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July 9, 2016

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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #16-125

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 May 10, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that written notice was provided of the participants who would be in attendance at the May 5, 2016 Individualized Education Program (IEP) team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
2. The BCPS did not ensure the complainant’s opportunity to participate in the entire IEP team meeting that was held on May 5, 2016, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. Specifically, you allege that the IEP team began the May 5, 2016 IEP team meeting without you present.

INVESTIGATIVE PROCEDURES:

1. On May 11, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On May 20, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, and Mr. Albert Chichester, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to discuss the allegations in this complaint.
4. On May 24, 2016, and June 1, 3, 24 and 28, 2016, the complainant provided the MSDE with documentation for consideration.
5. On May 25, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Rider of the allegations to be investigated and requested that her office review the alleged violations.
6. On May 26, 2016 and June 15, 2016, the MSDE requested documentation from the BCPS.
7. On May 27, 2016, June 15 and 17, 2016, and July 6, 2016, the BCPS provided the MSDE with documentation for consideration.
8. On May 27, 2016, Ms. Austin conducted a telephone interview with Ms. Conya Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS. During that conversation, Ms. Bailey informed Ms. Austin that the BCPS has acknowledged that a violation occurred with respect to Allegation #1. On the same date, the BCPS provided MSDE with correspondence from the BCPS reflecting the acknowledgement.
9. On June 27, 2016, Ms. Austin conducted a telephone interview with Ms. XXXXXXXXXXXX, Individualized Education Program (IEP) Chairperson, XXXXXXXXXXXXXXXXXXXX, and Ms. Denise Mabry, Coordinator of Compliance, Office of Special Education, BCPS, to discuss the allegations.
10. The MSE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Written summary of the April 22, 2016 IEP team meeting, and eligibility determination, dated April 22, 2016;
 - b. IEP, dated May 5, 2016;
 - c. Notice of the May 5, 2016 IEP team meeting, dated April 20, 2016
 - d. Notice of the May 5, 2016 IEP team meeting, dated April 28, 2016;
 - e. Sign-in sheet of participants at the May 5, 2016 IEP team meeting;

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- f. Written summary of the May 5, 2016 IEP team meeting 2016;
- g. Correspondence from the Central Office staff to the complainant, dated May 25, 2016;
- h. Electronic mail (email) communications between the complainant and the school system staff, dated May 5 to 18, 2016;
- i. Monthly message from the BCPS Office of Special Education, including guidance on notification of IEP team participants expected to attend meetings, undated; and
- j. Correspondence from the complainants alleging violations of the IDEA, received by the MSDE on May 10, 2016.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) and has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

ALLEGATION #1 NOTICE OF IEP MEETING PARTICIPANTS

FINDINGS OF FACTS:

1. On April 20, 2016, the school staff sent the complainant a written invitation notifying him of the IEP team meeting scheduled for May 5, 2016. This notice included the names of the school system staff members who were expected to participate in the May 5, 2016 IEP team meeting (Doc. c).
2. On April 28, 2016, the school staff sent the complainant a second (2nd) invitation notice for the May 5, 2015 IEP team meeting. This notice identified the names of different school system expected to attend the meeting (Doc. d).
3. The IEP team convened on May 5, 2016 with three (3) school system staff members whose names were not listed on either the April 20, 2016 or the April 28, 2016, invitations. At the meeting, the complainant expressed concern that he had not been provided with advance notice that these members were expected to attend the meeting, although he had, himself, invited one (1) of those individuals (Docs. c – f, and h).
4. Following the meeting, the complainant sent several electronic mail (email) communications to the school system staff reiterating his concern about the attendance of certain school system staff members at the May 5, 2016 IEP team meeting whose names were not included on the invitations to the meeting (Doc. h).
5. On May 25, 2016, the BCPS sent correspondence to the complainant acknowledging that “a violation occurred” related to the invitation not listing the names of all of the individuals who attended the May 5, 2016 IEP team meeting (Doc. g).

6. The complainant requested “additional district training” as the proposed remedy to address the violations alleged in the State complaint (Doc. j).

DISCUSSION/CONCLUSIONS:

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child (34 CFR §300.322)

Based on the Findings of Facts #1 - #5, the MSDE concurs with BCPS’s conclusion that a violation occurred and appreciates the school system’s response to the investigation. Notwithstanding the violation, based on the Finding of Fact #6, the MSDE does not require student - specific corrective action.

**ALLEGATION #2 THE COMPLAINANT’S PARTICIPATION IN THE
MAY 5, 2015 IEP TEAM MEETING**

FINDINGS OF FACTS:

7. The invitation notice for the May 5, 2016 IEP team meeting reflects that the meeting was scheduled for 10:00 a.m. at XXXXXXXXX for the purpose of developing the initial IEP for the student.¹ The written summary of the meeting documents that a draft IEP was prepared prior to the meeting and was sent to the complainant in advance of the meeting (Docs. d and h).
8. The written summary of the May 5, 2016 IEP team meeting documents that the meeting started at 10:00 a.m., and there is documentation that the complainant arrived “on time” for the meeting (Doc. f).
9. There is documentation that, at 10:00 a.m., the school staff requested that the complainant “wait in the lobby” while other members of the IEP team, from XXXXXXXXXXXXXXXX (XXXXXXX), the school that the student will attend during the 2016 – 2017 school year, were invited to join the conference room for the meeting (Docs. f and h).
10. At 10:20 a.m., the complainant was permitted to join the meeting, at which time he noted his objection to the start of the IEP team meeting without his participation (Doc. h).

¹ The student was found eligible for special education services on April 22, 2016 (Doc. a).

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11. The written summary of the May 5, 2016 IEP team meeting documents that the IEP team members from XXXXXX were “invited to the conference room before team” so that they “could review the draft IEP” (Doc. f).
12. In a series of emails sent to the school system after the meeting, the complainant expressed his continued objection to the start of the May 5, 2016 IEP team meeting without his presence, as a required IEP team member. The complainant also documented his belief that the school system-based IEP team members began the IEP team meeting at 10:00 am while they conducted a review of the draft IEP (Doc. h).
13. On May 9, 2016, the school system sent an email to the complainant explaining that the reason that the IEP team members from XXXXXXXX were invited to “a short meeting prior to the IEP team” meeting was “to ensure that [they were] aware of [the student’s] needs and the information contained in the draft IEP” (Doc. h).

DISCUSSION/CONCLUSIONS:

The IEP team must include the parents of the student, not less than one (1) regular education teacher of the student, not less than one (1) special education teacher or provider of the student, a representative of the public agency, and an individual who can interpret the instructional implications of evaluation results, who may also be a required member of the IEP team. The IEP team may also include other individuals who have knowledge or special expertise regarding the student, including related service personnel, as appropriate (34 CFR §300.321).

The public agency is required to take steps to ensure that a parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings. An IEP meeting may be conducted without a parent in attendance only if the public agency is unable to convince the parent to attend (34 CFR §300.322).

Based on the Findings of Facts #7 - #13, the MSDE finds that the school staff convened the May 5, 2016 IEP team meeting at 10:00 a.m., without the participation of the complainant. Based on the same Findings of Facts, the MSDE finds that the complainant, a required member of the IEP team, was not afforded the opportunity to participate in the May 5, 2016 meeting from 10:00 a.m. until 10:20 a.m. Therefore, this office finds a violation occurred. Notwithstanding the violation, based on the Finding of Fact #6, the MSDE does not require student - specific corrective action.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by October 1, 2016, of the steps it has taken, including appropriate staff training, to ensure compliance with the IDEA and related State requirements, as well as the BCPS’s written guidance, governing parent participation in an IEP team meeting, and notification to parents of all individuals expected to attend an IEP team meeting, in accordance with 34 CFR §§300.321 and .322.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the BCPS 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 implement any corrective actions within the timelines reported in this Letter of Findings.

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

Sincerely,

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

MEF:ksa

c: S. Dallas Dance
Conya Bailey
XXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin