



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

September 1, 2010

Michael J. Eig, Esq.
5454 Wisconsin Avenue, Suite 760
Chevy Chase, Maryland 20815

Ms. Mary Tillar
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: #11-002

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.

ALLEGATION:

On July 16, 2010, MSDE received a complaint from Michael J. Eig, Esq., hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the allegation that the AACPS did not follow proper procedures when responding to the request of the student’s parents to amend his education record, in accordance with 34 CFR §§300.618-.621.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 19, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Tillar, Director of Special Education, AACPS.
3. On July 27, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Tillar of the allegation and requested that her office review the alleged violation.

4. On July 28, 2010, MSDE received documentation from the complainant for consideration in the investigation.
5. On August 3 and 17, 2010, Ms. Stump conducted telephone interviews with Ms. Ellen Meyer, Coordinator of Compliance, AACPS, to request information and documentation related to the allegations.
6. On August 19, 2010, MSDE received a copy of correspondence, dated August 18, 2010, from AACPS personnel to the student's parents.
7. On August 30, 2010, Ms. Stump conducted telephone interviews with the student's father and with Ms. Meyer to request information related to the allegations.
8. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Correspondence and attachments from the complainant to MSDE, received July 16 and 23, 2010; and
 - b. Correspondence from AACPS personnel to the student's parents, received August 19, 2010.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with autism under IDEA, and receives special education services. During the 2009-2010 school year, the student had the following educational placements:

- From the start of the 2009-2010 school year until April 2010, the student attended XXXXXXXXXXXXXXXX, a nonpublic separate special education school, where he was placed by AACPS;
- From April 2010 until June 2010, AACPS provided the student with home and hospital teaching instruction due to an emotional crisis; and
- In June 2010, the student began attending the XXXXXXXXXXXXXXXX, a private school where he was placed by his parents.

During the period of time addressed by this investigation, the student's parents participated in the education decision-making process, and were provided with written notice of IEP team decisions and notice of the procedural safeguards (Docs. a, b, and interviews with the student's father and with AACPS personnel).

FINDINGS OF FACT:

1. On June 17, 2010, the complainant, on behalf of the student's parents, sent correspondence to AACPS personnel requesting that "AACPS take whatever steps are necessary to ensure that any and all record of discipline¹ being implemented against [the student] at XXXXXX be expunged" (Doc. a).
2. On July 1, 2010, AACPS personnel, through their attorney Mr. Eric C. Brousaides, sent correspondence to the complainant stating that AACPS "will not expunge" the half-day removal from the student's education record (Doc. a).
3. On August 18, 2010, AACPS personnel sent correspondence to the student's parents informing them of their right to request a hearing to determine whether information in the student's education record is inaccurate or misleading. The correspondence also provides information regarding the parents' right to include in the student's education record a statement of their disagreement with the information contained in that record if, as a result of the hearing, the student's education record is not amended (Doc. b).

DISCUSSION/CONCLUSIONS:

A parent of a student with a disability who believes that information in the student's education record is inaccurate, misleading, or violates the privacy or other rights of the student may request the public agency that maintains the information to amend it (34 CFR §300.618). If the public agency refuses to amend the information in accordance with the request, it must inform the student's parent of the refusal and advise the parent of the right, upon the request of the parent, to a hearing conducted by the public agency² to challenge the information in the student's education record to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and inform the student's parent in writing. If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the parent's right to place in the record a statement regarding information in the record or to set forth any reasons for disagreeing with the decision of the agency (34 CFR §300.620).

Any explanation placed in the student's education record must be maintained by the public agency as part of the record of the student as long as the record or contested portion is maintained by the public agency. If the education record of the student or the contested portion

¹ There is documentation that during the 2009-2010 school year, the student was sent home from school for one-half (½) of a school day. There is no documentation that the student was removed from school on any other dates during the 2009-2010 school year (Doc. a and interview with AACPS personnel).

² This hearing is not a due process hearing conducted by the Office of Administrative Hearings, pursuant to 34 CFR §§300.508-.515.

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is disclosed by the public agency to any party, the explanation must also be disclosed to the party (34 CFR §300.620).

Based on Finding of Fact #1, MSDE finds that the student's parents, through their attorney, requested that AACPS amend the student's education record. Based on Findings of Fact #2 and 3, MSDE finds that AACPS refused to amend the student's education record and informed the student's parents of the refusal in writing. Based on those same Findings, MSDE further finds that AACPS advised the student's parents, in writing, of their right to a hearing conducted by the public agency to challenge the information in the student's education record and of their right to include in the student's education record a statement of their disagreement with the information contained in that record if, as a result of the hearing, the education record is not amended. Therefore, MSDE finds no violation with respect to the allegation.

Please be advised that both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this LOF. 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 LOF. If additional information is provided, it will be reviewed and 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 LOF.

Questions regarding the findings and conclusions 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 IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

CAH:ks

c : Kevin M. Maxwell
Ellen Meyer
Dori Wilson
Kathy Stump