



October 28, 2014

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Mrs. Bonnie Walston  
Director of Special Education  
Wicomico County Board of Education  
101 Long Avenue  
P.O. Box 1538  
Salisbury, Maryland 21802-1538

RE: XXXXX  
Reference: #15-013

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 September 8, 2014, the MSDE received correspondence from Mr. XXXXXXXXXX, hereafter, “the complainant,” filed on behalf of the above-referenced student, his son. In that correspondence, the complainant alleged that the Wicomico County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. This office investigated the following allegations:

1. The WCPS has not ensured that the student has been consistently provided with the accommodations and supplementary aids and services required by the Individualized Education Program (IEP) since the start of the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323, as indicated below.
  - a. The student has not been provided with information about the areas where improvement is needed when completing assignments;

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- b. The student has not been provided with assistance in organizing his work to be completed at home;
  - c. The student has not been provided with the supports required by the IEP when substitute teachers have been assigned to provide instruction; and
  - d. The student was not assigned a new one-to-one assistant, in accordance with a December 20, 2013 IEP team decision, until February 2014.
2. The WCPS did not provide proper notice of an IEP team meeting held on February 5, 2014, in accordance with 34 CFR §§300.322 and the COMAR 13A.05.01.07.
  3. The WCPS did not ensure that the IEP team considered the complainant's concerns raised at the February 5, 2014 IEP team meeting about the school system's grading policy, in accordance with 34 CFR §300.324.
  4. The WCPS has not ensured that proper procedures were followed to provide access to the student's educational record in response to a request made on February 5, 2014, in accordance with 34 CFR §300.613.

#### **INVESTIGATIVE PROCEDURES:**

1. On September 8, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
2. On September 9, 2014, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Mrs. Bonnie Walston, Director of Special Education, WCPS, of the allegations to be investigated and requested that her office review the alleged violations.
3. On September 15, 2014, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with Ms. Lynne Smoak, Supervisor of Special Education, WCPS, regarding the allegations in the correspondence received from the complainant.
4. On September 18 and 19, 2014 and October 8, 9, 13, and 14, 2014, the complainant provided documentation to be considered.
5. On October 7, 2014, the WCPS provided the MSDE with copies of documents from the student's educational record.
6. On October 9, 2014, Ms. Mandis conducted a telephone interview with the complainant about the allegations.

7. On October 17, 2014, the MSDE requested additional information and documents from both the complainant and the school system staff.
8. On October 22 and 24, 2014, the MSDE received additional documentation from the WCPS.
9. On October 23, 2014, the MSDE requested additional documents from the school system staff.
10. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. Individualized Education Program (IEP), dated February 16, 2013;
  - b. IEP, dated September 23, 2013;
  - c. The student's teachers' schedules;
  - d. The student's 2013-2014 report card;
  - e. The substitute teacher folders including modified assignments, summaries of each student's IEP, directions for modifications for each student with an IEP, and the teacher schedules;
  - f. Written notice of the December 5, 2013 IEP team meeting;
  - g. Written notice of the December 20, 2013 IEP team meeting;
  - h. Parent consents for assessments to be conducted;
  - i. Written notice of the February 5, 2014 IEP team meeting;
  - j. Contact log and electronic mail (e-mail) messages maintained by the case manager;
  - k. School calendar for December 2013 and January 2014 reflecting school closings due to weather and holidays;
  - l. Written summary of the February 5, 2014 IEP team meeting;
  - m. Written summary of a conference held on February 18, 2014 between the student's parents and the school staff;
  - n. Correspondence from the school staff to the complainant forwarding an amended report card for the 2013-2014 school year, dated March 20, 2014, and amended report card;
  - o. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 8, 2014;
  - p. Written response to the complaint from the WCPS, dated September 29, 2014;
  - q. Correspondence between the WCPS and the complainant, dated September 30, 2014 and October 1 and 8, 2014;
  - r. IEP, dated October 1, 2014, and written summary of the IEP team meeting;
  - s. Correspondence from the WCPS to the complainant, dated October 9, 2014;
  - t. Written complaint that the complainant filed with the United States Department of Education, Office for Civil Rights (OCR), received by the MSDE on October 14, 2014;

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- u. The WCPS Teacher Handbook for the 2012-2013 and 2014-2015 school years; and
- v. Samples of the student's "pack up list" and "homework agenda."

### **BACKGROUND:**

The student is eleven (11) years old, is identified as a student with a Speech/Language Impairment under the IDEA, and has an IEP that requires the provision of special education and related services. He attends XXXXXXXXXX Elementary School (Docs. d and r).

During the time period covered by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a, b, f, g, i, and r).

### **FINDINGS OF FACT:**

**ALLEGATION #1:                    PROVISION OF ACCOMMODATIONS AND  
SUPPLEMENTARY AIDS AND SERVICES  
SINCE THE START OF THE 2013-2014  
SCHOOL YEAR**

### **FINDINGS OF FACTS:**

#### **Assistance with Organizing Work Assignments**

1. The IEP and documentation of the September 23, 2013, February 5, 2014, and October 1, 2014 IEP team meetings reflect the IEP team's decision that the student requires assistance organizing his work at the beginning of the school day and organizing his homework assignments the end of the school day (Docs. b, f, g, i, l, and r).
2. There is documentation that a special education teacher meets with the student at the beginning and at the end of the school day in order to assist him with organizing his work. The student carries an "interactive notebook" home each day that contains information about the assignments to be completed in each subject, which he reviews with the special education teacher (Docs. c and v).
3. On October 8, 2014, the complainant expressed concern to the WCPS staff about why the student was provided with homework that was not within his skill level (Doc. o).
4. On October 9, 2014, the WCPS staff responded to the complainant that the student must have brought a worksheet home that was distributed to students in another class, but that was not intended for him to complete. In that response, the WCPS staff noted that the "interactive notebook" that was sent home with the student that day did not reflect that he was to complete an assignment related to the material contained on the worksheet (Doc. s).

### **Feedback on Areas of Needed Improvement**

5. There is no documentation that the IEP team has decided that the student requires the provision of feedback on the areas where improvement is needed after the completion of assignments (Docs. b, f, g, i, l, and r).

### **Assignment of a New One-to-One Assistant**

6. The IEP does not reflect that the student requires the assistance of a staff member who works exclusively with him on a one-to-one basis. It does reflect that an Instructional Assistant is assigned to the classroom to assist with the implementation of the IEP (Docs. b, f, g, i, l, and r).
7. There is documentation that at a February 18, 2014 meeting between the student's parents and the school staff, the parents expressed concern that the individual assigned as the Instructional Assistant is "not assertive enough" with the student. However, there is no documentation that the school system staff agreed to have another staff member assigned to the class to serve as the Instructional Assistant or that the IEP team decided that the student required a change in staffing (Doc. m).

### **IEP Implementation by Substitute Teachers**

8. There is documentation that substitute teachers have been provided with "IEP snapshots," or summaries of each student's IEP, as well as lesson plans that include direction for the modification of instruction for each student (Doc. e).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that special education services, accommodations, and supplementary aids and services, are provided in accordance with each student's IEP (34 CFR §300.101). In order to do so, the public agency must make sure that the IEP includes a clear statement of the special education and related services that are required and that each teacher and provider is informed of the IEP requirements and their responsibility for implementing the IEP (34 CFR §§300.320 and .323).

### **Assistance with Organizing Work Assignments**

In this case, the complainant alleges that, in December 2013, the IEP team determined that the student requires assistance with organizing his work to be completed at home, but that this support has not been provided (Doc. o).

Based on the Findings of Facts #1 - #4, the MSDE finds that there is documentation that the student is provided with assistance in organizing his work at the start of the day and with organizing the homework to be completed at the end of the day. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **Feedback on Areas of Needed Improvement**

The complainant asserts that there was discussion that the student's teachers would provide the student with feedback on the areas where improvement is needed following the completion of each assignment. The complainant alleges that the teachers began providing the feedback, but that this support is no longer being provided (Doc. o).

Based on the Finding of Fact #5, the MSDE finds that there is no documentation that the IEP team has decided that the student requires this level of assistance. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation. However, the complainant is reminded that if he believes that this level of support is required or that the IEP is not written clearly with respect to the requirement to provide this support, he maintains the right to request an IEP team meeting to consider his concerns.

### **Assignment of a One-to-One Assistant**

The complainant further alleges that, although the IEP team decided that the student required the assignment of a different one-to-one assistant at the December 2013 team meeting, this was not implemented until February 2014 (Doc. o).

Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the student requires the support of staff to work with him on a one-to-one basis. Based on the Findings of Facts #6 and #7, the MSDE finds that, although there is an Instructional Assistant assigned to the student's class and the student's parents requested that a different staff member be assigned to serve in this role, there is no documentation that the school system agreed to a staffing change or that the IEP team decided that the student required a staffing change. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

### **IEP Implementation by Substitute Teachers**

In addition, the complainant alleges that the student has not been provided with supports in the classroom when substitute teachers have been assigned to the student's classroom and are not made aware of the requirements of the IEP (Doc. o).

Based on the Finding of Fact #8, the MSDE finds that there is documentation that substitute teachers have been informed of the requirements of the student's IEP, and with direction on how to implement the IEP. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #2: PROVISION OF WRITTEN NOTICE OF THE  
FEBRUARY 5, 2014 IEP TEAM MEETING**

**FINDINGS OF FACTS:**

9. On January 27, 2014, the complainant and the school staff scheduled an IEP team meeting for February 5, 2014 at 10 a.m. However, the written invitation was sent home with the student the following day, giving the complainant only nine (9) days' written notice of the meeting (Docs. i - k).
10. The documentation of the February 5, 2014 IEP team meeting reflects that both of the student's parents participated in the February 5, 2014 IEP team meeting (Doc. l).
11. The written summary of a February 18, 2014 conference between the student's parents and the school staff documents a discussion about the complainant's concern that he had to wait for thirty (30) minutes for the February 5, 2014 IEP team meeting to begin. The discussion reflects that the delay in the start of the meeting was due to the school principal not being available at the start of the meeting and the complainant not wanting to proceed without the principal, who is the IEP team chairperson (Doc. m).
12. The documentation of the February 5, 2014 IEP team meeting reflects that the assistant principal was present at the meeting as a representative of the public agency, but that the principal also participated as another representative of the public agency once he arrived and the meeting began (Doc. l).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that parents are provided with the opportunity to participate in each IEP team meeting by notifying them of the meeting early enough to ensure that they can attend and scheduling the meeting at a mutually agreed on time and place. The notice that is provided to parents must indicate the purpose, time, and location of the meeting, as well as who will be in attendance (34 CFR §300.322).

The IDEA does not specify how far in advance of the IEP team meeting the written notice must be provided to the parents (Analysis and Comments to the IDEA Regulations, Federal Register, Vol. 71, No. 156, p. 46678, August 14, 2006). However, in Maryland, written notice of the IEP team meeting must be provided to parents at least ten (10) days in advance of the meeting, unless an expedited meeting is being held (COMAR 13A.05.01.07).

In addition to the parent, an IEP team must include not less than one (1) regular education teacher of the student, not less than one (1) special education teacher or provider of the student, an individual who can interpret the instructional implications of evaluation results, and a representative of the public agency. While public agencies assign staff members to serve as IEP team chairpersons, there is no requirement that a member of the team serve as the IEP team chairperson (34 CFR §300.321).

In this case, the complainant asserts that he was given written notice of the meeting only nine (9) days before the meeting. The complainant also asserts that, in order for the individual designated as the IEP team chairperson to participate in the February 5, 2014 IEP team meeting, the meeting time had to be delayed for thirty (30) minutes. Therefore, the complainant alleges that he was not provided with proper written notice of the time of the IEP team meeting (Doc. o and interview with the complainant).

Based on the Findings of Facts #9, #11, and #12, the MSDE finds that, while the complainant chose to wait for thirty (30) minutes so that the IEP team chairperson could participate in the meeting, this individual was not required to participate in the meeting since there was another representative of the public agency present. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #9, the MSDE finds that the complainant was provided with written notice of the meeting nine (9) days before the meeting instead of ten (10) days before the meeting, and that a violation occurred. However, based on the Finding of Fact #10, the MSDE finds that the violation did not impact the complainant's ability to participate in the meeting, which was scheduled on a mutually convenient date. Therefore, no corrective action is required.

### **ALLEGATION #3: CONSIDERATION OF THE COMPLAINANT'S CONCERNS AT THE FEBRUARY 5, 2014 IEP TEAM MEETING**

#### **FINDINGS OF FACTS:**

13. The written summary of the February 5, 2014 IEP team meeting states that the student's parents expressed concerns about the grading system that was used to determine the grades that were earned by the student. However, there is no documentation that the IEP team addressed these concerns (Doc. l).
  
14. The written summary of the February 18, 2014 conference between the parents and the school staff reflects that the complainant reiterated the concern about the grading system and its impact on the information that the IEP team had about the student's academic performance.<sup>1</sup> The WCPS staff assured the complainant that the student's grades would be reviewed and re-issued if found to have been inaccurately calculated as a result of the grading system (Doc. m).

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<sup>1</sup>The concern surrounded a WCPS policy that was intended to address an issue raised by other parents about the accuracy of grades given to students in reading who are not performing at grade level. However, the school system reports that the policy is no longer in effect because of the impact on the grading of students with disabilities who perform below grade level. The complainant has addressed this concern directly to the United States Department of Education, Office for Civil Rights (OCR) (Docs. n, q, t, u, and interviews with the school system staff).



15. On March 20, 2014, the student was issued a new report card that was revised to remove comments about his grade level performance in reading and to change his reading grade from a "C" to an "A" (Docs. d and n).
16. On October 1, 2014, the IEP team reconvened and considered information from an evaluator who conducted a private psychological assessment. Based on this information, the team decided that additional data is needed in order to ensure that the student's present levels of performance are properly identified, and the complainant agreed to provide consent for assessments to be conducted (Docs. h and r).

### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

In this case, the complainant alleges that he raised concerns about the accuracy of the student's grades, which were used as a source of data to determine present levels of performance at the February 5, 2014 IEP team meeting, but that the IEP team did not consider his concerns (Doc. o).

Based on the Findings of Facts #13 - #15, the MSDE finds that, while the school system provided the complainant with assurances about the accuracy of the student's grades, it did not ensure that the IEP team considered his concern when determining the student's present levels of performance at the February 5, 2014 IEP team meeting. Therefore, this office finds that a violation occurred with respect to the allegation.

However, based on the Finding of Fact #16, the MSDE finds that the IEP team subsequently considered the complainant's concerns about the student's present levels of performance and is obtaining additional data in order to ensure that those concerns are addressed. Therefore, notwithstanding the violation, this office finds that the school system has remediated the violation, and that no further corrective action is required.

### **ALLEGATION #4**

### **PROVISION OF ACCESS TO THE STUDENT'S EDUCATIONAL RECORD**

### **FINDINGS OF FACTS:**

17. There is no documentation that the complainant requested access to the student's educational record at the February 5, 2014 IEP team meeting, and the school staff deny having received such a request at the meeting (Docs. l, p, and interviews with the school staff).

18. On September 30, 2014, the complainant requested documents from the WCPS staff (Doc. q).
19. On September 30, 2014, the WCPS responded to the complainant's request, indicating that the student's educational records would be made available for review, and that if the complainant was willing to pay a fee, they would be copied for him, but that it would take about two (2) to five (5) days to do so. In the correspondence, the school system staff requested that the complainant inform them of whether he wished to review the documents or wanted to have them copied (Doc. q).
20. On October 1, 2014, the complainant responded to the WCPS staff that he wished to have copies of all of the student's mid-term reports and report cards from kindergarten through the fifth (5th) grade, and that he was willing to pay the fee for the copies (Doc. q).
21. On October 9, 2014, the WCPS staff provided the complainant with copies of documents he had requested from the student's education record (Doc. s).

#### **DISCUSSION/CONCLUSIONS:**

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are “collected, maintained, or used by the agency,” consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §300.613). The public agency must comply with a request for access to the educational record without unnecessary delay, and before any meeting regarding an IEP, or any due process hearing or resolution session. However, in no case should the response be provided more than 45 days after the request has been made (34 CFR §300.613).

This right includes the right to request copies of records if the failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records. The right also includes the right to a response from the public agency to reasonable requests for explanations and interpretations of the records (34 CFR §300.613).

Based on the Finding of Fact #17, the MSDE finds that there is no documentation that the complainant requested access to documents from the student's educational record at the

February 5, 2014 IEP team meeting. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #18 - #21, the MSDE finds that there is documentation that the complainant made a request for access to the record on September 30, 2014 and that the school system staff responded to this request in a timely manner. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

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Please be advised that both the complainant and the WCPS 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 action consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective action 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 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/am

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