 - c. After listening to an adapted story using Story Box (real objects that go along with a book), answer questions about text details from a field of two choices with no more than one prompt to stay on task per question on four out of five trials.
 - d. After listening to a functional social story or Story Box and verbally given a functional object vocabulary word, match the verbally given vocabulary word with the correct object when asked with no more than one cue to stay on task in four out of five trials.
 - e. After listening to a functional social story, physically sequence the key events from the story by completing the task with no more than one partial physical prompt per step on four out of five trials.
 - f. Given a two category sorting tray and a set of six functional objects, correctly sort all of the objects into groups based on a common attribute with no more than one partial physical prompt per object for five out of six trials.

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- g. Given manipulatives and a tactile model, compose sets to five with one-to-one correspondence with no more than three partial physical prompts per number set on four out of five trials.
 - h. When provided with staff assistance, use a continuous approach to strike a slow moving ball with the foot, three out of five trials with no more than two verbal and two physical prompts.
 - i. When provided with staff assistance and engage in physical activity using the underhand toss, demonstrate the body in line with the target, stepping towards the target, and releasing the ball upwards towards a target five feet away with no more than two verbal and two physical prompts, in three out of five trials.
 - j. Say “done” when completing an academic task or activity instead of displaying aggressive behaviors with a verbal prompt on an average of 80% of the time for nine consecutive weeks.
 - k. Improve fine motor skills to participate and increase independence in classroom activities by appropriately playing or manipulating toys, engaging in purposeful play to place the hands in a sensory bin to find manipulatives, and tolerating working with different textures and use of a variety of classroom tools (Doc. j).
12. On August 30, 2016, the IEP team added prevention and teaching strategies to the BIP and made revisions to the IEP services as follows:
- a. Thirty-two hours and forty-five minutes of special education instruction per week; and
 - b. One and one-half hours of adaptive physical education per week (Docs. j and k).
13. On March 28, 2017, the IEP team convened to consider the concerns expressed by the complainant in the State complaint. At the meeting, the complainant provided the school based members of the team with a copy of a March 27, 2017 Summary Update from a private provider of services to the student, which states that the student is being provided with “weekly hourly therapeutic sessions” designed to assist the student in “developing learning behaviors in preparation to teach him language and social interactions.” The Summary Update indicates that the student has been diagnosed with Autism and contains a recommendation for the use of a specific instructional methodology. The IEP team decided that additional assessments were needed to consider the recommendation, but the complainant refused to provide consent (Docs. m and n).

DISCUSSION/CONCLUSIONS:

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 are identified in

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the evaluation data whether or not commonly linked to the disability category in which the student has been classified (34 CFR §§300.101 and .304).

The IEP team's determination of how the student's disability affects the student's involvement and progress in the general education curriculum is a primary consideration in the development of the IEP. The United States Department of Education, Office of Special Education Programs (OSEP) has explained that the special education and related services are to be based on the identified needs of each student and not on the disability category in which the student is classified (Analysis of Comments and Changes, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46549).

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 (34 CFR §300.324).

The IEP must include a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability and enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students. In addition, the IEP must include the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals. In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress, information from the student's parents, and the student's anticipated needs (34 CFR §300.324).

In this case, the complainant asserts that the IEP does not address the student's needs because the IEP team has not identified him with Autism under the IDEA and agreed to the instructional methodology recommended by a private therapist. The complainant further asserts that the student is not making sufficient progress on some of the goals because he is not being provided with appropriate services, while at the same time he is being required to work on other skills that he has already mastered (Doc. 1).

Based on the Findings of Facts #1 - #13, the MSDE finds that the documentation does not support the allegation. Based on those Findings of Facts, the MSDE finds that the CCPS has an IEP in place that includes goals and services designed to address all areas of need that have been identified in the data, including evaluation data, reports on the student's progress, and the complainant's concerns. Therefore, the MSDE does not find that a violation has occurred with respect to the allegation.

ALLEGATION #2

**CONSIDERATION OF THE NEED FOR
EXTENDED SCHOOL YEAR (ESY) SERVICES**

FINDINGS OF FACTS:

14. On April 28, 2016 and May 23, 2016, the IEP team considered the student's need for ESY services for the summer of 2016. The team documented that it considered all of the required factors and documented its determinations regarding each factor. The team determined that the student did not require ESY services because he was making consistent and steady progress on IEP goals, and that while he experienced regression in his physical and verbal aggression behaviors after school breaks and snow days during the 2015-2016 school year, he regained progress in these areas within a reasonable amount of time (Docs. h and i).
15. The IEP team documented that the complainant expressed concern that the student may not be able to recoup skills lost during a summer break. The IEP team discussed that the only available data was from short breaks that occurred during the 2015-2016 school year. The team further discussed that the student had previously been enrolled in the Anne Arundel County Public Schools (AACPS), that he was withdrawn from school in April 2014, and had not been enrolled in school again until entering the CCPS at the start of the 2015-2016 school year. The team documented that it considered this information when determining whether there were special circumstances that would require ESY services. The team found that, despite the student's having missed more than one year of school, there were no special circumstances that would result in the need for ESY services, but provided no explanation of the basis for this decision (Docs. h and i).
16. At the March 28, 2017 IEP team meeting, the team considered whether the student requires ESY services for the summer of 2017. The team documented that it considered all of the required factors and documented its determinations regarding each factor. The team found that the student had demonstrated no regression in communication skills and only "minimal regression" with behaviors summer break, which he was able to recover in a reasonable amount of time. The team further documented that the student was making sufficient progress on his IEP goals, and had achieved the early math literacy goal of sorting. However, the team found that the student was demonstrating a breakthrough in his communication skills and that he had experienced a trauma with the loss of a family member in December 2016, which constituted a special circumstance for which ESY services were required. Based on the information, the IEP team decided that the student would be prevented from receiving benefit from the education program during the 2016-2017 regular school year if ESY services are not provided and determined the goals to be addressed and the services to be provided through ESY services (Doc. n).

DISCUSSION/CONCLUSIONS:

Extended School Year (ESY) services are the individualized extension of specific special education and related services that are provided to a student beyond the normal school year. At least annually, each public agency must ensure that the IEP team determines whether a student

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requires ESY services in order to receive a FAPE (34 CFR §300.106 and COMAR 13A.05.01.03).

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider all of the factors below.

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08).

After considering the required factors, the IEP team must decide whether the benefits that a student receives from the education program during the regular school year will be significantly jeopardized if the student is not provided with ESY services (*MM v. School District of Greenville Co. (S.C.)*, 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002).

Based on the Finding of Fact #16, the MSDE finds that proper procedures were followed when making the ESY decision for the summer of 2017. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #14 and #15, the MSDE finds that when making the ESY determination for the summer of 2016, there was no basis for the IEP team's decision that the special circumstances that were found did not require the provision of ESY services. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #16, the MSDE finds that the IEP team has determined that the student was able to recoup the skills in which he experienced regression during the summer of 2016 school break within a reasonable amount of time. Therefore, this office finds that the violation did not impact the student's ability to benefit from the education program and does not require student specific corrective action to remediate the violation.

CORRECTIVE ACTION/TIMELINE:

The CCPS must provide the MSDE with documentation by the start of the 2017-2018 school year of the steps taken to ensure that the Denton Elementary School staff comply with the requirement to ensure that there is a documented basis for each IEP team decision.

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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 CCPS 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:am

c: John D. Ewald
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Dori Wilson
Anita Mandis
Nancy Birenbaum