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State Superintendent of Schools

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March 31, 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

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

RE: XXXXXX
Reference: #14-051

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 January 30, 2014,¹ the MSDE received a complaint from Mr. XXXXXXXXX and Mrs. XXXXXXXXXXXXX, 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 above-referenced student. The MSDE investigated the allegation that the MCPS has not provided the student with Home and Hospital Teaching (HHT) services since she was identified as student with a disability on August 9, 2013, in accordance with COMAR 13A.03.05.01 - .05 and COMAR 13A.05.01.10.

¹Correspondence was previously received from the complainants regarding the allegation on January 7 and 15, 2014 and telephone interviews were conducted with the student’s mother, on January 15 and 18, 2014.

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 30, 2014, the MSDE sent a copy of the complaint, via electronic mail (email), 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 January 31, 2014, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Mason of the allegation and requested that her office review the alleged violations.
4. On February 18, 22, 20, 21, and 23, 2014, and March 7, 2014, the complainants sent correspondence to the MSDE, via email, regarding the allegation being investigated.
5. On March 19, 2014, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXXX, Principal, XXXXXXXX;
 - b. Ms. XXXXXXXX, Assistant Principal, XXXXXX;
 - c. Ms. Deloris Harris, Instructional Specialist Home and Hospital Teaching, MCPS; and
 - d. Ms. XXXXXXXX, School Counselor, XXXXXXXX.

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. 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 January 7 and 30, 2014;
 - b. Email correspondence (email) between the school staff, from August 2013 to February 2014;
 - c. Correspondence from the school staff to the complainants from August 2013 to March 2014;
 - d. Home and Hospital Teaching (HHT) verifications, dated August 7, 2013, September 25, 2013, and November 20, 2013;
 - e. First quarter teacher report, dated November 1 and 11, 2013;

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- f. Letter of Findings #14-017, issued on November 14, 2013;
- g. Letter of Findings #14-022, issued on November 25, 2013;
- h. MCPS Department of Student Services HHT guidelines, updated on January 8, 2014;
- i. Email correspondence from the complainants to the MSDE staff, dated January 16, 2014 February 11, 12, 18 - 21, and 23, 2014 and March 7, 2014;
- j. Home Schooling Notification, signed January 22, 2014; and
- k. IEP team meeting documents, dated February 21, 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 HHT services as a result of a physical condition. Prior to receiving HHT services, the student attended XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX.

On February 21, 2014, the IEP team developed an initial IEP.² 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.

During the time period covered by this investigation, the complainants were provided with notice of the procedural safeguards (Docs. a, d - g, j, and k).

FINDINGS OF FACTS:

1. On August 9, 2013, when the student was identified as a student with a disability, under the IDEA, she had a current verification for HHT services, as a non-disabled student, which was based upon a physical condition. At that time, the verification stated that the student could not return to a school-based program until September 23, 2013. A re-verification of the need for HHT services was subsequently provided, effective through January 16, 2014 (Docs. d, f, and g).
2. The MCPS Department of Student Services HHT program description indicates that the student's school of enrollment is responsible for verifying the student's course schedule with the HHT office, providing the HHT teacher with "textbooks, course outlines, and current instruction information for the student," collaborating with the HHT teacher to ensure the student receives current course work, and ensuring the HHT office is provided

² On November 14, 2013, as a result of the investigation of a previous State complaint regarding the student (Complaint #14-017), 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 (Doc. f).

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- with information regarding the goals addressed through HHT and the services provided while the student is receiving HHT services (Doc. h and interviews with school staff).
3. The HHT program description further states that the HHT teacher is responsible for providing instruction to the student, scheduling teaching time, collecting instructional materials and communicating with the classroom teacher, planning course lessons according to MCPS curriculum, grading the student's work performance, and assessing the student's progress (Doc. h).
 4. There is documentation that by August 22, 2013, a disagreement arose between the school staff and the HHT services teacher regarding the sufficiency of the instructional materials that the school staff made available to the HHT services teacher (Docs. b, c, and interviews with school staff).
 5. On November 1, 2013, the HHT services teacher provided the school staff with a report on the assignments that the student had completed during the first quarter of the 2013-2014 school year and the grades she earned for each assignment. The report states that the student "became very frustrated when she tried to understand the textbook" and she "never completed the work that was assigned because it was too difficult" (Doc. e).
 6. On November 11, 2013, the HHT teacher sent an addendum to her report which states that it is "imperative for the [school-based] teachers to provide the class and homework assignments, novels, tests/quizzes" so that the HHT teacher can modify and adapt the assignments to ensure that the student is learning the same materials as her peers. It also states that the student "has multiple learning and language deficits," and that the amount of time allotted for HHT services does not provide enough time for her to "understand and grasp/learn material" because she "cannot process information that quickly" and needs repetition of the information (Doc. e).
 7. There is no documentation that steps were taken to resolve the dispute between the school system staff about the appropriateness of the instructional materials. Further, there is no documentation that the IEP team determined the services to be provided to the student after she was identified as a student with a disability and developed a plan for the student's return to a school-based program (Docs. b, c, review of the education record, and interview with school staff).
 8. On January 16, 2014, the complainants withdrew the student from the MCPS and started providing her with home instruction using an MCPS approved home schooling program. There is documentation that the student was provided with HHT services until she withdrew from the MCPS (Docs. b, j, and interview with school staff).
 9. On February 21, 2014, the IEP team completed the development of the IEP pursuant to the corrective action required as a result of findings made during a previous State

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complaint investigation. At the meeting, the team also determined the services to be provided to the student for the delay in developing an appropriate IEP (Doc. k).

DISCUSSION/CONCLUSIONS:

Each public agency must make instructional services available to students, including both students with disabilities and nondisabled students, who are unable to attend the school of enrollment due to a physical or emotional condition (COMAR 13A.03.05.03). The need for HHT services is determined by verification from a licensed physician, a certified school psychologist, a licensed psychologist, or a licensed psychiatrist which document that the student has a physical or emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.04).

If a student with a disability is unable to attend the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10).

The continuation of HHT services beyond sixty (60) calendar days after the initial determination of eligibility requires re-verification that the student continues to be unable to attend school due to a physical or emotional condition (COMAR 13A.03.05.04).

Based on the Finding of Fact #1, the MSDE finds that there is documentation that the student was entitled to receive HHT from August 9, 2013 when she was identified as a student with a disability, until January 16, 2014.

Based on the Findings of Facts #4 - #6, the MSDE finds that there is documentation that since the date that the student was identified as a student with a disability, the MCPS had information that the MCPS HHT teacher did not believe that she had sufficient instructional materials to provide the student with appropriate instruction.

Based on the Findings of Facts #2, #3, and #7 - #9, the MSDE finds that there is no documentation that the MCPS took steps to ensure that the instruction provided through HHT services was appropriate, or to convene an IEP team to determine the services to be provided and develop a plan for the student to be returned to a school-based program. Therefore, this office finds that a violation occurred from August 9, 2013, when she was identified as student with a disability under the IDEA until January 16, 2014, when the student was withdrawn from the MCPS.

Notwithstanding the violation, based on the Finding of Fact #9, the MSDE finds that the IEP team convened on February 21, 2014 and determined the services to be provided to the student to remediate the lack of the provision of a Free Appropriate Public Education (FAPE) during the same time period as a result of another violation that was previously identified through another

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State complaint investigation. Therefore, this office does not require additional student-based corrective action.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by the start of the 2014-2015 school year of the steps taken to determine if the violation identified in the Letter of Findings related to the provision of HHT services for students with disabilities is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXX.

The MSDE also requires that the MCPS provide documentation by the start of the 2014-2015 school year of the steps that have been taken to ensure that there is a process in place to resolve disputes between school staff and HHT services staff regarding the appropriateness of the instruction are resolved in order to make sure that students are provided with HHT services in accordance with the State requirements.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. 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 initial date that the school system determines non-compliance.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, 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.

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.

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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 Free Appropriate Public Education 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
Martha J. Arthur