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



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December 28, 2011

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Ms. Melissa Charbonnet
Director of Special Education and Student Services
St. Mary's County Public Schools
P.O. Box 1410
Leonardtown, Maryland 20650

RE: XXXXX

Reference: #12-031

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 November 1, 2011,¹ the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, "the complainant," on behalf of her daughter. In that correspondence, the complainant alleged that the St. Mary's County Public Schools (SMCPS) 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 SMCPS has not ensured that the student's Individualized Education Program (IEP) addresses her social, emotional, and behavioral needs since October 2010, in accordance with 34 CFR §300.324;
- 2. The SMCPS did not ensure that the IEP team considered the complainant's input regarding the progress made toward achieving the annual IEP goals at the September 29, 2011 IEP team meeting, in accordance with 34 CFR §300.324;

¹ On October 24, 2011, the complainant provided the MSDE with correspondence containing allegations violations of IDEA, which did not contain all of the necessary information to initiate a State complaint investigation. On November 1, 2011, the complainant provided the additional required information and the complaint investigation was initiated (34 CFR §300.153).

- 3. The SMCPS did not ensure that the IEP team considered the student's interests and preferences in the development of the transition plan at the IEP team meeting on October 14, 2011, in accordance with 34 CFR §§300.320 and .321 and COMAR 13A.05.01.07 and 13A.05.01.09; and
- 4. The SMCPS has not ensured that the IEP is written clearly with respect to the provision of supplementary aids and services since October 2010, in accordance with 34 CFR §300.320.

INVESTIGATIVE PROCEDURES:

- 1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
- 2. On October 24, 2011, the MSDE received written correspondence from the complainant containing allegations of violations of the IDEA.
- 3. On October 26, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegations and discussed the need for the complainant to provide a proposed remedy in order for a State complaint investigation to be initiated.
- 4. On November 1, 2011, the MSDE received the proposed remedy from the complainant.
- 5. On November 3, 2011, the MSDE sent a copy of the complaint, via facsimile, to Ms. Melissa Charbonnet, Director of Special Education and Student Services, SMCPS.
- 6. On November 4, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Charbonnet of the allegations and requested that her office review the alleged violations.
- 7. On November 4 and 16, 2011, Ms. Stump conducted telephone interviews with Ms. Charbonnet regarding the allegations in the complaint.
- 8. On November 16 and 21, 2011, the MSDE requested documentation from the student's educational record, via electronic mail (e-mail).
- 9. On December 1, 2011, the SMCPS provided the MSDE with a written response to the complaint and with documentation from the student's educational record, via United States mail.
- 10. On December 2, 5, and 6, 2011, Ms. Stump reviewed audio recordings of the IEP team meeting held on October 14, 2011. The recordings were provided by the SMCPS and the XXXXXXXXXX.

- 11. On December 12, 2011, the MSDE requested additional documentation from the student's education record from the SMCPS. The documentation was provided by the SMCPS on December 14, 2011.
- 12. On December 14, 2011, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at the SMCPS Central Office and interviewed the following SMCPS personnel:
 - a. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXX;
 - b. Ms. Marcie Hough, Supervisor of Special Education, SMCPS; and
 - c. Ms. Jeanne Huett, IRT, Nonpublic, SMCPS.
 - Dr. XXXXXXX, Principal, XXXXXXXXXX, participated by telephone conference.
- 13. The MSDE, reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on October 24 and November 1, 2011;
 - b. Anne Arundel County Public Schools IEP, dated April 23, 2010;
 - c. IEP team meeting summary, dated September 2, 2010;
 - d. Discharge Summary from The Psychiatric Institute of Washington, dated September 16, 2010;
 - e. SMCPS Student Observation form, dated September 21, 2010;
 - f. Functional Behavioral Assessment Student Interview form, dated September 22, 2010;
 - g. Functional Behavioral Assessment Parent Interview form, dated September 22, 2010;
 - h. Functional Behavioral Assessment, dated September 22, 2010;
 - i. Psychological Assessment report, dated October 14, 2010;
 - j. IEP and team meeting summary, dated October 18, 2010;
 - k. IEP and team meeting summary, dated October 28, 2010;
 - 1. Psychological Assessment report from Dominion Hospital, dated November 6, 2010;
 - m. Correspondence from student's private physicians to school staff, dated November 9 and 10, 2010;
 - n. Invitation to a November 19, 2010 IEP team meeting;
 - o. IEP Educational Report, dated December 14, 2010;
 - p. Invitation to a January 11, 2011 IEP team meeting;
 - q. Educational Summary, dated January 11, 2011;
 - r. IEP and team meeting summary, dated February 15, 2011;
 - s. Educational Summary, dated March 24, 2011;
 - t. IEP and team meeting summary, dated April 5, 2011;
 - u. Notice and Consent for Assessment form, dated April 5, 2011;
 - v. Functional Behavior Assessment, dated May 9, 2011;
 - w. Behavior Intervention Plan, dated May 9, 2011;

- x. IEP team meeting summary, dated May 17, 2011;
- y. IEP team meeting summary, dated June 14, 2011;
- z. Parent contact log for the 2010-2011 school year;
- aa. SMCPS information on the Learning Adjustment Program, undated;
- bb. Social Worker report, dated August 25, 2011;
- cc. IEP and team meeting summary, dated September 8, 2011;
- dd. Notice and Consent for Assessment form, dated September 8, 2011;
- ee. Functional Assessment Screening Tool forms, dated between September 25 and September 28, 2011
- ff. IEP team meeting summary, dated September 29, 2011;
- gg. IEP Behavior Report, dated September 29, 2011;
- hh. Invitation for the October 14, 2011 IEP team meeting, dated September 30, 2011;
- ii. IEP and team meeting summary, dated October 14, 2011;
- jj. Problem Behavior Questionnaire forms, dated October 26, 2011;
- kk. Functional Behavioral Assessment Summary Report, dated October 26, 2011;
- ll. Behavioral Intervention Plan, dated October 26, 2011;
- mm. IEP team meeting summary, dated November 3, 2011;
- nn. Educational Summary, dated November 17, 2011;
- oo. IEP team meeting summary, dated November 18, 2011; and
- pp. IEP and team meeting summary, dated December 16, 2011.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with an emotional disability under the IDEA, and receives special education instruction and related services.

The complainant resides in St. Mary's County. In November 2010, the St. Mary's County Department of Health and Mental Hygiene filed an application to the St. Mary's County Local Coordinating Council (LCC) for the student to be placed in a residential treatment center (RTC).

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS

Findings of Facts:

2010-2011 school year

1. The IEP in effect in October 2010 was developed at an IEP team meeting held on October 18, 2010. At that meeting, the team reviewed the reports of the student's

teachers from the school she attended during the 2009-2010 school year, a discharge report from the student's most recent hospitalization, reports from the student's current teachers and service providers, and information from the complainant (Docs. b, d, and j).

- 2. The data reviewed by the team indicates that the student has been diagnosed with bipolar disorder and Attention Deficit/Hyperactivity Disorder and that these disabilities affect her ability to access the general education curriculum. The data indicates that, behaviorally, the student has rapid behavior swings, can become "combative," difficult to reason with, and "emotionally distraught when stressed," and misses class time when she goes to her "crisis counselor" (Docs. b, d, and j).
- 3. Based on the review, the team at the October 18, 2010 meeting determined that the student has behavioral needs related to self-management and the ability to express her anger, frustration, sadness, and anxiety in an appropriate manner (Doc. j).
- 4. In order to address these identified behavioral needs, the team at the October 18, 2010 meeting developed annual goals. In order to assist the student in achieving the annual goals, the team determined that the student requires special education instruction in all academic areas and counseling as a related service. The team determined that the least restrictive environment (LRE) in which the student's IEP could be implemented is in the general education classroom with the support of the Learning Adjustment Program (LAP)². The team determined that in order to implement the student's IEP in the LRE, she required accommodations and supplementary aids and services such as extended time to complete assignments, reduced distractions, use of a "crisis pass" to allow the opportunity to "deescalate" when losing control, and use of a point sheet/behavior system (Docs. j and aa).
- 5. On October 28, 2010, the IEP team reconvened to review the results of a classroom observation, a Functional Behavioral Assessment (FBA), and the report of a psychological evaluation, which had been recommended at an IEP team meeting in September 2010. The data indicates that, behaviorally, the student "gets distracted if others are talking around her and [she] wants to be part of the conversation," has difficulty reacting to situations in a socially acceptable manner, can "become belligerent, refusing to cooperate with faculty, follow directions," can become verbally or physically aggressive when a conflict occurs with another student, is susceptible to periods of depression, and focuses on herself negatively (Docs. c, e-i, and k).
- 6. Based on the review, the team at the October 28, 2010 meeting determined that the student continues to have behavioral needs related to self-management and the ability to express anger, frustration, sadness, and anxiety in an appropriate manner. The IEP team determined that the student's program remained appropriate (Doc. k).

²The LAP program is designed for students who are experiencing behavior and emotional problems and who have demonstrated the need for a more structured educational setting to be academically successful. The LAP program includes a behavior management system ("point and level") that determines a student's privileges and consequences, group and/or individual counseling based on recommendations from the IEP team, and social skills training

(Doc. aa).

- 7. On November 4, 2010, the student was hospitalized by the complainant for "emotional instability." On November 12, 2010, the complainant informed XXXXXXX staff of the hospitalization and of the recommendations of the physicians including that the student be placed in a RTC. School staff provided the complainant with an application for Home and Hospital Teaching services and the complainant provided school staff with documentation about the student's hospitalization (Docs. 1 and m).
- 8. An IEP team meeting was scheduled for November 19, 2010. The SMCPS reports that because the complainant did not attend the meeting, the IEP team did not move forward with its review of the recent information (Docs. n, z, and interview with SMCPS personnel).
- 9. On November 29, 2010, the complainant informed XXXXXXXX staff that the student had been placed in the RTC at XXXX. School staff provided the student's educational record to XXXXXXX on December 6, 2010 (Doc. z).
- 10. School staff attempted to reconvene an IEP team meeting on January 11, 2011, but had to reschedule due to inclement weather (Doc. p and interview with SMCPS personnel).
- 11. On February 15, 2011, the IEP team convened to review the student's program and progress. The team reviewed reports from the student's teachers and service providers. The data indicates that the student has a difficult time maintaining appropriate peer relationships because she is easily distracted by them, engages in inappropriate conversations with them, provokes, belittles, and threatens them, and has engaged in both verbal and physical aggression against them. The data also indicates that the student has a difficult time maintaining appropriate relationships with adults because she tests authority, is "cautious of investing positively in relationships with adults," and is disrespectful toward her teachers (Docs. o, q, and r).
- 12. The data also indicate that the student misses class time when she participates in a "crisis management" program. During these periods of time, the student receives instruction, when she is emotionally available to do so, in a separate classroom from her peers. The complainant expressed concerns at this meeting that the student is "allowed" to go to crisis management "too much." XXXXXXX staff explained that the crisis management is needed in order to assist the student in being able to receive instruction (Docs. o, q, and r).
- 13. After the review, the team at the February 15, 2011 meeting revised the student's program to increase the amount of counseling the student receives during school time in order to "work on her social skills and replacement behaviors." The team determined that the remainder of the student's program remained appropriate (Doc. r).
- 14. The IEP team reconvened on April 5, 2011, May 17, 2011, and June 14, 2011 to review the student's progress. At each meeting, the team reviewed reports from the student's teachers and service providers and the concerns of the complainant. The data indicates

- that the student's interfering behaviors continue to affect her ability to access the general education curriculum (Docs. s-y).
- 15. In order to address the continuing behavioral needs, throughout this series of meetings, the team recommended an FBA and, based on the results and the previously reviewed information, revised the student's program and Behavioral Intervention Plan (BIP) to include additional behavioral supports. These include preferential seating; allowing the student to ask for a "time out" in order to calm down before entering the classroom; teaching the student proper conversation skills, positive choice-making, anger management, and assisting the student with improving her self-esteem; and providing the student with a "special lunch," overnight passes, and "outings" (Docs. s-y).

2011-2012 school year

- 16. Since the start of the 2011-2012 school year, the IEP team has convened five (5) times, as follows: September 8, 2011, September 29, 2011, November 3, 2011, November 18, 2011, and December 16, 2011. At each of these meetings, the team has reviewed reports from the student's teachers and service providers and the concerns of the complainant. The data indicates that the student's interfering behaviors continue to affect her ability to access the general education curriculum (Docs. bb-pp).
- 17. In order to address the continuing behavioral needs, throughout this series of meetings, the team recommended another FBA and, based on the results and the previously reviewed information, revised the student's annual goals and determined that the student requires additional supports to assist her in achieving the revised goals. These supports include providing the student with frequent breaks, use of an agenda book to record assignments and due dates, social skills training, use of "proximity control," which requires the student's teachers to remain in close proximity to the student during class time, allowing the student time to walk with a favored staff member in order to sort out her thoughts, reminding the student about the support choices that are available to her, and reminding the student of the goals toward which she is working (Docs. bb-pp).

Discussion/Conclusions:

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #1-#17, the MSDE finds that since October 2010, the IEP team has convened *twelve* times and, based upon data from assessments, reports of the student's progress from her teachers and service providers, and the concerns and input of the complainant, has revised the student's program to reflect the data it has considered. Therefore, the MSDE finds no violation regarding this allegation.

ALLEGATION #2: CONSIDERING THE COMPLAINANT'S CONCERNS AT THE SEPTEMBER 29, 2011 IEP TEAM MEETING

Findings of Facts:

- 18. At the September 29, 2011 IEP team meeting, the complainant disagreed with the reports of the student's progress toward achieving the annual IEP goals. The complainant believes that the student does not get her work done in the "time allotted" by the teacher because of the amount of time that the student spends out of class due to her behavior (Doc. ff).
- 19. The September 29, 2011 meeting summary indicates that the XXXXX staff explained to the complainant that when the student requires crisis management services, she is unavailable to engage in class work. When this occurs, school staff at XXXXXX do not count the time that she is emotionally unavailable toward the "time allotted" by the teacher to complete her assignments. The meeting summary indicates that the complainant expressed her disagreement with this practice (Doc. ff).

Discussion/Conclusions:

In developing each student's IEP, the public agency must ensure that the IEP team considers the concerns of the parent for enhancing the education of the student (34 CFR §300.324). When an allegation is made that a student has not been provided with an appropriate educational program under the 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.

If the State educational agency determines 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 student for loss of appropriate services. However, the state educational agency may not overturn an IEP team's decisions (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainant alleges that her concerns about the student's progress was not considered by the IEP team (Doc. a). Based on the Findings of Facts #18 and #19, the MSDE finds that the complainant's concerns were documented and addressed. Therefore, the MSDE finds no violation regarding this allegation. However, the complainant is reminded that she maintains the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding the special education services required to be provided to the student.

ALLEGATION #3: STUDENT PARTICIPATION IN THE OCTOBER 14, 2011 IEP TEAM MEETING

Findings of Fact:

- 20. On September 30, 2011, the SMCPS mailed an invitation to the complainant to attend the October 14, 2011 IEP team meeting. The student is listed as an "expected participant" on the invitation (Doc. hh).
- 21. The review of the audio-recordings of the October 14, 2011 IEP team meeting³ indicates that the student was not present at the start of the meeting. However, when the IEP team began its discussion of the student's transition plan, the recordings indicate that the student was pulled from her classes to participate in the meeting (review of audio recordings).
- 22. The review of the audio-recordings of the October 14, 2011 IEP team meeting indicates that while there was conversation between the student and the XXXXX staff and that the XXXXXX staff prompted the student to ask other participants to repeat themselves when she could not hear them during the telephone conference call, there is no indication on the audio recordings that the XXXXXX staff prohibited the student from expressing her interests and preferences or from participating in the meeting in any other manner (review of audio recordings).

Discussion/Conclusions:

In this case the complainant alleges that the student was not invited to the IEP team meeting because the student did not receive written notice of the meeting. The complainant further alleges that once the student was brought into the meeting, she was not permitted to express her interests and preferences or to meaningfully participate in the meeting (Doc. a).

<u>Invitation to the meeting</u>

The IDEA and the COMAR require the public agency to initiate and conduct meetings to review a student's IEP when it has placed a student in a nonpublic school (34 CFR §§300.145-.147 and COMAR 13A.05.01.16A). Under these circumstances, the COMAR requires that responsibility for compliance with the regulations of the IDEA and the COMAR remain with the public agency (COMAR 13A.05.01.16A). Therefore, while the complainant expressed concerns that the XXXXXX staff did not ensure the student's participation in the meeting, this office identified the allegation with respect to the SMCPS.

The United States Department of Education, Office of Special Education Programs (OSEP), has clarified that the public agency is *not* required to provide written notice to a student who has not

³ The SMCPS convened the IEP team meeting at the SMCPS Central Office. The complainant was present at the SMCPS Central Office and the XXXXXXX staff and the student participated via telephone conference (review of audio-recordings).

reached the age of majority under State law. When addressing this issue, the OSEP has stated that it would "be overly burdensome to require a public agency to include all of the notice requirements in [the regulations] with an invitation to a [student] to attend his or her IEP team meeting, particularly because the information is provided to the [student's] parents who can easily share this information with the [student]" (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, August 2006, p. 46671).

The MSDE finds that it is the responsibility of the public agency to ensure that the student is invited to attend the IEP team meeting. In this case, it is the responsibility of the SMCPS *not* XXXXX to ensure that the student is invited to attend IEP team meetings. Based on the Finding of Fact #20, the MSDE finds that when the SMCPS provided written notice of the October 14, 2011 IEP team meeting to the complainant, the SMCPS complied with the requirement of the IDEA to ensure that the student was invited to attend the IEP team meeting. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Meeting participation

The IDEA and the COMAR require a school system to ensure that, beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, the IEP include a transition plan (34 CFR §300.320 and COMAR 13A.05.01.09). When the purpose of an IEP team meeting is to consider the transition plan, the public agency must ensure that the student is invited to the IEP team meeting and, if the student is unable to attend the meeting, that the public agency takes steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

Based on the Findings of Facts #21 and #22, the MSDE finds that there is no documentation that staff at XXXXXXX prevented the student from participating in the October 14, 2011 IEP team meeting and, in fact, there is documentation that the student's interests and preferences were considered during the development of the transition plan. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

ALLEGATION #4: IEP WRITTEN CLEARLY

Findings of Facts:

Completion of assignments

23. At the IEP team meeting on April 5, 2011, the complainant requested that she be provided with a "weekly report" of the student's incomplete assignments and the IEP team agreed. The IEP was revised to require "weekly notification to parent regarding missing or incomplete assignments." However, there is no documentation that the complainant made such a request or that the IEP required this service prior to April 5, 2011 (Docs. c, j, k, r, and t).

24. At the October 14, 2011 IEP team meeting, the complainant requested that the IEP team clarify that she is to be notified of the specific assignments that are missing and those that are incomplete. The IEP team agreed and the IEP reflects that agreement (Doc. ii).

Provision of daily points sheets

25. At the September 2011 IEP team meetings, the complainant requested that the school staff provide her with copies of the student's point sheets on a weekly basis and the school staff agreed. The IEP was revised to reflect this agreement on October 14, 2011. There is no documentation that the complainant made such a request or that the IEP required this service prior to September 2011 (Docs. c, j, k, r, t, x, y, cc, and ff).

Discussion/Conclusions:

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 64, No. 48, p.12479, March 1999). In this case, the complainant alleges that since October 2010, the IEP team has agreed to provide her with the student's daily point sheets and notice of missing or incomplete assignments, but the IEP does not reflect the agreement (Doc. a and interview with complainant).

Based on the Finding of Facts #23 and #25, the MSDE finds that the IEP has required the provision of weekly reports to the complainant since April 5, 2011 and copies of points sheets since October 2011. Based on the Finding of Fact #24, the MSDE finds that when the complaint requested that the agreement regarding the notice of missing and incomplete assignments be further clarified, the IEP team revised the IEP to reflect the clarified agreement. Based on the Findings of Facts #23 and #25, the MSDE finds there is no documentation that the team agreed to provide the complainant with copies of these documents previously. Therefore, the MSDE finds no violation regarding this allegation.

Please be advised that both parties 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.

⁴ No changes were made to this requirement in the 2004 reauthorization of the IDEA.

Questions regarding the findings and conclusions 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 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:ks

cc: Michael Martirano
Linda Dudderar
Charles Ridgell
Marcie Hough
XXXXXXXX
Sarah Spross
Chezia Calloway
Jodi King
Anita Mandis
Kathy Stump