



July 18, 2014

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Mrs. Chrisandra A. Richardson
Associate Superintendent
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Mr. XXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXX

Dr. Gwendolyn J. Mason
Director
Department of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: #14-097

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 19, 2014, the MSDE received a complaint from Ms. XXXXXXXXX, the student's mother, and Mr. XXXXXXXXX, the student's grandfather, hereafter, "complainants" on behalf of 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 allegations listed below.

1. The MCPS has not followed proper procedures when responding to a request to amend the student's educational record since May 19, 2013¹, in accordance with 34 CFR §§300.618 - .621; and

¹ Although the complainants also alleged that the violation occurred prior to this date, this office notified the complainants that the MSDE has the authority to investigate allegations raised in a State complaint that occurred not more than one (1) year from the date the State complaint was received and which have not been resolved through a due process complaint, in accordance with 34 CFR §§300.152 and 153.

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2. The MCPS has not followed proper procedures when the Individualized Education Program (IEP) team determined the placement in which the student would receive special education instruction since August 13, 2013², in accordance with 34 CFR §§300.114 and .116

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 7, 2014, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the student's grandfather to clarify the nature of his concerns, which were expressed in an April 26, 2014 letter to the MSDE. During that interview, Ms. Mandis inquired whether the grandfather was seeking a State complaint investigation.
3. On May 19, 2014, the complainants filed a State complaint investigation.
4. On May 20, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Gwendolyn J. Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
5. On June 2 and 11, 2014 and July 11 and 14, 2014, Ms. Williams conducted telephone interviews with the complainants regarding the allegations being investigated.
6. On June 3, 11, 17-20, 23, 25, and 26, 2014 and July 11, 2014, the complainants provided additional information and documentation to the MSDE staff, via electronic mail (email), related to the allegations being investigated.
7. On June 10, 2014, the MSDE sent correspondence to the student's mother and the complainant 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.
8. On June 11, 13, 17, 19, and 26, 2014, and July 11, 2014, Ms. Williams contacted the MCPS via email and telephone to request information regarding the investigation.
9. On June 26, 27, and 30, 2014, the MCPS sent the MSDE information regarding the investigation.

² The MSDE initially identified the allegation as having occurred since May 19, 2013. During the investigation, the MSDE discovered that the allegation has occurred since August 13, 2013.

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10. 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 May 19, 2014;
 - b. Email correspondence between the student's grandfather and the MCPS staff, dated September 14, 2012 through September 27, 2012;
 - c. Correspondence between the parent's attorney and the MCPS, dated July 3 and 19, 2013 and August 6 and 7, 2014;
 - d. IEP, dated August 13, 2013;
 - e. Written Summary of the IEP team's decisions, dated August 13, 2013;
 - f. Email correspondence from the MCPS to the MSDE, received June 30, 2014; and
 - g. Email correspondence from the complainants to the MSDE, dated July 11, 2014.

BACKGROUND:

The student is identified as a student with an Other Health Impairment under the IDEA. Since the start of the 2012-2013 school year, the student has been parentally placed at the XXXXXX XXXXXXXXXX, a private school in Montgomery County, Maryland. Prior to that time, the student attended the XXXXXXXXXXXXXXXXXXXX and received special education and related services through an IEP.

During the period of time addressed by this investigation, the student's mother has participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. d and e and interview with the complainants).

ALLEGATION #1: RESPONSE TO REQUEST TO AMEND THE EDUCATIONAL RECORD

FINDINGS OF FACTS:

1. There is email correspondence between the MCPS school staff and the student's grandfather, dated from September 14, 2012 to September 27, 2012, which indicates that the student's grandfather requested that the MCPS staff amend the student's educational record to correctly state that the student has "Lung Disease" instead of the incorrect notation that he has Lyme Disease (Doc. b).
2. There is no documentation that the student resides with his grandfather or that the grandfather serves as the student's parent under the IDEA (Review of the educational record and interview with the complainants).
3. On September 25, 2012, the MCPS school staff provided the student's grandfather with information about how the student's parent could request an amendment to the educational record in writing in order to correct the error (Doc. b).

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4. There is no documentation that the parents of the student provided the MCPS school staff with a written request to amend the student's educational record (Review of the record and interview with the complainants).
5. On June 30, 2014, the MCPS staff sent email correspondence to the MSDE indicating that it was treating the written State complaint, which was filed by the student's mother on May 19, 2014, as a request to amend the student's educational record and that the record would be amended as requested (Doc. f and interview with the complainants).
6. On July 11, 2014, the complainants contacted the MSDE via email correspondence and indicated that the MCPS staff amended the student's educational record as requested (Doc. g).

DISCUSSION/CONCLUSION:

A parent who believes that information in the student's educational record is inaccurate or misleading may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period of time from the receipt of the request, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing before school system personnel to challenge the information (34 CFR §§300.618 and .619).

Under the IDEA, a "parent" means a biological or adoptive parent, a foster parent unless prohibited by State law, a guardian, a relative with whom the student lives, or a parent surrogate (34 CFR §300.30).

Based on the Findings of Facts #1 and #2, the MSDE finds that the student's grandfather does not serve as a parent for the student under the IDEA. Therefore, the requirements for responding to a parent's request for amendment of a student's educational record do not apply to the request made by the student's grandfather.

However, based on the Findings of Facts #3-#6, the MSDE finds that the MCPS followed proper procedures when responding to the mother's written request for amendment of the record which was contained in the State complaint that was filed with this office. Therefore, the MSDE does not find that a violation has occurred with respect to this allegation.

ALLEGATION #2: EDUCATIONAL PLACEMENT DECISION

FINDINGS OF FACTS:

7. On August 13, 2013, the IEP team convened at the request of the student's parents to consider data from the student's private school and develop an IEP. After reviewing the data, the IEP team documented that they did not have enough information about the

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student's performance in the area of written language to complete the review and revision of the IEP. However, there is no documentation that the IEP team determined how the required data would be obtained. The IEP team also decided that it did not have sufficient data about the student's current health needs and that the student's parents would provide this information so that a health plan could be developed (Docs. c and d and interview with the complainant).

8. Although it did not complete its review and revision of the IEP, the IEP team determined that the Least Restrictive Environment (LRE) in which the student's IEP could be implemented, with the provision of supplementary aids and services, was a separate special education classroom due to the student's "significant weakness in his cognitive and executive function skill, academic skill and adaptive skill difficulties which require significant adult support for completion of everyday tasks and maintenance of safety" (Docs. c and d).
9. There is no documentation that following the August 13, 2013 IEP team meeting the MCPS took steps to obtain the data that they had determined was necessary regarding the student's written language needs (Review of the educational record).
10. There is no documentation that the student's parents have either provided the data regarding the student's health needs or that the MCPS has sought consent from the parents to obtain the data (Review of the educational record and interview with the complainants).

DISCUSSION/CONCLUSION:

The determination of a student's educational placement must be based on the student's IEP. When making the educational placement decision, the IEP team must determine the LRE in which the IEP can be implemented with the provision of supplementary aids and services (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

In order to consider the supplementary aids and services that can be provided to ensure that the IEP is implemented in the LRE, the IEP team must have developed an IEP that identifies the needs that arise out of the student's disability. This means that the IEP contains annual goals for the student to improve skills in the areas of need, and contains a statement of the special education and related services needed to assist the student in achieving the goals (34 CFR §§300.101 and .320).

Based on the Findings of Facts #7 and #8, the MSDE finds that on August 13, 2013 the IEP team considered supplementary aids and services that could be provided and determined the LRE for the portions of the IEP that could be completed. However based on the Findings of Facts #9 and #10, the MSDE finds that that the IEP team did not convene again to complete the review and revision of the IEP and determine the educational placement in which the completed IEP could

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be implemented. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the MCPS to provide documentation by October 1, 2014 of the actions listed below.

1. The MCPS must provide documentation of the steps the MCPS has taken to obtain consent from the student's parents to collect the data regarding the student's written language and medical needs that the IEP team determined necessary to complete his IEP.
2. If the MCPS has obtained consent, then it must provide documentation that the data has been collected and the IEP team has reviewed and revised the IEP based on that data. The documentation must also indicate that the IEP team has determined the compensatory services or other remedy needed to redress the violations to be provided if the student is re-enrolled in the MCPS.

The MCPS must provide the student's mother 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 mother 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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through the Family Support Dispute Resolution Branch, MSDE at (410) 767-0255.

Please be advised that the student's mother and the school system 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.

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Questions regarding the Findings, Conclusions and Corrective Actions 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 Free Appropriate Public Education for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:tw

c : Joshua P. Starr
Julie Hall
Ashley Vancleef
Cathleen Burgess
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Dori Wilson
Anita Mandis
Tyra Williams