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December 30, 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: #17-051

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. Laura Cornejo, 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 decision regarding the student’s need for compensatory education services was consistent with the data, in accordance with 34 CFR §300.324.

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.

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2. On November 9, 2016, the MSDE requested documents from the HCPS.
3. On November 21, 2016, Ms. K. Sabrina Austin, Ms. Sharon Floyd, Mr. Albert Chichester, and Mr. Gerald Loiacono, 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 November 29, 2016, the MSDE received additional documentation from the complainant to be considered.
6. On December 12, 2016, the HCPS provided the MSDE with documents to be considered.
7. On December 15, 2016, Mr. Loiacono reviewed the student's educational record at the student's school.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Reports of the student's progress towards achievement of the IEP goals made in June and October, 2015, and February and April, 2016;
 - b. IEP, dated January 12, 2016, February 26, 2016, and May 13, 2016;
 - c. Written summary of the IEP team meeting held on February 26, 2016 and March 18 and 24, 2016;
 - d. Written summary of the IEP team meeting held on May 13, 2016;
 - e. Electronic mail (email) message from the complainant's legal counsel to the HCPS staff, dated April 21, 2016; and
 - f. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on October 31, 2016.

BACKGROUND:

The student is 11 years old and attends XXXXXXXXXX School. 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 (Docs. b - d).

During the time period addressed by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. b - d).

FINDINGS OF FACTS:

1. On February 26, 2016 and March 18 and 24, 2016, an IEP team meeting was held to review the IEP and the student's progress. At that time, the IEP team identified the student with an Intellectual Disability in addition to the previously identified disability of Autism. The IEP team also decided that the student will participate in alternate State and district-wide assessments based on standards for those students with the most significant cognitive disabilities.¹ These decisions were made based on information that the full scale Intelligence Quotient (IQ) that was reported in the last cognitive assessment was not accurate, and that the student's IQ fell within the criteria that supported her identification with an Intellectual Disability (Docs. b and c).
2. At the IEP team meeting, the existing annual goals, which were designed to address functional life skills within the general education curriculum, were revised based on reports of the student's classroom performance. The student was reported to be making sufficient progress towards achievement of the goals with the provision of the special education and related services and supplementary aids and services required by the IEP. The IEP team decided to reconvene in May, 2016 to review the student's progress and determine whether she required Extended School Year (ESY) services (Docs. a - c).
3. On May 13, 2016, the IEP team reconvened. At that time, the school staff reported that the student continued to make sufficient progress towards achievement of the annual goals, which were revised based on the student's progress. At the meeting, the complainant and her legal counsel requested that the student be provided with compensatory services because the student did not have an appropriate program until she was identified with an Intellectual Disability, and the IEP team denied the request (Docs. a - e).

DISCUSSION/CONCLUSIONS:

The IDEA does not require the IEP team to determine disability coding and does not permit decisions about the program and placement to be made solely on factors such as category of disability (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46588, August 14, 2006). 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

¹ In Maryland, alternate academic achievement standards are performance standards that are based on a limited sample of content that is linked to grade level content standards. This content, however, may not fully represent grade level content and may include content that is substantially simplified [Emphasis added] (MSDE Technical Assistance Bulletin 17, *Understanding the Criteria and Eligibility Process for Students with the Most Significant Cognitive Disabilities Participating in the Maryland Assessment Program*).

the needs that arise out of the student's disability that are identified in the evaluation data whether or not commonly linked to the disability category in which the student is classified (34 CFR §§300.101, .304, and .320).

When there has been a loss of a FAPE, compensatory services may be provided to remediate the loss (*Letter to Riffel*, 33 IDELR 188, March 20, 2000).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided a FAPE, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainant alleges that the IEP team's decision that compensatory services are not needed as a result of the delay in identifying the student with an Intellectual Disability is not consistent with the data (Doc. f).

Based on the Findings of Facts #1 - #3 above, the MSDE finds that the Intellectual Disability coding did not result in identification of additional areas of need or in how the IEP addresses the student's needs. Therefore, this office finds that the team's decision that the student did not require compensatory services as a result of adding the Intellectual Disability coding was consistent with the data. Therefore, the MSDE does not find that a violation occurred.

TIMELINE:

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 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

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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
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Dori Wilson
Anita Mandis
K. Sabrina Austin