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Interim State Superintendent of Schools

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August 5, 2011

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

RE: XXXXX
Reference: #11-103

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 June 9, 2011, MSDE received correspondence from Mr. XXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter “the complainants,” on behalf of their daughter. In that correspondence, the complainants 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 did not ensure that the student has been consistently provided with the services of a female bus attendant as required by the IEP since the start of the 2010-2011 school year, in accordance with 34 CFR §300.101; and
2. MCPS did not ensure that the student has been consistently provided with the services of a paraprofessional (classroom aide) as required by the Individualized Education Program (IEP) since the start of the 2010-2011 school year, which resulted in her not being able to

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receive instruction in the general education classroom, in accordance with 34 CFR §300.101 and .114.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 10, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Lee Phelps, Interim Acting Director, Department of Special Education Operations, MCPS; Ms. Gwendolyn Mason, Director, Special Education Services, MCPS; and Ms. Alison Steinfels, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On June 16, 2011, Ms. Hartman conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
4. On June 17, 2011, MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to the investigation. On the same date, MSDE notified Ms. Phelps of the allegations and requested that her office review the alleged violations.
5. On July 11, 2011, MSDE received a written response to the complaint with attached documents from MCPS.
6. On July 12, 2011, Ms. Hartman spoke with the student's mother concerning the allegations contained in the complaint.
7. Also on July 12, 2011, Ms. Hartman spoke with Ms. Amy Shvodian, Compliance Specialist, Equity Assurance and Compliance Office, MCPS, regarding the allegations contained in the complaint and to request additional documents. On that same date, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with Ms. Steinfels concerning the allegations.
8. On July 13, 2012, MSDE sent correspondence that amended the allegations to be investigated. Also on that same date, MSDE notified Ms. Phelps of the amended allegations and requested that her office review the alleged violations.
9. On July 21, 2011, MSDE received additional documents for consideration in the complaint investigation from the student's mother. On July 27, 2011, MSDE provided a copy of those documents to MCPS for their review.

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10. On July 27, 2011 and August 1, 2011, MSDE received additional documents from MCPS via electronic mail (email).
11. On August 2, 2011, Ms. Hartman spoke with Ms. Steinfelds by telephone concerning the allegations.
12. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 25, 2010;
 - b. IEP, dated March 21, 2011;
 - c. Amendment to the IEP, dated September 8, 2011;
 - d. Emails between the student's mother and school staff, dated between September 8, 2010 and September 13, 2010;
 - e. Copy of communication notebook between the complainants and school staff from the 2010-2011 school year;
 - f. Correspondence from the complainants to MSDE, dated July 5, 2011;
 - g. Email between MCPS staff members, dated July 14, 2011; and
 - h. Correspondence from MCPS personnel to MSDE, dated July 11, 2011.

BACKGROUND:

The student XXXXXX attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with an intellectual disability, and receives special education and related services under IDEA. The complainants have participated in the educational decision-making process and were provided with notice of the procedural safeguards (Docs. a and b).

ALLEGATION #1: PROVISION OF A FEMALE BUS ATTENDANT

Findings of Fact:

1. The IEP in effect at the start of the 2010-2011 school year, dated March 25, 2010, required, among other things, transportation to and from school with the services of a bus attendant (Doc. a).
2. On September 8, 2010, the IEP was amended at the request of the complainants to include the requirement that the bus attendant be female¹ (Docs. c and d).

¹ On March 21, 2011, the student's IEP was reviewed and the requirement for a female bus attendant was determined to still be necessary (Doc. b).

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3. On September 22, 2010 a female attendant was assigned to the student's bus (Docs. d and e).
4. There is documentation that the student's mother transported the student to and from school until September 21, 2010 when a female bus attendant was assigned to the student's bus (Docs. d and e).
5. The parties agree that, on July 5, 2011, the first day of extended school year services, the student's mother transported her to school because there was no female attendant on the bus (Doc. f and interview with MCPS staff).

Discussion/Conclusion:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP as soon as possible following its development or revision (34 CFR §§300.101,.323 and .342(b)). However, there may be circumstances that require a short delay in the provision of services, such as locating a qualified service provider or making transportation arrangements for the student (34 CFR §300, Attachment 1-Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p. 12579).²

In this case, while the complainants allege that the student was not provided with transportation services due to the lack of a female attendant, the IEP was not amended to require the female attendant until September 8, 2010. However, while MSDE acknowledges that a short delay in providing the female bus attendant was permissible, based on Findings of Fact #1-#3, MSDE finds that there is documentation that the student was not provided the services of a female bus attendant until September 22, 2010. Additionally, based on Finding of Fact #5, MSDE finds that the student was not provided the services of a female bus attendant on July 5, 2011, as required by the IEP. Therefore, MSDE finds a violation with regard to this allegation.

ALLEGATION #2: PROVISION OF A PARAPROFESSIONAL (CLASSROOM AIDE)

Findings of Fact:

6. The IEP in effect during the 2010-2011 school year required, among other things, the services of a paraprofessional (classroom aide) for six and one-half (6-1/2) hours per day, as well as fifteen (15) hours of specialized instruction in a general education classroom per week (Docs. a and b).

² In the 2004 reauthorization of the IDEA, no changes were made to the language of this regulation (Federal Register, Vol. 71, No. 156, August 2006, p. 46547).

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7. There is documentation that, for the following ten (10) school days during the 2010-2011 school year, the paraprofessional that was assigned to assist the student during the school day was on leave:

- a. October 26, 2010;
- b. November 1, 2010;
- c. January 6, 2011;
- d. January 18, 2011;
- e. January 26, 2011;
- f. January 27, 2011;
- g. January 28, 2011;
- h. February 18, 2011;
- i. March 4, 2011; and
- j. April 15, 2011 (Doc. g).

8. There is also documentation that, on the following school days during the 2010-2011 school year, the paraprofessional that was assigned to assist the student during the school day was on leave for a portion of each day as follows:

- a. October 7, 2010.....1.0 hours;
- b. October 18, 2010.....2.0 hours;
- c. December 14, 2010.....0.5 hours;
- d. December 16, 2010.....2.0 hours;
- e. January 20, 2011.....0.7 hours;
- f. February 4, 2011.....3.5 hours;
- g. February 14, 2011.....0.7 hours;
- h. March 23, 2011.....2.0 hours;
- i. May 2, 2011.....1.5 hours;
- j. May 24, 2011.....0.7 hours; and
- k. June 13, 2011.....0.5 hours (Doc. g).

9. There is documentation that, on all but April 15, 2011, other school staff transported the student to her general education classes when the assigned paraprofessional was absent. Further, while MCPS staff have reported that school staff also provided the student with the same services provided by the paraprofessional on the days that she was absent, there is no documentation that the student received those services (Docs. e and h).

Discussion/Conclusion:

As discussed above, the public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). In this case, MCPS staff reports that the student was provided the services of the classroom aide when

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the assigned paraprofessional was on leave. However, based on Findings of Fact #6, #7 and #9, MSDE finds that, while there is documentation to support that the student was transported to classes by other school staff, there is no documentation that the student was provided with the services of a classroom aide for ten (10) full school days. Additionally, based on Findings of Fact #6, #8 and #9, MSDE finds that there is no documentation that the student was provided with the services of a classroom aide for portions of eleven (11) school days. Therefore, MSDE finds a violation with regard to this allegation.

CORRECTIVE ACTION/TIMELINE:

MSDE requires MCPS to provide documentation by October 1, 2011 that the IEP team has convened and determined whether the violations have had a negative impact on the student's ability to benefit from her education program, and, if so, the nature and amount of *compensatory services*³ or other remedy necessary to redress the violations.

MCPS must provide the complainants with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainants disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint to resolve the dispute consistent with IDEA. Documentation of the corrective action taken is to be submitted to the attention of: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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 within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings (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 the corrective actions consistent with the timeline requirement as reported in this LOF.

³ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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Questions regarding the findings, conclusions and corrective action contained in this letter should be addressed to this office in writing. The complainants 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,

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

MEF/ch

cc: Joshua Starr
Gwendolyn J. Mason
Alison Steinfelds
Amy Shvodian
XXXXXXXXXX
Dori Wilson
Martha J. Arthur
Christine Hartman