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State Superintendent of Schools

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August 16, 2012

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Mrs. Chrisandra A. Richardson, Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason, Director
Department of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #12-102

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 the investigation.

ALLEGATION:

On June 26, 2012,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 student. The MSDE investigated the allegation that the MCPS did not follow proper procedures when responding to the complainant’s request for an evaluation during the 2011-2012 school year, in accordance with 34 CFR §§300.301, .302, and 304 – .311, and COMAR 13A.05.01.04 – .06.

¹ While correspondence from the complainant containing an allegation of a violation of the Individuals with Disabilities Education Act was received by MSDE on June 20, 2012, the requested remedy, which is required to initiate the complaint investigation, was received on June 26, 2012.

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INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 22, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated and to inform the complainant that, before the MSDE could initiate a complaint investigation into her concerns, she would need to provide this office with a statement of the remedy she is requesting in order to resolve her concerns.
3. On June 26, 2012, the MSDE received the proposed remedy from the complainant.
4. On June 27, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn Mason, Director, Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal and Informational Systems, MCPS.
5. On June 29, 2012, Ms. Alison Steinfels, former Supervisor of Equity Assurance and Compliance Office, MCPS, provided the MSDE with documentation to be considered during the investigation, via electronic mail (email).
6. On July 5, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Mason of the allegation and requested that her office review the alleged violation.
7. On July 11 and 12, 2012, Ms. Hartman requested information and documentation, via email, from Ms. Steinfels.
8. On July 17 and 24, 2012, Ms. Hartman conducted telephone interviews with the complainant to obtain additional information regarding the allegation being investigated.
9. On July 18, 2012, Ms. Patricia Grundy, Paralegal, Equity Assurance and Compliance Office, MCPS, provided information to the MSDE concerning the allegation being investigated, via email.
10. On July 20, 2012, Ms. Hartman requested documentation and information from Ms. Grundy concerning the allegation in the complaint, via email.

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11. On July 23 and 27, 2012, Ms. Hartman requested additional documentation from Ms. Sharon Gooding, Acting Supervisor of Equity Assurance and Compliance Office, MCPS.
12. On July 23, 24, 25, and 27, 2012, Ms. Hartman requested additional documentation and information from Ms. Meryl Benko, Paralegal, Equity Assurance and Compliance Office, MCPS, and was provided with additional documentation to be considered during the investigation of the allegation, via email.
13. On July 25, 2012, the MSDE received a written response to the complaint from the MCPS, via email.
14. On August 1, 2012, Ms. Hartman and Ms. Mandis reviewed the student's educational record at XXXXXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXX, Resource Teacher/Special Educator; and
 - c. Ms. XXXXXXXXXXX, School Psychologist.

Ms. Gooding was present at the record review, as a representative of the MCPS, in order to provide information on the MCPS policies and procedures, as needed.

15. On August 6, 2012, Ms. Hartman and Ms. Mandis conducted a telephone interview with Ms. XXXXXXXXXXX, Teacher, XXXXXXXXXXX, concerning the allegation being investigated. Ms. Gooding participated in the telephone call, as a representative of the MCPS. On the same date, the MCPS provided additional documents to the MSDE to be considered during the investigation of the allegation, via facsimile.
16. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Written summary of the IEP team meeting, dated April 17, 2012;
 - b. Correspondence from the MCPS to the MSDE, dated July 26, 2012;
 - c. MCPS' Communication Log listing communications held between school staff and the complainant during the 2011-2012 school year;
 - d. MCPS Referral for Special Education Screening form;
 - e. Correspondence from the MCPS to the complainant, dated April 13, 2012; and
 - f. Email correspondence from the MCPS to the MSDE, dated July 24, 2012.

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BACKGROUND:

The student is fourteen (14) years old, and during the 2011-2012 school year, he was an eighth (8th) grade student at XXXXXXXXXXXXXXXXXXXXXXXX. An evaluation to determine if the student has a disability under the IDEA is pending (Docs. a and b, and interviews with the complainant and the MCPS staff).

FINDINGS OF FACTS:

1. On March 19, 2012, the student was referred by school staff for an IDEA evaluation screening as a result of the complainant's verbal request for evaluation. There is no documentation or information from school staff that the complainant requested an evaluation prior to this date. However, school communication logs document that school staff had contacted the complainant during the 2011-2012 school year to discuss concerns about the student's behavior and the strategies to be used at home and at school to address the behavior (Docs. c and d, and interviews with the complainant and the MCPS staff).
2. There is documentation that, on April 13, 2012, the MCPS sent correspondence to the complainant inviting her to attend an IEP team meeting on April 17, 2012. The documentation indicates that a copy of the procedural safeguards was enclosed (Doc. e).
3. School staff report that the complainant was contacted by telephone and consulted about her availability prior to the meeting being scheduled for April 17, 2012; however, there is no documentation of this discussion (Doc. f and interviews with the MCPS staff).
4. On April 17, 2012, the MCPS held the IEP team meeting to determine whether the student was suspected of having a disability under the IDEA. The written summary of the meeting indicates that, when the complainant did not arrive for the meeting, school staff contacted her by telephone, and she informed them that she could not attend, but that the meeting should proceed in her absence. There is no documentation that school staff offered to have the complainant participate by alternative means, such as through teleconference (Doc. a and review of the student's educational record).
5. At the April 17, 2012 IEP team meeting, the team reviewed teacher reports of the student's classroom performance, the student's educational and behavioral history, and the concerns that the complainant expressed to school staff. The IEP team determined that no additional data was necessary, and that the student was not suspected of having a disability under the IDEA; proper documentation regarding the basis for the decision was not provided. The IEP team decided that the student's progress would be monitored with the provision of supports in the general education program (Doc. a and interviews with the MCPS staff).

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6. The MCPS reports that, due to the complainant's continuing concerns, an evaluation is now being conducted and is expected to be completed by September 14, 2012 (Doc. b and interviews with the complainant and the MCPS staff).

LEGAL REQUIREMENTS:

Child Find Responsibilities

The "child find" requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services. It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. However, the public agency must ensure that this process does not delay or deny a student's access to special education services when the student is suspected of being a student with a disability under the IDEA (34 CFR §300.111).

Parent Participation in IEP Team Meetings

To ensure that the rights of a student are protected, the public agency must take steps to provide the student's parent with the opportunity to participate in IEP team meetings. These steps include scheduling the IEP team meeting at a mutually agreed upon time and place, and providing the parent with written notice of the meeting at least ten (10) days in advance of the meeting, unless an expedited meeting is necessary (34 CFR §§300.321 and .322, and COMAR 13A.05.01.07).

If the parent is unable to attend the meeting, the public agency must offer alternative methods of participation, such as a video conference or a conference call. A meeting may be conducted without a parent in attendance if the public agency has been unable to convince the parent to attend, and has maintained a record of its attempts to arrange a mutually agreed upon time and place for the meeting (34 CFR §300.322, and COMAR 13A.05.01.07).

The Public Agency's Response to a Referral for an Evaluation

If a student is referred for an evaluation and the public agency does not suspect the student of having a disability under the IDEA, the parent must be provided with written notice of the public agency's refusal to conduct an evaluation. The written notice must include an explanation of why the public agency refuses to conduct an evaluation, a description of the data used in making its decision, the information that was used as the basis to make that decision, a description of other options that were considered and why those options were rejected, and a description of any other factors that were relevant in making the decision (34 CFR §300.305, COMAR 13A.05.01.04, and

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Analysis of Comments and Changes to IDEA, Federal Register, Vol. 71, No. 156, p. 46636, August 14, 2006).

CONCLUSIONS:

Based on the Findings of Facts #2 – #4, the MSDE finds that the MCPS did not provide the complainant with written notice of the meeting at least ten (10) days prior to the April 17, 2012 IEP team meeting. Based on the Finding of Fact #4, the MSDE finds that there is no documentation that the MCPS offered the complainant alternative methods of participating in the IEP team meeting when staff became aware that she could not attend the scheduled meeting.

Further, based on the Findings of Facts #1, #4, and #5, the MSDE finds that the IEP team did not suspect that the student is a student with a disability under the IDEA and that interventions would be provided in the general education program. However, based on the Finding of Fact #5, the MSDE finds that the MCPS did not ensure that the complainant was provided with proper written notice of the school system's refusal to conduct an evaluation. Therefore, the MSDE finds that violations occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the MCPS to provide documentation by October 1, 2012, that the evaluation has been completed and, if the student is determined to meet the criteria for identification as a student with a disability under the IDEA, that an IEP has been developed. If the student is identified as a student with a disability under the IDEA, the MCPS must also provide documentation by October 1, 2012 that the IEP team has determined whether the violations identified in this investigation resulted in a delay in the provision of special education and related services and, if so, the amount and nature of *compensatory services*² or other remedy necessary to redress the loss of services.

The MCPS must provide the complainant 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 complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

² 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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School-based

The MSDE requires the MCPS to provide documentation by November 1, 2012, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. 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 the MSDE. If the school system reports compliance with the requirements, the MSDE 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, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the MCPS.

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

TECHNICAL ASSISTANCE:

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

Please be advised that both the complainant and the MCPS 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. Pending the decision on a request for reconsideration, the school system must

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implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the Findings, Conclusions and Corrective Actions 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 Free Appropriate Public Education 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/ch

cc: Joshua P. Starr
Julie Hall
Sharon Gooding
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Dori Wilson
Anita Mandis
Martha J. Arthur
Christine Hartman