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October 27, 2016

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Maryland Center for Developmental Disabilities
Kennedy Krieger Institute
716 North Broadway, Office 106
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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: #17-028

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 August 30 2016, the MSDE received a complaint from Ms. Maureen van Stone hereafter, “the complainant,” on behalf of the above-referenced student, and his mother, XXXXXXXXXXXXX. 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 above-referenced student.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that the proper procedures were followed when determining the student’s educational placement for the 2015-2016 school year, in accordance with 34 CFR §§300.114 - .116.

2. The HCPS has not ensured, since the beginning of the 2015-2106 school year, that the student's Individualized Education Program (IEP) has included present levels of academic and functional performance and included measurable annual goals in accordance with 34 CFR §§300.320 and .324.
3. The HCPS did not ensure that the student was educated in the placement determined by the IEP team during the 2015-2016 school year, in accordance with 34 CFR §300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On September 2, 2016, the MSDE sent a copy of the complaint, via facsimile, to Dr. Susan Austin, Director of Special Education, HCPS.
2. On September 16, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On September 16, 2016, 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 the HCPS of the allegations and requested that the school system review the alleged violation.
4. On September 20, 2016, Mr. Loiacono contacted Ms. Pamela O'Reilly, Coordinator of Compliance, Department of Special Education, HCPS, to arrange a document review and site visit.
5. On October 5, 2016, Mr. Loiacono and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXX School to review the student's educational record and interviewed the following school staff:
 - a. XXXXXXXXX, Assistant Principal; and
 - b. XXXXXXXXX, Principal.

Ms. O'Reilly and Ms. Robin Meyer, Special Education Coordinator, HCPS, attended the site visit as representatives of the HCPS and to provide information on the school system's policies and procedures, as needed.

6. On October 12, 2016, the MSDE requested additional documentation from the HCPS staff.
7. On October 18, 2016, the MSDE received additional documentation from the HCPS staff.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. IEP, dated May 14, 2015;
- b. IEP, dated December 18, 2015;
- c. Prior Written Notice, dated May 14, 2015;
- d. Prior Written Notice, dated September 25, 2015;
- e. Prior Written Notice, dated December 18, 2015;
- f. Prior Written Notice, dated January 15, 2016;
- g. Prior Written Notice, dated March 16, 2016;
- h. Student point sheets, dated September 2015 to February 2016;
- i. "Student Placement Data," dated September 2015 to June 2016;
- j. Student report cards, 2015-2016 school year;
- k. "Classroom Support Program" (CPS) handbook, undated;
- l. Complainant's IEP team notes, 2015-2016 school year, and
- m. Correspondence from the complainant containing allegation of violation of the IDEA, received by the MSDE on August 30, 2016.

BACKGROUND:

The student is 16 years old and attends XXXXXXXXXXXXXXXX. Prior to the 2016-2015 school year, he attended XXXXXXXXXXXXXXXX. He is identified as a student with an Emotional Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. b).

There is documentation that the student's mother participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-h).

FINDINGS OF FACTS:

1. On May 14, 2015, an IEP was developed that includes present levels of academic achievement and functional performance that indicate that the student is at or above grade level in all academic areas, but struggles with attentiveness and maintaining his focus during instruction. The IEP includes goals for the student to increase his ability to remain on-task and communicate emotions to adults and peers. The IEP team determined that the student would attend the Classroom Support Program (CSP) XXXXXXXXXXXXXXXX due to his need for extended breaks, crisis intervention, counseling, positive reinforcement and a "quick pass," allowing him to leave the classroom when needed. The CSP includes participation in a special education homeroom and has additional supports available to the student throughout the day. The team decided that the student would be provided with instruction in the general education classroom in a small group setting as well as in a separate special education resource room (Docs. a, c, and k.).

2. At the May 14, 2015 IEP team meeting, the team decided that the student's time in general education would increase throughout the 2015-2016 school year as his ability to receive instruction in that setting improved. The student's time in general education during the 2015-2016 school year increased from 14% in September 2015 to 90% in June 2016 (Docs. a,d, and i).
3. On September 25, 2015, the IEP team at XXXXXXXXXXXXXXX met at the request of the student's mother to address her concerns regarding the student's behavior. The team decided to collect data on the student's missed assignments, and time spent in the CSP resource room (Doc. d, I, and l).
4. In the beginning part of the 2015-2016 school year, the student was provided with a "point sheet", as part of the CSP, to track his progress towards behavioral objectives, and to provide a means for home-school communication. The point sheet allowed the student to earn "CSP bucks" to be used for classroom rewards. The school staff met monthly to review the point sheets for students in the CSP program. By the end of the school year, the CSP staff determined that the student no longer required the use of the point sheet (Docs. h and i).
5. On December 18, 2015, the IEP team met as part of an annual review. The IEP team determined that the student's strengths were in academic areas, but that he struggles with frustration and impulsivity. To assist the student, the IEP team developed goals for the student to increase appropriate communication and coping skills (Docs. b, e and l).
6. On January 15, 2016, the IEP team met to address the parent's concerns regarding the administrative changes to the student's schedule. The school-based members of the IEP team explained the basis of the decision and that it did not change his time spent in general or special education classrooms. The IEP team reviewed the student's grades and input from the student's teachers that he was struggling to turn in assignments in all classes. The IEP team determined that home-school communication would be added to the student's supplementary aids and services to keep the student's parent informed of the assignments to be completed in order to increase his work completion (Doc. b, f, j and l).
7. On March 16, 2016, the IEP team met to consider the student's progress. The school staff reported that the student continued to struggle with turning in assignments, but was capable of performing in his academic classes. The IEP team discussed the student's grades and Scholastic Reading Inventory (SRI)¹ scores which reflected that the student performed at or above grade level, but was not passing all classes due to missed assignments. The school staff agreed that the student was capable of moving to a different English/Language Arts class with higher performing peers. Based on their review of the data, his academic record,

¹ The SRI is a classroom-based assessment of a student's reading levels
(http://teacher.scholastic.com/products/product_info/pdf/SRI_Research%20Summary_Revised.pdf).

and input from his teachers, the IEP team decided to include a goal for the student to increase his completion of assignments (Docs. b, g, j and l).

DISCUSSIONS/CONCLUSIONS

Allegation #1: Determining the Student's Placement

When determining the educational placement for a student with a disability, the placement decision must be based on the IEP and made by an IEP team in conformity with the requirement that students be educated in the Least Restrictive Environment (LRE). This means that, to the maximum extent appropriate, the student must be educated with students who are not disabled. When determining the educational placement of a student with a disability, each public agency must ensure that the removal of the student from the regular education environment occurs only if the nature or severity of the disability is such that being educated in the regular education classroom with the use of supplemental aids and services cannot be achieved satisfactorily (34 CFR §§300.114-116).

In this case, the complainant alleges that the student's placement was not based on the IEP in conformity with the LRE requirements, but as a reward for appropriate behavior. Based on Findings of Facts #2-#7 the MSDE finds that, while the school staff did utilize a point sheet to collect data on the student's performance, there is no documentation that the student "earned" the right to participate in the general education setting.

Based on Finding of Fact #1 the MSDE finds that the student's placement was determined by the IEP team in May 2015 based on the student's need for behavioral supports in the IEP which was anticipated to change as the student developed the skills necessary to be successful in the general education classroom.

Further, based on those same Findings of Facts, the MSDE finds that, as the school year progressed, the IEP team met and determined that the student could be successful in a less restrictive environment. Therefore, the MSDE finds that there is not documentation to support this allegation.

Allegation #2: Present Levels of Performance and Measurable Goals

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present level of academic achievement and functional performance including how the disability affects the student's involvement and 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 the special education instruction and related services required to assist the student in achieving the goals.

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The United States Department of Education, Office of Special Education Programs (OSEP) has explained that, 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 annual IEP goals. The IDEA does not require goals to be written for each specific discipline (34 CFR §§300.101, .320, COMAR 13A.05.01.09, and Analysis of Comments and Changes, Federal Register, Vol. 71, No. 156,p. 46662, August 14, 2006).

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).

English/Language Arts/Reading Needs

In this case, the complainant alleges that the student's IEP does not identify the student's academic needs in reading. Based on Findings of Facts #1-#7, the MSDE finds that there is no data that the student's disability affects his reading skills, unrelated to behavior, which is addressed in his IEP. Therefore the MSDE does not find that a violation occurred with respect to this allegation.

Social/Emotional and Behavioral Needs

In this case, the complainant alleges that the student's Social/Emotional and Behavioral goal developed at the March 2016 IEP team meeting were based entirely on two weeks of data collected for the student in February 2016, and that the team did not consider additional data from the additional point sheets that should have been available to the team.

Based on Findings of Fact #7, the MSDE finds that the IEP team considered data, including input from the student's teachers about his current performance, and that this was a sufficient basis for developing the student's behavioral goals. Therefore the MSDE does not find that a violation occurred with respect to this allegation.

Allegation #3: Provision of Special Education Services in the Educational Placement

The public agency must ensure that students with disabilities receive the special education and related services and supports in the educational placement required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that special education services were not provided in the educational placement required by his IEP. Based on Findings of Facts #1-#7, the MSDE finds that the student's IEP reflected the team's determination that the student receive services in both general and separate special education classrooms and gradually transition to a less restrictive environment.

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Based on Findings of Facts #2-#7, the MSDE further finds that during the 2015-2016 school year, the IEP was implemented with regard to the student's placement and the student's transition to a less restrictive environment was evaluated during IEP team meetings during the school year. Therefore the MSDE does not find that a violation occurred with respect to this allegation.

TIMELINES:

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 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.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's mother 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:gl

c: XXXXXXXXX
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