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June 27, 2011

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Ms. Mary Lee Phelps
Acting Director, Department of Special Education Operations
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #11-092

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 May 9, 2011, MSDE received a complaint from Wayne D. Steedman, Esq., hereafter, "the complainant," on behalf of the above-referenced student. 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. MSDE investigated the following allegations:

1. MCPS has not ensured that proper procedures were followed when reviewing and revising the student's Individualized Education Program (IEP) to address the lack of achievement of the annual goals within one (1) year of their development, since May 2010,¹ in accordance with 34 CFR §§300.320 and .324; and
2. MCPS did not follow proper procedures when responding to a request by the student's parents to amend her education record, in accordance with 34 CFR §§300.618-.621.

¹ The complaint alleged violations dating to February 2009. However, the complainant was informed, in writing, on May 13, 2011 that this office has authority to investigate allegations of violations that occurred not more than one (1) year prior to the date the complaint is received, in accordance with 34 CFR §300.153.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 10, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn Mason, Director of Special Education Services, MCPS; Ms. Mary Lee Phelps, Acting Director of Special Education Operations, MCPS; and Ms. Alison Steinfels, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On May 11, 2011, Ms. Stump spoke with the complainant by telephone and clarified the allegations to be investigated.
4. On May 13, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Phelps of the allegations and requested that her office review the alleged violations.
5. On May 31, 2011, MCPS provided MSDE with a written response to the complaint, via facsimile.
6. On June 2, 2011, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX) to review the student's education record, and interviewed the following MCPS personnel:
 - a. Ms. XXXXXXXXXXX, Special Education Teacher;
 - b. Mr. XXXXXXX, Special Education Teacher;
 - c. Dr. XXXXXXXXXXX, Principal; and
 - e. Ms. XXXXXXX, Special Education Teacher.

Ms. Steinfels, Ms. Donna Naberhuis, Special Education Compliance Specialist, Equity Assurance and Compliance Office, MCPS; Ms. Meryl Benko, Paralegal, Equity Assurance and Compliance Office, MCPS; and Ms. Patricia Grundy, Paralegal, Equity Assurance and Compliance Office, MCPS attended the site visit as representatives of MCPS and to provide information on MCPS policies and procedures, as needed.
7. On June 8, 2011, MCPS provided MSDE with additional documentation from the student's education record, via facsimile.
8. On June 13, 2011, Ms. Stump conducted a telephone interview with the student's parents.
9. On that same date, Ms. Stump reviewed audio recordings of IEP team meetings held February 25, 2011 and June 6, 2011. MCPS provided these recordings to MSDE via United States mail.

10. On June 15, 2011, the student's parents provided MSDE with documentation related to the allegations, via electronic mail (e-mail).
11. 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 May 9, 2011;
 - b. IEP, dated March 12, 2010;
 - c. IEP progress reports, dated April 7, 2010;
 - d. IEP progress reports, dated June 16, 2010;
 - e. IEP progress reports, dated July 30, 2010;
 - f. IEP progress reports, dated October 29, 2010;
 - g. IEP and team meeting notes, dated November 23, 2010;
 - h. IEP progress reports, dated January 21, 2011;
 - i. IEP progress reports, dated February 1, 2011;
 - j. IEP, dated February 25, 2011;
 - k. E-mail correspondence between school staff and the student's parents, dated between February 28, 2011 and March 28, 2011; and
 - l. MCPS Regulation, entitled *Student Records*, dated 2008.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an other health impairment under IDEA, related to a diagnosis of XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX. The student attends XXXXXXXXXXXXXXX, where she receives special education 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 written notice of the procedural safeguards (Docs. a, b, g, and j).

ALLEGATION #1: REVIEW AND REVISION OF THE IEP SINCE MAY 2010

Findings of Fact:

1. The IEP in effect in May 2010 was finalized on March 12, 2010 and contains annual goals and short-term objectives in mathematics, reading, written language, hearing, physical therapy, occupational therapy, speech/language, and self-advocacy (Doc. b).
2. The IEP team reported that the student was making sufficient progress to achieve the annual goals within one (1) year of their development on a quarterly basis throughout the 2009-2010 and 2010-2011 school years (Docs. c-f, h, j, and k).
3. There is documentation that the student achieved the annual goal related to physical therapy. However, there is no documentation that the student achieved either the short-term objectives within the remaining goals or any of the remaining annual goals within one (1) year of their development (Docs. b-j).

4. The IEP team convened in February 2011 and reviewed and revised the goals based on the reports of the student's progress (Doc. j).

Discussion/Conclusions:

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to *determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate*. Additionally, the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address the lack of expected progress toward achievement of the annual goals (34 CFR §300.324) (emphasis added).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on Findings of Fact #2 and 3, MSDE finds that although the IEP team reported that the student was making progress *sufficient* to achieve all of the annual goals within one (1) year of their development, there is no documentation that the student achieved the short-term objectives or the annual goals in any area except physical therapy.

Further, based on Findings of Fact #1 and 4, MSDE finds that the IEP team did not convene to review and revise, as appropriate, the student's program based on the reports of her progress for nearly one (1) year, despite the fact that the student did not achieve the annual goals. Therefore, MSDE finds a violation regarding this allegation.

ALLEGATION #2:

RESPONDING TO THE REQUEST TO AMEND THE STUDENT'S EDUCATION RECORD

Findings of Fact:

5. At the February 2011 IEP team meeting, the student's parents expressed their concern that the IEP progress report, dated February 2011, was inaccurate because the student had not achieved the annual goals within one (1) year of their development. The school-based members of the IEP team attempted to address the concerns of the student's parents by explaining the methodology of reporting the student's progress toward achieving the annual goals (Review of audio recording of the February 25, 2011 IEP team meeting).
6. On March 10, 2011, following the February 2011 IEP team meeting, the student's parents again requested, via e-mail, that school staff revise the IEP progress report sent home on February 2, 2011. The e-mail correspondence reiterated the belief of the student's parents that the student had not made sufficient progress to meet the annual goals because she did

not achieve them and therefore, they believed that the progress reports were inaccurate (Doc. k).

7. MCPS has policies and procedures in place to address parental requests for the amendment of education records and there is documentation that school staff received the request of the student's parents. However, there is no documentation that school staff have amended the student's education record or informed the student's parents of their right to a hearing by school system personnel² (Doc. l, review of education record, and interview with MCPS personnel).

Discussion/Conclusions:

A parent of a student with a disability who believes that information in the student's education record is inaccurate or misleading 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. The public agency must also advise the parent of the right, upon the request of the parent, to a hearing conducted by the public agency to challenge the information in the student's education record to ensure that it is not inaccurate or misleading (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate or misleading, it must amend the information and inform the student's parent in writing. If, however, the public agency decides that the information is not inaccurate or misleading, 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).

Based on Findings of Fact #5 and 6, MSDE finds that there is documentation that the student's parents believe that the education record is *inaccurate* and have requested that the inaccuracy be addressed. Therefore, MSDE finds that the student's parents have requested that school staff amend the student's education record. However, based on Finding of Fact #7, MSDE finds that there is no documentation that school staff have responded to the parents regarding this request as required by the regulations. Therefore, MSDE finds a violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-specific

MSDE requires MCPS to provide documentation by July 31, 2011 that school staff have responded to the request of the student's parents to amend the education record by either amending it or by providing the student's parents with notice of its refusal to amend the record and informing them of the right to a hearing in the school system² to challenge the record.

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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Additionally, MSDE requires MCPS to provide documentation by the start of the 2011-2012 school year that an IEP team has convened and done the following:

1. Determined whether the student's ability to receive educational benefit from her program was adversely impacted as result of the violation related to measuring and reporting progress toward achievement of the annual goals; and
2. If the team determines that there was an adverse impact, it must also determine the nature and amount of *compensatory services*³ or other remedy necessary to redress the violation.

MCPS must provide the student's parents 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 34 CFR §300.503. If the student's parents disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint, in accordance with IDEA.

School-based

MSDE requires MCPS to provide documentation by the start of the 2011-2012 school year, of the steps it has taken to determine if the violations identified in the LOF are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXX.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, 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, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of OSEP. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of MCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

³ For the purpose of this letter, these are services, as determined by the IEP team, needed to remediate the denial of appropriate services to the student (34 CFR §300.151).

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties 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 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, conclusions and corrective actions 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

cc : Jerry D. Weast
Gwendolyn Mason
Alison Steinfels
XXXXXX
Martha Arthur
Kathy Stump