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April 20, 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: #11-064

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 February 23, 2011, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," on behalf of her daughter. 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 an Individualized Education Program (IEP) that addresses the student's needs has been in place or implemented since February 2010,¹ in accordance with 34 CFR §§300.101, .320, and .324; and
2. MCPS has not provided the complainant with prior written notice of the IEP team meeting held on December 6, 2010, in accordance with 34 CFR §300.503.

¹ The complaint included violations dating to the start of the 2009-2010 school year. The complainant was informed, in writing, on March 4, 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. Therefore, the investigation will cover the time period since February 2010.

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INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 25, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn Mason, Director of Special Education Services, MCPS; and Ms. Alison Steinfelds, Supervisor of Equity Assurance and Compliance Unit, MCPS.
3. On February 28, 2011, Ms. Stump spoke with the complainant by telephone and clarified the allegations to be investigated.
4. On March 4, 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. Mason of the allegations and requested that her office review the alleged violations.
5. On March 18, 2011, Ms. Stump reviewed the student's education record at the MCPS Central Office. Ms. Marsha Corley, Compliance Specialist, Equity Assurance and Compliance Unit, MCPS, and Ms. Patricia Grundy, Paralegal, Equity Assurance and Compliance Unit, MCPS, were present at the record review.
6. On March 22, 2011, Ms. Stump reviewed an audio recording of the IEP team meeting held on December 6, 2010. This recording was provided by the MCPS.
7. On March 24, 2011, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and interviewed the following MCPS personnel:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXX;
 - b. Ms. XXXXXXXXXXXX, Resource Teacher, XXXXXXXX;
 - c. Mr. XXXXXXXXXXXX, Behavior Support Teacher, XXXXXXXXXXXX;
 - d. Ms. XXXXXXXXXXXX, Teacher, XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX);
 - e. Mr. XXXXXXXXXXXX, Resource Teacher, XXXXXXXXXXXXXXXX; and
 - f. Ms. XXXXXXXXXXXX, School Social Worker, XXXXXXXXXXXX.

Ms. Steinfelds, Ms. Corley, and Ms. Grundy attended the site visit as representatives of MCPS and to provide information on MCPS policies and procedures, as needed.

8. On March 25, 2011, and April 7, 2011, MCPS provided MSDE with additional documentation from the student's education record.
9. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:

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- a. Correspondence and attachments from the complainant to MSDE, received February 23, 2011;
- b. Functional Behavioral Assessment and Behavior Intervention Plan, dated January 16, 2009;
- c. MCPS *Report of Psychological Evaluation*, dated February 17, 2009;
- d. MCPS *Educational Assessment Report*, dated February 25, 2009;
- e. IEP, dated April 22, 2009;
- f. MCPS *Authorization to Release/Receive Information* form, unsigned;
- g. IEP progress reports, dated June 8, 2009;
- h. Electronic mail (e-mail) correspondence between MCPS personnel, dated between April 19-23, 2010;
- i. IEP and meeting summary, dated May 6, 2010;
- j. IEP team meeting summary, dated December 6, 2010;
- k. IEP progress reports for the 2010-2011 school year; and
- l. School social worker's service provider log for the 2010-2011 school year; and
- m. Student's attendance data for the 2010-2011 school year.

BACKGROUND:

The student is nineteen (19) years old and is identified as a student with an other health impairment under IDEA, related to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and "adjustment disorder with anxiety." The student attends XXXXXXXXX, where she receives special education and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. a-e, i, and j).

FINDINGS OF FACT:

1. The IEP in effect in February 2010 was developed at an IEP team meeting on April 22, 2009. The documentation of that meeting indicates that the team considered the results of the following data, which were collected as part of a three-year reevaluation:
 - a. The report of the results of a functional behavioral assessment (FBA), conducted in January 2009, which indicates that the student displays several behaviors that interfere with her ability to make progress in the general education curriculum that are caused by the student's belief that she is not academically competent. These behaviors include:
 - i. An inability to function independently when completing assignments, homework, and classwork;
 - ii. An inability to accept responsibility for her academic progress;
 - iii. A lack of academic persistence with a task through its mastery;
 - iv. Difficulty successfully using the supports provided within the classroom environment;

- v. Avoidance behaviors such as inconsistent school attendance, leaving school before the end of the school day, placing her head on her desk, and speaking in low soft tones;
 - vi. An inability to demonstrate personal problem-solving skills, to manage disappointment, and to communicate her wants and needs;
 - vii. An inability to develop satisfactory relationships with peers; and
 - viii. An inability to manage the stress and frustrations typically encountered in a high school environment.
 - b. The report of the results of a psychological assessment, conducted in February 2009, which indicates that the student “demonstrates inappropriate behaviors or feelings under normal circumstances (such as appearing to be overwhelmed and unable to ask for help or ask questions).” Additionally, the report states that the student “has a tendency to develop physical symptoms or fears associated with personal or school problems.”
 - c. The report of the results of an educational assessment, conducted in February 2009, which indicates that the student is performing in the “low average” to “average” range in all academic subjects.
 - d. Information from school staff that the student missed a lot of school reportedly due to illness (Docs. b-f).
2. Based on its review of this data, the IEP team determined that the student continued to qualify as a student with an other health impairment and that the student’s disability adversely affects her ability to access the general education curriculum because “she also has limited alertness due to ADHD and needs consistent redirection to stay focused” (Doc. e).
3. The documentation of the meeting indicates that the team requested consent from the complainant for the school nurse to contact the student’s doctors to obtain information about the student’s health needs in order to address the interfering behaviors of lack of regular school attendance, but the complainant refused to provide the consent (Docs. e and f).
4. The team determined that the student has needs in written language, math, reading, and problem-solving. Additionally, the team identified needs with respect to managing the stress and frustration typically encountered in a high school environment, developing satisfactory relationships with peers, and successfully using the supports provided within the classroom environment. Needs related to reduced alertness due to ADHD, and fatigue were also identified (Doc. e).
5. In order to address the identified needs, the team determined that the student required annual goals in both academics and behavior. The behavior goals are designed to assist the student with improving her ability to follow school rules, prevent avoidance

behaviors, sustain academic motivation, identify situations that cause her stress and select appropriate solutions, and to be able to problem solve (Doc. e).

6. In order to assist the student in achieving the annual goals, the team determined that the student requires:
 - a. A behavioral intervention plan that requires the provision of verbal redirection, use of an agenda book, one-on-one assistance, and remedial academic support during lunch and after school;
 - b. Instructional and testing accommodations, including verbatim reading, visual cues, and use of calculation devices in order to address her "limited alertness and reduced focusing ability;"
 - c. Instructional and testing accommodations, including the use of a word processor and a change in location to access the word processor in order to address her fatigue caused by carpal tunnel syndrome;
 - d. Special education instruction in all academic subjects; and
 - e. Counseling as a related service (Doc. e).
7. The team determined that the least restrictive environment (LRE) in which the student's IEP can be implemented is in a separate special education classroom with a program designed to address the needs of students with social and emotional needs. The team determined that supplementary aids and services, including frequent checking for understanding, and reduced quantity of work are also necessary in order to implement the IEP in the LRE (Doc. e).
8. Based on the April 22, 2009 placement determination, the student was transferred to XXXXXXXX because that school had the appropriate program to address the student's social/emotional and behavioral needs. However, the student did not begin attending school at XXXXXXXX until April 19, 2010² (Docs. e, h, and m).
9. The IEP team convened on May 6, 2010. At the meeting, the team considered the student's lack of regular attendance at XXXXXXXXXXXX, resulting in a lack of sufficient progress in the general education curriculum and toward achieving the annual goals. The team also considered information from the complainant that the student suffers from migraine headaches and carpal tunnel syndrome and her concerns about how the student will be able to earn enough credits to graduate. The team decided that the supports

² The student received Home and Hospital Teaching (HHT) services from the start of the 2009-2010 school year until January 2010 as a result of a medical condition related to pregnancy. Although services were offered to the student at XXXXXXXXXXXX upon completion of the HHT services, the student did not return to school until April 19, 2010 (Docs. h and m).

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determined necessary on April 22, 2009 to address the student's needs were appropriate (Docs. g and i).

10. The IEP team, including the complainant, convened on December 6, 2010 to review the student's program and progress. The meeting summary and a review of the audio recording of the meeting indicate that the team discussed that provision of additional supports through the program at XXXXXXXX, such as additional help from the student's teacher before school and during lunch periods, had not resulted in the student's regular school attendance. A review of the audio recording documents that the student indicated that she would come to school if the school system gave her the credits toward graduation that she believes she has already earned, but that the school system says that she has not earned. The documentation indicates that the team discussed the student's options to earn the remaining credits that she would need to graduate. The documentation further indicates that the complainant did not want to proceed until the student had a chance to think about how she wants to earn the needed credits in order to graduate. As a result, the team did not make any decisions regarding the student's program (Doc. j and review of audio recording).
11. There is documentation that since the start of the 2010-2011 school year, the student's teachers addressed the annual goals in the IEP when the student attended school, but that the student has not made progress toward achieving the goals because of the student's lack of consistent school attendance. There are service provider logs that document that when the student is in school, the school social worker provides the student with the counseling services required by the IEP (Docs. k and l).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that addresses the student's needs and IEP implementation

IEP development

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

In this case, the complainant alleges that the student has medical needs that arise out of her disability that prevent her from attending school regularly. She further asserts that these needs have not been properly identified and addressed (Doc. a).

Based on Findings of Fact #1-9, MSDE finds that the IEP team considered assessment data and information from the complainant, the student's teachers, and the student. The team developed a program to address the identified needs, including medical needs related to reduced alertness and

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fatigue and social/emotional and behavioral needs. Therefore, MSDE finds no violation regarding this aspect of the allegation.

This office understands that the complainant disagrees with the team's decisions about the nature of special education services needed to address the student's medical needs. 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).

When the State education agency determines that the public agency did not follow proper procedures, it can require the public agency to ensure that the IEP team reviews and revises, as appropriate, the student's program to ensure that it addresses the needs identified in the data, ensuring that proper procedures are followed. The State education agency can also require the public agency to determine a remedy to the student for the loss of appropriate services (OSEP Letter #00-20). However, the state education agency may not overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20).

In this case, MSDE has not identified a procedural violation with respect to the determination of special education services and may not overturn the team's decisions. MSDE reminds the complainant that she maintains the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding the special education services required by the student's program.

IEP implementation

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). Based on Finding of Fact #11, MSDE finds that there is documentation that the student's IEP is implemented when the student attends school. Therefore, MSDE finds no violation regarding this aspect of the allegation.

Allegation #2: Prior written notice of the December 6, 2010 team meeting

The public agency is required to provide parents with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student (34 CFR §300.503). There is no requirement to provide parents with a verbatim transcript of discussions that occur at the IEP team meeting (*Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46691).

In this case, the complainant alleges that she did not receive written notice of the IEP team's decisions from the December 6, 2010 IEP team meeting, which she attended. Based on Finding

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of Fact #10, MSDE finds that there were no proposals to initiate or change or refusals to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student made at the December 6, 2010 IEP team meeting. Therefore, because there were no proposals made to change the program and no refusal to initiate any changes to the program, MSDE finds that MCPS was not required to provide prior written notice to the complainant. As a result, MSDE finds no violation with respect to this allegation.

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.

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 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,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH:ks

cc : Jerry D. Weast
Gwendolyn Mason
Alison Steinfelds
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