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State Superintendent of Schools

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May 5, 2014

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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

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

RE: XXXXX
Reference: #14-017

Dear Parties:

On September 3, 2013, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. 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 student. Based on that correspondence, the allegations listed below were identified for investigation.

1. The MCPS did not follow proper procedures when destroying information contained in the student’s educational record, in accordance with 34 CFR §300.624.

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2. The MCPS has not ensured that proper procedures have been followed to conduct an evaluation of the student that began on May 31, 2013, in accordance with 34 CFR §§300.304, .305 and .324, and COMAR 13A.05.01.06. Specifically, the complainants allege that:
 - a. The MCPS has not ensured that the evaluation was sufficiently comprehensive to identify all of the student's sensory processing needs.
 - b. The MCPS has not ensured that the IEP team considered existing evaluation data.
 - c. The MCPS has not ensured that the evaluation has been completed within the required timelines.
3. The MCPS did not ensure that the complainants were provided with prior written notice of the decisions made by the Individualized Education Program (IEP) team at the August 9, 2013 meeting, in accordance with 34 CFR §300.503.
4. The MCPS did not ensure that an IEP was in place for the student by the start of the 2013-2014 school year, in accordance with 34 CFR §300.323.
5. The MCPS did not follow proper procedures when responding to the complainants' request for an Independent Educational Evaluation (IEE) in the area of speech/language skills, in accordance with 34 CFR §300.502.

By agreement of the parties, on October 15, 2013, the MSDE extended the timeline for completion of the complaint investigation to afford them more opportunity to attempt to resolve the dispute informally.

On November 11, 2013, the MCPS filed a due process hearing request to defend its evaluation of the student. On November 14, 2013, this office informed the parties that the investigation into Allegation #2, above, was being held in abeyance because it was the subject of the due process hearing request. On the same date, a Letter of Findings was issued which constituted the final results of the investigation into Allegations #1 and #3 - #5.

On April 15, 2014, this office received a copy of the due process hearing decision issued on April 4, 2014 by the Maryland Office of Administrative Hearings in response to the MCPS' request for a hearing to defend its evaluation of the student. In that hearing decision, the Administrative Law Judge ruled that the speech/language assessment conducted by the MCPS was appropriate, but did not rule regarding the other aspects of the evaluation. Therefore, while the ruling regarding the appropriateness of the speech/language assessment is binding upon this office,

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the MSDE has determined that the investigation into the remaining aspects of Allegation #2 can resume, in accordance with 34 CFR §300.152.

On April 24, 2014, the MSDE informed the parties that it had resumed its investigation into Allegation #2, and that the investigation would be completed on or about May 5, 2014. This is the report of the final results of the investigation into the remaining allegation.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 3, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn J. Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal and Informational Systems, MCPS.
3. On September 10, 2013, Ms. Anita Mandis, Chief, Complaint Section, Family Support and Dispute Resolution Branch, MSDE, and Ms. Hartman each conducted separate telephone interviews with the student's mother to clarify the allegations to be investigated.
4. On September 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 25, 27, 29, and 30, 2013, October 4, 6, 7, 8, 9, 11, 12, 13, 14, 21, 22, 23, 25, 27, 29, and 31, 2013, and November 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13, 2013, the MSDE received additional information and documentation from the student's mother, via email and facsimile. The documentation that was provided included the audio recordings of the August 9, 2013 and October 28, 2013 IEP team meetings.
5. On September 13, 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 the MCPS of the allegations and requested that the MCPS review the alleged violations.
6. On September 18, 2013, the MSDE received documentation from the Office of Administrative Hearings that the MCPS had requested a due process hearing in response to the complainants' request for an IEE, which is also the subject of Allegation #5 of the State complaint.

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7. On September 18, 2013 and October 4, 2013, Ms. Hartman conducted telephone interviews with the student's mother concerning the allegations contained in the complaint.
8. On September 27, 2013, the MSDE sent correspondence to the complainants informing them that, because Allegation #5 of the State complaint was also the subject of a due process hearing, the State complaint investigation into that allegation was being held in abeyance until the conclusion of the due process hearing.
9. On October 4 and 18, 2013, November 1, 4, 12, and 13, 2013, and April 22 and 25, 2014, the MSDE requested information and documentation related to the allegations contained in the complaint from the MCPS, via email.
10. On October 6, 15, 18, 21, and 25, 2013, November 4, 7, 8, 12, and 13, 2013, April 22, 25, and 28, 2014, and May 1, 2014, the MSDE received information and documentation from the MCPS, via email.
11. On October 15, 2013, the MSDE informed the parties in writing of the extension of the timeline for completion of the investigation to provide them with the opportunity to resolve the dispute informally.
12. On October 17, 2013, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXX, Principal, XXXXXXX;
 - b. Ms. XXXXXXX, Special Education Teacher, XXXXXXX;
 - c. Ms. XXXXXXX, Occupational Therapy Instructional Specialist, MCPS;
 - d. Ms. XXXXXXX, School Psychologist, MCPS; and
 - e. Ms. XXXXXXX, 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.
13. On October 18, 2013, the MSDE received documentation from the Office of Administrative Hearings that the MCPS had withdrawn its request for a due process hearing in response to the complainants' request for an IEE.

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14. On October 29, 2013, the MCPS provided the MSDE with a written response to the complaint, via email.
15. On November 1, 4, and 8, 2013, Ms. Mandis conducted telephone interviews with the student's mother regarding the allegations contained in the complaint.
16. On November 4, 2013, the MSDE sent correspondence to the complainants informing them that, because the MCPS had withdrawn its request for a due process hearing, this office would resume its investigation into Allegation #5.
17. On November 12, 2013, Ms. Mandis conducted a telephone interview with Ms. XXXXXXXXXXXX, the student's private counselor.
18. On November 12, 2013, the MSDE received documentation from the Office of Administrative Hearings that the MCPS had requested a due process hearing to defend its evaluation.
19. On November 14, 2013, the MSDE notified the parties that Allegation #2 was being held in abeyance due to the MCPS' request for a due process hearing on that issue.
20. On April 15, 2014, the MSDE received a copy of the due process hearing decision regarding the appropriateness of the MCPS' evaluation. The hearing decision was limited to the appropriateness of the MCPS' assessment of the student's speech/language needs.
21. On April 22, 2014, Ms. Hartman unsuccessfully attempted to communicate with the student's mother, via telephone and email, concerning this office's decision to resume the investigation into Allegation #2 of the complaint.
22. On April 24, 2014, the MSDE sent correspondence to the complainants informing them that the investigation was being resumed with regard to the remaining allegation contained in the State complaint, but that it would not address the appropriateness of the evaluation as it relates to the student's speech/language needs.
23. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainants to the MSDE, received on September 3, 2013;
 - b. Screening Form, dated May 30, 2013, summary of the screening meeting, dated May 31, 2013; and Authorization for Assessment, dated May 31, 2013;

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- c. Correspondences and email correspondences between the MCPS and the complainants, dated May 22, 2013, June 3, 4, 14, 17, and 18, 2014, and July 1, 9, and 10, 2014;
- d. Email correspondence among the MCPS staff, dated July 10, 2014;
- e. Email correspondences from the MCPS to the MSDE, dated April 25 and 28, 2014;
- f. Report of Occupational Therapy Assessment Evaluation conducted by the MCPS, dated July 19, 2013;
- g. Letter of Findings issued by the MSDE completing the investigation into Allegations #1 and #3 - #5 of the complaint, dated November 14, 2013;
- h. IEP team meeting documents, dated February 21, 2014;
- i. IEP Team Meeting Summary, dated August 9, 2013;
- j. Report of Educational Assessment conducted by the MCPS, dated July 9, 2013;
- k. Report of Psychological Assessment Report conducted by the MCPS, dated August 2, 2013;
- l. Report of Pediatric Occupational Therapy Evaluation obtained privately by the complainants, dated August 8, 2013;
- m. Report of Audiology Assessment obtained privately by the complainants, dated August 2, 2013;
- n. IEP and IEP Team Meeting Summary, dated October 28, 2013;
- o. Summary review of Non-MCPS Occupational Therapy Report, dated September 9, 2013;
- p. Home Schooling Notification, signed January 22, 2014; and
- q. Email from the MCPS to the MSDE, dated April 22, 2014.

BACKGROUND:

The student is thirteen (13) years old. On August 9, 2013, she was identified as a student with Autism under the IDEA. At that time, the student was receiving Home and Hospital Teaching (HHT) services as a result of a physical condition. Prior to receiving HHT services, the student attended XXXXXXXXXXXXXXXXXXXXXXXXXXXX and received accommodations pursuant to a 504 Plan.

On February 21, 2014, the IEP team developed an initial IEP.¹ However, by that time, on January 16, 2014, the complainants withdrew the student from the MCPS and began providing her with home instruction using a MCPS-approved teaching program.

¹ On November 14, 2013, as a result of the investigation into Allegations #1 and #3 - #5 of this State complaint, the MSDE found that the MCPS had not followed proper procedures to ensure that the development of the initial IEP was completed following the identification of the student on August 9, 2013. The MSDE required the MCPS to ensure that proper procedures were followed to complete the IEP. This corrective action was taken on February 21, 2014. Thus, an initial IEP was not in place until February 21, 2014 (Docs. g and h).

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During the period of time addressed by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a-q).

ALLEGATION #2 PROPER PROCEDURES IN CONDUCTING AN EVALUATION

FINDINGS OF FACTS:

1. On May 22, 2013, the complainants requested an evaluation under the IDEA, indicating that they believe that the student is struggling with understanding instruction and expressing herself, which is causing her anxiety and frustration, and resulting in behaviors for which disciplinary action had been taken (Docs. b and c).
2. On May 31, 2013, an IEP team convened and considered information from the complainants that the student has a history of difficulty with socializing with peers and that, while she has a high Intelligence Quotient (IQ), she has a history of low academic performance. The complainants also expressed concerns about the student having anxiety, frustration, "melt downs," difficulty expressing herself, and making bad choices. However, there is no documentation that the complainants indicated that these issues were related to sensory processing difficulties (Doc. b).
3. At the May 31, 2013 meeting, the IEP team considered information from the student's teachers that, while she is enrolled in advanced math, reading, and English courses, she has inconsistent attendance, does not follow through on missed work, is easily distracted, and demonstrates difficulty with written language, reading and listening comprehension, and verbal expression (Doc. b).
4. Based on the data considered on May 31, 2013, the IEP team recommended that psychological, speech/language, and educational assessments be conducted, and the complainants provided written consent (Doc. b).

There is documentation that the MCPS staff began attempting to conduct the assessments on June 4, 2013, but that they were not completed until July 19, 2013 because the complainants reported that the student's schedule was busy during that time period due to various medical appointments and her HHT services schedule. The documentation also reflects that during this time period, the complainants had many questions about the test protocols that would be used and the credentials of the MCPS evaluators, which had to be addressed before the student was made available for testing. During this time period, an

occupational therapy assessment was conducted, as well, in response to a request made by the complainants following the May 31, 2013 IEP team meeting (Docs. c-f).²

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5. On August 9, 2013, the IEP team convened to consider the assessment data. In addition to considering the results of the speech/language assessment, the team considered data from the educational assessment that the student was performing in the “average” and “high average” ranges in all academic areas (Docs. i and j).
6. At the August 9, 2013 meeting, the IEP team also considered the results of the psychological assessment, which indicated that the student demonstrated delays in the development of social skills, that she had difficulty following rules, and that she showed a “disregard for dangerous situations.” In the report, the evaluator stated that these behaviors are “characteristic of autistic spectrum conditions in children” (Docs. i and k).
7. The report of the psychological assessment includes information that the student had previously been identified as a student with a developmental delay under the IDEA when she was in preschool based on delays in expressive language and social communication skills. The report states that, at that time, the student demonstrated “tactile/anxiety concerns” that were addressed with the provision of “sensory modulation strategies” (Docs. i and k).
8. At the August 9, 2013 IEP team meeting, the complainant provided the team with reports of private audiology and occupational therapy assessments that she had obtained. The team decided to reconvene after school-based members had had the opportunity to review the assessment reports, but that, based on the data that was already considered, the student meets the criteria for identification as a student with Autism under the IDEA (Docs. i, l, and m).
9. On October 28, 2013, the IEP team reconvened and considered information from the report developed by the MCPS occupational therapy evaluator. In that report, the evaluator indicated that the results of the private occupational therapy assessment were reviewed, which recommends occupational therapy services because the student “picks at skin until it bleeds, jumps at unexpected touch, dislikes tags and certain fabrics, enjoys movement and swinging” and that she is “under reactive to pain.” The MCPS occupational therapy assessment report reflects that, based on information provided by the complainants, the student, and her teachers, as well as observations of the student during testing, the MCPS occupational therapist found “no evidence” that “sensory processing problems are a significant factor in any behavioral difficulties in school.” The MCPS occupational therapist reported that, based on the data, she does not believe that occupational therapy services are needed (Docs. f, l, n, and o).

² The basis for the complainants’ was their concern that any sensory processing needs that might exist be identified (Docs. c-f).

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10. At the October 28, 2013 IEP team meeting, the team further considered the report of the results of the private audiological assessment, that states that the student is a “poor auditory learner who requires classroom support,” but that she has “normal hearing” and does not have a Central Auditory Process Disorder (Docs. m and n).
11. At the October 28, 2013 IEP team meeting, the team decided that the student requires accommodations in order to address her auditory skills needs, but that she does not have sensory processing needs that require the provision of occupational therapy as a related service (Doc. n).

DISCUSSION/CONCLUSIONS:

The IDEA requires that the IEP address the needs that arise from the student’s disability regardless of the category of disability determined by the IEP team. When conducting an evaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the evaluation is sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not commonly linked to the suspected disability category. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student’s IEP (34 CFR §300.304).

As part of the evaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student’s parents, the team must identify what additional data, if any, are needed to determine whether the student meets the criteria for identification as a student with a disability and, if so, determine the student’s educational needs (34 CFR §300.305 and COMAR 13A.05.01.06).

In this case, the complainants assert that the school system did not maintain the student’s educational record from the time that she was previously identified with a developmental delay under the IDEA when in preschool, and that, as a result, the IEP team could not have considered existing data regarding the sensory processing needs that the student demonstrated at that time (Doc. a and interviews with the student’s mother).

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Based on the Findings of Facts #1 - #12, the MSDE finds that, while the MCPS did not properly maintain the student's educational record,³ there is documentation that the IEP team considered information about the sensory processing needs that the student demonstrated when she was in preschool. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

The complainants further assert that the school system did not consider the results of the private occupational therapy evaluation that recommended occupational therapy to address sensory processing needs (Doc. a and interviews with the student's mother). However, based on the Findings of Facts #7 - #12, the MSDE finds that the IEP team considered information from the private occupational therapy evaluation that was provided through the report of the MCPS' occupational therapist. Further, based on the Findings of Facts #1 - #3, #5, and #7 - #12, the MSDE finds that there is data to support the IEP team's decision that the student does not require occupational therapy to address sensory processing needs. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

When conducting an evaluation, the public agency must ensure that assessments are conducted and the results are considered by the IEP team within sixty (60) days of the parent's consent to assessments, and within ninety (90) days of the date the team determines that assessments are required, unless the parent repeatedly fails or refuses to produce the student for assessments (COMAR 13A.05.01.06E).

Based on the Findings of Facts #1 - #4 and #9, the MSDE finds that, while the MCPS ensured that the evaluation was completed within ninety (90) days of the written referral, it was not completed within sixty (60) days of the complainants' consent to the assessments, as required. However, based on the Finding of Fact #5, the MSDE finds that there is documentation that the delay in completing the evaluation was due to the unavailability of the student. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

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

³ On November 14, 2013, as a result of the investigation into Allegations #1 and #3 - #5 of this State complaint, the MSDE found that the MCPS had not properly maintained the student's educational record, and required corrective action to address the violation (Doc. g).

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

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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 Free Appropriate Public Education (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/ch

cc: Joshua P. Starr
Julie Hall
Ashley VanCleaf
XXXXXXXXXX
Dori Wilson
Anita Mandis
Christine Hartman
Martha J. Arthur