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November 16, 2016

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Mr. Philip A. Lynch
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #17-032

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.

ALLEGATION:

On September 19, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of 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 her son, the above-referenced student.

The MSDE investigated the allegation that the MCPS has not addressed the student’s transportation needs since the start of the 2016 - 2017 school year, in accordance with 34 CFR §§300.101, and .324.

INVESTIGATIVE PROCEDURES:

1. On September 19, 2016, the MSDE received the State complaint and documentation to be considered.

XXX

Mr. Philip A. Lynch

November 16, 2016

Page 2

2. On September 22, 2016, the MSDE sent a copy of the complaint, via facsimile, to Mr. Philip A. Lynch, Director of Special Education, MCPS.
3. On October 4, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
4. On October 11, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Mr. Lynch of the allegation to be investigated and requested that his office review the alleged violation.
5. On November 4, 2016, the MSDE received a written response from the MCPS which acknowledged a violation with respect to the allegation.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Individualized Education Program (IEP), dated February 17, 2016;
 - b. IEP, dated August 22, 2016;
 - c. *Student Transportation Action Form* (STAR), dated August 24, 2016;
 - d. Correspondence, dated November 4, 2016, from the MCPS Central Office staff; and
 - e. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on September 19, 2016.

BACKGROUND:

The student is ten (10) years old and is identified as a student with Autism under the IDEA. He attends the XXXXXXXXXXXXXXXXXXXXXXXXXX and has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services (Docs. a - c).

In August 2016, the student was enrolled in the MCPS as a result of the family moving from XXXXX to Maryland. While living in XXXXX, the student had an IEP that identified him as a student with Autism under the IDEA (Docs. a and e)

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a, b, and e).

XXX

Mr. Philip A. Lynch

November 16, 2016

Page 3

FINDINGS OF FACTS:

1. The student's XXXXX IEP, dated February 18, 2016, requires that he be provided with transportation that includes the use of a seat belt while on the school bus (Doc. a).
2. On August 22, 2016, the MCPS IEP team convened, and following its review, adopted the student's XXXXX IEP, including the use of a seat belt while on the school bus. The team discussed transportation needs for the student and completed the MCPS *Student Transportation Action Form (STAR)* form to initiate transportation services for the student. The STAR form reflects that the student requires a seat belt "ONLY" while on the school bus (Docs. b and c).
3. The MCPS acknowledge that as the result of "inadvertent miscommunication" with school staff with regard to the proper procedures for completing the STAR form, a safety vest was utilized with the student, rather than a seat belt, while on the school bus (Docs. d and e).

DISCUSSION/CONCLUSIONS:

When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, and the academic, developmental, and functional needs of the student (34 CFR §300.324).

In this case, the complainant alleges that although the IEP requires that a seat belt be utilized when the student is on the school bus, a safety vest was used instead. The complainant asserted that placing the student in a safety vest increases his anxiety and escalates his negative behaviors (Doc. e).

Based on the Findings of Facts #1 - #3, the MSDE finds that the IEP continues to require the same transportation services that were provided in the XXXXX IEP. Specifically, the IEP requires the use of a seat belt and not a safety vest, while being transported on the school bus.

Further, based on those Findings of Facts, the MSDE concurs with the MCPS report that a safety vest was utilized with the student rather than a seat belt, as required by the IEP. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTION/TIMELINES:

The MCPS has proposed to conduct district-wide training for the MCPS Department of Transportation staff and the Department of Special Education Services staff on the proper use of Child Safety Restraint Systems for transporting students with disabilities and will revise the STAR form used to initiate transportation services for students.

In addition, the MCPS proposes to convene an IEP meeting with the complainant to clarify that no changes were made to the Maryland IEP, with respect to transportation services, when the XXXXX IEP was adopted, and to address any concerns the complainant may have regarding the student's transportation needs.

The MSDE requires the MCPS to provide documentation by February 28, 2017, that the corrective action proposed by the MCPS has been taken.

TECHNICAL ASSISTANCE:

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

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 implement any corrective actions within the timeline 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 for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

XXX

Mr. Philip A. Lynch

November 16, 2016

Page 5

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:ac

c: Jack Smith
Chrisandra A. Richardson
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