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April 29, 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: #11-071

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 March 17, 2011, MSDE received correspondence from Mr. XXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter "the complainants," on behalf of their son. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA), the Code of Maryland Regulations (COMAR), and the Annotated Code of Maryland with respect to the above-referenced student. MSDE investigated the following allegations:

1. MCPS did not ensure that the student's Individualized Education Program (IEP) was fully implemented from September 17, 2010 to January 6, 2011, in accordance with 34 CFR §300.101. Specifically:
 - a. MCPS did not provide the student with the number of hours of specialized instruction in reading comprehension required by the IEP, and
 - b. MCPS did not provide the student with the accommodations required by the IEP.

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 2

2. MCPS did not ensure that the complainants were provided with prior written notice of the decisions made by the IEP team on September 16, 2010, in accordance with 34 CFR 300.503.
3. MCPS did not ensure that the revised IEP was provided to the complainants within five (5) days after the September 16, 2010 IEP meeting, in accordance with Education Article §8-405, Annotated Code of Maryland.
4. MCPS did not ensure that the complainants were provided with at least ten (10) days' written notice of the February 17, 2011 IEP team meeting, in accordance with 34 CFR §300.322, COMAR 13A.05.01.07D.
5. MCPS did not ensure that documents to be discussed at the February 17, 2011 IEP team meeting were provided to the complainants at least five (5) days before the meeting, in accordance with Education Article §8-405, Annotated Code of Maryland.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine R. Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 21, 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 Steinfelds, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On March 22, 2011, Ms. Hartman conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
4. On March 24, 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 April 14, 2011, MSDE received a written response to the complaint from MCPS. On the same day, Ms. Hartman and Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, reviewed the student's education record at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and interviewed the following school staff:

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 3

- a. Ms. XXXXXXXXX, Principal, XXXXXXXXX;
- b. Ms. XXXXXXX, Resource Teacher, XXXXXXXXX; and
- c. Mr. XXXXXXXXX, Counselor, XXXXXXXXX.

Ms. Steinfels and Ms. Donna Naberhuis, Compliance Specialist, Equity Assurance and Compliance Office, MCPS, were present at the record review, as representatives of MCPS, in order to provide information on MCPS policies and procedures, as needed.

6. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. IEP, dated September 16, 2010;
 - b. IEP, dated January 6, 2011;
 - c. IEP, dated February 17, 2011;
 - d. Correspondence from MCPS to the complainants, dated February 25, 2011;
 - e. Correspondence from MCPS to MSDE, dated April 14, 2011;
 - f. Correspondence from MCPS to the complainants, dated January 12, 2011;
 - g. Electronic mail (e-mail) from MCPS to the student's mother, dated February 14, 2011;
 - h. Correspondence from MCPS to the complainants, dated January 20, 2011;
 - i. E-mail from MCPS to the student's mother, dated January 21, 2011; and
 - j. Elementary Teacher Report, dated January 17, 2011.

BACKGROUND:

The student is eleven (11) years old and attends XXXXXXXXXX. He is identified as having a specific learning disability, and receives special education and related services under IDEA. The complainants have participated in IEP team meetings and have received notice of their procedural safeguards (Docs. a-c).

**ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION
AND RELATED SERVICES FROM SEPTEMBER 17, 2010
TO JANUARY 6, 2011**

FINDINGS OF FACT:

1. On September 16, 2010, an IEP team meeting was held to review the IEP and at that meeting the IEP was revised. The IEP requires that the student be provided with special education instruction and accommodations in both the general education and special education classroom (Doc. a).

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 4

2. On February 17, 2011, as part of an interim review of the student's program, the IEP team discussed the complainants' concerns that the student was not consistently being provided with the special education services required by the IEP. Based on the school's reported inability to document the consistent provision of the student's special education services, the IEP team determined specific services that would be provided as a remedy (Docs. c-e).

DISCUSSION/CONCLUSIONS:

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, based on Findings of Fact #1 and 2, MSDE finds that there is no documentation of consistent implementation of the student's IEP and that a violation has occurred. Notwithstanding the violation, based on Finding of Fact #2, MSDE finds that services have been offered to remediate the violation. Therefore, no additional student-specific corrective actions are required. If the complainants disagree with the amount and nature of the services offered by the IEP team, they maintain the right to request mediation or to file a due process complaint to resolve the dispute.

ALLEGATIONS #2 & #3: PRIOR WRITTEN NOTICE OF THE DECISIONS MADE BY THE IEP TEAM ON SEPTEMBER 16, 2010 AND PROVISION OF A COPY OF THE IEP

FINDINGS OF FACT:

3. School staff acknowledge there is no documentation that the complainants were provided with prior written notice of the decisions made at the September 16, 2010 IEP team meeting or a copy of the IEP (Doc. e and interview with MCPS staff).
4. After the complaint was filed, MCPS provided the complainants with a copy of the IEP which reflects decisions made by the IEP team on September 16, 2010 (Interview with the student's mother).

DISCUSSION/CONCLUSIONS:

Allegation #2: Prior Written Notice of the Decisions Made by the IEP Team on September 16, 2010

Written notice must be given to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE). This notice includes a description of the action proposed or refused, the basis for the decision, other options considered, and the data used in making the decision (34 CFR §300.503).

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 5

The complainants assert that, while they participated in an IEP team meeting to review and revise the student's IEP on September 16, 2010, they were provided with neither written notice of the IEP team's decisions prior to those decisions being implemented nor a complete copy of the student's revised IEP. Based on Finding of Fact #3, MSDE finds that there is no documentation that MCPS provided the complainants with prior written notice of the decisions made by the IEP team on September 16, 2010. Therefore, MSDE finds a violation with regard to this allegation.

However, based on Finding of Fact #4, MCPS has subsequently provided the complainants with a copy of the IEP. Therefore, notwithstanding the violation, no student-specific action is required to remediate the violation.

Allegation #3: Provision of a Copy of the IEP

Parents must be provided a copy of the student's IEP within five (5) business days of the IEP team meeting at which the program was reviewed (Md. Code Ann., Educ., §8-405 (2010)). Based on Findings of Fact #3 and #4, MSDE finds that there is no documentation that MCPS provided the complainants with a copy of the IEP within five (5) business days after the meeting. Therefore, MSDE finds a violation with regard to this allegation.

Notwithstanding the violation, MCPS has subsequently provided the complainants with a copy of the IEP. Therefore, no student-specific corrective action is required to remediate the violation.

ALLEGATIONS #4 & #5: PROVISION OF TIMELY INVITATION TO THE FEBRUARY 17, 2011 IEP TEAM MEETING AND PROVISION OF A COPY OF DOCUMENTS FIVE (5) DAYS PRIOR TO THAT MEETING

FINDINGS OF FACT:

5. An IEP team meeting was scheduled for January 27, 2011. By letter dated January 12, 2011, the complainants were provided with a written invitation to the meeting, which included the meeting's purpose, time and location, as well as the individuals to be in attendance. That meeting was subsequently rescheduled to February 17, 2011 by agreement of both MCPS and the complainants, and the complainants participated in the meeting (Docs. c-g and interviews with the student's mother and MCPS staff).
6. On January 20, 2011, MCPS provided the complainants with a copy of a proposed IEP that was to be considered by the team at the February 17, 2011 IEP team meeting. On January 21, 2011, a copy of a teacher report of the student's classroom performance was

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 6

sent home to the complainants in the student's backpack. This document was used by the IEP team on February 17, 2011 when reviewing the student's progress (Docs. c and h-j).

7. At the February 17, 2011 IEP team meeting, the team decided that the student's teacher would begin to provide the complainants with weekly e-mail reports of the specific accommodations provided in order to address the complainants' concerns about whether accommodations were being provided to the student on a consistent basis. When the complainants asked the teacher how she planned to track the accommodations provided, the teacher shared with them a chart the teacher developed in order to document the provision of accommodations. However, the team did not make any determinations regarding how the provision of accommodations would be tracked by the teacher and there is no documentation that a purpose of the meeting was to determine how the teacher would track the provision of accommodations to the student (Docs. c-e, review of record, and interviews with the student's mother and MCPS staff).

DISCUSSION/CONCLUSIONS:

Allegation #4: Provision of Ten (10) Days' Written Notice of the February 17, 2011 IEP Team Meeting

In order to ensure that parents are afforded an opportunity to participate in their child's IEP team meetings, parents must be provided notice of the meeting, which must be scheduled at a mutually agreed upon time and place. The notice must contain, among other things, the purpose, time and location of the meeting and indicate who will be in attendance (34 CFR §300.322). In Maryland, that notice must be at least ten (10) days prior to the scheduled IEP team meeting (COMAR 13A.05.01.07).

Based on Finding of Fact #5, MSDE finds that the complainants were provided written notice of the IEP team meeting more than ten (10) days prior to the date of the meeting, agreed to the date on which the IEP team meeting was rescheduled, and participated in the IEP team meeting. Therefore, MSDE finds no violation with regard to this allegation.

Allegation #5: Provision of a Copy of Documents Five (5) Days Prior to the February 17, 2011 IEP Team Meeting

At least five (5) business days prior to a scheduled IEP team meeting, appropriate school personnel must provide the parents with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 (2010)). The document in question must be a document that is relating to the development of a child's IEP and must actually be discussed at the IEP team meeting (MSDE Technical Assistance Bulletin #20).

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 7

In this case, the complainants allege that they should have been provided with a copy of the chart the teacher was going to use to track the provision of the student's accommodations. Based on Findings of Fact #6 and 7, MSDE finds that the complainants were provided a copy of the documents the team planned to discuss at the IEP team meeting. Further, based on Findings of Fact #6 and 7, MSDE also finds that, because determining how the teacher would track the provision of accommodations was not a purpose of the meeting, MCPS was not required to provide the complainants with a copy of the document the teacher shared at the meeting. Therefore, MSDE finds no violation with regard to this allegation.

CORRECTIVE ACTION/TIMELINE:

MCPS personnel report that they are taking steps to ensure compliance with the requirements for prior written notice and provision of the IEP within five (5) days of the IEP team meeting within the school system and that this action will be completed by July 1, 2011. Accordingly, MSDE requires MCPS to provide documentation that this action has been taken by the start of the 2011-2012 school year.

Upon receipt of this report, MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of Memorandum #09-02 issued by the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration for future monitoring activities.

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, and 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 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 action consistent with the timeline requirement as reported in this LOF.

XXX

Ms. Mary Lee Phelps, Interim Acting Director

April 29, 2011

Page 8

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 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/crh

cc: Jerry D. Weast
Gwendolyn J. Mason
Alison Steinfeld
Donna Naberhuis
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Christine R. Hartman