



June 9, 2014

Holly L. Parker, Esquire
P.O. Box 457
Olney, Maryland 20830

Mr. Russell Gray
Director of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #14-098

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 May 19, 2014, the MSDE received a complaint from Holly L. Parker, Esquire, hereafter “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State regulations with respect to the student.

The MSDE investigated the allegation that the CCPS did not follow proper procedures when transferring educational decision-making rights to the student at the Individualized Education Program (IEP) team meeting convened on April 10, 2014, in accordance with 34 CFR §§300.320, .321, and .520, and Md. Code Ann., Educ., § 8-412.1 (2014).

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 20, 2014, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.

3. On May 21, 2014, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On May 22, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the CCPS of the allegation and requested that the CCPS review the alleged violation.
5. On May 29, 2014, the CCPS responded to the complaint and provided the MSDE with information and documentation, via electronic mail (email).
6. On May 30, 2014, Ms. Hartman conducted a telephone interview with the student's mother regarding the allegation contained in the complaint.
7. On May 30, 2014, the CCPS provided the MSDE with additional documentation regarding the allegation contained in the complaint, via email.
8. On June 2, 2014, the MSDE received information and documentation, via email, from the student's mother regarding the allegation contained in the complaint.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on May 19, 2014;
 - b. Notice of IEP Team Meeting, dated April 1, 2014;
 - c. IEP, IEP team summary, Prior Written Notice document, and Receipt of Parental Rights document, dated April 10, 2014;
 - d. Correspondences between the complainant and the CCPS' legal counsel, dated April 11, 15, 22, and 23, 2014; and
 - e. The CCPS' written response to the complaint, dated May 29, 2014.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with Autism under the IDEA, and receives special education instruction and related services. He attends the XXXXXXXXXXXX XXXXXXXXXX.¹ During the period of time addressed by this investigation, the student's mother was provided with written notice of the procedural safeguards (Docs. a-e, and).

FINDINGS OF FACTS:

1. On April 10, 2014, the IEP team convened to review the student's IEP and discuss postsecondary transition services. The documentation reflects that, on April 1, 2014, the

¹ XXXXXXXXXXXXXXXXXXXXXXXXXX is a public school within the CCPS which provides alternative educational opportunities for students with difficulties in the areas of behavior and emotional adjustment in traditional school settings (review of the CCPS' website at <http://www.carrollk12.org/schools/other/default.asp>).

CCPS informed the student's mother that the student, who is sixteen (16) years old, was invited to attend the IEP team meeting (Docs. b and c).

2. During the April 10, 2014 IEP team meeting, the school-based members of the IEP team requested that the student be permitted to participate in the meeting, but the student's mother decided that she did not want the student to attend (Docs. c-e and interviews with the CCPS staff, the complainant, and the student's mother).
3. The complainant and the student's mother left the April 10, 2014 IEP team meeting prior to its completion. At the meeting, they indicated that they disagreed with the school-based members of the team and did not wish to continue with the discussion. Following their departure, the school staff brought the student to the meeting to participate as a member of the team (Docs. c-e).
4. In its response to the complaint, the CCPS asserts its understanding that its responsibility for inviting the student to the IEP team meeting gives the school staff the right to decide whether the student should attend the IEP team meeting (Docs. c-e).
5. There is no documentation that the educational decision-making rights of the student's mother have been transferred to the student, or that the student's mother agreed to the student's participation in the IEP team meeting (Review of the student's educational record).

DISCUSSION/CONCLUSIONS:

The school system is required to invite a student with a disability under the IDEA to an IEP team meeting when the student's postsecondary goals and the services needed to assist the student in achieving those goals are to be discussed. If the student does not attend the IEP team meeting, the public agency must take other steps to ensure that the student's preferences and interests are considered (34 CFR §300.321).

Under the IDEA, only the parent has the authority to make educational decisions for the student, including whether the student should attend an IEP team meeting, unless the parent's rights have been transferred to the student under State law, or unless the parent's rights have been extinguished or limited (34 CFR §300.520 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46671).

In Maryland, educational decision-making rights may, under certain circumstances, transfer to students who have reached the age of eighteen (18), which is the age of majority² in Maryland. If educational decision-making rights are transferred to a student who has reached the age of majority, the public agency must provide notice to both the student and the parents of the transfer of rights (34 CFR §300.520 and Md. Code Ann., Educ., § 8-412.1 (2014)).

The MSDE finds that, while the CCPS had the obligation to ensure that the student was invited to the April 10, 2014 IEP team meeting, this did not confer upon the school staff the right to

² The age of majority means the age at which a person becomes a legal adult (Md. Ann. Code. Art. 1, § 24 (2014)).

decide whether the student would participate on the IEP team. Based on the Findings of Facts #1 - #5, the MSDE finds that, because there is no documentation that the educational decision-making rights of the student's mother has transferred to the student or has been extinguished or limited, the right to decide whether the student would attend the meeting remained with the student's mother. Further, based on the same Findings of Facts, the MSDE finds that there is no documentation that the CCPS obtained the agreement of the student's mother before arranging for the student to participate as a member of the team. Therefore, the MSDE finds that a violation occurred.

Notwithstanding the violation related to ensuring the educational decision-making rights of the student's mother, based on the Findings of Facts #2 and #3, the MSDE finds that the student's mother was provided an opportunity to participate in the April 10, 2014 IEP team meeting.

ADDITIONAL DISCUSSION:

During the course of this investigation, the student's mother expressed her belief to the MSDE that the summary of the April 10, 2014 IEP team meeting contains inaccurate or misleading information (Interview with the student's mother). The student's mother is reminded that she has the right to request that the CCPS amend the information contained in the student's educational record if she believes that it is inaccurate or misleading or violates the privacy or other rights of the student. Upon receipt of such a request, the CCPS must decide, within a reasonable period time of the receipt of the request, whether to amend the information. If the CCPS refuses to amend the information, it must inform the student's mother of the refusal and advise her of the right to a hearing to challenge the information (34 CFR §§300.618 and .619).

If the CCPS decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information and inform the student's mother in writing. If the CCPS decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it must inform the student's mother of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the CCPS in the educational record (34 CFR §300.620).

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation, by July 1, 2014, that it has provided the student's mother with written confirmation that she maintains educational decision-making authority for the student.

Systemic

The MSDE requires the CCPS to provide documentation, by the start of the 2014-2015 school year, of the steps it has taken to ensure that school system staff follows proper procedures to ensure that parents' educational decision-making authority includes the right to determine whether students will attend IEP team meetings.

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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 CCPS by Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both the complainant and the CCPS 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 student's mother 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

c: XXXXXXXXXXXX
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XXXXXXXXXXXX

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