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State Superintendent of Schools

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July 10, 2014

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Office of the Public Defender
District 01 - Baltimore City
Juvenile Protection Division
201 East Baltimore Street, 8th floor
Baltimore, Maryland 21202

Ms. Beth Hart
Director, Juvenile Services Education Program
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

RE: XXXXXXXX
Reference: #14-092

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 12, 2014, the MSDE received a complaint from Grace Reusing, Esq., Office of the Public Defender, hereafter “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Maryland State Department of Education, Juvenile Services Education Program (MSDE, JSEP) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student and other similarly situated students.

Grace Reusing, Esq.
Ms. Beth Hart
July 10, 2014
Page 2

The MSDE investigated the allegations listed below:

1. The MSDE, JSEP did not ensure that the student was provided with special education instruction to enable him to be involved in and make progress in the general education curriculum from May 12, 2013¹ to June 21, 2013, in accordance with 34 CFR §§300.101, .103, .320, and .323.
2. The MSDE, JSEP did not ensure that the student's educational record was accurately maintained and transferred to the receiving school upon his transfer from XXXXXXXX XXXXX to XXXXXXXXXXXXXXX on June 21, 2013, in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.
3. The MSDE, JSEP did not ensure that a copy of the student's Individualized Education Program (IEP) was obtained and implemented from May 12, 2013¹ to June 21, 2013, in accordance with 34 CFR §§300.323 and .612, COMAR 13A.08.02.28, and *The Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 12, 2014, the MSDE provided the MSDE, JSEP with a copy of the written complaint.
3. On May 19, 2014, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On May 19, 2014, 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 MSDE, JSEP of the allegations and requested that the MSDE, JSEP review the alleged violations.
5. On June 25, 2014, Ms. Hartman and Ms. Janet Jacobs, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXX to review the student's educational record, and interviewed Mr. XXXXXXXXXXXX, Teaching Supervisor, XXXXXXXXXXXXXXX. Mr. Samuel Kratz, Special Education Coordinator, MSDE, JSEP attended the site visit as a representative of the MSDE, JSEP and to provide information on the MSDE, JSEP policies and procedures, as needed.

¹ While the complaint contained allegations of violations that occurred more than one (1) year prior to the filing of the complaint, the complainant was informed, in writing, that the MSDE has authority to investigate allegations of violations that occurred no more than one (1) year from the date the complaint was received (34 CFR §300.153(c)).

Grace Reusing, Esq.
Ms. Beth Hart
July 10, 2014
Page 3

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated October 11, 2012;
 - b. IEP, dated October 7, 2013;
 - c. Letter of Findings issued by the MSDE on January 3, 2014 as a result of an investigation of State complaint #14-039; and
 - d. Correspondence from the complainant to the MSDE containing allegations of violations of the IDEA, received on May 12, 2014.

BACKGROUND:

Student-Specific

The student is eighteen (18) years old and identified as a student with an Other Health Impairment under the IDEA, based on a diagnosis of Attention Deficit Hyperactivity Disorder. He has an IEP that requires the provision of special education instruction (Doc. b).

From April 12, 2013 to June 21, 2013, the student was placed by the Maryland Department of Juvenile Services (DJS) at XXXXXXXXXXXXXXXX, a DJS detention facility. Since June 21, 2013, the student has been placed by the DJS at XXXXXXXXXXXXXXXX, a residential treatment center (Docs. a - d, and interviews with the MSDE, JSEP staff and the complainant).

Prior to his placement at XXXXXXXXXXXXXXXX, the student attended XXXXXXXXXXXXXXXX in the Prince George's County Public Schools (PGCPS) (Review of the student's educational record).

Related State Complaint Investigation

On January 3, 2014, this office issued a Letter of Findings, as a result of a previous State complaint investigation (#14-039) regarding all students identified with disabilities under the IDEA who were participating in the education programs operated by the MSDE, JSEP. As reported in that Letter of Findings, the MSDE found violations of provisions of the IDEA with respect to students with disabilities placed in the fourteen (14) DJS facilities across the State and required corrective action to address the violations (Doc. c).

As a result of those determinations, the MSDE has required the public agency to review the educational records of students who participated in the education programs operated by the MSDE, JSEP during the 2013-2014 school year. The public agency is required to take corrective action for each student for whom a violation is identified as a result of that review (Doc. c).

Grace Reusing, Esq.
Ms. Beth Hart
July 10, 2014
Page 4

However, the investigation of State complaint #14-039 did not cover all of the allegations raised in this complaint during the time period that the violations were alleged to have occurred. Therefore, this investigation was initiated related to those allegations that were not resolved through the investigation of State complaint #14-039 (Docs. c and d).

SUMMARY OF FINDINGS AND CONCLUSIONS:

The MSDE, JSEP staff acknowledges that there is no documentation that student educational records were consistently maintained, as required, or that the named student or other students at the XXXXXXXXXXXXXXXX were consistently provided with the special education and related services required during the time period covered by this investigation (Interview with the MSDE, JSEP staff). This office appreciates the acknowledgement of the violations by the MSDE, JSEP, and concurs with the public agency's findings.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MSDE, JSEP to provide documentation by September 1, 2014 that the educational records for all students with disabilities participating in the educational program at XXXXXXXXXXXXXXXX from May 12, 2013 to June 21, 2013 have been reviewed for compliance with the requirements addressed in this investigation. For each student for which a violation is identified in the areas listed below, the MSDE, JSEP must provide documentation of the following:

1. The steps taken to ensure that each student's educational record includes information and documents required by *The Maryland Student Records System Manual* for the time period of May 12, 2013 to June 21, 2013;
2. That an IEP team has made the following determinations based on the evaluation data:
 - a. the student's current levels of academic and functional performance;
 - b. the levels of academic and functional performance that were expected to be achieved by the time that the IEP team meeting is convened;
 - c. the amount and nature of services needed to compensate the student for the violations identified, based upon any identified discrepancy between the student's expected and actual levels of performance; and
 - d. a plan for how and when the services are to be provided within one year of the date of this Letter of Findings.

Grace Reusing, Esq.
Ms. Beth Hart
July 10, 2014
Page 5

The MSDE, JSEP must ensure that each student's parent is provided with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's parent disagrees with the IEP team's determinations, he or she maintains the right to request mediation or file a due process complaint in order to resolve the dispute, in accordance with IDEA.

If the student is enrolled in another public agency, the MSDE, JSEP must consult and collaborate with that public agency to ensure that the above actions are taken.

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 MSDE, JSEP through the Family Support and Dispute Resolution Branch at (410) 767-7770.

Please be advised that both the complainant and the MSDE, JSEP 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 public agency 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 student's parent and the public agency 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

Grace Reusing, Esq.
Ms. Beth Hart
July 10, 2014
Page 6

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/am

c: Jack R. Smith
Katharine M. Oliver
Anna Lisa Nelson
Samuel Kratz
Daniel Gardner
XXXXXXXXXXXXXX
Dori Wilson
Anita Mandis
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