



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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January 16, 2015

Paula A. Rosenstock, Esq.  
Michael J. Eig and Associates, P.C.  
Attorneys at Law  
5454 Wisconsin Avenue, Suite 760  
Chevy Chase, Maryland 20815-6938

Mrs. Chrisandra A. Richardson, Associate Superintendent  
Department of Special Education and Student Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 220  
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #15-028

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 November 18, 2014, the MSDE received a complaint from Paula A Rosenstock, Esq., hereafter, “the complainant,” on behalf the above-referenced student and her parents. In that correspondence, the complainant 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 ensured that the student has been provided with all of the accommodations required by the Individualized Education Program (IEP), since January 2014, in accordance with 34 CFR §§300.101 and .323.

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2. The MCPS has not ensured that, since May 14, 2014, the IEP addresses all of the student's needs resulting from a traumatic brain injury that she sustained, in accordance with 34 CFR §§300.304, .320, and .324.
3. The MCPS did not ensure that proper procedures were followed when responding to the parents' November 25, 2014 request for an amendment of the record, in accordance with 34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22.

### **INVESTIGATIVE PROCEDURES:**

1. On November 18, 2014, the MSDE received correspondence from the complainant alleging violations of the IDEA.
2. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
3. On November 19, 2014, the complainant sent additional information and documentation to the MSDE.
4. On November 20, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Gwendolyn J. Mason, Director of Special Education Services, MCPS; and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
5. On November 21, 2014, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE spoke with the complainant, by telephone, to clarify the allegations to be investigated.
6. On November 25, 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 MCPS of the allegations and requested that it review the alleged violations.
7. On December 3, 2014, the complainant provided the MSDE with correspondence from the MCPS, which included an additional allegation of a violation of the IDEA.
8. On December 18, 2014, the MSDE notified the parties, in writing, that an additional allegation had been identified for investigation by the MSDE and would be included in the ongoing State complaint investigation.

9. On January 9, 2015, Ms. Moyo and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to complete a review of the student's educational record and interviewed the following school staff:
- a. Dr. XXXXXXX, Principal;
  - b. Ms. XXXXXXXXXXX, Assistant Principal;
  - c. Ms. XXXXXXX, Special Education Resource Teacher;
  - d. Mr. XXXXXXX, Special Education Teacher/Case Manager;
  - e. Ms. XXXXXXXXXXX, School Nurse; and
  - f. Ms. XXXXXXXXXXX, School Guidance Counselor.

Ms. Ashley Vancleef, Supervisor, Equity Assurance and Compliance Unit, MCPS, and Ms. Patricia Grundy, Paralegal, Equity Assurance and Compliance Unit, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed. On the same date, the MCPS staff provided the MSDE with documentation from the student's educational record.

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 complainant to the MSDE, received on November 18, 2014;
  - b. IEP, dated March 22, 2013;
  - c. Acute Concussion Evaluation (ACE) care plan, dated February 4, 2014;
  - d. IEP, dated February 4, 2014;
  - e. Individual health care plan and post-concussion medical/academic accommodations document, initiated on February 6, 2014;
  - f. ACE Care Plan, dated February 18, 2014;
  - g. Teacher subject progress reports, dated March 24, 2014;
  - h. Reports of progress towards achieving the annual goals completed since March 27, 2014;
  - i. ACE Care Plan, dated April 1, 2014;
  - j. Correspondence from the private psychologist at the Children's National Health System, dated May 6, 2014;
  - k. IEP, dated May 14, 2014;
  - l. IEP, dated June 11, 2014;
  - m. IEP, dated October 8, 2014;
  - n. Correspondence from the MCPS staff to the complainant, dated November 20, 2014;
  - o. Correspondence from the parents to the MCPS staff, dated November 25, 2014;
  - p. Electronic mail (email) from the MCPS staff to the parents, dated December 2, 2014;
  - q. Correspondence between school staff and the complainant since January 2014;

- r. Correspondence between school staff members related to the student since January 2014;
- s. Correspondence between the student's parents and the school/MCPS staff since January 2014;
- t. Sample assignments, graphic organizers, health room entry logs, communication logs, flash pass, and other documents demonstrating the provision of IEP and MCPS Care Plan accommodations since January 2014;
- u. Reports of the student's grades since January 2014;
- v. XXXXXXXXXXXXXXXX Concussion training materials; and
- w. MCPS guidelines and procedures regarding concussions/head injuries.

**BACKGROUND:**

The student is seventeen (17) years old and attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with an Other Health Impairment (OHI) under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). She has an IEP that requires the provision of special education instruction and related services. During the period of time addressed by this investigation, the student's parents participated in the education decision-making process and were provided with notice of the procedural safeguards (Docs. a, b, k – m and u).

**ALLEGATIONS #1 AND #2: PROVISION OF ACCOMMODATIONS REQUIRED BY THE IEP SINCE JANUARY 2014 AND DEVELOPMENT OF THE IEP TO ADDRESS THE STUDENT'S NEEDS**

**Findings of Facts:**

1. The IEP in effect during the period of time covered by the investigation required that the student be provided with instructional and testing accommodations to address her difficulties with focusing and sustaining attention as a result of her ADHD. The IEP required that the student be provided with supports, including a human reader, text to speech software, copies of notes and outlines completed by the teacher, word processor, answering in test booklets, calculators, spelling and grammar devices, extended time, frequent breaks, reduced distractions, a pass to leave class for testing, and a space that the student can utilize to access technology. The IEP also required that the student be provided with the use of organizational aids, highlighters, checks for understanding, home set of textbooks, study guides, and a pass to allow her to go to small group (Docs. b and k - m).
2. On February 3, 2014, the student's parents sent email correspondence to school staff indicating that on January 28, 2014 the student was in a car accident which resulted in "minor traumatic brain injury" (concussion) which caused the student to have headaches that impacted her ability to concentrate, memorize, and retain new information. In the email, the student's parents also indicated that they would be unavailable to attend the IEP team meeting scheduled for the following day (Doc. s).
3. On February 4, 2014, an IEP team meeting was held to review the student's progress and program, but due to the student's accident, the team agreed to meet again at a later date to

review the IEP again with the student's parents in attendance. On the same date, an Acute Concussion Evaluation Care Plan (ACE Care Plan) was developed by the student's physician indicating that when the student returned to school she would require additional supports to assist her during the school day as a result of the injury she sustained. The ACE Care Plan indicated that the student required supports, including a shortened school day for the first week the student returned to school following the accident. The ACE Care Plan also indicated that the student would benefit from "rest breaks" during the school day, extended time to complete assignments, reduced homework load, excusals from test taking, and time to meet with school staff to determine how and missed work could be made up (Docs. c and d).

4. The progress reports completed by the student's teachers document that the student was following directions and requesting the provision of accommodations that she needed during her classes in order to complete her work. The teachers' notes indicate that the student was provided with "concussion accommodations" that exempted her from completing assignments and tests (Doc. g).
5. The ACE Care Plan was updated by the student's physician on February 18, 2014 and April 1, 2014, and these updates were provided to school staff by the student's parents. The updated ACE Care Plans provided additional recommendations for supports that the student would require while in school as a result of the concussion that she experienced. The care plans were shared with the school nurse who developed a "MCPS Individual Health Care Plan" (Care Plan) that was given to all of the student's teachers. The Care Plan described the signs and symptoms that the teachers should be monitoring for in order to determine whether the student was experiencing distress during her classes. The Care Plan also included the actions that school staff should take if the student experienced headaches or exhibited signs of cognitive, memory, or concentration difficulties. The Care Plan also included the academic accommodations that the student should be provided with as a result of her injury (Docs. c, e, f, i, v, and w).
6. There is documentation that on April 3, 2014, the student's parents requested that an IEP team meeting be convened to discuss coordinating the supports in the student's IEP and the supports necessary to address her "post-concussive" needs. There is also documentation that the school staff and the student's parents communicated frequently regarding the student's needs following her concussion and that the school staff indicated that the student's teachers were aware of the student's accommodations and providing them to her (Docs. r and s).
7. On May 6, 2014, the student's private psychologist sent additional correspondence to the school staff indicating that the student has also experienced stress and anxiety as a result of the amount of school time she missed and the number of assignments she still needed to complete. The student's psychologist provided information indicating that coursework, studying, and testing during recovery can worsen "post-concussive symptoms and prolong recovery," and that, while she is recovering, her "cognitive symptoms" interfere with her performance when she is required to engage in tasks for prolonged periods of time. The letter also indicated that the psychologist believed that the accommodations included in the

- student's ACE Care Plan should be included in her IEP. The letter further suggested that the student be provided with accommodations that would allow her to have unlimited time and breaks when completing assessments or to be exempt from the exams (Docs. j and s).
8. On May 14, 2014, the IEP team convened to review the accommodations and supports being provided to the student to assist with needs resulting from her concussion and to revise the IEP, if necessary. At the meeting, the team considered the recommendations made by the student's physician regarding the supports the student required to complete her school work following the concussion that the student experienced in January 2014. During the meeting, the team noted that the recommended supports were the same as those already included in the student's IEP. During the meeting, the school staff indicated that the accommodations recommended by the ACE Care Plan "do not go on the IEP", because the care plan "trumps" the IEP. The team determined that the student would be provided with additional breaks when completing long tasks, and would take no more than one test per day, but did not include this information in the IEP document (Doc. k).
  9. On August 7, 2014, the student's private psychologist prepared correspondence for school staff which included a recommendation that the school staff add additional accommodations to the IEP to address the student's post-concussive symptoms. The correspondence suggested that the IEP team include an accommodation requiring school staff to closely monitor the student for signs and symptoms of a concussion and provide her with scheduled breaks (Docs. q - s).
  10. On October 8, 2014, the IEP team convened to review the student's program and determine strategies to address the student's stress resulting from her concussion. At the meeting, the team discussed that the student continued to need assistance with coping with stress. The school staff suggested that the student could have a resource period added to her schedule to provide her with time during the school day to work with less stress. However, the student and her parents declined this option. The team revised the student IEP to reflect that the student experiences "post concussion levels of stress" that impact her performance during the student school day. The IEP team agreed that this information would be included in the student's present levels of performance. The team also revised the IEP to reflect that due to her stress the student should be given no more than two assessments in a day, provided with the use of a flash pass to the health room, take breaks during the school day, and get additional support from teachers during the lunch period (Doc. m).
  11. The student's IEP includes annual goals in the areas of self-advocacy, organization, and "coping" with stress. These annual IEP goals required that the student demonstrate the use of coping strategies when she becomes frustrated to reduce stress and develop her problem-solving skills. In order to demonstrate progress towards achieving the goal, the student was required to utilize supports, including graphic and visual organizers, self-advocacy, requests for clarification, highlighters, and outlines (Docs. b, d, and k - m).
  12. The reports of progress towards achieving the annual IEP goals since January 2014 document that the made progress toward achieving the annual goals (Doc. h).

13. There is documentation that the student was provided with class notes, checks for understanding, graphic organizers, modified assignments, access to a separate space to work, as needed, spelling and grammar assistance, a flash pass, prompts, rubrics, and extended time to complete assignments. There is documentation that the student took breaks in the nursing suite, as needed. There is also documentation that the student was provided with extended time, use of reading software, and preferential seating while taking assessments. There are emails indicating that the school staff communicated with the student's parents about scheduling the student's assessments to accommodate her need for breaks and fewer tests per day (Docs. g, h, and q - t).

### **Discussion/Conclusions:**

#### **Allegation #1: Provision of Accommodations since January 2014**

The public agency must ensure that special education and related services are available to each student in accordance with the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the IEP requires the provision of accommodations to address the student's needs arising out of her identified disability of an OHI related to her diagnosis with ADHD that have not been provided since January 2014 (Doc. a).

Based on the Findings of Facts #1, #4, #6, #11 - #13, the MSDE finds that there is documentation that the student has been provided with the supports required by her IEP since January 2014. Therefore, the MSDE finds that a violation did not occur with respect to this allegation.

#### **Allegation #2: Addressing the Needs Arising Out of the Traumatic Brain Injury**

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 making changes to the IEP after the annual IEP team meeting for a school year, the parent and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the current IEP. If changes are made in this manner, the public agency must ensure that the IEP team is informed of those changes (34 CFR §300.324).

Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. The United States Department of Education, Office of Special Education Programs (OSEP), has clarified that the public agency is not required to provide a copy of the IEP document incorporating changes made by agreement of the parties to the parent unless the parent specifically makes such a request (34 CFR §300.324 and Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46686).

In this case, the complainant alleges that the IEP team never considered recommendations from the student's private physician for the provision of accommodations, such as a shortened school day, reduced workload, and excusal from testing, in order to address her needs arising out of a diagnosis of a Traumatic Brain Injury (TBI) (Doc. a).

Based on the Findings of Facts #2, #3 and #8 - #10, the MSDE finds that there is documentation that the IEP team discussed the fact that these recommendations had been agreed to and that the accommodations were being provided through an Care Plan. Based on those Findings of Facts #6 and #7, the MSDE finds that the IEP team also discussed that there was no need to revise the IEP document to incorporate the accommodations because they were already documented as part of the student's program through the Care Plan document.

Based on the Findings of Facts #5, #12, and #13, the MSDE further finds that there is documentation that the school staff with responsibility for providing the accommodations had been informed of the requirements of the Care Plan. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

### **ALLEGATION #3: PROPER PROCEDURES FOR AMENDING THE EDUCATIONAL RECORD**

#### **Findings of Facts:**

14. On November 25, 2014, the student's parents sent correspondence to the school staff requesting that the school staff revise the student's third and fourth quarter grades from the 2013-2014 school year. The parents also indicated that they disagreed with the language that was included in the IEP regarding the "areas affected by disability" and requested that the school staff amend the language in that section to include information about impact of the student's "minor traumatic brain injury" (Doc. o).
15. On December 2, 2014, the MCPS staff sent electronic mail (email) correspondence to the complainant in response to the parents' request for amendment of the educational record. The MCPS indicated that some changes had already been made to the student's grades, as agreed. However, the MCPS staff indicated that the language in the IEP would not be amended because the school system staff felt that the language accurately reflected the decision made by the IEP team (Doc. v).
16. There is no documentation indicating that the MCPS informed the student's parents of the right to request a hearing after refusing to amend the record as requested by the parents (Doc. n and review of the educational record).

#### **Discussion/Conclusions:**

If a parent believes that information contained within the student's educational record is inaccurate or misleading, they may request that the school system amend the information, as provided for in both the IDEA and the Family Educational Rights and Privacy Act (FERPA). If the school system refuses to amend the record, it must advise the parent of that decision and provide the



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parent with the opportunity to request a hearing to challenge the content of the student's educational record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22).

Based upon the Findings of Facts #14 - #16, the MSDE finds that the MCPS did not ensure that proper procedures were followed in response to the parents request for a change to the record because they were not informed of their opportunity to request a hearing to challenge the content of the student's educational record. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINE:**

#### **Student-Specific**

The MSDE requires the MCPS to provide documentation by February 28, 2015 that it has followed proper procedures in response to the parents request for amendment to the student's educational record.

#### **School-Based**

The MSDE requires that MCPS provide documentation of the steps taken to determine if the violation related to responding to requests to amend the student's educational record is unique to this case or if it represents a pattern at XXXXXXXXXXXXXXXX High School. Specifically, the school system is required to conduct a review of student records, and any other relevant information to determine whether there is documentation that the parents are provided with all of the required information when responding to requests to amend a student's educational record. The MCPS must provide documentation of the results of these reviews to the MSDE.

If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report. If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, for its consideration during present or future monitoring of the MCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the student's parents and the MCPS from Dr. Kathy Aux, Education Program Specialist, MSDE. Dr. Aux may be contacted at (410) 767-0255.

Please be advised that both the complainant and the MCPS 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 complainants 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:km

c:       XXXXXXXXXXXXXXXXXXXX  
          Joshua P. Starr  
          Julie Hall  
          Ashley VanCleaf  
          XXXXXXXXXX  
          Dori Wilson  
          Anita Mandis  
          Koliwe Moyo  
          Kathy Aux