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Interim State Superintendent of Schools

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June 11, 2012

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Ms. Patricia A. Daley
Director of Special Education
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #12-078

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 our investigation.

ALLEGATIONS:

On April 2, 2012, the MSDE received correspondence from The Honorable Benjamin L. Cardin, United States Senate, requesting that the MSDE respond to the concerns addressed in correspondence to him from Ms. XXXXXXXX, hereafter “the complainant.” On April 9, 2012, the MSDE verified with the complainant that she wished to file a State complaint and informed her of the additional information required to initiate a State complaint investigation.

On April 12, 2012, the MSDE received additional correspondence from the complainant alleging the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to her daughter, the above-referenced student. This office investigated the allegations listed below.

1. The HCPS did not provide the complainant with the opportunity to participate in an Individualized Education Program (IEP) team meeting held on June 14, 2011, in accordance with 34 CFR §300.322.

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2. The HCPS has not ensured that the IEP addresses the student's social, emotional, and behavioral needs, since April 2, 2011,¹ in accordance with 34 CFR §300.324.
3. The HCPS has not followed proper procedures when disciplinarily removing the student from school since the start of 2011-2012 school year, in accordance with 34 CFR §300.530.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegations in the complaint.
2. On April 2, 2012, the MSDE received correspondence from The Honorable Benjamin L. Cardin, United States Senate, sharing the complainant's request for his assistance in addressing concerns about the educational services provided to her daughter by the HCPS.
3. On April 9, 2012, Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a telephone interview with the complainant, clarified that she wished for this office to conduct a State complaint investigation of allegations that the HCPS violated certain provisions of the IDEA, and informed her of the additional information needed to initiate a State complaint.
4. On April 12, 2012, the complainant provided the MSDE with the information required to initiate the State complaint investigation.
5. On the same date, a copy of the complaint was provided, by facsimile, to Ms. Patricia A. Daley, Director of Special Education, HCPS, and Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic, Community and Alternative Programs, HCPS.
6. On April 17, 18, and 20, 2012, Ms. Williams conducted telephone interviews with the complainant to clarify the allegations to be investigated.
7. On April 17, 18, 24, 26, and 30, 2012, the complainant sent electronic correspondence to the MSDE with information to be considered during the investigation.
8. On April 24, 2012, the complainant sent electronic correspondence to the MSDE, containing additional allegations to be investigated.
9. On April 27, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On

¹ Although the complaint contained allegations of violations dating back to the 2009 – 2010 school year. On April 27, 2012, this office informed the complainant, in writing, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

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that same date, the MSDE also notified the HCPS of the allegations to be investigated and requested that HCPS review the alleged violations.

10. On May 3, 2012, the complainant sent electronic correspondence to the MSDE with information to be considered during the investigation.
11. On May 10, 2012, Ms. Williams and Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, Division of Special Education/Early Intervention Services, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXXX, Special Education Team Leader; and
 - c. Ms. XXXXXXXX, Health Assistant.

Mr. Dan Furman, Staff Attorney, HCPS, attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.

12. On June 4, 2012, Ms. Williams conducted a telephone interview with the complainant.
13. On June 8, 2012, the HCPS sent additional information to the MSDE, via electronic correspondence.
14. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this letter include:
 - a. Correspondence from the complainant to The Honorable Benjamin L. Cardin, United States Senate, dated April 2, 2012;
 - b. Correspondence from the complainant to the MSDE, dated April 12, 2012;
 - c. Correspondence from the complainant to the MSDE, amending the State complaint, dated April 24, 2012;
 - d. Electronic correspondence from the HCPS to the complainant, dated April 15, 2011;
 - e. IEP, dated June 16, 2010, amended December 14, 2010;
 - f. Correspondence from the HCPS to the complainant, regarding scheduling an IEP meeting, dated May 16, 2011;
 - g. IEP Meeting Notice, scheduling an annual review of the IEP with a draft of the proposed IEP, dated May 24, 2011;
 - h. Electronic correspondence from the complainant to the HCPS, confirming attendance for a June 10, 2011 date for the IEP meeting, dated June 3, 2011;
 - i. Electronic correspondence from the complainant to the HCPS, requesting to re-schedule the June 10, 2011 IEP meeting, dated June 9, 2011;
 - j. Electronic correspondence from the HCPS to the complainant, responding to the complainant's request to re-schedule the June 10, 2011 IEP meeting, dated June 9, 2011;

- k. Electronic correspondence from the HCPS to the complainant, explaining the June 14, 2011 IEP meeting date remained available, dated June 9, 2011;
- l. Electronic correspondence from the complainant to the educational advocate, requesting that she contact the HCPS, regarding the June 14, 2011 meeting date, dated June 10, 2011;
- m. Electronic correspondence from the complainant to the HCPS, requesting another meeting date for June 21, 2011, dated June 13, 2011;
- n. Correspondence to the complainant from the HCPS, regarding the meeting scheduled on June 14, 2011, dated June 13, 2011;
- o. Electronic correspondence from the HCPS to the complainant, regarding the annual review of the IEP and agreeing to meet on June 21, 2011, dated June 13, 2011;
- p. IEP, dated June 14, 2011;
- q. Electronic correspondence from the educational advocate on behalf of the complainant to the HCPS, cancelling the IEP meeting scheduled for June 21, 2011, dated June 20, 2011;
- r. HCPS Attendance Log, dated August 6, 2011 through May 11, 2012;
- s. HCPS Conduct History, dated August 6, 2011 through May 10, 2012;
- t. HCPS Discipline Record, dated September 27, 2011 through February 14, 2012;
- u. IEP Meeting Notice, scheduling a meeting for a Functional Behavioral Assessment and Extended School Year determination for March 2, 2012, dated February 14, 2012;
- v. Functional Behavioral Assessment, dated March 2, 2012;
- w. IEP dated June 14, 2011, amended March 2, 2012;
- x. HCPS Nursing Log, indicating when the student visited the Nurse's Office, dated March 22, 2012;
- y. Hospital School Form, noting the student may return to school on March 26, 2012, dated March 22, 2012;
- z. Private Physician Return to School Instructions, confirming the student does not have any limitations for returning to school on March 25, 2012;
- aa. Private Physician Note, regarding heart rate and blood pressure checks, dated March 29, 2012;
- bb. IEP Meeting Notice, scheduling a meeting to review the Functional Behavioral Assessment and create a Behavioral Intervention Plan for April 27, 2012, dated April 10, 2012;
- cc. IEP dated June 14, 2011, amended April 27, 2012; and
- dd. Electronic correspondence from the HCPS to the MSDE, dated June 8, 2012.

BACKGROUND:

The student is thirteen (13) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. She is identified as a student with multiple disabilities based upon a speech/language impairment and Other Health Impairment related to Attention Deficit Hyperactivity Disorder (ADHD). There is documentation that, during the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. p and cc).

**ALLEGATION #1: PARENT PARTICIPATION IN THE JUNE 14, 2011
IEP MEETING**

Findings of Facts:

1. The student's educational record contains a copy of a written invitation to the complainant, dated May 16, 2011, to attend an IEP team meeting scheduled for June 7, 2011. The invitation states that if the complainant was unable to participate in the meeting on June 7, 2011, the meeting could be re-scheduled for either June 10, 2011 or June 14, 2011 (Doc. f).
2. On May 24, 2011, the HCPS sent the complainant a copy of the proposed draft IEP (Doc. g).
3. On June 3, 2011, the complainant contacted the school staff, via electronic correspondence (email), and requested that the IEP team meeting be held on June 10, 2011, rather than on June 7, 2011. In response to her request, the meeting was re-scheduled for June 10, 2011 (Docs. h and l).
4. On June 9, 2011, the complainant contacted the school staff, via email, and informed them that the IEP team meeting could not be held on June 10, 2011, due to the unavailability of her educational advocate, who had a death in her family. On the same day, the school staff replied to her, indicating that because they still had June 14, 2011 available as an alternative date for the meeting, they could re-schedule the IEP team meeting for that date (Docs. i, j, and k).
5. On June 10, 2011, at the request of the complainant, her educational advocate advised school staff that June 14, 2011 was not an acceptable date to meet because the educational advocate was still attending to matters related to the death in her family (Doc. l).
6. On June 13, 2011, the complainant sent an email to school staff, requesting that the meeting be re-scheduled for June 21, 2011, and stating the "IDEA requires a mutual agreement of dates and times for IEP team members" (Doc. m).
7. On June 13, 2011, the school staff responded to the complainant, informing her they needed to hold the IEP team meeting on June 14, 2011 because the IEP was last reviewed on June 16, 2010 and they had an obligation to review the student's program at least annually. However, in order to ensure the complainant's participation, the school staff also indicated another IEP team meeting would be held on June 21, 2011, the date the complainant requested (Docs. e, n, and o).
8. On June 20, 2011, the educational advocate informed school staff that the June 21, 2011 IEP team meeting needed to be cancelled because the complainant had a death in her family (Doc. q).

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Discussion/Conclusions:

In accordance with the IDEA, the school system is required to take steps to ensure that parents have the opportunity to participate in IEP team meetings, which includes notifying parents of a meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually convenient place and time. In Maryland, the school system must provide parents with written notice of the meeting at least ten (10) days in advance of the meeting. The school system must also provide parents with a copy of any draft IEP that school staff propose for consideration by the team at least five (5) business days before the meeting (34 CFR §300.322 and COMAR 13A.05.01.07).

However, there is no requirement that school systems contact parents prior to scheduling IEP team meetings. Rather, school systems are required to provide parents with notice of a meeting early enough so that the parents can arrange their schedules to attend. An IEP team meeting may be held without the parents in attendance if the public agency is unable to “convince” the parents to attend, but when this occurs, the school system must document the steps taken to obtain parent participation. If the parent cannot attend an IEP team meeting, the public agency must use other methods to ensure parent participation, such as through a conference call (34 CFR §300.322).

While the parents are equal participants in the IEP process, the school system has the ultimate responsibility for ensuring that the student is provided with a Free Appropriate Public Education (FAPE) (34 CFR §§300.101 and .201). In order to ensure that the IEP provides the student with a FAPE, the public agency must make sure that the IEP is reviewed, and revised as appropriate, at least annually (34 CFR §300.324). Accordingly, the school system may not be bound solely by the parent’s wishes with regards to scheduling an IEP team meeting.

In this case, the complainant asserts that she is unable to participate in an IEP team meeting without the assistance of her educational advocate, and that the school system was not permitted to proceed with the IEP team meeting without the participation of both of them. The complainant alleges that she did not receive the written invitation to the meeting until June 2, 2011, when the student provided her with a copy. She also alleges that she was not provided with a draft IEP in advance of the IEP team meeting (Docs. a, b, and c).

Based on the Findings of Facts #1 - #7, the MSDE finds that had the IEP team continued to delay its meeting in an effort to accommodate the complainant’s schedule, it would have resulted in the delay of the review of the student’s IEP beyond the one (1) year time period permitted by the regulations. Therefore, the school system had an affirmative obligation to proceed with the meeting on June 14, 2011.

Based on the Finding of Fact #1, the MSDE finds that school staff provided the complainant with a written invitation to the IEP team meeting and documented their attempts to solicit a mutually convenient date to convene the meeting. Based on Finding of Fact #7, the MSDE further finds that the school system also offered the complainant an alternative means of participation through a second IEP review meeting on a date on which she could participate. Based on the Findings of Facts #1 - #8, the MSDE finds that the school system made efforts to ensure participation of the complainant and her educational advocate in the IEP meeting and that a draft IEP was provided

to the parent more than five (5) business days in advance of the June 14, 2011 meeting. Therefore, the MSDE finds that the HCPS followed proper procedures when scheduling and convening the IEP team meeting, and does not find that a violation occurred with respect to this allegation.

The MSDE reminds the complainant that an IEP team meeting is to be student-centered, and it is in the best interest of the student for the parent and the school system to work cooperatively in the scheduling of the meeting and the development of the IEP. However, despite the critical importance of parental participation, repeated requests to re-schedule IEP team meetings cannot be permitted to delay or deny the provision of a FAPE to the student.

**ALLEGATION # 2 IEP THAT ADDRESSES THE STUDENT'S
SOCIAL/EMOTIONAL/BEHAVIORAL NEEDS**

Findings of Facts:

IEP in Effect From April 12, 2011 to June 14, 2011

9. The IEP in effect on April 12, 2011 was developed on June 16, 2010. At that IEP team meeting, the team considered teacher reports that the student has difficulty completing large assignments without supports, and that she requires prompts to initiate assignments, assistance organizing materials, and repetition and rephrasing of directions to complete tasks. The team also considered information from the complainant, teachers, and the results of a psychological assessment indicating that the student has trouble shifting focus, monitoring emotions, inhibiting responses, completing multi-step tasks, and planning/organizing for future tasks (Doc. e).
10. The IEP included a goal for the student to increase organizational and study skills with the provision of "maximum" teacher support. It also required the provision of special education instruction to assist the student in achieving the goals. It also required the provision of supports such as the chunking of material into smaller parts, reducing homework into smaller assignments with extended time, checking for comprehension of oral/written directions, monitoring of notes for accuracy, providing frequent breaks, and reducing distractions (Doc. e).
11. The IEP team determined that with the provision of these supports, the least restrictive environment in which the IEP could be implemented was the general education classroom (Doc. e).

IEP in Effect From June 14, 2011 to April 27, 2012

12. On June 14, 2011, the IEP team convened, without the complainant,² to conduct the annual review of the IEP. The team considered information from teachers indicating that,

² See, Allegation #1.

while the student demonstrates the ability to follow directions and classroom routines, she can also become preoccupied with peer issues. However, the information also indicated that she responds well to strategies to assist her to re-engage in her work. In the classroom, the student's ability to sustain attention and remain on task varies and she benefits from a review of expectations, praise, verbal and nonverbal prompts, and frequent monitoring of her independent work. The student's teachers also reported that recent absences were impacting the student's performance in her classes (Doc. p).

13. The IEP team revised the annual IEP goals based on reports of the student's progress and developed a goal for the student to acquire and maintain study skills, refrain from calling out in class, refrain from making comments about peers during class discussions, use models to determine appropriate behavior, and develop self-awareness skills about when she is distracted and needs to take a break. The IEP was also revised to require small group instruction to address the student's organizational/study skills needs (Doc. p).
14. On March 2, 2012, the IEP team reconvened to consider information from school staff that the student was beginning to demonstrate noncompliant behavior. The IEP team decided that a Functional Behavioral Assessment (FBA) would be conducted, and the complainant consented to the assessment (Docs. u, v, and w).

IEP in Effect Since April 27, 2012

15. On April 27, 2012, the IEP team met to review the results of the FBA and develop a Behavioral Intervention Plan (BIP). The FBA addresses the student's disruptive behavior, noncompliance in classroom, and difficulty when confronted with challenging social situations. According to the FBA, the student exhibits these behaviors when she wants to avoid work or tasks, communicate frustration with an academic task, or gain social acceptance. The IEP team developed a BIP with strategies to address the behavior which include teaching the student techniques to use when feeling frustrated, and allowing the student to meet with an advisor, redirecting the student, providing non-verbal reminders of behaviors through a visual behavior system, and allowing preferential seating away from the student's friends where work can be monitored (Docs. w, bb, and cc).
16. At the April 27, 2012 meeting, the complainant reported that the student has panic attacks which the complainant believes are caused by stress in the school environment.³ The IEP team discussed that the student has a heart condition and that this information has been shared with the school nurse. The school staff reported they have not observed the student experiencing anxiety about school (Doc. cc).

³ On March 22, 2012, the student was escorted to the nurse's office because she complained of an increased heart rate and feeling nauseous. The complainant was contacted, but there is no documentation that the student was dismissed early from school. On the same day, and again on March 25, 2012, the complainant took the student to the hospital, but there is no documentation that the student was admitted for treatment (Docs. r, x, y, z, and aa).

17. On June 8, 2012, school staff reported that, on the same date, the IEP reconvened to complete its annual review of the IEP (Doc. dd).

Discussion/Conclusions:

The IEP must include a statement of the student's present levels of academic achievement and functional performance, and must include annual goals and services designed to address the student's identified needs. When determining the levels of academic achievement and functional performance, the team must consider the evaluative data, including assessment reports, information from the student's teachers, and the parent's concerns. The team must also consider, in the case of a student whose behavior impedes his learning or that of others, strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.320 and .324).

The public agency must ensure that the IEP team reviews the program at least annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the team reviews and revises, as appropriate, the IEP to address lack of expected progress toward achievement of the annual goals (34 CFR §300.324).

Based on the Findings of Facts #9 - #16, the MSDE finds that the IEP team considered information about the student's social/emotional/behavioral needs and developed an IEP that addresses the needs identified in the data. Therefore, this office does not find that a violation occurred with respect to this allegation.

This office understands that the complainant disagrees with the IEP team's decisions about the student's program. In this case, the MSDE did not identify a procedural violation with respect to addressing the student's social/emotional/behavioral needs and may not overturn the team's decisions. However, the complainant is reminded that she maintains the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding the student's special education services.

**ALLEGATION # 3 DISCIPLINARY PROCEDURES DURING THE
2011-2012 SCHOOL YEAR**

Finding of Fact:

18. The student's disciplinary record reflects that, while the school has taken disciplinary action against the student, the student has not been disciplinarily removed from school in excess of ten (10) school days during the 2011 - 2012 school year (Docs. r, s, and t).

Discussion/Conclusion:

The IDEA provides protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year (34 CFR §§300.530 and .536). In this case, the complainant alleges that the student was disciplined multiple times throughout the 2011 - 2012 school year without consideration of the student's disability (Doc. a).

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Based on the Finding of Fact #18, there is no documentation that the student was removed from school in excess of ten (10) school days during the 2011 - 2012 school year, so the disciplinary procedures required by the IDEA do not apply in this case. Therefore, the MSDE does not find a violation with respect to this allegation.

Please be advised that both the complainant and the HCPS 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.

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

Sincerely,

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

MEF/tw

cc: Sydney L. Cousin
Judith Pattik
Janet Zimmerman
Dan Furman
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Dori Wilson
Anita Mandis
Tyra Williams