



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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December 12, 2011

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Ms. Chrisandra A. Richardson, Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason, Director
Department of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #12-028

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.

ALLEGATION:

On October 17, 2011, the MSDE received correspondence from Mr. XXXXX and Mrs. XXXXXX, hereafter “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the allegation that the MCPS has not ensured that the student has been provided with the supports required by the Individualized Education Program (IEP) since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.101 and .323.

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 19, 2011, the MSDE sent a copy of the complaint, via facsimile to Ms. Gwendolyn Mason, Director, Special Education Services, MCPS; and Ms. Alison Steinfels, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On October 25, 2011, Ms. Moyo conducted a telephone interview with the student's mother to clarify the allegation to be investigated.
4. On October 28, 2011, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to the investigation. On the same date, the MSDE notified Ms. Mason of the allegation and requested that she review the alleged violation.
5. On November 4, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and a Due Process Branch, conducted a telephone interview with Ms. Steinfels regarding the allegation being investigated.
6. On November 11, 14, and 22, 2011 the MCPS staff sent electronic mail (email) correspondence to the MSDE staff regarding the allegation being investigated.
7. On November 28, 2011, the MCPS staff provided the MSDE staff with documentation from the student's education record.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated May 10, 2011;
 - b. Email Correspondence from school staff to the student's mother, dated October 3, 2011;
 - c. Email correspondence between school staff, dated October 17, 2011;
 - d. Correspondence and attachments from the complainant to MSDE, received on October 17, 2011;
 - e. Email correspondence from MCPS staff to MSDE staff, dated November 11, 2011;
 - f. Email correspondence from MSDE staff to MCPS staff, dated November 14, 2011;
 - g. Email correspondence from MCPS staff to MSDE staff, dated November 14, 2011;
 - h. Correspondence from MCPS staff to MSDE staff, dated November 22, 2011;
 - i. Student's first quarter progress reports for the 2011-2012 school year;

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- j. Record of accommodations forms completed by all teachers for the first quarter of the 2011-2012 school year;
- k. English class work samples from the first quarter of the 2011-2012 school year;
- l. Science class work samples from the first quarter of the 2011-2012 school year;
- m. World History class work samples from the first quarter of the 2011-2012 school year; and
- n. List of para-educators assigned to the student per class for the first semester of the 2011-2012 school year.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXX High School. He is identified as a student with autism under the IDEA and receives special education instruction and related services. During the period of time covered by this investigation, the complainants participated in the educational decision-making process and have been provided with notice of the procedural safeguards (Docs. a, d, and h-n).

Findings of Facts:

1. The IEP in effect at the start of the 2010-2011 school year is dated May 10, 2011 and requires that the student receive the support of a para-educator in his math, English, and science classes to provide him with “cues” to remain on task, “checks” to ensure understanding, and copies of class notes (Doc. a).
2. There is documentation of the provision of the supports required by the IEP since the start of the 2011-2012 school year. However, the documentation does not indicate that the supports were consistently provided to the student in each class (Docs. b, c, and i - n).
3. The MCPS staff acknowledges that the student was not provided with support of a para-educator in accordance with his IEP from the start of the 2011-2012 school year until October 3, 2011 in his English class and from the start of the 2011-2012 school year until October 18, 2011 in his science class. The school system proposes to offer compensatory services or a remedy for the loss of special education services that resulted from the lack of this support (Docs. e - h and interview of MCPS staff).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and 323). In this case, the complainants allege that the student was not provided with a para-educator for the purpose of assisting him with remaining on task, checking to ensure his understanding of materials, and obtaining copies of class notes for him in English and science classes, as required by his IEP (Doc. h).

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Based on the Findings of Facts #1 - #3, the MSDE finds that there is no documentation that the student was consistently provided with the supports required by the IEP from the start of the 2011-2012 school year until October 18, 2011. Therefore, this office finds that a violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the MCPS to provide documentation by January 30, 2012 that a remedy has been offered to remediate the violation identified in this Letter of Findings. If the complainants disagree with the remedy offered, they maintain the right to request mediation or file a due process complaint to resolve the dispute consistent with the IDEA.

School Based

The MSDE requires that the MCPS provide documentation by February 28, 2012 of the steps taken to determine if the procedural violation identified in this Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXX High School. If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that the staff properly implement the requirements of the IDEA and COMAR, and provide a description of how the MCPS will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violations do not recur.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring is being informed of the violation identified through this investigation for use in its future monitoring for continuous improvement activities.

Documentation of completion of the required actions is to be submitted to this office to Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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 both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

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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 the corrective action consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective action 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 identification, evaluation, placement, or provision of a Free Appropriate Public Education for the student, including issues subject to a 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/km

cc: Joshua Starr

XXXXXXXXXX

Alison Steinfels

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XXXXXXXXXX

Dori Wilson

Martha J. Arthur

Koliwe Moyo

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bc: Linda Bluth

Sandy Marx

Alice Harris

Anita Mandis

Marjorie Shulbank

William Fields

Allen Perrigan

Donna Riley

File