



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

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March 13, 2015

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

RE: XXXXX
Reference: 15-044

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 January 15, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) 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 CCPS has not ensured that the student has been consistently provided with the supplementary aids and services required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323 as follows:
 - a. Did not ensure that the student’s art and health teachers at XXXXXXXXXXXX XXXXX had access to the student’s IEP, were informed of their specific responsibilities related to implementing the student’s IEP, and the specific accommodations, modifications, and supports that must be provided for the student in accordance with his IEP, since the start of the 2014-2015 school year;

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- b. Did not “monitor the use of the student’s agenda book and/or progress report” since the start of the 2014-2015 school year;
 - c. Did not provide the student with assistance with organization since the start of the 2014-2015 school year; and
 - d. Did not allow extra time for movement between classes, from the start of the 2014-2015 school year until October 28, 2014.
2. The CCPS did not follow proper procedures when responding to the complainant’s request made following the IEP team meeting on April 8, 2014, to amend the student’s educational record, in accordance with 34 CFR §§300.618 - .621; and
 3. The CCPS did not provide prior written notice of the decisions made by the IEP team on August 22, 2014 and October 28, 2014, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.

INVESTIGATIVE PROCEDURES:

1. Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On, January 16, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mr. Russell Gray, Director of Special Education, CCPS.
3. On January 26, 2015, Ms. Austin conducted a telephone interview with the complainant and clarified the allegations to be investigated.
4. On January 28, 2015, 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 CCPS of the allegations and requested that the CCPS review the alleged violations.
5. On February 3 and 17, 2015, the complainant submitted documentation to the MSDE to be considered in the investigation.
6. On February 4 and 6, 2015, Ms. Austin discussed the allegations by telephone with Mr. Wayne Whalen, Coordinator of Compliance, CCPS.
7. On February 5, 13, 24 and 26, 2015, and March 9, 2015, Ms. Austin requested documentation from the CCPS.

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8. On February 10, 20, 25 and 27, 2015, and March 3, 9 and 10, 2015, the CCPS provided the MSDE with documentation for consideration in the investigation.
9. On February 18, 2015, Ms. Austin and Dr. Kathy Aux, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school system staff:
 - a. Ms. Christine Bechtel, Supervisor of Special Education, CCPS;
 - b. Ms. XXXXXXXXXXXX, Art Teacher, XXXXXXXXXXXXXXXXXXXX;
 - c. Mr. XXXXXXXXXXXX, Health Teacher, XXXXXXXXXXXXXXXXXXXX;
 - d. Mr. XXXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXXXXXX;
 - e. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXXXXXX; and
 - f. Ms. XXXXXXXX, Special Education Instructional Consultant, CCPS.

Mr. Whalen attended the site visit as a representative of the CCPS and to provide information on the CCPS policies and procedures, as needed.

10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, and IEP “snapshot,” dated December 17, 2013;
 - b. Prior Written Notice, dated April 10, 2014;
 - c. Notice of Invitation to IEP Meeting, dated August 11, 2014;
 - d. Prior Written Notice, dated August 27, 2014;
 - e. Receipt of parent’s rights document, signed September 29, 2014;
 - f. Notice of IEP Team Meeting, dated October 1, 2014;
 - g. IEP Progress Reports, dated October 15, 2014, and January 8, 2015;
 - h. IEP, dated October 28, 2014;
 - i. Sign-in sheet of attendees at IEP team meeting, dated October 28, 2014;
 - j. Prior Written Notice, dated October 31, 2014;
 - k. Notice of Documents Provided to Parent After an IEP Meeting, dated November 3, 2014;
 - l. Notice of Documents Provided to Parent After an IEP Meeting, dated November 7, 2014;
 - m. Amended IEP, dated November 12, 2014;
 - n. Log of the school staff receipt of IEP, dated November 13, 2014;
 - o. The student’s agenda book;
 - p. The student’s class schedule, 2014-2015 school year;
 - q. The student’s report card for the first and second marking periods of the 2014-2015 school year;
 - r. Electronic mail communications (emails) from the complainant to the school staff, dated April 25, 29 and 30, 2014, September 25, 2014, October 29, 2014, November 3, 6, 14 and 17, 2014, and December 2, 15, 17 and 21, 2014;

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- s. Emails from the school staff to the complainant, dated April 10, 29 and 30, 2014, October 29, 2014, November 3 and 6, 2014, and December 17 and 22, 2014;
- t. The student's progress monitoring data from September 24, 2014 to January 8, 2015;
- u. Contact Log of communications between the school staff and the complainant, Maryland Online IEP, August 26, 2014 to January 28, 2015;
- v. Progress reports of the student's performance on assignments, test, quizzes and homework, dated February 18, 2015;
- w. Chart of IEP supports that the student requires, undated; and
- x. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on January 15, 2015.

BACKGROUND:

The student is twelve (12) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Emotional Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services. During the period of time addressed by this investigation, the complainant was provided with notice of the procedural safeguards and participated in the education decision making process (Docs. a, e, h, i and m).

ALLEGATION #1A: ENSURING THAT TEACHERS HAD ACCESS TO THE STUDENT'S IEP, AND WERE INFORMED OF THEIR RESPONSIBILITIES FOR IMPLEMENTATION SINCE THE START OF THE 2014-2015 SCHOOL

Findings of Facts:

1. At the site visit conducted on February 18, 2015, the student's art and health teachers each had a binder that included the student's IEP "snapshot."¹ However, there is no documentation that the teachers had access to this information at the start of the 2014-2015 school year (Interview with the school staff).
2. After the start of the school year and when a student's IEP is revised, the school staff are provided the revised IEP "snapshot" and asked to sign a form indicating their receipt. On October 28, 2014 and November 12, 2014 the student's IEP was revised. The student's health teacher signed a document stating that he received the revised IEP, but the document does not indicate the date of his receipt. The art teacher has not signed for receipt of the IEP (Doc. n and interview with the school staff).

¹ The IEP "snapshot" contains information about the supports, accommodations, annual IEP goals, and the special education and related services to be provided to assist the student in achieving the goals (Doc. a).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP. In order to ensure the provision of the services, each public agency must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. This is done to ensure that each teacher and provider is informed of his or her specific responsibilities related to implementing the student's IEP and of the accommodations, modifications, and supports that must be provided to the student in accordance with the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student's art and health teachers have indicated to her that they were unaware of the student's IEP and the supports required for the student (Doc. x).

Based on the Findings of Facts #1 and #2, the MSDE finds that, while the teachers now have the IEP "snapshot," there is no documentation that they had this document at the start of the 2014-2015 school year. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation from the start of the 2014-2015 school year until February 18, 2015, when this office was able to verify that they had received this document.

**ALLEGATION #1B: MONITORING THE STUDENT'S USE OF THE AGENDA
BOOK SINCE THE START OF THE 2014-2015 SCHOOL
YEAR**

Findings of Facts:

3. The IEP requires that the school staff monitor the student's use of an agenda book in which he is to record the homework that he is assigned each day. The IEP states that this is to be done daily (Docs. a, h and m).
4. While there is documentation that the student's agenda book is being monitored, the documentation does not reflect that the monitoring is done on a daily basis, and for each class (Docs. o and v, and interview with the school staff).
5. The student's report card reflects incomplete homework in English and social studies classes (Doc. q).

Discussion/Conclusions:

As stated above, the public agency is required to ensure that each student is provided with the special education instruction, related services, and supports required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the school staff did not monitor the student's agenda book. As a result, the complainant alleges that the student regularly had incomplete classwork and homework assignments because they were never recorded in the agenda book (Doc. x and interview with the complainant).

Based on the Findings of Facts #3 - #5, the MSDE finds that the school staff did not consistently monitor the student's agenda book. Therefore, the MSDE finds that a violation occurred regarding this aspect of the allegation since the start of the 2014-2015 school year.

ALLEGATION #1C: PROVIDING ASSISTANCE TO THE STUDENT WITH ORGANIZATION SINCE THE START OF THE 2014-2015 SCHOOL YEAR

Findings of Facts:

6. The IEP includes a goal that requires the student to organize materials to complete tasks, maintain organization of his binders and folders, and complete and turn in classwork and homework. The IEP also requires that the school staff provide daily assistance to the student to help him with organization of his materials (Docs. a, h and m).
7. There is documentation that the school staff meet with the student at the start of each day and at the end of each day to help him organize his materials (Docs. g and u, and interview with the school staff).
8. There is documentation that on August 26 and 27, 2014 and September 2 and 12, 2014, the complainant expressed concern that the student was not completing classwork, not receiving assistance with organization, not understanding what work needed to be completed at home, and that he was not receiving prompting to complete work in school (Docs. r and u).
9. The IEP progress report, dated October 15, 2014, reflects that the student was not making sufficient progress to meet the IEP goal to improve his task completion and organization of materials. The report indicates that the student was having difficulty organizing his binder, that he "takes a great deal of time" to locate needed papers from his binder, and that he was not completing classwork assignments (Doc. g).
10. The IEP team met on October 28, 2014, and made revisions to the IEP based on the student's reported progress (Docs. h, i and j).
11. On December 2, 15, and 21, 2014, the complainant expressed concern that the student was not bringing materials to class, was not bringing home materials for homework, had missing assignments for all classes, including thirteen (13) assignments missing in health class, and that completed work was not being turned in. The responses by the school staff do not dispute the complainant's assertions (Docs. r and s).

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12. The IEP progress report, dated January 8, 2015, reflects that the student was making sufficient progress to meet the IEP goal to organize materials in order to complete tasks. The report documents the student's progress for the first quarter on this goal. The report indicates that the student completed 38% of homework assignments and 66% of classwork assignments, with overall progress toward the goal of 54% (Doc. g).
13. The student's grades improved from the first marking period to the second marking period for the 2014-2015 school year. The student's grade for the second marking period consisted of one "A", three "B's," two "C's," and one "D" (Doc. q).

Discussion/Conclusions:

As stated above, the public agency is required to ensure that each student is provided with the special education instruction, related services, and supports required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student has not been provided with assistance with organization (Doc. x). Based on the Findings of Facts #6, #8, #9 and #11, the MSDE finds that the CCPS has not provided the student with the assistance with organization required by the IEP. Therefore, the MSDE finds a violation occurred with respect to this aspect of the allegation since the start of the 2014-2015 school year. However, based on the Findings of Facts #12 and #13, the MSDE finds that the student is making progress in this area.

ALLEGATION #1D: PROVIDING EXTRA TIME FOR MOVEMENT BETWEEN CLASSES FROM THE START OF THE 2014-2015 SCHOOL YEAR UNTIL OCTOBER 28, 2014

Findings of Facts:

14. The IEP in effect from the start of the 2014-2015 school year, until October 28, 2014, required that the student be provided with extra time for movement between classes. The IEP specified that the student would be the last to leave academic classes to avoid crowds and unsupervised time with peers in the hallway, and that he would be permitted to leave all other classes and lunch early. The IEP was revised on October 28, 2014 to discontinue this support (Docs. a, h and m).
15. There is no documentation that the student was provided with the extra time for movement from the start of the 2014-2015 school year until October 28, 2014. The school staff report that the student was not provided this support based on a verbal agreement between the complainant and school staff that the student would begin the school year without this support (Interview with the school staff).

Discussion/Conclusions:

As stated above, the public agency is required to ensure that each student is provided with the special education instruction, related services, and supports required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #14 and #15, the MSDE finds that while the IEP required this support, the school staff discontinued the provision of allowing the student extra time for movement between classes at the start of the 2014-2015 school year. Therefore, this office finds a violation occurred with regard to this aspect of the allegation from the start of the 2014-2015 school until October 28, 2014.

**ALLEGATION #2: RESPONSE TO THE COMPLAINANT’S REQUEST TO
AMEND THE STUDENT’S EDUCATIONAL RECORD**

Findings of Facts:

16. On April 25, 2014, the complainant sent an email to the school staff expressing concern about the content of the Prior Written Notice document that was developed following the April 8, 2014 IEP team meeting. In her email, the complainant stated that a question that she posed was taken “out of context,” and she provided clarification of what was discussed (Doc. r).
17. On April 29, 2014, the complainant again sent an email to the school staff, stating, “I would appreciate a copy of the updated meeting notes with the information I provided” (Doc. r).
18. There is no documentation that the school staff responded to the complainant’s request. The school staff report that they did not understand that the complainant was requesting that they amend the Prior Written Notice document, even after receiving the State complaint regarding this issue (Interview with school staff).

Discussion/Conclusions:

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

Based on the Findings of Facts #16 and #17, the MSDE finds that the complainant’s correspondence constituted a request to amend the Prior Written Notice document. Based on the Finding of Fact #18, the MSDE further finds that the CCPS has not ensured that proper procedures

have been followed in response to the complainant's request, and that a violation occurred regarding this allegation.

Allegation #3: PROVISION OF PRIOR WRITTEN NOTICE OF THE IEP TEAM'S DECISIONS FROM THE IEP MEETINGS ON AUGUST 22, 2014 AND OCTOBER 28, 2014

Findings of Facts:

August 22, 2014 IEP Team Meeting

19. The IEP team convened on August 22, 2014. Following the meeting, the school staff generated a written summary of the meeting, which reflects that the complainant shared information with the team about the student's hospitalization during the spring of 2014. This included information that the student had been diagnosed with social anxiety, attention deficit hyperactive disorder combined type and depressive disorder, and that the student felt "unsafe at school." The written summary of the meeting also reflects that the complainant requested changes in the student's education program, including reduced homework, counseling services and breaks throughout the day when the student needed extra support. The written summary of the meeting does not indicate how the IEP team addressed the complainant's concerns and requests, and that states there were no changes made to the student's IEP (Docs. c and d).
20. On October 29, 2014 and November 3, 2014, the complainant informed school staff, via email, that she had not received the Prior Written Notice from the August 22, 2014 IEP team meeting. While the school staff sent an email to the complainant on November 6, 2014, indicating that the Prior Written Notice would be provided in response to her request, there is no documentation that the school staff have sent the written summary of the meeting to the complainant (Docs. r and s, and interview with the school staff).
21. The school system staff report that the complainant was not provided with this written summary because no changes to the IEP were proposed and the IEP was not revised. The school system staff further report that the CCPS only provides Prior Written Notice when revisions are made to the IEP (Interview with the school system staff).

October 28, 2014 IEP Team Meeting

22. The IEP team met to conduct the annual review of the student's IEP on October 28, 2014 and the IEP team made changes to the student's education program. The school staff documented the meeting in a Prior Written Notice, dated October 31, 2014, which was sent to the complainant on November 3, 2014 (Docs. h - k).

Discussion/Conclusions:

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a Free Appropriate Public Education (FAPE) to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

Based on the Findings of Facts #19 - #21, the MSDE finds that, while Prior Written Notice was provided to the complainant following the October 28, 2014 IEP team meeting, the CCPS has not provided the complainant with Prior Written Notice of the decisions made by the IEP team on August 22, 2014. Based on the Finding of Fact #21, this office finds that the CCPS has a practice of not providing parents with Prior Written Notice unless the IEP team makes changes to the IEP. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

ADDITIONAL VIOLATION:

Finding of Fact:

Content of Written Summaries of the IEP Team Meetings

23. The written summaries of both the October 31, 2014 and August 27, 2014 IEP team meetings contain a statement that any revisions made will be implemented “as soon as possible, but no later than thirty (30) school days from the date of this notice” (docs. d and j).

Discussion/Conclusions:

Each public agency must ensure that special education and related services are provided to a student as soon as possible following the development of the IEP, and that there is no delay in implementing a student’s IEP (34 CFR §§300.103 and 323).

Based on the Finding of Fact #23, the MSDE further finds that the CCPS has not ensured that IEP team decisions are implemented without delay because the school system allows for up to thirty (30) school days (which equates to approximately one and half months) for implementation to begin. Therefore, the MSDE finds that an additional violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the CCPS to provide documentation, by June 1, 2015, that the services are being provided to the student as required by the IEP. The MSDE also requires the CCPS to provide documentation, by June 1, 2015, of the following:

The IEP team has convened, reviewed the student's IEP, and determined the following, based on data:

- a. the student's current levels of academic and functional performance;
- b. the levels of academic and functional performance that were expected to be achieved by that time;
- c. the amount and nature of services needed to compensate the student for the violations identified in this Letter of Findings;
- d. a plan for how and when the services are to be provided within one year of the date of this Letter of Findings; and
- e. the amount of special education instruction that the student requires.

The CCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by CFR §300.503.

By June 1, 2015, the CCPS must also provide documentation of the following actions.

2. The CCPS has followed proper procedures to respond to the complainant's requests for amendment of the student's educational record.
3. The CCPS has provided the complainant with proper written notice of the decisions made at the IEP team meeting held on August 22, 2014, including the IEP team's response to the concerns and requests made by the complainant at the meeting.

School-Based

The MSDE requires the CCPS to provide documentation, by June 1, 2015, of the steps it has taken to determine if the violations identified in this Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX.

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Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violations do not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Systemic

The MSDE requires the CCPS to provide documentation, by the start of the 2015-2016 school year, of the steps it has taken, including appropriate staff training, to ensure compliance by all CCPS schools with the following IDEA and related State requirements:

1. That each student's IEP is implemented without delay, in accordance with 34 CFR §§300.101 and .323.
2. That Prior Written Notice is provided each time the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a FAPE to the student, without consideration for whether the IEP is revised, in accordance with 34 CFR §300.503.

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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the CCPS by Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Aux can be reached 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.

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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 complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (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

c: Stephen Guthrie
Wayne Whalen
XXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin