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September 16, 2016

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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: #17-006

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 July 18, 2016, the MSDE received a complaint from Mr. XXXXXX and Mrs. XXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants 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 follow proper procedures when excusing required members of the Individualized Education Program (IEP) team from the IEP team meeting held on November 18, 2015, in accordance with 34 CFR §300.321.
2. The CCPS did not ensure that the IEP included measurable annual goals during the 2015-2016 school year, in accordance with 34 CFR §300.320.
3. The CCPS did not ensure that the student was provided with the supplementary aids and services required by the IEP, during the 2015-2016 school year, in accordance with 34 CFR §§300.101 and. 323.

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4. The CCPS did not ensure that proper procedures were followed when determining the student's educational placement on April 13, 2016, in accordance with 34 CFR §300.114.

INVESTIGATIVE PROCEDURES:

1. On July 18, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Grey, former Director of Special Education, CCPS.
2. On August 1, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainants to discuss the allegations.
3. On August 5, 2016, Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a telephone interview with the complainants to clarify the allegations.
4. On September 22, 2015, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mr. Grey of the allegations to be investigated and requested that his office review the alleged violations.
5. On August 31, 2016, Mr. Chichester and Ms. Mandis visited XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school system staff:
 - a. Mr. XXXXXXX, Principal;
 - b. Ms. XXXXXXX, Action Supervisor of Equity;
 - c. Ms. XXXXXXX, Special Education Teacher;
 - d. Ms. XXXXXXX, Special Education Teacher;
 - e. Ms. XXXXXXX, Special Education Instructional Consultant;
 - f. Ms. XXXXXXX, Social Worker; and
 - g. Ms. XXXXXXX, Supervisor of Special Education.

Mr. Wayne Whalen, Coordinator of Compliance, CCPS, attended the site visit as a representative of the CCPS and to provide information on the school system's policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated September 24, 2015;
 - b. IEP, dated November 18, 2015;
 - c. IEP, dated April 15, 2016;
 - d. IEP, dated April 29, 2016;
 - e. IEP meeting invitation, dated October 28, 2015;
 - f. IEP meeting summary, dated November 18, 2015;
 - g. IEP meeting excusal form, dated November 18, 2015;

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- h. IEP meeting sign-in sheet, dated November 18, 2015;
- i. IEP meeting summary, dated April 13, 2016;
- j. IEP meeting audio recording, dated April 13, 2016;
- k. Visitation log, dated November 18, 2015;
- l. Daily accommodation log for the student, dated April 14, 2016 to June 16, 2016;
- m. Professional development training presentation, dated August 23, 2016; and
- n. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on July 18, 2016.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with an Emotional Disability under the IDEA. He attends the XXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - d).

During the time period covered by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. a - d).

ALLEGATION #1: EXCUSAL OF IEP MEETING PARTICIPANTS

FINDINGS OF FACTS:

1. On October 28, 2015, the CCPS sent the complainants a written invitation to attend a November 18, 2015 IEP meeting. The invitation provided information including the names of those individuals who were expected to attend and the start time of 8:00 a.m. for the meeting (Doc. e).
2. The school staff report that, on November 18, 2016, at 8:15 a.m., they contacted the complainants by telephone because they had not arrived at the school for the scheduled IEP meeting. The school staff indicated that the complainants informed them they were running late, but would attend the meeting. The school's visitor log indicates that the complainants arrived at the school at 8:29 a.m. and the complainant's educational advocate arrived at the school at 8:38 a.m. for the meeting. The school staff report that as a result, the 8:00 a.m. meeting began at approximately 8:45 a.m. (Doc. k and an interview with the school staff).
3. The IEP meeting notice and sign-in sheet, dated November 18, 2015, indicates that the guidance counselor was invited to the meeting and that he was present at the meeting. However, he left prior to the end of the meeting when the student's mother signed a form after she arrived to the meeting, excusing him from the meeting because his area of related service was not being discussed (Docs. b, e, g, n, and an interview with the school staff).
4. The IEP meeting notice and sign-in sheet, dated November 18, 2015, indicates that the general education teacher was invited to, and participated in the meeting, and provided

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input for the team to consider. However, the meeting was extended beyond the allotted time for which it was scheduled because the start of the meeting was delayed by the complainants' late arrival. There is documentation that the student's mother provided written consent for the general education teacher to return to the classroom, prior to the end of the meeting, after he provided his input (Docs. b, e, g, n, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The IEP meeting notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student (34 CFR §300.322).

A member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting (34 CFR §300.321).

A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the public agency consent to the excusal, and the member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting (34 CFR §300.321).

Based on the Findings of Facts #1 and #3, the MSDE finds that the CCPS followed proper procedures for the excusal of the guidance counselor from the IEP meeting held on November 18, 2015 because while invited, his area of related service was not being discussed at the meeting. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #1, #2, and #4, the MSDE finds that there was no basis upon which to excuse the general education teacher in advance of the IEP meeting because he intended, and did in fact, attend the meeting and provided information regarding the student and the curriculum.

Further, based upon the Findings of Facts #1, #2, and #4, the MSDE finds that the IEP meeting was delayed to accommodate the complainants and it was for this reason only that the general education teacher was required to leave the meeting prior to its end. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

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ALLEGATION #2: DEVELOPMENT OF MEASURABLE IEP GOALS

FINDINGS OF FACTS:

5. The IEP, dated April 29, 2016, includes goals that address written language mechanics, speech and language pragmatics, organizational skills, social, emotional, behavior, and self-management skills (Doc. d).
6. The school staff acknowledges that not all of the goals were written in a manner in which the student's progress towards achievement of those goals could be accurately measured (Docs. d, n, and an interview with the school staff and the complainants).
7. On August 23, 2016, the Supervisor of Special Education, CCPS, conducted professional development training for the XXXXXXXXX School staff, entitled, *High Quality Standards Based IEP Goals and Objectives*. This training included information on drafting measurable annual goals (Doc. m).

DISCUSSION/CONCLUSIONS:

The IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the student's to be involved in and make progress in the general education curriculum (34 CFR §300.320).

Based on the Findings of Facts #5 - #7, the MSDE finds that the IEP goals are not written in a manner in which the student's progress towards achieving the goals can be accurately measured. Therefore, the MSDE finds that a violation has occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #7, the MSDE finds that the CCPS has subsequently conducted a system-wide training on the development of measurable goals. Therefore, no school-based corrective action is required.

ALLEGATION #3: PROVISION OF SUPPLEMENTARY AIDS AND SERVICES

FINDINGS OF FACTS:

8. On April 13, 2016, the IEP team convened and the complainants raised concern about the lack of accommodations being provided to the student as required by the IEP. As a result, the school staff began documenting the provision of accommodations as of April 14, 2016. However, there is no documentation prior to April 14, 2016 which indicates that the student was provided with accommodations consistently, as required by the IEP (Docs. i, l, n, and an interview with the school staff).

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DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education services, accommodations, and supplementary aids and services, are provided in accordance with each student's IEP (34 CFR §§300.101 and .323).

Based on the Finding of Fact #8, the MSDE finds that there is no documentation that the student was consistently provided with the accommodations required by the IEP for the start of the 2015-2016 school year to April 14, 2016. Therefore, the MSDE finds that a violation has occurred with respect to the allegation for that time period.

ALLEGATION #4: DETERMINING THE EDUCATIONAL PLACEMENT

FINDINGS OF FACTS:

9. The IEP, dated November 18, 2015, requires that the student be provided with one hour of special education instruction each week, inside the general education classroom, to address "study organization" and written language mechanics (Doc. c).
10. The student was enrolled in health class for the fourth quarter of the 2015 - 2016 school year. However, the complainants requested that he be excused from participating in the class because they did not believe that he was mature enough for the curriculum content (Docs. j and n).
11. On April 13, 2016, the IEP team met to discuss the complainants' concerns that the student had 6 hours and 40 minutes of free time in his schedule each week as a result of his excusal from participating in health class. The IEP team considered the general education classes that were available during this period of the day and decided that none of them were appropriate for the student. The team proposed adding 6 hours and 40 minutes per week of special education instruction to the IEP to be provided in a separate special education resource class that had room for the student. The team discussed that the additional special education instruction could be used to provide the student with more time to complete coursework in the core content areas. The complainants expressed concern that going into a separate special education classroom might cause the student to experience anxiety since he was accustomed to receiving instruction in the general education classroom. However, the IEP team decided that there were no other appropriate general education classroom course available, and the student would benefit from additional special education instruction in the separate special education classroom (Docs. i, j, and n).

DISCUSSION/CONCLUSIONS:

In determining the educational placement in which special education instruction is to be provided, the public agency must ensure that the placement is based on the IEP and that the student is placed in the Least Restrictive Environment (LRE) in which those services can be successfully provided (34 CFR §300.116). This meant that, to the maximum extent appropriate,

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students with disabilities must be educated with students who are not disabled. Removal of students from the regular education environment may only occur if the nature of severity of the student's disability is such that education in regular classed with the use of supplementary aids and services cannot be achieved (34 CFR §300.114).

The complainants allege that the student was placed in a separate special education classroom based on administrative convenience, and not because the special education instruction could not be provided in the general education classroom.

Based on the Findings of Facts #9 - #11, the MSDE finds that there is documentation that both the additional 6 hours and 40 minutes per week of special education instruction and the educational placement in which that instruction was to be provided were not based on the student's needs.

Further, based on those Findings of Facts, this office finds that the decision to add special education instruction in a separate special education classroom was based on the school staff's attempt to fill the student's schedule, at the complainants' request, following the administrative excusal from the class in which he was not receiving special education instruction. Therefore, this office finds that the CCPS did not follow proper procedures when adding special education instruction to the IEP, and, as a result, a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation by November 1, 2016 that the IEP team has determined the amount of special education instruction required by the student and the educational placement in which those services are to be provided, in accordance with the LRE requirements. The CCPS must also provide documentation that the IEP team has determined the amount and nature of compensatory services or other remedy for the lack of measurable annual IEP goals during the 2015-2016 school year.

School-Based

The MSDE also requires the CCPS to provide documentation by December 1, 2016 of the steps taken to ensure that the XXXXX School staff understands the requirements regarding the special education services and educational placements based on the needs of the student in accordance with the LRE requirements.

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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 complainants 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 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 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 Guthrie
Wayne Whalen
XXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum