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August 2, 2011

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

RE: XXXXX
Reference: #11-107

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 June 22, 2011,¹ MSDE received correspondence from Mark B. Martin, Esq., hereafter “the complainant,” on behalf of the above-referenced student. 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. MSDE investigated the allegation that CCPS did not ensure that the Individualized Education Program (IEP) team reviewed and revised the student’s IEP, as appropriate, at least annually during the 2010-2011 school year, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

¹ Correspondence from the complainant containing an allegation of a violation of the Individuals with Disabilities Education Act (IDEA) was received by MSDE on June 8, 2011, and the requested remedy, which is required to initiate the complaint investigation, was received on June 22, 2011.

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2. On June 23, 2011, MSDE sent a copy of the complaint, via facsimile, to Dr. Russell Gray, Director of Special Education, CCPS.
3. On June 28, 2011, Ms. Hartman conducted a telephone interview with Jennifer Falter, Esquire, an attorney in the complainant's law office, to clarify the allegation to be investigated. On that same date, Ms. Hartman contacted by telephone Ms. Dona Foster, Supervisor, Compliance and Quality Assurance, CCPS, to discuss the allegation.
4. On June 29, 2011, Ms. Hartman contacted by telephone Ms. XXXXXXXXXX, Executive Director of the XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school in which the student is placed, to discuss the allegation. On that same date, MSDE received documentation related to the allegation from Ms. XXXXXX, via facsimile.
5. On June 30, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to the investigation. On the same date, MSDE notified Dr. Gray of the allegation and requested that his office review the alleged violation.
6. On July 1, 2011, Ms. Hartman again spoke with Ms. Foster by telephone regarding the allegation and requested that her office provide MSDE with necessary documents related to the allegations. Ms. Foster provided the requested documents via electronic mail on July 1, 2011 and July 5, 2011.
7. On July 8, 2011, MSDE received from the Office of Administrative Hearings a copy of the due process complaint filed by CCPS with the Office of Administrative Hearings, dated July 8, 2011.
8. On July 12, 2011, MSDE received correspondence from the complainant enclosing additional documentation for consideration in the complaint investigation.
9. On July 20, 2011, Ms. Hartman requested, via electronic mail (email), that Ms. Foster provide MSDE with additional documentation from the student's education record, which was provided on July 22, 2011, via email.
10. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. IEP, dated May 19, 2010;
 - b. Prior Written Notice Document, dated May 19, 2010;
 - c. Receipt of Parental Rights Document, dated May 19, 2010;
 - d. IEP Team Meeting Notice, dated May 3, 2011;
 - e. Summary of IEP Team Meeting, dated June 1, 2011;
 - f. Prior Written Notice Document, dated June 1, 2011;
 - g. Email messages from CCPS's counsel to the complainant, dated April 5, 2011 and April 19, 2011;

- h. Email message from complainant's office to CCPS's counsel, dated April 19, 2011;
- i. Letter from the student's parent to XXXXXXXXXXXXXXXXXXXX, dated June 1, 2011; and
- j. CCPS' Due Process Complaint, dated July 8, 2011.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with speech and language impairment under the IDEA, and receives special education and related services. She attends XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school where she was placed by CCPS. During the period of time covered by this investigation, the student's parent has participated in the educational decision-making process and has been provided with notice of the procedural safeguards and of the IEP team's decisions (Docs. a-f).

FINDINGS OF FACT:

- 1. The IEP in effect at the beginning of the 2010-2011 school year was developed on May 19, 2010 (Doc. a).
- 2. There is documentation that CCPS attempted in early April 2011 to schedule an IEP team meeting to review the student's program, but that the complainant indicated that the earliest date he would be available for an IEP team meeting was June 1, 2011 (Docs. d, g and h).
- 3. On June 1, 2011, the IEP team convened to, among other things, review and revise, as appropriate, the student's IEP. At that meeting:
 - a. The team considered information presented by XXXXXXXXXXXXXXXXXXXX staff about the student's present levels of performance;
 - b. The CCPS members of the IEP team indicated that they did not agree with the methodology used by XXXXXXXXXXXXXXXXXXXX staff when measuring the student's present levels of performance, and determined that additional assessments were necessary to determine the student's present levels of performance; and
 - c. The student's father stated that he would not consent for additional assessments to be conducted (Docs. d-f and i).
- 4. At the meeting, the IEP team decided to continue to implement the current IEP while school system staff sought permission to conduct the required assessments (Docs. e-f and i).

5. On July 8, 2011, CCPS filed a due process complaint with the Office of Administrative Hearings requesting an Order that would permit CCPS to conduct assessments without parental consent, and, as of the date of this LOF, this matter is pending (Doc. j).

DISCUSSION/CONCLUSIONS:

Parents are equal participants in the IEP team process and the school system is required to take steps to ensure parents have the opportunity to participate in all IEP team meetings; however, there is no similar requirement to ensure the participation of the parents' invitees. Notwithstanding the requirement to take steps to ensure that the parent has the opportunity to participate, the school system is also required to ensure that the IEP team reviews each student's IEP periodically, but not less than annually. Further, the school system has the ultimate responsibility for "crafting the IEP" (34 CFR §§300.322 and .324, and Letter to Simon, 211 IDELR 436, OSEP (1987)).

In this case, based on Findings of Fact #1 and #2, MSDE finds that there is documentation that school system staff attempted to convene an IEP team meeting to review the student's program more than six (6) weeks prior to the date by which the IEP was required to be reviewed. Based on Finding of Fact #2, MSDE finds that it was the lack of availability of the complainant, and the school system's willingness to accommodate his schedule, that led to the IEP being reviewed thirteen (13) calendar days past the annual review date.

The complainant also asserts that CCPS was required to complete the IEP review process based upon the present levels of performance reported at the June 1, 2011 IEP team meeting by the XXXXXXXXXXXXXXXXXXXX staff. However, IDEA requires that the local school system ensures the IEP team develops an IEP to address the student's identified needs (34 CFR §300.320).

Based on Findings of Fact #3 and #4, MSDE finds that the IEP team determined, based upon its review of the student's progress and the evaluative data that was available, that new assessments were required to ensure that the student's IEP is appropriate and addresses her needs. Based on Findings of Fact #4 and #5, MSDE further finds that the IEP team agreed to continue the current IEP while CCPS pursued permission to assess the student, and that CCPS took the required steps to obtain that permission.

MSDE finds a violation with regard to this allegation as a result of the thirteen (13) day delay in reviewing the IEP. However, because the IEP was reviewed and continued pending the outcome of the due process hearing decision, no corrective action is required.

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 issue 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

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conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's father 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 FAPE 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,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/crh

c: Stephen H. Guthrie
Dona Foster
XXXXXXXXXXXX
Sarah Spross
Jodi King
Dori Wilson
Anita Mandis
Christine R. Hartman