



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

April 28, 2017

XXX
XXX
XXX
XXX

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

RE: XXXXX
Reference: #17-113

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. XXXXXXXXXXXX and Ms. XXXXXXXXXXXX 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.

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 2

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.
3. The MSD did not ensure that an IEP was provided within 5 business days of the August 23, 2016 IEP team meeting, in accordance with COMAR 13A.05.01.07.
4. The MSD did not ensure that the student's teachers met the State requirements for certification from March 1, 2016 until the end of the 2015-2016 school year,¹ in accordance with 34 CFR §300.156.
5. The MSD did not ensure that the American Sign Language (ASL) assessment that was conducted during the 2015-2016 school year was administered by trained and knowledgeable personnel, in accordance with 34 CFR §300.304.

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, interviewed Ms. Jennifer Lake, Special Assistant to the Superintendent/Coordinator of Special Projects, 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. XXXXXXXXXXXX, Assistant Superintendent/Principal, MSD.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

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).

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 3

- a. IEP Team Meeting Notice, dated August 11, 2016;
- b. IEP, dated March 18, 2016;
- c. IEP Team Summary, dated August 26, 2016;
- d. Electronic mail message from the MSD to the complainants, dated August 17, 2016;
- e. Electronic mail message from the MSD to the complainants, dated August 26, 2016;
- f. Student's schedule for the 2015-2016 school year;
- g. Written response to the State complaint from the MSD to the MSDE, dated March 29, 2017;
- h. Student's report card for the 2015-2016 school year;
- i. Receipt of parental rights document, signed by the complainants and dated August 23, 2016;
- j. Electronic mail messages from the MSD to the MSDE, dated August 17, - 19, 21, and 24, 2017;
- k. Electronic mail message from the among the MSDE staff, dated April 20, 2017;
- l. Memorandum to members of the Professional Standards and Teacher Education Board, dated December 1, 2016;
- m. American Sign Language Proficiency Interview; <https://www.gallaudet.edu/asl-diagnostic-and-evaluation-services/aslpi>; and
- n. Correspondence from the complainants alleging violations of the IDEA, received by the MSDE on March 1, 2017.

BACKGROUND:

The student is 12 years old and is identified as a student with a Hearing Impairment under the IDEA. He attended The Maryland School for the Deaf during the timeframe of this investigation. He has an IEP that requires the provision of special education instruction and related services. The student is currently enrolled in the Frederick County Public Schools, where he attends XXXXXXXXXXXX School (Docs. b and n).

There is documentation that the complainants were provided with the procedural safeguards during the time period addressed by this investigation (Doc. i).

ALLEGATION #1:

NOTICE OF IEP TEAM MEETINGS

FINDING OF FACT:

1. There is documentation that on August 11, 2016, an IEP team written notice with the required components was prepared for the August 23, 2016 IEP meeting. The school staff

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 4

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. However, there is no documentation that the IEP team written notice was sent by mail or that the complainants received the meeting invitation at least 10 days in advance of the IEP meeting (Docs. a, d, e, and an interview with school staff).

2. There is documentation that the complainants participated in the August 23, 2016 (Docs. a, d, and e).

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 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 Free and Appropriate Public Education (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 Finding of Fact #2, the MSDE finds that there is no documentation that the MSD provided the complainants with the meeting invitation for the August 11, 2016 IEP meeting within the timeline required. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #1, 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 within 5 days of the IEP team meeting (Doc. c).

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).

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 5

In this case, there is documentation that the IEP team provided the complainants with proper written notice in a timely manner and prior to implementing the decisions made by the IEP team on August 23, 2016. Therefore, based on Finding of Fact #3, the MSDE finds that no violation occurred.

ALLEGATION #3: PROVIDING COPIES OF THE STUDENT'S IEP

FINDING OF FACT:

4. There is no documentation that the IEP was provided to the complainants within 5 business days after the August 23, 2016 IEP team meeting. There is documentation that the IEP has subsequently been amended by the IEP team at the student's current school on February 16, 2017 and provided to the complainants (Docs. g and n).

DISCUSSION/CONCLUSIONS:

Not later than 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 Finding of Fact #4, the MSDE finds that there is no documentation that the complainants were provided with a copy of the IEP within the required timeline following the August 23, 2016. As a result, the MSDE finds that a violation occurred.

ALLEGATION #4: ENSURE QUALIFIED TEACHING PERSONNEL

FINDINGS OF FACTS:

5. The IEP requires the student be provided with special education classroom instruction for thirty (30) minutes per week for math and written language by a special education teacher and a teacher of the hearing impaired (Doc. b).
6. There is no documentation that the student received special education classroom instruction by a teacher who holds a certificate in special education (Docs. f and k and Interview with school staff).
7. There is documentation to support that the student made sufficient progress to meet the IEP goals in math and written language and progressed through the general curriculum during the 2015-2016 school year (Doc. b).

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 6

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. 1).
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 recruitment of qualified personnel. The proposed changes are currently pending (Doc. 1).
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. 1).

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 measureable 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 Findings of Facts #5 and #6, the MSDE finds that the MSD has not ensured that the student's teachers met the State requirements for certification, and a violation occurred.

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 7

Notwithstanding the violation, based on the Findings of Facts #7 - #10, the MSDE finds that there is no evidence that the student's ability to benefit from the education program was negatively impacted by the violation, and that steps are being taken to improve recruitment of qualified personnel. Therefore, no corrective action is required to remediate the violation.

ALLEGATION #5

**PERSONNEL QUALIFICATIONS FOR
ADMINISTERING AN AMERICAN SIGN
LANGUAGE ASSESSMENT**

FINDINGS OF FACTS:

11. The American Sign Language Proficiency Interview (ASLPI) is a holistic language evaluation used to determine global ASL proficiency. The basic precept in this type of evaluation is to find out through a face-to-face interview what an individual can do with the target language at a given point in time. The ASLPI is a 20-25 minute video recorded interactive dialogue between the examinee and the interviewer² (Doc. m and Review of assessment literature).
12. The training program consists of exit tests and mock interview cycles needed for rating and interviewing the examinees. Approved evaluators are mandated to participate in a comprehensive refresher training program focusing on maintaining strong interviewing skills and rating reliability (Doc. m and Review of assessment literature).
13. There is documentation that the evaluators of the student are trained and are certified to be able to conduct the assessment with the student (Doc. j).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that evaluations are administered in accordance with any instructions provided by the producer of the assessments and in a manner that is designed to ensure that, for a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the factors that the test purports to measure rather than the impaired sensory, manual, or speaking skills (34 CFR §300.304 and COMAR 13A.05.01.02).

In this case the complainants allege that the student's American Sign Language assessment was conducted by two assessors with non-ASL specialty credentials (Doc. n).

Based on the Findings of Facts #11 - #13, the MSDE finds that the facts do not support the allegation. Therefore, this office finds no violation has occurred.

² <https://www.gallaudet.edu/asl-diagnostic-and-evaluation-services/aslpi>.

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 8

CORRECTIVE ACTION/TIMELINES:

The MSDE also requires the MSD to provide documentation by the start of the 2017-2018 school year of the steps taken to ensure that MSD staff implement the requirements regarding the provision of IEP team written notice at least 10 days in advance of the meeting and the provision of the completed IEP not later than 5 business days after the IEP team meeting. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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.

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 complainants and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the

XXX

XXX

Mr. James E. Tucker

April 28, 2017

Page 9

identification, evaluation, placement, or provision of a 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:sf

c: Kevin Strachan
Stacy Bundy
Jennifer Lake
Dori Wilson
Anita Mandis
Sharon Floyd