



October 29, 2014

XXX
XXX
XXX

XXX
XXX
XXX

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

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

RE: XXXXX
Reference: #15-014

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 September 9, 2014, the MSDE received a complaint from Ms. XXXXXXXX, the student's mother, and Mr. XXXXXXXX, 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 following allegations:

1. The MCPS did not ensure that the evaluation completed on August 27, 2014 was sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified, in accordance with 34 CFR §300.304.

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 2

2. The MCPS has not followed proper procedures in response to a request for an Independent Educational Evaluation (IEE) made on August 21, 2014, in accordance with 34 CFR §300.502.
3. The MCPS did not ensure that the statement of the student's present levels of academic and functional performance on the Individualized Education Program (IEP), developed on August 27, 2014, contains a description of how the disability affects the student's involvement and progress in the general curriculum, in accordance with 34 CFR §300.320.
4. The MCPS did not ensure that proper procedures were followed when the IEP team determined the student's educational placement on August 21 and 27, 2014, in accordance with 34 CFR §§300.114 - .116, .324, and .503 and COMAR 13A.05.01.07, .10, and .12. The complainants specifically asserted the following:
 - a. The parent was not provided with copies of documents considered by the IEP team prior to the meeting;
 - b. The IEP team did not consider the concerns of the parent for enhancing the education of the student;
 - c. The parent was not provided with proper written notice of the IEP team's decisions; and
 - d. The placement decision was not based on the IEP.

INVESTIGATIVE PROCEDURES:

1. On September 10, 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.
2. On September 10, 2014, the MSDE also sent correspondence to the complainants 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.
3. On September 12, 2014 and October 23, 2014, the complainants provided the MSDE with documentation to be considered during the investigation.

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 3

4. On September 18, 2014, Ms. Sandi Marx, Complaint Investigation Consultant, MSDE, discussed the allegations with Ms. Ashley Vancleef, Supervisor, Equity Assurance and Compliance Unit, MCPS, and requested documents from the student's educational record.
5. On October 3, 2014, the MCPS provided documents to the MSDE for consideration in conducting the investigation.
6. On October 16, 2014, the MCPS provided the MSDE with copies of audiotapes of IEP team meetings for consideration in conducting the investigation and a written response to the complaint.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Letter of Findings issued on July 18, 2014 as a result of an investigation of State complaint #14-097 regarding the student;
 - b. Five Day Document Verification, dated August 7, 2014;
 - c. IEP and written summary of the August 21 and 27, 2014 IEP team meeting;
 - d. Correspondence from the complainants containing an allegation of a violation of the IDEA, received by the MSDE on September 9, 2014; and
 - e. Written response to the complaint from the MCPS, received on October 16, 2014.

BACKGROUND:

The student is eleven (11) years old, and is identified as a student with an Other Health Impairment (OHI) under the IDEA. Since the start of the 2012-2013 school year, the student has been parentally placed at the XXXXXXXXXXXX School, a private school in Montgomery County, Maryland. Prior to that time, the student attended the XXXXXXXXXXXX Elementary School and received special education and related services through an IEP (Docs. a, c, and d).

During the period of time addressed by this investigation, the student's mother was provided with written notice of the procedural safeguards (Doc. c).

On July 18, 2014, the MSDE issued a Letter of Findings reporting the results of an investigation of a previous State complaint filed on behalf of the student (#14-097). Through that investigation, this office found that, on August 13, 2013, the IEP team documented that it did not

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 4

have enough information about the student's performance in the area of written language to complete the review and revision of the IEP. The IEP team also decided that it did not have sufficient data about the student's current health needs.

In that investigation, the MSDE also found that the IEP team had completed the review and revision of the IEP with the data it had available at that time, but that by July 18, 2014, the school system still had taken no steps to ensure that the additional data determined necessary by the IEP team had been obtained and that the IEP had been reviewed based on that data. Therefore, this office concluded that proper procedures had not been taken to ensure that all of the student's needs were identified in order to ensure that the IEP remained appropriate (Doc. a).

As a result of the investigation of State complaint #14-097, the MSDE required the MCPS to provide documentation by October 1, 2014 that the IEP team reviewed and revised the IEP, as appropriate, based on the additional data regarding the student's written language and health needs (Doc. a).

FINDINGS OF FACTS:

1. On August 21 and 27, 2014, the IEP team met and reviewed and revised the IEP, which states that the student is identified as a student with an Other Health Impairment (OHI) under the IDEA. While the IEP indicates the student's areas of performance that are affected by the disability, and documentation of the meeting reflects that medical records were considered when determining the student's present levels of performance, there is no indication of the student's chronic health problem that serves as the basis for the IEP team's decision to identify the student with an OHI (Docs. c and e).
2. The IEP team documented its consideration of medical reports and the information from March 2014 from the student's private school about his levels of academic performance and fine and gross motor performance. The team also considered the results of a July 21, 2014 classroom observation of the student's oral language performance, as well as information from a private speech therapist's report and from the student's private school about his levels of performance in the area of oral language. The IEP team identified continued needs in the areas of math, reading, writing, and fine and gross motor skills, but decided that the student does not demonstrate needs in the area of oral language. The team developed goals for the student to improve in the areas of need that were identified and determined the special education and related services needed to assist him in achieving the goals (Doc. c and review of the audio recordings of IEP team meetings).

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 5

3. The IEP team considered the family's concern that there were no needs identified in the area of speech when the school staff from the student's private school were recommending the continuation of speech/language services. The MCPS staff reported that the basis for the decision was that the student speaks with "100% intelligibility," that his receptive and expressive language scores were "just below average," and that the student achieved the speech goals established by the private school. The speech/language therapist explained that the private school's recommendation was based on the student's standardized scores being in the below average range, and that needs in this area have to be based upon a demonstrated deficit in the functional use of language. The speech/language therapist reported that additional information is needed to determine whether the student has a memory deficit or a language deficit (Doc. c and review of the audio recordings of IEP team meetings).
4. The IEP team also considered the family's concerns about the decision made to reduce the amount of physical therapy to be provided to the student. The student's mother asked about information in the medical reports about the student's strength and balance. The school system staff explained that the student's needs were being determined from the perspective of his functioning in the school environment and not from a medical perspective. Thus, the team was basing its decisions on information from the student's private school about his functioning (Doc. c and review of the audio recordings of IEP team meetings).
5. There is documentation that, on August 27, 2014, the student's mother provided written consent for assessments to be conducted in the areas of reading, math, written language, speech/language, fine motor and gross motor skills (Docs. c and e).
6. The IEP team documented that at the August 27, 2014 IEP team meeting, the family requested an Independent Educational Evaluation (IEE). There is no documentation that a response was provided to this request (Doc. c).
8. The documentation reflects that the IEP team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a combination of general and separate special education classrooms at the XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX. The IEP team documented that it considered placement in the school the student would attend if not disabled, but rejected that option because the student "does not have the stamina to maintain the physical pace of a larger classroom setting" and because the XXXXXXXXXXXXXXXXXXXXXXXX is the closest school to the student's home with the supports required for the student to access the general

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 6

curriculum. The student's mother requested public funding for the private school in which he is placed by his parents. The IEP team considered the family's concerns that the student is making good progress at the private school and that it would be harmful to change his placement at this time, but rejected the request, finding that the IEP can be implemented in a less restrictive public school with the provision of supplementary aids and services (Doc. c and review of the audio recordings of IEP team meetings).

8. The IEP team documented that the parents expressed concern that the educational placement decision was being made before obtaining the additional data that the team decided was needed in order to complete the IEP review. The team also documented its discussion that the IEP is a "fluid document" and that the student's needs can be reconsidered when additional data is obtained (Doc. c and review of the audio recordings of IEP team meetings).
9. There is documentation that the school system staff hand delivered a proposed IEP to the student's parents at their home on August 7, 2014. However, there is no documentation of the provision of reports containing data used by the IEP team to determine the student's present levels of performance, which the school system staff had obtained from the complainants. These data include progress reports from XXXXXXXXXXXXXXXX XXXX, a report of the results of a neuropsychology evaluation and a report from the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX a physical therapy report, and an occupational therapy discharge summary. While the IEP team documented that the complainants expressed concern about their ability to fully participate without having received copies of these documents prior to the meeting, there is no documentation that the school staff offered to reconvene the meeting in order to give them time to review the documents before they were discussed by the team (Docs. b and c, and review of the audio recordings of IEP team meetings).
10. There is documentation that written notice of the basis for the IEP team's placement decision was developed on September 4, 2014. The written notice includes the decision made, the basis for the decision, including the data used as a basis for the decision. The written notice indicates that the complainants requested a separate written statement from each member of the team regarding the basis for each member's decision, but that the school system denied this request (Doc. b).

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 7

LEGAL REQUIREMENTS:

Evaluation and IEP Development

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).

If the IEP team determines that a reevaluation is needed to ensure that all of the student's needs have been identified and addressed, the IEP team must review the existing data, and on the basis of that review and input from the parents, identify what additional data, if any, is needed to determine the student's eligibility and educational needs. If the IEP team determines that additional data is required, the public agency must ensure that results of assessment procedures are used by the IEP team in reviewing and as appropriate, revising the IEP within ninety (90) days (34 CFR §300.305 and COMAR 13A.05.01.06).

The public agency must ensure that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. Therefore, a variety of assessment tools and strategies must be used to gather sufficient relevant functional, cognitive, developmental, behavioral, academic, and physical information, and information provided by the parent (34 CFR §300.304).

In developing each student's IEP, the public agency must ensure that the parent is provided with the opportunity to participate as a member of the team. In order to do so, the public agency must provide the parent with a copy of each document that will be considered by the IEP team at least five (5) business days before the IEP team meeting (COMAR 13A.05.01.07).

In September 2012, the MSDE issued guidance that explains that this includes reports that were previously provided to the school system staff by the parents. As also explained in this guidance, as long as all parties are in agreement, there is flexibility in the law to make the process more efficient and amenable to each student's needs. If a parent has not been provided with a copy of a document to be considered by the IEP team, the public agency should offer the parent the opportunity to continue the meeting, reconvene the meeting, or any other appropriate option agreeable to both parties (*Technical Assistance Bulletin #20: Child with a Disability - Individualized Education Program Meeting - Document Access*, September 18, 2012).

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 8

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 Least Restrictive Environment (LRE) in which the IEP can be implemented with the provision of supplementary aids and services. This means that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. Special classes, separate schooling, or other removal of children with disabilities from the regular education environment may only occur if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

IEP Content

The public agency must ensure that the IEP contains a statement of the student's present levels of academic and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum (34 CFR §300.320).

Prior Written Notice

The public agency must provide parents with written notice a reasonable time before it proposes or refuses to initiate or change the identification, evaluation, educational placement of the student, or the provision of a FAPE to the student. This notice must include a description of the action proposed or refused, an explanation for why it proposes or refuses to take the action, a description of each evaluation procedure, record, or report used as a basis for the decision, and a description of other options that were considered and the reasons why they were rejected (34 CFR §300.503).

DISCUSSION/CONCLUSIONS:

Allegation #1 Comprehensive Reevaluation

Based on the Findings of Facts #1 - #5, the MSDE finds that the reevaluation has not yet been completed. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2 Response to Request for an Independent Educational Evaluation (IEE)

Parents may request an IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Upon receipt of such a request, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 9

that its evaluation is appropriate, or ensure that the IEE is provided at public expense. This includes providing the parents with information about where an IEE may be obtained, and the agency criteria applicable for each IEE (34 CFR §300.502).

Based on the Findings of Facts #1 - #6, the MSDE finds that the IEP team is in the process of conducting a reevaluation, and thus, there is no reevaluation with which the parents can disagree. Therefore, while this office finds that the school system has not responded to the request for an IEE, it also finds that the right to an IEE at public expense does not apply at this time, and does not find that a violation occurred with respect to the allegation.

Allegation #3 IEP Content

In this case, the complainants allege that, while the IEP states that the student is identified with an OHI under the IDEA, it does not contain information about the student's complex medical issues and how they affect his involvement and progress in the general curriculum (Doc. d).

Based on the Finding of Fact #1, the MSDE finds that the IEP includes information about how the student's disability impacts his involvement and progress in the general curriculum. Based on that Finding of Fact, the MSDE finds that while the IEP does not identify the chronic or acute medical condition upon which the OHI is based,¹ there is no requirement that the IEP include such information. Therefore, the MSDE does not find that a violation has occurred with regard to the allegation.

The parties are reminded that if, upon completion of the reevaluation, the IEP team decides that the student continues to meet the criteria for identification as a student with an OHI under the IDEA, the school system is required to document the basis for that decision, including information about the student's medical condition.

Allegation #4 Educational Placement Decision

- A. In this case, the complainants allege that they were not provided with documents that were considered by the IEP team at the August 21 and 27, 2014 IEP team meeting prior to the meeting. They report that, as a result, they did not have sufficient time to review the data and were unable to fully participate in the meeting (Doc. d).

¹ In order to be identified as a student with a disability under the IDEA, a student must be found to have one (1) of a list of disabilities, and that as a result, special education and related services are needed in order for the student to access instruction. The list of disabilities includes OHI, which means having limited strength, vitality, or alertness to environmental stimuli that results in limited alertness with respect to the educational environment, which is due to a chronic or acute health problem that adversely affects the student's educational performance (34 CFR §300.8).

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 10

Based on the Findings of Facts #2, #3, #4, and #9, the MSDE finds that the complainants were not provided with copies of documents containing data that was considered by the IEP team prior to the IEP team meeting in which they were considered. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

- B. The complainants also allege that they raised concerns that it would be harmful to the student's social, physical, and educational progress to change his educational placement to a much larger school, but that the concerns were not considered by the team (Doc. d).

Based on the Findings of Facts #3, #4, #7, and #8, the MSDE finds that the IEP team documented its consideration of the complainants' concerns. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

- C. In addition, the complainants allege that the MCPS has not provided them with written notice of the basis for each team member's decision to accept some sources of data over other sources (Doc. d).

Based on the Findings of Facts #7 and #10, the MSDE finds that the IEP team documented the basis for the educational placement decision and was not required to provide separate written information from the individual members of the IEP team as requested. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

- D. The complainants further allege that, at the August 21 and 27, 2014 IEP team meeting, the team developed the education program and determined the educational placement despite deciding that additional data was needed to ensure that all of the student's needs are identified (Doc. d).

Based on the Findings of Facts #7, #8, and #10, the MSDE finds that the IEP team documented the basis for the educational placement decision and its willingness to reconsider its decisions after reviewing the additional data that it recommended. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

For clarification purposes, while this office found that a violation occurred in State complaint #14-097 with respect to the educational placement decision made on August 13, 2013, the basis for the violation was not that the IEP team made a placement decision with the data it had available to it at the time of the August 13, 2013 IEP team meeting. The basis for the violation was that, over the course of an entire school year, the IEP team did not reconvene to review the data it determined necessary in order to complete the IEP review that began on August 13, 2013.

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 11

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the MCPS to provide documentation by January 1, 2015 of the steps that were taken to ensure that the complainants were provided with copies of the documents that have been considered by the IEP team at least five (5) business days prior to the IEP team having reconvened to complete the reevaluation. The MSDE also requires the MCPS to provide documentation that, when the IEP team reconvened to complete the reevaluation, it considered any concerns of the complainants about decisions previously made based on the evaluation data.

The MSDE also requires the MCPS to provide documentation by January 1, 2015 of the steps taken to ensure compliance within the school system with the guidance issued in September 2012 regarding the provision of documents to parents prior to IEP team meetings.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties from Ms. Bonnie Preis of the Family Support Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the complainants 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.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The student's parents 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.

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 12

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:am

c : Joshua P. Starr
 Julie Hall
 Ashley Vancleef
 XXXXXXXX
 XXXXXXXX
 Dori Wilson
 Anita Mandis
 Bonnie Preis

XXX

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

October 29, 2014

Page 13

bc: Donna Riley
Marjorie Shulbank
Kenneth Hudock
Kimberly Marchman
File