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Interim State Superintendent of Schools

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October 9, 2015

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

Mr. Philip Lynch
Acting Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #16-016

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 August 13, 2015, the MSDE received a complaint from Ms. XXXX XXXXX, Esq.¹ The complaint was submitted on behalf of the above-referenced student, and his mother, Ms. XXXXXXXX, hereafter the “complainant.” 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 student.

¹ On September 8, 2015, Ms. XXXXX notified the MSDE of her withdrawal from representation of Ms. XXXX. On the same date, Ms. XXXX notified the MSDE of the withdrawal, and indicated her desire for the complaint to continue with her as the identified complainant (Doc. n).

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The MSDE investigated the following allegations:

1. The MCPS has not ensured that proper procedures have been followed to provide the student with a Free Appropriate Public Education (FAPE) since his transfer to the MCPS on January 13, 2015, in accordance with 34 CFR §§300.101, .103, and .323.
2. The MCPS did not ensure that the complainant was provided with reports of the student's progress toward achieving the annual Individualized Educational Program (IEP) goals during the 2014-2015 school year, in accordance with 34 CFR §300.101 and .323.
3. The MCPS did not ensure that the complainant was provided with a copy of the procedural safeguards notice during the 2014-2015 school year, in accordance with 34 CFR §300.504.
4. The MCPS did not follow proper procedures when destroying the student's educational records following the receipt of the complainant's request to inspect and review the records, in accordance with 34 CFR §§300.624 and 99.10, the *Maryland Student Records System Manual*, and COMAR 13A.08.02.06.

INVESTIGATIVE PROCEDURES:

1. On August 14, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Mr. Philip Lynch, Acting Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
2. On August 24, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant's attorney to clarify the allegations to be investigated.
3. On August 26, 2015, the MSDE sent correspondence to the complainant and her attorney that 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.
4. On August 27, 2015, Ms. Austin conducted a review of the student's educational record at the MCPS Central Office. Ms. Ashley Vancleef, Supervisor, Resolution and Compliance Unit, MCPS, was present at the record review. On the same date, the MSDE received additional documentation from the complainant's attorney for consideration.
5. On August 27, 2015, and September 10, 11, 15, 17, 22 and 24, 2015, the MCPS provided documents to the MSDE for consideration.

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6. On September 8, 9, 16 and 28, 2015, and October 3, 2015, the MSDE communicated with the complainant through electronic email messages.

7. On September 10, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXX) and interviewed the following school system staff:

- a. Ms. XXXXXXXX, Special Education Teacher and Case Manager, XXXXXXXX XXXXXXXX;
- b. Ms. XXXXXXXXXXXX, Registrar, XXXXXXXXXXXXXXXXXX;
- c. Ms. Charlene Parilla, Special Education Supervisor, MCPS; and
- d. Mr. XXXXXXXXXXXX, Special Education Teacher and Case Manager, XXXXXXXXXXXXXXXX.

Ms. Vancleef and Ms. Lindsay Brecher, Staff Attorney, Resolution and Compliance Unit, MCPS, participated in the site visit as representatives of the MCPS and to provide information on the school system's policies and procedures, as needed.

8. On September 15 and 21, 2015, the MSDE requested additional documentation from the MCPS.

9. On October 6, 2015, the MSDE discussed the allegations with the complainant.

10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. The student's grades for the first semester of the 2014-2015 school year while attending XXXXXXXXXXXX, XXXXXXXX Public Schools;
- b. Individualized Educational Program (IEP) developed by the XXXXXXXXXXX Public Schools, dated May 13, 2014;
- c. The documentation of the decisions made during an IEP team meeting convened by the XXXXXXXX Public Schools on October 30, 2014, and draft IEP;
- d. The demographics form, and the student's record card, showing the date of the student's entry into the MCPS on January 14, 2015;
- e. The MCPS calendar for the 2014-2015 school year and the XXXXXXXXXXXXXXXX XXXX calendar for January 2015 and June 2015;
- f. The student's class schedule, dated January 21, 2015, and schedules of co-teachers and paraprofessionals for the spring of 2015;
- g. Electronic email (Email) message from the school staff to the school staff at the XXXXXXXX Public Schools, dated January 26, 2015;
- h. The school staff's request for the student's records from the XXXXXXXX Public Schools, dated March 3, 2015;

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- i. The documentation of the decisions made at the March 17, 2015 IEP team meeting, and continued eligibility documentation, dated May 19, 2015;
- j. Draft IEP, dated April 13, 2015, and approved IEP, dated April 13, 2015;
- k. Session roster listing the students who received audio recording of the Biology High School Assessment examination in May 2015;
- l. Correspondence from the complainant to the school system staff requesting records, dated June 9 and 15, 2015;
- m. Correspondence from the complainant's attorney submitted on behalf of the complainant, alleging violations of the IDEA, received by the MSDE on August 13, 2015;
- n. Email message from the complainant's attorney to the MSDE, dated September 8, 2015, and from the complainant to the MSDE, dated September 8, 2015;
- o. The speech/language therapy provider's logs for the 2014-2015 school year;
- p. Email messages between the complainant and the school staff, and between the school system staff, dated between January 13, 2015 and June 16, 2015;
- q. Copies of the student's math classwork; and
- r. *The Maryland Student Records System Manual.*

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. During the time period covered by the investigation, the student attended the XXXXXXXXXXXXXXXXXXXX (XXXXXX XXXXXXXXXXXX). However, there is no information that he has attended school since the start of the 2015-2016 school year (Docs. b and d, and interview with the school staff).

FINDINGS OF FACTS:

Development of a Maryland IEP for the Student

1. The student enrolled in XXXXXXXXXXXXXXXXXXXX on January 14, 2015, one (1) day after the complainant provided the school staff with proof of residence. On that date, students were attending school only for the purpose of taking exams. The student's first day of attendance at XXXXXXXXXXXXXXXXXXXX was January 21, 2015, the start of the second (2nd) semester of classes² at XXXXXXXXXXXXXXXXXXXX (Docs. d, e, m and p, and interview with the school staff).

² The student received final semester grades for his attendance during the first semester of the 2014-2015 school year at XXXXXXXXXXXX, XXXXXXX Public Schools, in the State of XXXXXXXX (Doc. a).

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2. At the time the complainant enrolled the student, the school staff had documentation from another state indicating that the student was a student with a disability (Docs. c, g and m, and interview with the school staff).
3. On January 26, 2015, the school staff sent an email message to the XXXXXXXX (XX) school staff. The email reflects that the school staff only had a draft IEP for the student (draft XX IEP). The school staff requested clarification with regard to several provisions in the draft XX IEP, including specificity about the amount of speech and language and social work services that was required, the amount and nature of any adult support that was required, and the educational placement that was required. The school staff report that they received no response to this inquiry from the XXXXXXXX school staff (Doc. g and interview with the school staff).
4. On March 3, 2015, the school staff requested the student's complete academic, health and confidential records from XXXXXXXX. The school staff report that, to date, the XXXXXXXX school staff have not responded to this request (Doc. h and interview with the school staff).
5. There is no documentation of other efforts by the school staff to obtain the student's educational records from his former school in XXXXXXXX (Interview with the school staff and review of the student's educational record).
6. On March 17, 2015, the IEP team convened a meeting.³ The IEP team reviewed and accepted the assessments provided by the complainant that had been conducted in XXXXXXXX as part of a reevaluation of the student that began in October 2014. There is documentation that, based on this information, the IEP team determined that no additional data was needed. The IEP team agreed to develop a Maryland IEP for the student based on the XXXXXXXX assessment data and reports of the student's progress since starting school at XXXXXXXXXXXXXXXX (Docs. i and p).
7. The school staff developed a draft IEP for the student, dated April 13, 2015, which was provided to the complainant on several occasions (Docs. j and p).
8. In April, May and June, 2015, the school staff made several attempts to arrange with the complainant a mutually convenient meeting date for the purpose of reviewing the proposed IEP. However, the IEP team has not reconvened to finalize a Maryland IEP for the student (Doc. p).

³ An earlier IEP team meeting was scheduled for February 18, 2015, but was rescheduled at the request of the complainant due to illness (Doc. p).

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Implementation of the Student's XXXXXXXX IEP

9. On February 16, 2015, the complainant provided the school staff with a finalized IEP that had been developed in XXXXXXXX, dated May 13, 2014 (the XX IEP) (Docs. b and p).
10. The XX IEP included seven (7) goals and required that the student be provided specialized instruction, in a combination of general education classes and one (1) separate special education class for academic resource, in order to assist the student in achieving the annual goals. In addition, the XX IEP required that he be provided with social work services and speech and language services on a weekly basis, and accommodations during state/district-wide assessments in the area of social studies (Doc. b).
11. The XX IEP also reflects that the student required numerous supplementary aids and supports including a quiet location to take assessments, the opportunity to express learning in alternative forms, access to a computer, an additional set of textbooks for home use for all core academic classes, extended time for tests, quizzes, homework and projects, and “[r]etake opportunity for needed repetition of skills” (Doc. b).
12. Adult support was required by the MI IEP for note taking, re-teaching, encouragement, and assistance with multi-step directions. The XX IEP reflects that the adult support was to be provided in order to facilitate the student’s reading comprehension of grade-level text, to provide “cues for both instructional and work times,” and to provide checks for understanding. The XX IEP also reflects that the student was “able to have test[s] read with que from adult support” (Doc. b).
13. There is documentation that the school staff unilaterally determined instruction, supports and services for the student that were different than what was required by the XX IEP.⁴ These included placement in a separate special education class for geometry, no provision of social work services, the provision of less speech and language services than was required, and not providing the full adult support to the student including during assessments (Doc. p).
14. Between January 2015 and June 2015, the complainant sent numerous electronic mail (email) messages to the school staff expressing her belief that the XX IEP was not being fully implemented. The complainant asserted that the school staff was not consistently providing the student with opportunities to retake tests and quizzes for which he received low and failing grades, the use of notes during tests and quizzes, alternative ways to demonstrate his learning, an extra set of textbooks for use at home, extended time, testing in a separate location, and a laptop for use at school. The complainant also expressed

⁴ The school staff acknowledged that the student was placed in a separate special education class for geometry, and that he was not provided social work services by a social worker (Interview with the school staff).

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concern that the student was not consistently being provided with the adult support required, or with specialized instruction in the placement required by the XX IEP (Doc. p).

15. There is documentation that the school staff and the complainant did not agree on the requirements of the XX IEP. However, the IEP team did not convene to clarify the XX IEP requirements (Doc. p).
16. The student did not return to the MCPS at the start of the 2015-2016 school year. The complainant has indicated that she will not be returning him to the MCPS (Doc. n and interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that each student with a disability is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .103).

If a student with an IEP in one state transfers to a public agency in another state, the new public agency, in consultation with the student's parent, must provide the student with a Free Appropriate Public Education (FAPE), including services comparable to those described in the student's IEP from the previous state, until the new public agency either conducts an evaluation, if determined to be necessary, and develops, adopts, and implements a new IEP, if appropriate (34 CFR §300.323).

"Comparable services" is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [emphasis added] (Analysis of Comments and Changes to IDEA, Federal Register, Vol. 71, No. 156, p. 46681, August 14, 2006).

In order to ensure the provision of appropriate services to a transferring student, the new public agency must take reasonable steps to promptly obtain the student's educational record, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled (34 CFR §300.323).

Student records are to be maintained in accordance with the *Maryland Student Records System Manual*. Student records provide information about a student's academic performance. Therefore, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education. Public agencies must collect and maintain certain information in the record for student with disabilities, including an IEP (COMAR 13A.08.02.06 and .09, and *Maryland Student Records System Manual*).

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An IEP team meeting may be conducted without a parent in attendance if the public agency is unable to convince the parent to attend (34 CFR §300.322 and COMAR 13A.05.01.07D).

In this case, the complainant alleges that the school staff did not fully implement the student's XX IEP following his transfer to XXXXXXXXXXXXXXXX. She asserts that the student was not provided with all of the accommodations and supports required by the XX IEP, including adult support, that he was not placed in general education classes with non-disabled student for all classes (except resource), and that he was not provided with the amount of speech and language services and social work that the XX IEP required (Doc. m).

Based on the Findings of Facts #1 - #5, the MSDE finds that the school staff did not make reasonable efforts to obtain the student's educational record, including the IEP, from his previous school in XXXXXXXX. Therefore, this office finds that a violation occurred.

Based on the Finding of Fact #9 - #15, the MSDE finds once the XX IEP was provided by the complainant on February 16, 2015, the school staff did not implement the student's XX IEP as written. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Further, based on the Findings of Facts #13 - #15, the MSDE finds that while the school staff and the complainant did not agree on the requirements of the XX IEP, the school staff unilaterally determined the comparable services to be provided without convening an IEP team meeting, as required. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2 Provision of Progress Reports

FINDINGS OF FACTS:

17. The XX IEP required an evaluation of the student's performance on each objective of the annual IEP goals each "grading period" or "marking period" (Doc. b).
18. The MCPS acknowledges that the school staff did not evaluate the student's progress towards mastery of the annual goals in the XX IEP. The MSDE appreciates the MCPS's cooperation with this aspect of the investigation (Interview with the school system staff).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .103).

Based on the Findings of Facts #17 and #18, the MSDE finds that a violation occurred.

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ALLEGATION #3

Provision of Procedural Safeguards

FINDING OF FACT:

19. There is no documentation that the complainant was provided with written notice of the procedural safeguards during the 2014-2015 school year (Interview with the school staff and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

A copy of the procedural safeguards must be given to the parents of a child with a disability one time a school year (34 CFR §300.504).

Based on the Finding of Fact #19, the MSDE finds that there is no documentation that the MCPS provided the complainant with a copy of the procedural safeguards during the 2014-2015 school year. Therefore, the MSDE finds a violation occurred.

Notwithstanding the violation, this office finds that the complainant exercised her right to access dispute resolution proceedings described in the procedural safeguards by filing the State complaint. Therefore, no student-specific corrective action is required.

ALLEGATION #4

Destruction of Educational Records After Request to Inspect and Review

FINDINGS OF FACTS:

20. The last day of classes for students at XXXXXXXXXXXXXXXX was June 5, 2015. The school staff report that teachers do not maintain student work from year to year, and that they typically dispose of any student work that has not been returned to the student after the last day of classes (Doc. e and interview with the school staff).
21. On June 11, 2015, the school staff received a letter from the complainant, via email, requesting copies of the student's educational records, including classwork and homework, and stating that she would contact the school staff for a time to "review and to pick up" the records. There is documentation that, on June 15, 2015, the complainant's legal counsel sent a letter to the school staff and to the MCPS Central Office staff noting the complainant's request for copies of the student's educational records and classwork (Docs. l and m, and review of the student's educational record).
22. On June 15, 2015, the school staff requested that the student's teachers provide copies of any graded work they still had in their possession (Doc. p).

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23. On June 16, 2015, one of the student's teachers documented that she had already returned all of the student's work from her class directly to the student. Another teacher documented that she no longer had any of the student's work. She explained that she had returned the student's MCPS semester exam to central office and that she had already disposed of all remaining student work (Doc. p).
24. There is documentation that some of the student's classwork was kept by one teacher following the complainant's request (Doc. q).

DISCUSSION/CONCLUSIONS:

Pursuant to the Family Educational Rights and Privacy Act (FERPA), a public agency shall not destroy any education records if there is an outstanding request to inspect and review the records. Education records means those records that are directly related to a student, and maintained by an educational agency or institution (34 CFR 300.3 and .10).

Based on the Findings of Facts #20 - #24, the MSDE finds that there is no documentation that the student's teachers destroyed the student's classwork after receiving the complainant's request for the student's records. Therefore, the MSDE does not find a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the MCPS, by December 1, 2015, to provide documentation of efforts made to contact the complainant and obtain information regarding the school system in which the student is receiving educational services. The MCPS must also provide documentation of efforts made to convene an IEP team meeting with the new school system in order to determine compensatory services for the violations identified in this Letter of Findings.

School-Based

The MSDE requires the MCPS to provide documentation, by December 1, 2015, of the steps taken to ensure that proper procedures are followed at XXXXXXXXXXXX HS when students with an IEP from another state transfer to the school. This includes taking the steps necessary to obtain the educational records of transferring students and ensuring that students are provided with services as written in the out-of-state IEP, or that comparable services are determined by the IEP team, until the out-of-state IEP is revised.

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 parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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 requirement as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties 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

c: Larry Bowers
Julie Hall
Ashley VanCleaf
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin