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State Superintendent of Schools

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November 25, 2013

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Mrs. Chrisandra A. Richardson, Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXXXXXXXXX
Reference: #14-022

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 September 26, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) 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 MCPS did not ensure that the complainants were provided with the prior written notice of the decisions made by the Individualized Education Program (IEP) team at the May 31, 2013 meeting, in accordance with 34 CFR §300.503; and

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2. The MCPS did not ensure that the complainants were provided with a written invitation to the September 23, 2013 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07(D).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 1, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mrs. Gwendolyn J. Mason, Director of Special Education Services, MCPS; and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
3. On October 7, 2013, the complainants provided the MSDE with documentation related to the allegations being investigated.
4. On October 16, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Mason of the allegations and requested that her office review the alleged violations.
5. On October 17, 2013, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX Middle School (XXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXX, Principal, XXXXXX;
 - b. Ms. XXXXXX, Special Education Teacher, XXXXXX;
 - c. Ms. XXXXX, Occupational Therapy Instructional Specialist, MCPS;
 - d. Ms. XXXXXXXX, School Psychologist, MCPS; and
 - e. Ms. XXXXXXXX, Instructional Specialist, MCPS.

Ms. Ashley VanCleaf, Supervisor, Equity Assurance and Compliance Unit, MCPS, and Ms. Meryl Benko, Paralegal, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed. At the site visit, the MCPS provided the MSDE with documentation from the student's educational record.

6. On October 29, 2013, Ms. Moyo conducted a telephone interview with Mrs. XXXXXXXX regarding the allegations being investigated.
7. On November 7 and 12, 2013, the MCPS staff provided the MSDE with additional documentation from the student's educational record.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

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- a. Correspondence and attachments from the complainants to the MSDE, received on September 26, 2013;
- b. IEP meeting documents, dated May 31, 2013;
- c. Authorization for assessment, dated May 31, 2013;
- d. Electronic mail correspondence (email) between the school staff and the complainants, dated June 3, 4, 14, 17, and 18 2013; July 9, 10 , and 11, 2013;
- e. Correspondence from the school staff to the complainants, dated June 11, 2013;
- f. Certified mail receipt, dated June 13, 2013;
- g. Home and Hospital Teaching verifications, dated August 7, 2013, September 25, 2013, and October 8, 2013;
- h. IEP team meeting documents, dated August 9, 2013;
- i. Email between school staff and the complainants, dated August 30, 2013 and September 5 and 24, 2013;
- j. Email from the MCPS to the complainants notifying them of a September 23, 2013 IEP team meeting notice, sent on September 10, 2013;
- k. Facsimile from the complainants to the MSDE staff, dated October 7, 2013;
- l. IEP and IEP Team Meeting Summary, dated October 28, 2013;
- m. Written response to the complaint from the MCPS, dated October 29, 2013; and
- n. Letter of Findings #14-017, issued on November 14, 2013.

BACKGROUND:

The student is twelve (12) years old and was identified as a student with Autism under the IDEA on August 9, 2013. She has been receiving Home and Hospital Teaching (HHT) services since sustaining a physical injury on March 21, 2013 that has prevented her from attending a school-based program. Prior to receiving HHT services, the student attended XXXXXXXXXXXX Middle School.

During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a – c, g, h, j, l, and m).

ALLEGATION #1: PROVISION OF PRIOR WRITTEN NOTICE FOLLOWING THE MAY 31, 2013 IEP TEAM MEETING

Findings of Facts:

1. On May 31, 2013, the IEP team considered the complainants' referral for an IDEA evaluation for the student based on their concerns regarding the student's "academic issue that is showing up through her behavior." At the meeting, the team considered information from the student's teachers about her classroom performance, the complainant concerns, the results of standardized test scores, and the student's grades. Based on its review of the data, the IEP team suspected a disability under the IDEA and recommended that educational and psychological assessments be conducted. On that date, the complainants provided written consent for the additional data to be obtained (Docs. b and c).

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2. There is documentation that on July 31, 2013, the complainants were provided with a copy of the *MCPS Screening Form* that was completed at the May 31, 2013 IEP team meeting. This form included a description of the actions proposed by the team, a description of the data considered and used as a basis for the decisions, and a statement that the complainants are entitled to the procedural safeguards. However, there is no documentation that the complainants were provided with information about the resources they could contact, should they choose to obtain assistance with understanding it (Docs. a and k).
3. On September 4, 2013, the school system staff provided the complainants with information, in writing, about how they could obtain assistance in understanding their rights following a subsequent IEP team meeting, which was held as part of the evaluation process (Doc. n).

Discussion/Conclusions:

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student. This notice must include a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision. It must also include a statement that the parents of a student with a disability have protection under the procedural safeguards and the means by which a copy of the description of the safeguards can be obtained, sources for parents to contact to obtain assistance in the understanding the provisions, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

There is, however, no IDEA requirement to provide the parent of a student with a disability with a verbatim transcript of discussions that occur at the IEP team meeting or written notice of any information other than the content specifically required above (*Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46691).

In this case, the complaints allege that the school staff did not provide them with the prior written notice of the decisions made at the May 31, 2013 IEP team meeting. Instead, they assert that they were only provided with the "screening forms and not the meeting minutes which have all of the conversations discussed at the table" which did not constitute the prior written notice (Docs. a and k).

Based on the Findings of Fact #1 and #2, the MSDE finds that while the MCPS was not required to provide the complainants with detailed meeting minutes, the school system did not provide the complainant with all of the required information when issuing written notice of the team's decisions. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

Notwithstanding the violation, based on the Finding of Fact #3, the MSDE finds that the complainants were subsequently provided with written notice of the information that was omitted

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from the written notice of the decisions made on May 31, 2013. Therefore, no student specific corrective action is necessary to remediate the violation.

ALLEGATION #2: **PROVISION OF A WRITTEN INVITATION TO THE
SEPTEMBER 23, 2013 IEP TEAM MEETING**

Findings of Facts:

4. The student's mother informed school staff that the best way to reach the complainants when arranging for assessments to be conducted is by electronic mail correspondence (email). The student's mother also indicated that the school staff should schedule parent-teacher meetings with the complainants by email. However, there is no documentation that the complainants requested that they be provided with notice, in writing, of the IEP team meetings by email (Doc. d and review of the educational record).
5. On September 10, 2013 the school staff sent the complainants a written invitation for an IEP team meeting that was scheduled for September 23, 2013. Following receipt of that invitation, at the complainants' request, the school staff rescheduled the September 23, 2013, IEP team meeting for another date (Docs. j and i).
6. There is documentation that the complainants were notified of previous IEP team meetings through both US mail and email. However, there is no documentation that written notice had previously been provided exclusively through email (Docs. a, d, e, f, and review of the educational record).

Discussion/Conclusions:

The public agency is required to take steps to ensure the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322). To ensure parent participation, the school system must provide parents with written notice at least ten (10) days in advance of the meeting unless an expedited meeting is being conducted to ensure the provision of a FAPE. The notice must state the purpose, time, date, and location of the meeting, and who is expected to participate (34 CFR §300.322 and COMAR 13A.05.01.07(D)).

An IEP team meeting can be convened without the participation of parents under certain circumstances. Therefore, while the regulations do not specify the method by which written notice of an IEP team meeting must be provided, it is important that such notice be provided within sufficient time for parents to rearrange their schedules to attend. Unlike the delivery of US mail, parents may not be aware of the receipt of email if they are not expecting notice in that manner and are, therefore, not routinely checking for it, or if internet services are interrupted, impacting access to email.

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In this case, the complainants allege that they were not provided with a written invitation to the September 23, 2013 IEP team meeting because while it was received by email, they had not provided consent for the school staff to send the IEP team meeting invitation using this method of correspondence.

Based on the Findings of Facts #4 - #6, the MSDE finds that the school staff took appropriate steps to reschedule the meeting in response to the complainants' request in order to ensure that they had the opportunity to participate in the meeting. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by March 30, 2014, of the steps it has taken to determine if the violation related to the provision of prior written notice of decisions made by the team during the evaluation process is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXX Middle School or within the school system. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the MCPS.

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

TECHNICAL ASSISTANCE:

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

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Please be advised that both the complainants and the MCPS 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 consistent with the timeline requirements as 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 complainants 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:km

cc : Joshua P. Starr
Julie Hall
Ashley VanCleaf
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Dori Wilson
Anita Mandis
Koliwe Moyo

bc: Donna Riley
Marjorie Shulbank
File