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December 26, 2017

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Dr. Jeffrey Gladhill  
Director of Special Education  
Washington County Public Schools  
10435 Downsville Pike  
Hagerstown, Maryland 21740

RE: XXXXX  
Reference: #18-031

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 October 30, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student, and on November 7, 2017, the MSDE acknowledged receipt, in writing. In that correspondence, the complainant alleged that the Washington County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student. The MSDE investigated the following allegations:

1. The WCPS has not ensured that the student has been provided with a Free Appropriate Public Education (FAPE) since November 2016, in accordance with 34 CFR §§300.101 .320, and .323. Specifically, the complainant asserts the following:
  - A. The WCPS has not provided a reasonably safe educational placement through the implementation of a Health Plan included on the Individualized Education Program (IEP).
  - B. The WCPS did not ensure that the IEP team has considered requests for specific services and supports to ensure that the student’s health needs are addressed.

2. The WCPS has not provided prior written notice of the IEP team's decisions since November 2016, in accordance with 34 CFR §300.503.

**BACKGROUND:**

The student is six (6) years old, is identified as a student with a Speech/Language Impairment under the IDEA, and has an IEP that requires the provision of special education and related services.

The student attended XXXXXXXXXXXX School, until December 1, 2017. She is now enrolled in the Howard County Public Schools (HCPS) as a result of the family's move to that school district.

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards.

**FINDINGS OF FACTS:**

1. During the 2016-2017 school year, the student was provided with morning pre-kindergarten half-day services at XXXXXXXXXXXXXXXXXXXXXXXX and participated in a local Head Start program in the afternoon. The student has XXXXXXXX disease, asthma, and XXXXXXXX. The documentation reflects that the student cannot have pain medication due to the XXXXXXXX disease, and that she also has allergies to soy and latex. The student's IEP has required that she be provided with the services described in a Health Plan.
2. The Health Plan in effect during the 2016-2017 school year was developed on October 20, 2016 and November 7, 2016. It states that measures must be taken to prevent exposure to known or potential sources of infection, including maintaining meticulous hand washing. It states that the student is susceptible to urinary tract infections and requires ongoing toileting assistance to maintain urinary tract health. It also states that the student needs to avoid any contact sports and play because she is at risk for injury. It further states that the student has "potential for anaphylaxis related to latex and soy allergies" and should avoid exposure to these things.
3. On November 15, 2016, the IEP team convened and discussed the student's health needs and her progress. The "meeting minutes" that were developed following the meeting state that the student's teacher and speech/language therapist reported that the student was doing well and that there were no concerns academically or socially in the classroom. The document reflects that the complainant expressed concern about the student's difficulty with maintaining attention. It reflects that the IEP team decided that this was not impacting the development of her academic skills, but that she would be provided with rewards for appropriate behavior and that her behavior would be

- monitored, and that the IEP would be revised to reflect that the student has a Health Plan that is developed and managed by the school health office.
4. There is no documentation that the complainant expressed concerns about the implementation of the Health Plan at the November 15, 2016, IEP team meeting or that she requested that the student be identified with an Other Health Impairment related to her medical concerns.
  5. On November 22, 2016, the complainant was provided with the written notice of the decisions made by the IEP team on November 15, 2016. The written notice reflects the determinations made by the IEP team regarding the health care plan, which are documented in "meeting minutes" that were developed following the meeting. The written notice includes a description of the decision made, the basis for the decision, the options considered, and the data used in making the decision.
  6. There is documentation that on several occasions during the 2016-2017 school year, the school staff provided the student with soy milk and that the complainant expressed concerns to the school staff about the matter.
  7. There is documentation that the student was absent from the pre-kindergarten class on 32 days, was tardy on 23 days, and left school early on 6 days during the 2016-2017 school year. There is documentation that the student missed school due to her illnesses that were already documented. However, there is no documentation that these illnesses resulted in a lack of implementation of the Health Plan.
  8. There is documentation that the student received assistance with toileting beginning on September 5, 2017 and ending on December 1, 2017. There is also documentation that toileting with assistance was removed from the Health Plan without documentation of the discontinuation of the need. When the complainant expressed concern that the student was no longer receiving this assistance, the assistance was added back to the Health Plan.
  9. The reports of the student's progress that were made on January 27, 2017, April 3, 2017, and May 26, 2017 reflect that she was making sufficient progress to achieve the annual IEP goals. The speech/language pathologist reported on the January 27, 2017 progress report that the student achieved the goal; however, it was recommended that it be continued for greater consistency.
  10. The student's report card for the 2016-2017 school year reflects that she mastered the standards in all but one area of language arts and one in mathematics, and that she made progress in those areas. It also reflects that she exceeded the standard in one area of language arts.
  11. On August 30, 2017, all school staff received training on Bloodborne Pathogen Exposure Prevention. The staff also received training on the signs and symptoms of anaphylaxis,

monitoring of symptoms, administration of the Epi-Pen, importance of the Emergency Medical System activation and understanding the “recovery position.”

12. On September 1, 2017, the student’s Health Plan was revised to state that the school staff will monitor for signs and symptoms of asthma and send the student to the nurse if symptoms are observed and to require medication administration by the school health office.
13. On September 4, 2017, the first day of school, all school staff received a chart of the students in the school who have Health Plans. The student’s name is on the list, along with information that she is allergic to soy and latex, that she uses an Epi-Pen/inhaler in the health office, uses the health office bathroom, carries water for her use, and should be sent to the health office if coughing.
14. On September 6, 2017, the school staff were informed of the electronic process for alerting all staff/substitutes of health related information whenever the class roster was accessed. The school principal informed the complainant of the process on September 13, 2017.
15. On September 13, 2017, the school staff were informed that the student has many health concerns, and were reminded to review information in the aforementioned process. The electronic mail message states the following:

“A new process is being used to inform teachers which of their students have severe health conditions. When teachers open their class lists, an icon will appear under the picture of any student with a severe health condition. Please make sure your staff including substitutes are aware of the new process. Nurses will continue to provide emergency care training, particularly for field trips.”

On this same date, the complainant was provided with the email correspondence informing her of information about the new process of providing teachers and staff with health information.

16. On September 25, 2017, the physical education (PE) teacher sent correspondence to all parents about the PE program and requested health information that may cause health concerns while participating in PE. The complainant responded directly to the PE teacher on the same date with detailed information on the student’s health conditions, which she had previously shared with the school nurse upon enrollment, including contact and collision precautions, hydration needs, respiratory/asthma distress signs, toileting assistance, allergies, and information on the student’s immunodeficiency needs.
17. On October 3, 2017, the IEP team convened. At that meeting, the complainant requested that the student, who was currently identified with a Speech/Language Impairment, be identified as a student with an Other Health Impairment (OHI) under the IDEA or with

- the coding of multiple disabilities based on her need for health care supports. The school staff explained that in order to be identified with OHI the student must require special education instruction as a result of the OHI, and that while she receives the supports of a Health Plan, these supports constitute accommodations or supplementary aids and services and not specialized instruction.
18. On October 4 and 10, 2017, written notice of the meeting was provided to the complainant. The written notice reflects the determinations made by the IEP team regarding the request to change the student's identified disability, consistent with the "meeting minutes" that were developed following the meeting and a review of the audio recording of the meeting. The written notice includes a description of the decision made, the basis for the decision, the options considered, and the data used in making the decision.
  19. At the October 3, 2017 IEP team meeting, the complainant also expressed concern about the lack of consistent implementation of the Health Plan during the 2017-2018 school year and her concern that the school staff have still not been informed of their responsibility for implementation of the plan. A review of the audio recording of the meeting reflects that the complainant requested that the IEP describe 4 specific health-related supports to be provided in the classroom:
    - a. That the student will be provided with water in the classroom and be encouraged to drink it throughout the day;
    - b. That the student have access to hand sanitizer to be provided by the complainant and be provided with the opportunity to wash her hands throughout the day;
    - c. That the student be provided with assistance with toileting in the health room; and
    - d. That the student be provided with modified physical education to avoid the chance of collision and high falls.
  20. The IEP team initially refused to consider the request at the October 3, 2017 IEP team meeting until it completed a reevaluation, despite the fact that it reviewed and revised the IEP pending the completion of the reevaluation.
  21. When the complainant insisted that the IEP team consider her request to have the IEP describe the specific health-related supports that need to be provided in the classroom at the October 3, 2017 IEP team meeting, the team again rejected her requested based on the following:
    - a. The supports are not considered educational services that belong in an IEP, but rather are health services that should only be included in a health care plan, despite the fact that the IEP requires the implementation of a Health Plan;

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- b. The IEP team did not have the expertise to determine whether the supports should be provided despite the fact that the IEP team included participation by health care staff that the team decided needed to be the ones to develop the Health Plan; and
  - c. The student's need for the specific supports might change in the future, which would necessitate the reconvening of the IEP team to make changes to the IEP, despite the fact that the parent indicated that she would not anticipate that any of the 4 items she requested would change in the future.
22. The written notice of the IEP team meeting does not reflect the basis for the complainant's request for specific services to be added to the IEP. While the "meeting minutes" reflect that the complainant expressed concern that she was told that not all of the school staff were provided with the Health Plan and that assistance with toileting was dependent upon staffing, the documentation does not reflect the complainant's concern that the Health Plan had not been consistently implemented during the previous school year and her belief that the IEP needed to clarify what is required in order to ensure the future implementation of the plan.
23. On November 10, 2017, a progress report was made that reflects that the student was making sufficient progress to achieve the annual IEP goals.
24. On November 18, 2017, the school staff were informed that in addition to the no contact sports information previously provided by the complainant, she also requested that the student not play dodge ball, kickball, basketball, soccer, or volleyball to avoid any physical impact due to her XXXXXXXX issues.
25. The student attended school 55 days out of the 59 school days that she was enrolled in the WCPS during the 2017-2018 school year.
26. On December 1, 2017, the complainant withdrew the student from the WCPS and enrolled her in the Howard County Public Schools (HCPS) as a result of the family's move to that county.

**DISCUSSION/CONCLUSIONS:**

**ALLEGATION #1A: PROVISION OF A REASONABLY SAFE EDUCATIONAL PLACEMENT THROUGH THE IMPLEMENTATION OF THE HEALTH PLAN**

In this case, the complainant alleges that the student's Health Plan wasn't properly created and implemented until September 5, 2017.

Based on the Findings of Facts #1 - #6, #8, and #11 - #16, the MSDE finds that while a Health Plan was developed to address the student's needs, it was not consistently implemented.

Therefore, the MSDE finds that a violation has occurred with respect to this allegation, in accordance with 34 CFR §§300.101 .320, and .323.

Notwithstanding the violation, based on the Findings of Facts #7-#9 and #23, the MSDE finds that there is no documentation that the student's illness and resulting loss of instruction were caused by the lack of implementation of the Health Plan. Based on these Findings of Facts, the MSDE further finds that the student made sufficient progress on her IEP goals and mastered most standards on her 2016-2017 report card. Therefore, no student-based corrective action is required to remediate the violation.

**ALLEGATION #1B:            CONSIDERATION OF REQUESTS FOR SPECIFIC SERVICES AND SUPPORTS TO ENSURE HEALTH NEEDS ARE MET**

Based on the Findings of Facts #4 and #17, the MSDE finds that the IEP team considered the complainant's request for a change in the identified disability, and that its decision was consistent with the data, in accordance with 34 CFR §300.324.

However, based on the Findings of Facts #6 and #19 - #22, the MSDE finds that the IEP team's decision to reject the complainant's request for specific health related supports on the IEP is not consistent with the data and do not reflect an understanding that nursing and school health services can constitute related services under the IDEA, in accordance with 34 CFR §§300.34 and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #2:            PROVISION OF PRIOR WRITTEN NOTICE**

In this case, the complainant alleges that the Prior Written Notice (PWN) did not contain complete information regarding the basis for her requests and the denial of her requests.

Based on the Findings of Facts #1 - #5, the MSDE finds that the November 15, 2016 PWN and meeting minutes reflect the determinations made by the IEP team, including a description of the decisions made, the basis for the decision, the options considered, and the data used in making the decision.

However, based on the Findings of Facts #17 - #22, the MSDE finds that the October 3, 2017 PWN and meeting minutes do not reflect the IEP team's consideration of the information from and concerns of the complainant. Therefore, the MSDE finds that a violation has occurred with respect to this allegation, in accordance with 34 CFR §300.503.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student - Specific**

The MSDE requires the WCPS to provide documentation by February 1, 2018, that it has contacted the HCPS to make arrangements for the HCPS IEP team to consider the complainant's request for specific supports to be included in the IEP.

**School - Based**

The MSDE requires the WCPS to provide documentation by May 1, 2018, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXX comply with the following requirements:

- a. To ensure that each student is provided with the services and supports necessary to offer a reasonably safe educational environment.
- b. To ensure that IEP team decisions are consistent with the data and the federal regulations.
- c. To ensure that prior written notice reflects all of the information considered by the IEP team.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the WCPS by 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 WCPS 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 be accompanied by a substantial explanation of why it was not provided 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 consistent with the timeline requirements as 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



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the 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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/

Early Intervention Services

MEF/sf

c: Boyd Michael  
XXXXXXXXXX  
Marcella Franczkowski  
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Sharon Floyd