



July 15, 2013

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Ms. Patty Daley
Director of Special Education
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #13-097

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 May 16, 2013, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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 student. The MSDE investigated the allegations listed below.

1. The HCPS did not ensure that a copy of the documents discussed by the Individualized Education Program (IEP) team on January 24, 2013 were provided to the complainant at least five (5) business days prior to the IEP team meeting, in accordance with Md. Code. Ann. Educ. § 8-405 (2010) and COMAR 13A.05.01.07D(3); and
2. The HCPS did not ensure that the complainant was provided with the prior written notice of the decisions made by the IEP team at the January 24, 2013 and February 5, 2013 IEP team meetings, in accordance with 34 CFR §300.503.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Family Support and Dispute Resolution Branch, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 20, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Executive Director of Special Education and Student Services, HCPS, and Ms. Judith Pattik, Coordinator of Special Education, HCPS.
3. On May 28, 2013 and June 3, 2013, the MSDE conducted telephone interviews with the complainant to clarify the allegations to be investigated, and received additional documentation from the complainant, via electronic mail (email).
4. On June 6, 2013, 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 HCPS review the alleged violations.
5. On July 6, 2013, the MSDE sent email to the Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic Services and Special Education Compliance, HCPS to request additional information for the investigation.
6. On July 9, 2013, the MSDE conducted a telephone interview with Ms. Zimmerman.
7. On the same date, Ms. Zimmerman provided the MSDE with additional information and documentation related to the allegations being investigated.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on May 16, 2013;
 - b. IEP Team Meeting Invitation, dated December 21, 2012;
 - c. *IEP Team Meeting Report*, dated January 24, 2013;
 - d. IEP Team Reevaluation Report, dated January 24, 2013;
 - e. Email from the complainant to the HCPS school staff, dated January 25, 2013;
 - f. IEP Team Meeting Invitation, dated January 28, 2013;
 - g. Compact Disc (CD) recordings of the IEP team meeting conducted on January 24, 2013 and February 5, 2013;
 - h. *IEP Team Meeting Report*, dated February 5, 2013;
 - i. Email from the HCPS central office staff to the complainant, dated March 13, 2013; and
 - j. Consent for Assessments, dated March 14, 2013.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. He receives special education instruction and related services in a separate special education class at XXXXXXXXXXXX (XXXXXX), and in a general education class at XXXXXXXXXXXX XXXXXXX(XXXXXX), which is located on the same grounds as XXXXXXX (Docs. a, c, g, and h).

FINDINGS OF FACTS:

1. On January 24, 2013, the IEP team convened to begin a reevaluation of the student. At the start of the meeting, the complainant expressed concern that she had not previously received “the data summary” of the student’s performance that the team intended to review at the meeting as part of the reevaluation process. In response to this concern, the IEP team agreed to continue the meeting on another date to conduct the reevaluation in order to provide the complainant with the opportunity to review the “data summary.” However, the IEP team also continued this meeting to address the complainant’s other concerns (Docs. b, c, and g).
2. At the January 24, 2013 IEP team meeting, the complainant’s legal counsel expressed concern that there was a delay in the provision of special education instruction in a general education environment at the start of the school year and requested that compensatory services¹ be awarded to remediate the violation. The IEP team denied the request based on the information from the school staff that the special education instruction was provided. Although the school staff acknowledged that the instruction was provided in a separate special education classroom rather than the general education setting until the second week of September, they also determined that this delay did not have a negative impact on the student’s ability to benefit from his educational program (Docs. c and g).
3. At the January 24, 2013 IEP team meeting, the complainant requested that there be collaboration between the student’s private speech therapist and the HCPS speech therapy providers. In response to the concern, the IEP team decided that the HCPS and private provider will communicate on a quarterly basis, and that they will meet to collaborate on the provision of services twice by the end of the school year (Docs. c and g).
4. The IEP team generated a written summary of the January 24, 2013 meeting, which contains information about the complainant’s concerns, the team decisions made, and the basis for those decisions. The written summary states that the written notice of the IEP team’s decisions was mailed to the complainant on January 28, 2013 (Doc. c).

¹ Compensatory services, for the purposes of this letter, mean the determination by the IEP team regarding how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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5. An electronic mail (email) correspondence, dated January 25, 2013, from the complainant to the school staff documents that communication and collaboration between the HCPS and private speech therapy providers was to begin after the IEP team reconvened on February 5, 2013 (Doc. e).
6. On February 5, 2013, the IEP team reconvened and reviewed the existing data. Based on its review, the team decided that additional data was required to conduct the reevaluation. The IEP team recommended that psychological, educational, speech/language, and occupational therapy assessments be conducted, as well as a classroom observation of the student (Docs. d, f, and g).
7. At the February 5, 2013 IEP team meeting, the complainant requested that the HCPS speech/language therapy provider be trained to provide services using a specific methodology. The IEP team rejected the decision based upon information from school staff that the HCPS speech/language therapy provider had already received training to provide services using an appropriate methodology (Docs. h and g).
8. At the February 5, 2013 IEP team meeting, the complainant also requested that the student be transferred to a different school. The IEP team rejected the request based on the need to complete the reevaluation and review the IEP before determining the student's placement (Docs. h and g).
9. At the February 5, 2013 IEP team meeting, the complainant further requested that the student be provided with an "extended school day." The IEP team rejected this request because the student "is exhausted by the end of the XXXXXXXX day" (Docs. h and g).
10. The IEP team generated a written summary of the February 5, 2013 meeting, which contains information about the concerns expressed by the complainant, the decisions made, and the basis for the decisions. However, there is no documentation that the written summary of the IEP team meeting was provided to the complainant (Doc. h and g).
11. The student's educational record includes a document that lists the assessments recommended by the IEP team on February 5, 2013 and the information to be obtained by conducting those assessments. On March 13, 2013, the school staff sent an email to the complainant, requesting that she sign and return the consent for assessment (Docs. i and j).
12. The document that lists the assessments contains the complainant's signature, providing consent for the assessments to be conducted, with a notation that the complainant signed the document on March 14, 2013. There is no information or documentation that the assessments recommended on February 5, 2013 were conducted prior to the

complainant's receipt of the list of recommended assessments and the provision of her written consent for the assessments to be conducted (Docs. i and j and review of the educational record).

DISCUSSION/CONCLUSION:

**ALLEGATION #1: PROVISION OF DOCUMENTS PRIOR TO THE
JANUARY 24, 2013 IEP TEAM MEETING**

In order to ensure meaningful participation as an IEP team member, the parent must be provided with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at an IEP team meeting at least five (5) business days before the meeting (Md. Code Ann., Educ., § 8-405(c) (2010) and COMAR 13A.05.01.07D). In this case, the complainant alleges that she did not have an opportunity to examine one of the documents considered by the IEP team on January 24, 2013, prior to the IEP team meeting (Doc. a).

Based on the Findings of Facts #1, #4, and #6, the MSDE finds that there is documentation that the IEP team reconvened after January 24, 2013 in order to ensure that the complainant had sufficient opportunity to review the documentation before it was considered by the IEP team. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

**ALLEGATION #2: NOTICE OF DECISIONS MADE BY THE IEP TEAM ON
JANUARY 24, 2013 AND FEBRUARY 5, 2013**

Written notice must be given to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement of the student, or provision of a Free Appropriate Public Education (FAPE) to the student. This notice includes a description of the action proposed or refused, the basis for the decision, other options considered and the reason the options were rejected, and the data used in making the decision (34 CFR §300.503). It is important that written notice be provided so that the parent can determine whether to exercise the right to utilize the dispute resolution procedures to resolve any disagreement with the IEP team's decisions.

IEP Team Decisions Made on January 24, 2013

Based on the Findings of Facts #1 and #4, the MSDE finds that there is documentation that the complainant was provided with written notice of the decision made by the IEP team on January 24, 2013 to reconvene to complete the review of existing data prior to the date on which it reconvened to do so. Based on the Findings of Facts #2, #3, #4, and #5, the MSDE finds that there is documentation that the complainant was provided with written notice of the decisions made by the IEP team on January 24, 2013 in response to her request for compensatory services¹

and to her request for communication and collaboration between the student's school-based and community-based speech therapists. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

IEP Team Decisions Made on February 5, 2013

Based on the Findings of Facts #6, #11, and #12, the MSDE finds that the complainant was provided with written notice of the assessments recommended by the IEP team on February 5, 2013 and obtained her consent to conduct the assessments prior to the assessments being conducted. However, based on the Findings of Facts #7, #8, #9, and #10, the MSDE finds that there is no documentation that the complainant was provided with written notice of the other decisions made by the IEP team on February 5, 2013. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the HCPS to provide documentation by August 30, 2013 that the HCPS has provided the complainant with a copy of the written summary of the February 5, 2013 IEP team meeting that includes a written explanation of the team's decisions and the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

Documentation of all corrective action taken must be submitted to this office, to the attention of the Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both the complainant and the BCPS 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 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

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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 consistent with the timeline requirements as 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/tw

cc: Renee A. Foose
Judith Pattik
Janet Zimmerman
XXXXXX
Dori Wilson
Anita Mandis
Tyra Williams