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April 28, 2017

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

RE: XXXXX
Reference: #17-112

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 1, 2017, the MSDE received a complaint from Mr. XXXXXXXXXX and Ms. XXXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Maryland School for the Deaf (MSD) 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 MSD did not provide written notice of the August 23, 2016 Individualized Education Program (IEP) team meeting at least ten days prior to the meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.
2. The MSD did not provide prior written notice of the decisions made by the IEP team on August 23, 2016, in accordance with 34 CFR §300.503.

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3. The MSD has not ensured that the student's teachers meet State requirements for certification during the 2015-2016 school year,¹ in accordance with 34 CFR §300.156.

INVESTIGATIVE PROCEDURES:

1. On March 3, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. James E. Tucker, Superintendent, MSD.
2. On March 8, 2017, 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 allegations and requested that the school system review the alleged violations.
3. On April 14, 2017, Mr. Albert Chichester, Education Program Specialist, MSDE, contacted Ms. Jennifer Lake, Special Assistant to the Superintendent/Coordinator of Special Projects, MSD, to requested documentation from the MSD.
4. On April 17 - 19, 21 and 24, 2017, Ms. Lake provided documentation to the MSDE for consideration.
5. On April 24, 2017, Ms. Sharon Floyd, Education Program Specialist, MSDE, interviewed Mr. Kevin Strachan, Assistant Superintendent/Principal, MSD.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 18, 2016;
 - b. IEP, dated August 23, 2016;
 - c. IEP, dated March 29, 2017;
 - d. IEP meeting invitation, dated August 11, 2016;
 - e. IEP team meeting sign-in sheet, dated August 23, 2016;
 - f. IEP prior written notices for the team meetings held on August 23, 2016 and March 29, 2017;
 - g. Electronic mail (email) correspondence, dated August 17, 2016 and August 26, 2016, between the complainants and the school staff;
 - h. The student's class schedule for the 2015-2016 and 2016-2017 school years;
 - i. MSD teacher certification status report;
 - j. Memorandum to members of the Professional Standards and Teacher Education Board, dated December 1, 2016; and

¹ While it was alleged that the violation occurred during the entire 2015-2016 school year, the complainants were informed in writing that this office can only address allegations of violations that occurred within one year of the filing of the State complaint (34 CFR §300.153)

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- k. Page Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on March 1, 2017.

BACKGROUND:

The student is 10 years old and is identified as a student with a Hearing Impairment, under the IDEA. He attends the Maryland School for the Deaf and has an IEP that requires the provision of special education instruction and related services (Docs. a and c).

During the time period covered by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a and c).

ALLEGATION #1: NOTICE OF IEP TEAM MEETING

FINDINGS OF FACTS:

1. There is documentation that on August 11, 2016, an IEP team written notice was prepared for the August 23, 2016 IEP meeting. While the school staff report that the IEP team written notice was sent to the complainants on August 11, 2016 by mail, and then again on August 17, 2016, there is no documentation that the IEP team written notice was sent by mail (Docs. d, g, k, and an interview with school staff).
2. There is documentation that the complainants participated in the August 23, 2016 IEP team meeting (Docs. b and e).

DISCUSSION/CONCLUSIONS:

A public agency shall take steps to ensure that the parent of the student with a disability is present or are afforded an opportunity to attend and participate at meetings of the IEP team. The parent of a student with a disability shall be provided with written notice in advance of the meeting. In Maryland, notice must be provided at least 10 days in advance of the meeting, unless an expedited meeting is being conducted to address disciplinary issues, determine the placement of the student with a disability not currently receiving educational services, or meet other urgent needs of the student to ensure the provision of Free Appropriate Public Education (FAPE) (34 CFR §300.322 and COMAR 13A.05.01.07)

Based on the Finding of Fact #1, the MSDE finds that there is no documentation that the MSD provided the complainant with the meeting invitation for the August 11, 2016 IEP meeting within the timeline required by COMAR. Therefore, this office find that a violation occurred with respect to the allegation.

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Notwithstanding the violation, based on the Finding of Fact #2, the MSDE finds that the complainants participated in the August 23, 2016 IEP team meeting. Therefore, no student-based corrective action is required.

ALLEGATION #2: PRIOR WRITTEN NOTICE OF THE IEP TEAM DECISIONS

FINDING OF FACT:

3. There is documentation that the IEP team prepared and sent prior written notice of the IEP team's August 23, 2016 decisions on August 26, 2016 (Docs. f, g, and k).

DISCUSSION/CONCLUSIONS:

The public agency is required to provide the parent of a student with a disability 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 FAPE to the student. This notice includes a description of the action proposed or refused, an explanation of the action, and a description of each evaluation procedure, assessment, record, or report used as a basis for the decision (34 CFR §300.503 and COMAR 13A.05.01.12).

Based on the Finding of Fact #3, the MSDE finds that the MSD provided the complainants with prior written notice after the August 23, 2017 IEP team meeting. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3: ENSURING QUALIFIED TEACHING PERSONNEL

FINDINGS OF FACTS:

4. The IEP requires that the student be provided with special education instruction in all classes, by a special education teacher and a teacher of the deaf and hearing impaired (Docs. a – c, and k).
5. The student's 2015-2016 class schedule reflects that the he received special education instruction in math and social studies classes, by a teacher who held a certification in special education. The schedule reflects that the instruction provided in the remaining courses was not provided by a teacher who held certification in special education, and there is no documentation that these teachers were supervised by a special education teacher (Docs. h, i, k, and an interview with the school staff).
6. There is no documentation that, during the 2016-2017 school year, the student received special education instruction by a teacher who held a certification in special education, or that the student's teachers were supervised by a teacher who held a certification in special education (Docs. h, k, and an interview with the school staff).

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7. There is documentation to support that, during the 2015-2016 and 2016-2017 school years, the student was making sufficient progress to meet the annual goals and progressed through the general curriculum (Docs. a - c).
8. Based on a request from the MSD on April 2, 2015, the MSDE established a workgroup at the direction of the Professional Standards and Teacher Education Board (PSTEB) to review the certification requirements for the teachers of the deaf and hearing impaired and make recommendations to address barriers to certification for teachers of the deaf and hard of hearing (Doc. j).
9. The workgroup, consisting of representatives from the Governor's Office of the Deaf and Hard of Hearing, McDaniel College, the MSD, Anne Arundel County Public Schools, the Steering Committee for Students who are Deaf/Hard of Hearing, Towson University, and the MSDE, has proposed regulatory changes to the requirements for certification of teachers of the deaf and hearing impaired in order to improve the ability to recruit qualified personnel. The proposed changes are currently pending (Doc. j).
10. Each year, the MSDE submits to the United States Department of Education (DOE) its methodology for determining certification areas of shortage for the current academic year along with the list of shortage areas. Individuals who decide to prepare for the profession of teaching in these designated shortage areas can receive certain benefits as an incentive to do so. On January 11, 2017, the DOE designated teachers of the hearing impaired as one of the teacher shortage areas in Maryland based on the MSDE's submission (Doc. j).

DISCUSSION/CONCLUSIONS:

The IDEA requires that each State Education Agency (SEA) establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of the regulations are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve students with disabilities. The SEA must further adopt a policy that includes a requirement that Local Education Agencies (LEAs) take measurable steps to recruit, hire, train, and retain qualified personnel to provide special education and related services (34 CFR §300.156).

The Maryland Regulations establishes the requirements for certification of teachers of the deaf and hearing impaired. These requirements include certification in generic special education at any grade level, a specified number of hours of training in specific content and professional education courses, and successful teaching experience evidenced by a series of at least four observation periods per year (COMAR 13A.12.02.21).

Based on the Findings of Facts #4 - #10, the MSDE finds that the MSD did not ensure that the student's teachers met the State requirements for certification and that a violation occurred.

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Notwithstanding the violation, based on the Finding of Fact #7, the MSDE finds that there is no evidence that the violation prevented the the student from benefiting from the program, and steps are being taken to improve the ability to recruit qualified personnel. Therefore, no corrective action is required.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the MSD to provide documentation by the beginning of the 2017-2018 school year, of the steps taken to ensure that MSD staff implement the requirements regarding the provision of written notice of IEP team meetings at least 10 days in advance of the meetings. The documentation must include a description of how the MSD will evaluate the effectiveness of the steps taken and monitor to ensure the violation does not recur.

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

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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: Kevin Strachan
Jennifer Lake
Stacey Bundy
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum