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State Superintendent of Schools

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September 22, 2006

Mr. Mark B. Martin, P.A.
One North Charles Street, Suite 1215
Baltimore, Maryland 21201

Ms. Idalyn Hauss
Director of Special Education
Baltimore City Public School System
200 East North Avenue, Room 204B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #07-009

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 our investigation.

ALLEGATIONS:

On August 4, 2006, MSDE received correspondence from Mr. Mark B. Martin, P.A., hereafter, "the complainant," on behalf of the above referenced student and his parents, Mr. and Mrs. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Baltimore City Public School System (BCPSS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and the corresponding federal and State regulations. The specific allegations subject to this investigation are:

1. The BCPSS did not follow proper procedures to ensure that the July 14, 2006 Individualized Education Program (IEP) team meeting was scheduled at a mutually convenient time and included the necessary participants, as required by 20 U.S.C. §1414 (d)(1)(B), 34 CFR §300, Appendix A, Questions 23-26, and COMAR 13A.05.01.07C.
2. The BCPSS did not ensure that proper written notice of the determinations made by the IEP team on July 14, 2006 was provided, in accordance with 20 U.S.C. §1414.

INVESTIGATIVE PROCEDURES:

1. Ms. Anita Mandis, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 7, 2006, a copy of the complaint was provided by facsimile to Ms. Idalyn Hauss, Director of Special Education, BCPSS; Ms. Maryanne Ralls, Director of Student Services, BCPSS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPSS.
3. On August 9, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation, notified Ms. Hauss of the allegations to be investigated, and requested that her office review the alleged violations.
4. On September 5, 2006, BCPSS provided MSDE with a written response that addresses the allegations in the complaint and with copies of documents from the student's education record.
5. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence from the complainant to school system staff, dated June 26, 2006;
 - b. Correspondence from school system staff to the complainant, dated June 30, 2006;
 - c. School communication log for July 2006;
 - d. Written invitation to the student's parents to attend the July 14, 2006 IEP team meeting, dated July 3, 2006;
 - e. Correspondence from school system staff to the complainant, dated July 3, 2006;
 - f. Correspondence from the complainant, received by BCPSS on July 10, 2006;
 - g. Correspondence from school system staff to the complainant, dated July 11, 2006;
 - h. Written summary of the July 14, 2006 IEP team meeting;
 - i. IEP, dated July 14, 2006;
 - j. Parental Notification and Request for Signature, dated July 17, 2006;
 - k. Written summary of the July 28, 2006 IEP team meeting;
 - l. Correspondence from the complainant alleging violations of IDEA, received by MSDE on August 4, 2006;
 - m. Written summary of the August 14, 2006 IEP team meeting;
 - n. IEP, dated August 14, 2006; and
 - o. Written response to the allegations in the complaint from BCPSS, received by MSDE on September 5, 2006.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with autism under IDEA. He attends XXXXXX Elementary School (Docs. i and n).

FINDINGS OF FACT:

1. An IEP team meeting was scheduled for June 1, 2006 to review the results of an assistive technology assessment and report of a classroom observation of the student. At the request of the complainant and the student's parents, the meeting was postponed in order for the student's parents to obtain the report of an independent educational evaluation (IEE) for the team to consider at the same time as the other evaluative data (Docs. a and o).
2. On July 3, 2006, the student's parents contacted school staff by telephone and scheduled an IEP team meeting for July 14, 2006.¹ The student's education record contains a copy of a written invitation to the student's parents to the July 14, 2006 meeting, dated July 3, 2006, which states the date, time, location, and purpose of the meeting, as well as information regarding the meeting participants (Docs. c, d, and e).
3. On July 10, 2006, school system staff received correspondence from the complainant indicating that he and the student's parents were unable to attend the meeting on July 14, 2006 and requesting that the meeting be rescheduled (Doc. f).
4. On July 11, 2006, school system staff informed the complainant that school staff believed it was necessary to proceed with the meeting as scheduled due to the need to ensure that an appropriate IEP was in place at the start of the school year and considering the fact that the meeting had been previously been postponed. The correspondence further indicates that alternative means of participation would be made available to the student's parents, such as by telephone conference, and that the IEP team would reconvene after July 14, 2006 to review its determinations (Doc. g).
5. The IEP team convened on July 14, 2006 and revised the IEP. The student's parents did not participate in the meeting. The student's education record contains documentation indicating that on July 17, 2006, school system staff sent the student's parents copies of the written summary of the July 14, 2006 IEP team meeting and the IEP revised on July 14, 2006, which indicate the team's determinations and the bases for those decisions (Docs. h, i, and j).
6. The IEP team reconvened on July 28, 2006, at which time, the student's parents provided a report of the results of the IEE. Due to time constraints, the meeting was continued on August 14, 2006, at which time the IEP team revised the IEP. The student's parents participated in both the July 28, 2006 and August 14, 2006 IEP team meetings (Docs. k, m, and n).
7. School system staff report that, while a special education teacher who had knowledge of the student participated in the July 14, 2006 meeting, a special education teacher of the student was not present at the meeting, but provided written input for the team's consideration. School system staff acknowledge that, while a regular education teacher

¹ The student's parents had previously selected dates of June 29, 2006 and July 13, 2006 for the meeting (Doc. b).

participated at the July 14, 2006 and August 14, 2006 meetings, the teacher was not a regular education teacher of the student (Doc. o).

ALLEGATION #1 SCHEDULING OF THE IEP TEAM MEETING

DISCUSSION/CONCLUSIONS:

In accordance with IDEA, the term “IEP team” means a group of individuals composed of the following:

1. the parent(s) of the student;
2. not less than one (1) regular education teacher of the student if the child is or may be participating in the regular education environment;
3. not less than one (1) special education teacher, or where appropriate, not less than one (1) special education provider of the student;
4. a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency;
5. an individual who can interpret the instructional implications of evaluation results;
6. other individuals who have knowledge or special expertise regarding the student; and
7. the student, whenever appropriate (20 U.S.C. §1414(d)(1)(B)).

The public agency is required to take steps to ensure parents have the opportunity to participate in IEP team meetings, which include “[n]otifying parents of [a] meeting early enough to ensure that they will have an opportunity to attend,” and “[s]cheduling the meeting at a mutually convenient place and time” (34 CFR §300.345(a)). To ensure parent participation, the public agency must provide parents with written notice at least ten (10) days in advance of the meeting (COMAR 13A.05.01.07C).

In this case, the complainant alleges that the school system convened the July 14, 2006 IEP team meeting “over the objection and without consent of the parents” (Doc. l). However, there is no requirement that the public agency obtain the consent of parents prior to scheduling IEP team meetings. Rather, the public agency is required to provide parents with notice of a meeting early enough so that the parents can arrange their schedules to attend. While the parents are equal participants in the IEP process, the school system has the ultimate responsibility for “crafting the IEP” (*Letter to Simon*, EHLR 211:436 (Office of Special Education Programs 1987)).

Accordingly, the public agency may not be bound solely by the parent’s wishes with regards to scheduling an IEP team meeting. It is recognized that, in order to accommodate all participants’ schedules, “sometimes more than one meeting is necessary in order to finalize a child’s IEP” (34 CFR §300, Appendix A, Question 23).

Based on Findings of Fact #1 – 5, MSDE finds that, while the student’s parents did not attend the July 14, 2006 meeting, there is documentation that the meeting date was selected by the student’s parents and that a written invitation to the meeting was sent to the student’s parents in accordance with 34 CFR §300.345 and COMAR 13A.05.01.07C. Furthermore, based on Finding of Fact #6, MSDE finds that additional team meetings were held to ensure the participation of the student’s

parents and to ensure that all of the evaluative data, including the results of the IEE obtained by the parents, was considered when reviewing and revising the student's IEP. However, based on Finding of Fact #7, MSDE finds that the IEP team did not include all of the required participants, specifically, regular and special education teachers of the student, in accordance with 20 U.S.C. §1414(d)(1)(B).

ALLEGATION #2 PRIOR WRITTEN NOTICE OF THE TEAM'S DECISIONS

DISCUSSION/CONCLUSION:

The public agency must provide parents with written notice whenever it proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to a student. Specific content is required to inform the parents of the decisions and of their rights, including a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action (20 U.S.C. §1415(b) and 34 CFR §300.503).

Based on Finding of Fact #5, MSDE finds that there is documentation that the student's parents were provided with proper written notice of the decisions made by the IEP team on July 14, 2006, in accordance with 20 U.S.C. §1415(b) and 34 CFR §300.503. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific Corrective Action

In its written response, the BCPSS proposes that an IEP team meeting be convened after the issuance of the first (1st) quarter report cards in order to review the student's progress and determine if the lack of required participants at the IEP team meetings had a negative impact on the student's ability to benefit from his education program and, if so, determine the amount and nature of *compensatory services*² or other remedy necessary to remediate the violation. The MSDE concurs with BCPSS' proposal and requires that the IEP team be convened within ten (10) days of the issuance of the first (1st) quarter report cards, unless the student's parents agree to a later date.

Within fifteen (15) days of completing the corrective action, BCPSS shall submit documentation of completion to MSDE. This documentation is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

² Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to "how to remediate the denial of [appropriate] services [to the student]..." (34 CFR §300.660(b)(1)). This does not address compensable awards under the *Vaughn G. Consent Decree*.

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School-Based/Systemic Corrective Action

As a result of a violation found in a previous complaint investigation regarding another student in BCPSS (complaint #06-153), MSDE has required the school system to take system-based corrective action to ensure that IEP teams convened during the summer months include the required participants and is working with the school system to ensure that the corrective action is taken. Therefore, no further system-based action is required.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Ms. Martha Roulette, Education Program Specialist, MSDE. Ms. Roulette may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of fact, conclusions, and corrective actions contained in this LOF should be addressed to this office in writing. The student's parents and the school system maintain the right to initiate mediation or a due process hearing if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student in accordance with IDEA 2004. The MSDE recommends that this LOF be included with any request for mediation or upon filing a due process complaint.

Sincerely,

Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAB/aam

c: Charlene C. Boston
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