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October 3, 2017

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #18-012

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 August 4, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The MCPS has not ensured that the student’s need for a reading intervention has been identified and addressed through the Individualized Education Program (IEP) since the start of the 2016-2017 school year,¹ in accordance with 34 CFR §§300.101, .304, and .324.

¹ The complainant indicated that the violation has occurred since the 2008-2009 school year. She was informed in writing that only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation process (34 CFR §§300.153).

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2. The MCPS has not ensured that prior written notice was provided of the March 27, 2017 IEP team's decisions to reject requests for goals and services and a description of instructor qualifications on the IEP, in accordance with 34 CFR §300.503.
3. The MCPS has not ensured that the IEP includes a statement of the student's present levels of performance, measurable annual goals, and special education instruction in the area of reading, in accordance with 34 CFR §300.320.
4. The MCPS did not ensure that proper procedures were followed when considering the need for Extended School Year (ESY) services for the student, in accordance with 34 CFR §300.106, COMAR 13A.05.01.03 and 13A.05.01.08, and *MM v. School District of Greenville Co.* (S.C.), 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002).

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXXXXXXXXXX. He is identified as a student with a Specific Learning Disability, related to Dyslexia, under the IDEA and has an IEP that requires the provision of special education and related services.

FINDINGS OF FACTS:

1. The MCPS acknowledges the IEP in effect since the start of the 2016-2017 school year does not contain goals and services that appropriately address the reading needs identified by the IEP team through teacher input, input from the complainant, and assessment data.
2. While there is data identifying reading needs for the student, there is no documentation that the IEP team determined that a specific reading intervention is required to address those needs.
3. The MCPS also acknowledges that comprehensive prior written notice of the basis for the IEP team's decisions to reject proposed goals and services requested by the complainant, including a reading intervention, was not provided to the complainant following IEP team meetings held during the 2016-2017 school year.
4. The IEP, developed on February 28, 2017, required that the student be provided with ESY services during the summer of 2017. The IEP team, however, did not determine how those services would address the identified needs of the student.

CONCLUSIONS:

Based on Findings of Fact #1 and #2, the MSDE finds the IEP team has not determined, in accordance with 34 CFR §§300.101, .304 and .324, that the student requires a specific reading intervention. Therefore, this office does not find that a violation occurred with respect to Allegation #1.

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However, based on the Finding of Fact #3, the MSDE finds that prior written notice was not provided, in accordance with 34 CFR §300.503. Therefore, this office finds that a violation occurred with respect to Allegation #2.

In addition, based on the Findings of Facts #1 and #4, the MCPS acknowledges, and the MSDE concurs that the IEP does not include the content required by 34 CFR §300.320. Therefore, the MCPS did not offer appropriate services to address the student's reading needs since the start of the 2016-2017 school year, including during the ESY services period, in accordance with 34 CFR §§300.101, .304 and .324. As a result, the MSDE finds that violations occurred with respect to Allegations #3 and #4, which resulted in a denial of a Free and Appropriate Public Education (FAPE).

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the MCPS to provide documentation, by December 1, 2017, that the IEP team has reviewed and revised the IEP, as appropriate, to include goals and services, including any required reading intervention, to address the student's reading needs consistent with the data. The IEP team must also determine the compensatory services or other remedy to redress the violation, and must ensure that prior written notice of all decisions is provided to the complainant.

School -Based

The MSDE requires that the MCPS provide documentation by January 1, 2018, of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff comply with the requirements to ensure that the IEP includes goals and services that address identified needs consistent with the data.

Further, the MSDE requires that MCPS the MCPS provide documentation by January 1, 2018, of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXX staff comply with the requirements regarding the provision of prior written notice that include the basis for IEP team decisions.

The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 complainant and the MCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached at (410) 767-7770.

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Please be advised that both the complainant and the MCPS 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 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 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 a due process complaint.

Sincerely,

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

MEF:gl

c: Jack R. Smith
Tracee Hackett
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Dori Wilson
Anita Mandis
Gerald Loiacono
Nancy Birenbaum