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State Superintendent of Schools

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March 23, 2018

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Ms. Michelle Concepcion  
Director of Instruction and Student Performance  
Frederick County Public Schools  
191 South East Street  
Frederick, Maryland 21701

RE: XXXXX  
Reference: #18-082

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 January 22, 2017, the MSDE received a complaint from Ashley VanCleef, Esq., hereafter “the complainant,” on behalf of Mr. XXXXXXXX and Mrs. XXXXXXXXXXXX, the parents of the above-referenced student. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) 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 FCPS has not ensured that the student has been offered a program and placement that addresses his academic and communication needs, since the start of the 2017 - 2018 school year, in accordance with 34 CFR §§300.101, .320 and .324.

**BACKGROUND:**

The student is eleven (11) years old and is identified as a student with a Hearing Impairment under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and has an IEP that requires the provision of special education instruction and related services.

Prior to enrolling in the FCPS, the student attended the XXXXXXXXXXXXXXXXXXXX (XXX). However, the parents withdrew him from the XXX and enrolled him in the FCPS.

**FINDINGS OF FACTS:**

1. The student began attending XXXXXXXXXX at the start of the 2017 - 2018 school year. His schedule reflects that he was placed in general education classes at XXXXXXXXXX, and there is documentation that the school system staff made arrangements to ensure that an American Sign Language (ASL) interpreter was in place for the student at the start of the 2017 - 2018 school year.
2. Prior to attending XXXXXXXXXX, the student attended the XXXXXXXXXXXXXXXXXXXX (XXX), where he had an IEP requiring the provision of special education services (XXX IEP).
3. The XXX provides direct access to learning to students who are deaf and hard of hearing using ASL, which is described in the following manner:

“ASL is used as the language of instruction throughout the school day, both in and out of the classroom. ASL provides XXX students full access to information, knowledge and incidental learning. Our deaf and hard of hearing students interact with teachers, staff, and peers - *all day, every day* - in the classroom, at lunch, during extra-curricular activities, and on the bus. At XXX, learning takes place directly, not through an interpreter.”
4. The XXX implements the Maryland State Curriculum of core subjects and disciplines including math, reading/English, language arts, science, social studies, advanced technology, career and technology, foreign languages, health and physical education, leadership development, performing arts, service learning and visual arts. Classes in spoken English, keyboarding and art are also included in the curriculum at the elementary school level. Students who meet the State requirements receive a Maryland High School Diploma.
5. On September 11, 2017, the FCPS adopted the XXX IEP and amended it to include the current school name, case manager, and FCPS graduation requirements.

6. The XXX IEP, developed in March 2017, documents the following about the student:
  - He has “mild to moderate sensorineural hearing loss” and uses ASL and “spoken English to communicate throughout the school day.”
  - He is performing on grade level in all areas of speech and language.
  - He demonstrates “skilled” ability to switch from using ASL to spoken English (code-switching).
  - He is performing at the fourth (4th) grade level in math, but at or above grade level in all other areas.
  - He is pursuing a Maryland High School Diploma.
7. Math calculation, communication, and hearing are the only areas that are identified in the XXX IEP as having an impact on the student’s academic achievement and/or functional performance.
8. The XXX IEP states that the student “no longer demonstrates an education impact” in the area of speech and language, including expressive language, receptive language, and pragmatics. The XXX IEP documents that the student needs “direct visual education,” and requires an interpreter. With regard to his communication needs, the XXX IEP reflects that the student needs “direct instruction using American Sign Language with spoken English support at time[s].” It also states that “because XXX is a bilingual environment,” the student’s “deafness does not impact his involvement in the curriculum.”
9. The XXX IEP states that the student “needs a full day program with opportunities for direct communication and instruction with deaf peers and professionals and personnel in American Sign Language to support his academic and social needs.”
10. The XXX IEP requires thirty-two and one-half (32.5) hours per week of specialized instruction, taught primarily by a special education teacher,<sup>1</sup> in a separate special education classroom. The XXX IEP states that “this service delivery reflects the fact that the whole day and week for [the student] is considered special education since he is placed at XXX.”
11. On October 18, 2017, the student completed a questionnaire for deaf and hard of hearing students. The student reported the following in the context of the classroom:
  - He “typically” uses an interpreter.
  - Signing is his preferred way of communicating with hearing students, or by speech if they do not know ASL.
  - Using an interpreter is the best way for hearing students to communicate with him.
  - He communicates with teachers using an interpreter and speech.

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<sup>1</sup> A teacher of the hearing impaired is also listed as a provider on the IEP.

- He “almost always” feels happy in group discussions in class, joins in class discussions, and understands other students during group discussions.
  - He “almost never” gets upset because other students cannot understand him or because his teacher cannot understand him, or feels frustrated when he communicates with other students.
12. On October 23, 2017, the IEP team convened. The IEP team discussed the student’s performance on informal and formal assessments. The school staff reported that the student “does a great job” in the classroom, has “adjusted well to the transition, has a lot of friends, and has started to teach his peers sign language.”
  13. The parents expressed concern about the delay in the student’s code-switching ability, and their belief that this is an area of need that should be addressed by the IEP.<sup>2</sup> The school staff disagreed, noting their observations that the student “does well” with code-switching at school and that he demonstrates an understanding of both ASL and spoken English in the classroom.
  14. The parents also expressed social and emotional concerns reported by the student at home, noting his struggle and difficulty being the only deaf and hard of hearing student in school, and his need to have other deaf and hard of hearing students to “socialize and feel emotionally comfortable in his environment.” The parents explained that the student is not able to connect socially with other deaf and hard of hearing peers who are like him, and who understand the “isolation aspect.” While the school staff reported that the student was “presenting differently” at school where he socializes with peers and has friends, the IEP team recommended that the school counselor build a relationship with the student to better understand his needs, and to identify ways to help him feel more comfortable with his peers at XXXXXXXXXX. To address this, the IEP team documented that the student requires counseling services to support his emotional needs.
  15. The IEP team decided to conduct a speech and language assessment to obtain current data about the student’s language skills, and that an individual with a deaf and hard of hearing background would conduct the assessment.
  16. The IEP team was unable to complete the review of the IEP at the October 23, 2017 meeting, and agreed to reconvene to review the rest of the IEP, beginning with goals and objectives. At the meeting, the school staff reported that, in addition to the support of an ASL interpreter throughout the school day, the student has been receiving four (4) thirty (30) minute sessions per week of specialized instruction in math, in a separate special education classroom, as well as four (4) thirty (30) minute sessions per month of itinerant hearing services, two (2) being provided in the general education classroom and the other two (2) in a separate special education classroom.

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<sup>2</sup> The XXX IEP reflects a discontinued goal in the area of speech and language pragmatics with one (1) objective requiring the student to improve his code-switching skills between ASL and spoken English. The XXX IEP documents that the student achieved this goal in June 2017, just prior to coming to XXXXXXXXXX.

17. On December 1, 2017, the IEP team reconvened. The student reported that he would like to be able to communicate with peers using ASL, and that the school “staff do not understand the struggles he deals with as a hard of hearing student.”
18. The parents expressed their desire for the student to participate in activities with deaf and hard of hearing students. The complainant explained that, as a student who is hearing impaired, the IEP team is required to consider his language and communication needs, opportunities for direct communications with peers and professional personnel in the student’s language and communication mode, academic level, and full range of needs, including opportunities for instruction in the his language and communication mode.
19. The complainant requested the IEP team “be creative to allow [the student] to communicate with peers with similar needs in other schools.” The school staff noted that this would be “difficult” due to other FCPS students’ schedules and different needs. The legal counsel for the school system explained to the parents that the XXX offers the opportunity for communication with deaf and hard of hearing peers. There is documentation that the complainant provided clarification to the team that the request was not to be with “all deaf peers but the opportunity to be with hearing and deaf peers, and not to segregate [the student] at XXX.”
20. The parents requested a regional program within the school system to support students who are deaf and hard of hearing. The legal counsel for the school system “stated that the IEP team does not create regionalized programs.”
21. The parents again expressed concern about the student’s code-switching skills and requested the development of an IEP goal in this area. The legal counsel for FCPS noted that the IEP needs to address special education services that are “necessary to provide access to the general education curriculum and that [the student] was doing that well.” The complainant explained that the parents’ request relates to the student’s needs as a bilingual student using both ASL and spoken English, and not access.
22. The IEP team discussed the need for additional information to determine the student’s level of functioning in the area of code-switching, and recommended assessments to identify a baseline of the student’s proficiency in code-switching. The IEP team also recommended an education assessment of the student’s current functioning in the areas of math and writing.
23. The team revised the IEP, updating information about the student’s present levels of performance. The team also added the supplementary support of consultation, twice a month, by a teacher of the hearing impaired to train the school staff in best practices when working with student who are deaf and hard of hearing.
24. The special education services required by the IEP were also revised. The revised IEP requires thirty (30) minute sessions of specialized instruction in math, four (4) times per week. The specialized instruction is to be provided in a separate special education classroom, primarily by a general education teacher.

25. The IEP team did not revise the statement in the IEP that the student “needs a full day program with opportunities for direct communication and instruction with deaf peers and professional personnel in American Sign Language to support his academic and social needs.” In addition, the IEP continued to document that, due to the student’s special communication needs, he needs direct instruction using ASL with spoken English support at times.
26. On December 1, 2017, the parents provided written consent for an educational assessment, a speech and language assessment, a classroom observation, and an assessment of the student’s code-switching skills.
27. The IEP team is scheduled to convene on April 12, 2018 to review the results of the assessments recommended at the October 2017 and December 2017 IEP meetings. There is documentation that the school staff have made numerous attempts to schedule a meeting to convene prior to April 12, 2018, but none of the suggested dates have been mutually agreeable for all of the required IEP team members to participate in a meeting.
28. There is documentation that, the student has been making sufficient progress towards mastery of the IEP goals since he began attending XXXXXXXXXXXX.
29. The student’s report card documents that he has earned all As in both the first (1<sup>st</sup>) and second (2<sup>nd</sup>) quarters of the 2017 – 2018 school year. The report card also documents that, in the area of personal and social development, the student “consistently” interacts appropriately with peers, follows classroom and school rules and routines, uses strategies to solve social problems, and listens attentively to adults and peers.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #1 - #29, the MSDE finds that the student is making progress in the program and placement required by the IEP. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Based on the Findings of Facts #13, and #17 - #21, the MSDE finds that the parents have requested that the student be provided with opportunities for communication with other deaf and hard of hearing peers and professional staff using ASL, and that he be provided with special education services to improve his code-switching skills. Based on the Findings of Facts #17, #22, and #26, the MSDE finds that, the IEP team agreed to obtain additional information to determine the student’s needs in these areas, and that on December 1, 2018, the parents provided consent for the recommended assessments.

Based on the Findings of Facts #26 and #27, the MSDE finds that the IEP team has not convened to review the recommended assessments within the required timeline. Therefore, the MSDE finds a violation. However, based on the Findings of Facts ##27, the MSDE finds that the school staff did attempt to schedule a meeting within the required timeline, and therefore no corrective action is required.

**ADDITIONAL DISCUSSION:**

While the MSDE has reached a conclusion that the program and placement offered by the FCPS is appropriate under the IDEA, this office does not have the authority to determine whether the FCPS has met its obligations under the Title II of the Americans with Disabilities Act (ADA). If the complainant believes that the FCPS has violated the student's right to an equal opportunity to participate in and enjoy the benefits of the school system's services, she may file a complaint with the United States Department of Education, Office for Civil Rights (OCR) at the following address:

United States Department of Education  
Office for Civil Rights  
Philadelphia Office  
Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107

**TIMELINE:**

Please be advised that the FCPS 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 parents 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 Free Appropriate Public Education (FAPE) for the student, including issues subject to this State

Ashley VanCleaf, Esq.  
Ms. Michelle Concepcion  
March 2, 2018  
Page 8

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/ksa

c:     XXXXX  
          XXXXXXXXXX  
          Theresa Alban  
          Carol Breeze  
          Linda Chambers  
          XXXXXXXX  
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          K. Sabrina Austin  
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