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July 29, 2016

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Mr. James Tucker
Superintendent
Maryland School for the Deaf
101 Clarke Place
P.O. Box 250
Frederick, MD 21705

RE: XXXXX
Reference: #16-138

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.

ALLEGATIONS:

On June 1, 2016, the MSDE received a complaint from Mr. XXXXXXXXX and Ms. XXXXXXXXXXXXX hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainant alleged that the Maryland School for the Deaf (MSD) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to their son, the above-referenced student.

The MSDE investigated the following allegations:

1. The MSD has not ensured that the Individualized Educational Program (IEP) has addressed the student’s physical education needs, since November 2015, in accordance with 34 CFR §§300.320 and .324;

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2. The MSD did not provide proper written notice from the November 2, 2015 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07;
3. The MSD has not ensured that written parental consent has been obtained to conduct assessments of the student's occupational therapy needs in November 2015, in accordance with 34 CFR §300.300;
4. The MSD has not ensured that proper written notice was provided of the decisions made by the IEP team since June, 2015,¹ in accordance with 34 CFR §300.503;
5. The MSD did not provide a copy of the IEP document within five (5) business days after the IEP team meeting on April 29, 2016 and May 6, 2016, in accordance with Md. Code Ann., Educ., §8-405(d) and COMAR 13A.05.01.07D(3); and
6. The MSD has not ensured that the student's educational record is maintained and available to the student's parent, in accordance with COMAR 13A.08.02.09, and *The Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. On June 2, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mr. James Tucker, Superintendent, Maryland School for the Deaf.
2. On June 21, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, sent correspondence to the complainants requesting clarification of the allegations to be investigated.
3. On July 1, 2016, the complainants sent correspondence to the MSDE to clarify the allegations to be investigated.
4. On July 1, 2016, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the MSD of the allegation and requested that the school system review the alleged violations.
5. On July 14, 2016, Mr. Loiacono and Ms. Sharon Floyd, Complaint Investigator, MSDE contacted Ms. Stacey Bundy, Director of Student Achievement, MSD to arrange a review of the student's records.

¹While the complainants included allegations of violations that occurred prior to this date, they were informed, in writing, that only those violations of the IDEA that are alleged to have occurred within one year of the filing of a State complaint may be addressed through the State complaint investigation (34 CFR §300.153).

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6. On July 15, 2016, Mr. Loiacono MSDE, conducted a site visit at the MSD to review the student's educational record. Ms. Bundy attended the site visit as a representative of the MSD and to provide information on the school's policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated June 1, 2015;
 - b. IEP, dated November 2, 2015;
 - c. IEP Draft, dated February 22, 2016;
 - d. IEP, dated March 18, 2016;
 - e. IEP Team Meeting Notice, dated May, 28, 2015;
 - f. IEP Team Meeting Notice, dated October 22, 2015;
 - g. IEP Team Meeting Notice, dated March 5, 2016
 - h. Prior Written Notice, dated July 16, 2016;
 - i. Occupational Therapy Assessment, dated December 16, 2015;
 - j. Electronic Mail (Email) from the School Staff to the complainant, dated November 20, 2015;
 - k. Email from the School Staff to the complainant, dated October 22, 2015;
 - l. Email from the Complainants to the School Staff, dated February 16, 2016; and
 - m. Correspondence from the complainants alleging allegations of violations of the IDEA, received by the MSDE on June 1, 2016.

BACKGROUND:

The student is nine years old and attends the Maryland School for the Deaf. He is identified as a student with a Hearing Impairment under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

There is documentation that the complainants participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-h).

ALLEGATION #1: ADDRESSING THE STUDENT'S PHYSICAL EDUCATION NEEDS

FINDINGS OF FACTS:

1. There is no data that the student has gross motor skills needs or that he requires adapted physical education (Review of student's record).
2. On November 20, 2015, the school staff informed the complainants that they were implementing specific procedures during the physical education class for the student in

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order to protect the “specialized” eyeglass lenses worn by the student. This included prohibiting other students from throwing balls above waist level, allowing the student to wear sport goggles during physical education class, and permitting him to opt to sit out any activities with which he was uncomfortable (Doc. k).

3. At the IEP team meeting on March 18, 2016, the complainants requested that the requirement for the provision of sport goggles and the manner in which they would be offered to the student be included in his IEP. As a result, the IEP was revised to include that sport goggles would be made available to the student on a daily basis and that, “during more strenuous or highly competitive activities, the teacher will prompt/suggest/remind [the student] that the goggles are available for use” (Docs. c, d and review of IEP team meeting audio recording).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free and Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student’s disability that are identified in the evaluation data (34 CFR §§300.101 and .320).

Based on Findings of Facts #1-3, the MSDE finds that there is no data that the student has special education needs related to physical education. Based on those same Findings of Facts, the MSDE further finds that the IEP team considered the complainants’ concerns and has provided general education supports to address the concerns. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #2: NOTICE OF IEP TEAM MEETINGS

FINDING OF FACT:

4. There is documentation that a written meeting notice was prepared for the June 1, 2015 IEP team meeting, but there is no documentation that the complainants were provided with the notice. There is documentation, however, that the complainants were able to attend and participate in the IEP team meeting (Docs. a and e).
5. There is documentation that the complainants were provided with notice of the November 22, 2015 IEP team meeting on October 22, 2015. However, the notice did not include the full list of the IEP team meeting attendees (Docs. b, f, j and k).
6. There is documentation that a meeting notice was prepared for the March 18, 2016 IEP team meeting, but there is no documentation that the complainants were provided the notice. There is documentation, however, that the complainants were able to attend and participate in the IEP team meeting (Docs. c, d, and g).

DISCUSSION/CONCLUSIONS:

The public agency is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded with this opportunity, a written invitation must be sent to the parent at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent needs of the student to ensure the provision of a FAPE. The meeting notice must indicate the purpose, time, and location of the meeting and who will be in attendance (34 CFR §300.322 and COMAR 13A.05.01.07D).

Based on the Findings of Facts #4-#6, the MSDE finds that there is no documentation that the complainants were provided with written invitations for the June 1, 2015 and March 18, 2016, IEP team meetings at least ten (10) days before each meeting.

Based on the Findings of Facts #5, the MSDE further finds that the IEP meeting notice sent on October 22, 2015 did not include all the required information for the November 22, 2015 IEP team meeting. Therefore, the MSDE finds a violation with respect to this allegation.

Notwithstanding the violation, based on the Findings of Facts #4-6, the MSDE finds that the complainants were able to participate in the meetings, and therefore, no student-specific corrective action is required.

ALLEGATION #3: CONSENT FOR THE OCCUPATIONAL THERAPY ASSESSMENT

FINDING OF FACT:

7. On June 1, 2015, the IEP team at the MSD met to discuss the occupational needs of the student's brother. However, at the IEP meeting held for this student, no occupational therapy needs were discussed (Docs. a and l).
8. In December 2015, the occupational therapist conducted occupational therapy assessments for both this student and his brother (Doc. i).
9. There is no documentation that the complainants provided consent for an occupational therapy assessment for this student (Review of the student's record).

DISCUSSION/CONCLUSIONS:

Informed parental consent must be obtained prior to conducting assessments. If the parent refuses to provide consent, the public agency may, but is not required to, file a due process complaint in order to seek approval to conduct the assessments (34 CFR §300.300).

In this case, the complainants assert that the student was assessed in an area that was not needed and for which they did not provide consent.

Based on Findings of Fact #7-9, the MSDE finds that there is no documentation that the MSD received consent to conduct the occupational therapy assessment or that an occupational therapy assessment was required for the student. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #4: PRIOR WRITTEN NOTICE OF THE IEP TEAM DECISIONS

FINDINGS OF FACTS:

10. There is documentation that the IEP team prepared prior written notice of the IEP team's June 1, 2015 and March 18, 2016 decisions, but there is no documentation that the notices were sent to the complainants (Review of the student's record).
11. There is documentation that the complainants have received prior written notice of the IEP team's decisions made on November 2, 2015, there is no documentation that they were sent to the complainants prior to implementation (Doc. b).

DISCUSSION/CONCLUSIONS:

The public agency must provide parents with written notice prior to any proposal or refusal to initiate or change the identification, evaluation, or educational placement or the provision of a FAPE to a student with a disability. This notice must include a description of the action, and explanation of why the public agency is taking or refusing to take the action, a description of the data used as a basis for the decision, and a description of other options that were considered (34 CFR §300.503).

In this case, based on Findings of Facts #10 and #11, the MSDE finds that there is no documentation that the IEP team has provided the complainants with proper written notice in a timely manner, and prior to implementing the decisions made by the IEP team, since June 2015. Therefore, based on Finding of Facts #10 and #11, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #5: PROVIDING COPIES OF THE STUDENT'S IEP

FINDINGS OF FACTS:

12. There is documentation that the complainants have been provided with a copy of the student's IEP following amendments made at the June 1, 2015 and November 2, 2015

IEP team meetings, but there is no documentation that they were provided to the complainants within five days after each meeting (Documentation and review of the student's record).

13. There is no documentation that the complainants have been provided with a copy of the student's IEP, developed on March 18, 2016 (Review of the student's record).

DISCUSSION/CONCLUSIONS:

Not later than five (5) business days after a scheduled IEP team meeting, school personnel must provide a copy of the completed IEP to the parent. If the IEP has not been completed by the fifth (5th) business day after the meeting, a draft copy of the IEP must be provided (COMAR 13A.05.01.07D).

Based on Findings of Facts #14 and #15, the MSDE finds that there is no documentation that the complainants were provided with copies of IEPs developed at the June 2, 2015, November 22, 2015 and March 18, 2016 IEP team meetings in a timely manner. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ALLEGATION #6: MAINTAINING THE STUDENT'S RECORD

FINDING OF FACT:

14. The student's educational record does not contain required IEP and assessment documents (Review of student records).

DISCUSSION/CONCLUSIONS:

All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627). In order to ensure proper student records management, local public agencies in the State of Maryland are required to maintain educational records consistent with the Maryland Student Records System Manual (COMAR 13A.08.02.01 and .02).

The Maryland Student Records System Manual requires that, in addition to the documents that must be retained in the educational records for all students, specific information is required to be maintained in the educational records for students with disabilities for a period of six years. This information includes the IEP and any documentation of IEP team meetings, progress reports and assessment reports (Maryland Student Records System Manual, 2016).

Based on Finding of Fact #14, the MSDE finds that the MSD has not maintained all of the documents that are required in the student's record. Therefore, the MSDE finds that a violation has occurred with respect to this allegation.

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CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE further requires the MSD to provide documentation by October 1, 2016 that the IEP team has determined the compensatory services to remediate the violations identified through this investigation.

School-Based

The MSDE requires the MSD to provide documentation by October 1, 2016 that training has been provided to the staff involved in this investigation on the requirements for which violations were identified.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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 the MSD and the complainant 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 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, 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 FAPE for the student, including issues subject to this State complaint investigation, consistent

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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:gl

c: XXXXXXXX
 Stacey Bundy
 Dori Wilson
 Anita Mandis
 Gerald Loiacono