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Interim State Superintendent of Schools

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December 2, 2011

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Ms. Mary Lee Phelps
Acting Director, Department of Special Education Operations
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #12-023

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 October 4, 2011, the MSDE received correspondence from Mr. 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) and related requirements with respect to the above-referenced student. This office investigated the allegations listed below.

1. The MCPS did not follow proper procedures when determining the student’s educational placement on August 31, 2011, in accordance with 34 CFR §300.114 and COMAR 13A.05.01.10.
2. The MCPS did not ensure that the student was provided with the special education and related services in the placement required by the Individualized Education Program (IEP) from August 29, 2011 until September 28, 2011, in accordance with 34 CFR §§300.101 and .323.
3. The MCPS did not ensure that the student was provided with the transportation services required by the IEP on September 28, 2011, in accordance with 34 CFR §§300.101 and .323.

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INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 6, 2011, the MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Lee Phelps, Acting Director, Department of Special Education Operations, MCPS; Ms. Alison Steinfelds, Supervisor, Department of Special Education, Equity Assurance and Compliance Unit; and Ms. Amy Shvodian, Paralegal, Department of Special Education, Equity Assurance and Compliance Unit, MCPS.
3. On October 6, 2011, Ms. Williams contacted the complainant by telephone to clarify the allegations to be investigated.
4. On October 14, 2011, Ms. Williams conducted a telephone interview with the student's mother regarding the allegations to be investigated.
5. On October 19, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified the MCPS of the allegations to be investigated and requested that the MCPS review the alleged violations.
6. On November 11, 2011, the MSDE received correspondence from the MCPS, responding to the allegations to be investigated by the MSDE.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated May 10, 2011;
 - b. Written Summary of the May 10, 2011 IEP team meeting;
 - c. Transportation Information Form that identifies the student's transportation needs, dated May, 10, 2011;
 - d. IEP, dated August 31, 2011;
 - e. Correspondence from the complainant to the MSDE, received on October 4, 2011;
 - f. IEP, dated October 12, 2011;
 - g. MCPS Electronic Mail between MCPS staff, dated October 28, 2011;
 - h. MCPS Transportation Log, dated October 28, 2011;
 - i. MCPS Attendance Summary Report, dated November 2, 2011; and
 - j. MCPS Response to Complaint, received by the MSDE on November 11, 2011.

BACKGROUND:

The student is five (5) years old. The student is identified as a student with developmental delay and receives special education instruction and related services under IDEA. The student began attending XXXXXXXXXXXXXXXXXXXX (XXXXXXX) at the start of the 2011-2012 school

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year, but has attended XXXXXXXXXXXXXXXX (XXXXXXXXXX) since September 6, 2011 as a result of a change in educational placement.

There is documentation that during the time period covered by this investigation, the complainant and the student's mother participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. d and f).

**ALLEGATIONS # 1 AND #2 DETERMINATION AND IMPLEMENTATION OF IEP
IN THE PROPER EDUCATIONAL PLACEMENT**

Findings of Facts:

XXXXXXXXXXXXXXXXXX

1. On August 23, 2011, the complainant enrolled the student in the MCPS, at XXXXXXXXX, a school that the student would attend if nondisabled. On that date, the complainant presented the school staff at XXXXXXXXX with a copy of the May 10, 2011 IEP and the meeting summary, developed in XXXX (XXXXX), where the student attended school the previous school year. He also provided school staff with information regarding the type of specialized transportation that was provided to the student in XXXX (Docs. a, b, and j).
2. The XXXXXXXXX indicates that the student requires special education instruction in both general and separate special education classrooms, the supports of a Behavior Intervention Plan, and occupational and speech therapy as related services. The document indicates that the student is very active, that he may exhibit tantrums, that he is sensitive to loud noises, and that his mood changes quickly. The document further explains that the student cannot attend the school he would attend if not disabled, due to his needs, and that he requires transportation services including a specially equipped bus for the student's safety and the safety of others, including additional support provided by a bus aide or monitor (Docs. a and c).
3. On August 29, 2011, the first day of school, the school staff contacted the complainant and informed him that the student demonstrated difficulty transitioning to the new school and displayed "unsafe behaviors" that could not be addressed by the school staff. In response, the complainant and the student's mother complied with the school staff request to pick the student up prior to the end of the school day. The parents did not return the student to XXXXXXXXX and there is no documentation that they were notified of a school which the student could attend (Docs. i and j).
4. On August 31, 2011, the MCPS held an expedited IEP team meeting to consider the student's educational placement. At the meeting, the complainant and the student's mother requested that the student receive instruction as much as possible in the general education classroom with the provision of behavioral supports. The IEP team decided that the student continued to require special education instruction in both general and

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separate special education classrooms, but that he could not attend the school he would attend if not disabled and that he would have to attend XXXXXXXX. However, the IEP team did not document the basis for the decision (Doc. d).

5. The MCPS acknowledges that the proper procedures were not followed when developing the August 31, 2011 IEP (Doc. j).

XXXXXXXXXXXXXX

6. On September 6, 2011, the student began attending XXXXXXXX, where he has been participating in a program designed to address the behavioral needs of students with autism (Doc. j).
7. On October 12, 2011, the IEP team convened to review the student's progress. After considering the student's progress, the complainant and the student's mother requested that the IEP require more instruction in the general education classroom with the provision of behavioral supports; the team agreed that the student could receive an increased amount of instruction in the general education classroom. However, the team also determined that the least restrictive environment in which the IEP could continue to be implemented is in general and separate special education classrooms. Further, the team determined the student could not attend the school he would attend if not disabled, due to his need for a structured classroom setting with more individualized instruction, repetition, and behavioral and communication supports that could be provided at XXXXXXXX, but not at XXXXXXXX (Doc. f).
8. The MCPS acknowledges that while the IEP requires that the student be provided with special instruction in the general education classroom, this has not occurred at XXXXXXXX. The MCPS staff report that an IEP meeting will be held to determine a remedy for violations that occurred (Doc. j).

Discussion/Conclusions:

Allegation #1: Determination of Educational Placement

When determining the educational placement for a student with a disability, the decision must be made by an IEP team and conform to the requirement that students be educated in the least restrictive environment. This means that, to the maximum extent appropriate, the student must be educated with students who are not disabled. If the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, then special education classes, separate schooling, or the removal of children with disabilities from the regular educational environment may occur. Unless the IEP of a child with disability requires some other arrangement, the child is educated in the school that the student would attend if not disabled (34 CFR §300.114 -.116 and COMAR 13A.05.01.10).

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During the investigation of an allegation that a child has not been provided with appropriate services under IDEA, the State educational agency must determine whether proper procedures were followed when making determinations about the program and whether there is data to support those decisions. When it is determined that the public agency has not followed proper procedures, the State agency can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the child for loss of appropriate services. However, the State educational agency may not overturn an IEP team's decisions (United States Department of Education, Office of Special Education Programs, Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on the Findings of Facts #1 - #6, the MSDE finds that there is no basis for the IEP team's August 31, 2011 decision that the student could not attend the school he would attend if not disabled. Therefore, the MSDE finds that proper procedures were not followed on August 31, 2011 and that a violation occurred.

Based on the Finding of Fact #7, the MSDE finds that on October 12, 2011, the IEP team considered less restrictive environments with the provision of supplementary aids and services when determining the least restrictive environment in which the IEP can be implemented. Based on the Finding of Fact # 7, the MSDE finds that the team considered the student's needs when determining that the student could not attend the school he would attend if not disabled and that the decision was consistent with the data. Therefore, notwithstanding the violation that occurred on August 31, 2011, the MSDE further finds proper procedures were followed when determining the educational placement since October 12, 2011.

Allegation #2: IEP Implementation in the Required Educational Placement

The public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP. If a student with an IEP effective in one state transfers to a public agency in another state, the new public agency must provide the student with the services in the IEP until the new public agency conducts an evaluation, if determined necessary, and develops an IEP, or until the new public agency reviews and revises the out-of-state IEP (34 CFR §§ 300.101 and .323).

Based on the Findings of Facts #1- #3, the MSDE finds that the MCPS did not ensure that the student was provided with special education instruction and related services required by the XXXXXX from the beginning of the school year until September 6, 2011.

Based on the Finding of Fact #8, the MSDE finds that the MCPS has not ensured that the student has been provided with the special education instruction in the educational placement required in accordance with the student's IEP since August 31, 2011. Therefore, this office finds that a violation has occurred.

ALLEGATION #3 PROVISION OF TRANSPORTATION ON SEPTEMBER 28, 2011

Finding of Fact:

9. On September 28, 2011, the student was transported to school by the school bus after the start of the school day. However, due to a miscommunication between school and transportation staff of whether the student was expected to attend school on September 28, 2011, there was a delay in the bus picking him up that morning (Docs. g, h, and j).

Discussion/Conclusion:

As stated above, the public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP (34 CFR §§300.101 and .323). Related services means transportation and other supportive services as are required to assist a student to benefit from special education instruction (34 CFR §300.34).

Based on the Finding of Fact # 9, the MSDE finds that the MCPS did not ensure that transportation was provided in accordance with the IEP in a timely manner that would enable the student to benefit from a full day of special education instruction. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by December 23, 2011 that the school system is providing the student with special education instruction in the general education classroom, in accordance with the student's IEP.

The MSDE concurs with the MCPS' proposal to convene an IEP team meeting to determine a remedy for the violations identified. The MSDE requires the MCPS to provide documentation by January 31, 2012 that the IEP team has determined the remedy required to remediate the violation regarding the determination of the educational placement from the start of the 2011-2012 school year until October 12, 2011.

The MCPS must also provide documentation that the IEP team has determined the remedy to remediate the violation related to the implementation of the IEP from the start of the 2011-2012 school year until such time that the student begins receiving special education instruction in the general education classroom, as required by the IEP.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur 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 Letter of Findings if they disagree with the findings of fact, conclusions or corrective actions. 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 Letter of Findings.

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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. 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 of fact, conclusions or corrective actions contained in this Letter of Findings 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 the identification, evaluation, placement, or provision of a Free Appropriate Public Education for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF:tw

cc: Joshua P. Starr
Gwendolyn Mason
Alison Steinfeld
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XXXXXXXXXX
XXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Tyra Williams