



June 17, 2013

Mr. XXXXXX  
XXXXXXXX  
XXXXX, XXXXX XXXX

Ms. Mary Tillar  
Director of Special Education  
Anne Arundel County Public Schools  
2644 Riva Road  
Annapolis, Maryland 21401

RE: XXXXXX  
Reference: #13-080

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 our investigation.

**ALLEGATION:**

On April 18, 2012, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his daughter, XXXXXX. In that correspondence, the complainant alleged that the Anne Arundel County Public Schools (AACPS) 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 AACPS has not ensured that the student has been provided with special education instruction in reading and math in the educational placement required by the student’s Individualized Education Program (IEP), from the beginning of the 2012-2013 school year until April 10, 2013<sup>1</sup>.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, was assigned to investigate the allegation in the complaint.

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<sup>1</sup>In correspondence dated April 29, 2013, the MSDE identified the timeframe for the allegation as occurring “since August 2012.” However, during the course of the investigation, the MSDE discovered that the complainant transferred the student from the XXXXXXXXXXXX XXXXXX XXXXXX School, Glen Burnie, (XXXXXXXXXXXX XXXX) and enrolled the student at XXXXXXXXXXXX School. Because the complainant clarified that the allegation covers only the time period that the student attended the XXXXXXXXXXXX XXXX, the timeframe covered by the investigation is being clarified (Doc. a and interview with the complainant).

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2. On April 18, 2013, the MSDE received correspondence from the complainant that contained an allegation of a violation of the IDEA.
3. On April 19, 2013, a copy of the complaint was provided by facsimile to Ms. Mary Tillar, Director of Special Education, AACPS, and Ms. Alison B. Steinfelds, Program Manager, Compliance and Legal Issues, AACPS.
4. On April 26, 2013, Ms. Williams, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, contacted the complainant, by telephone, to clarify the allegation to be investigated.
5. On April 29, 2013, 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 the AACPS of the allegation and requested that the AACPS review the alleged violation.
6. On May 15 and 22, 2013, and June 4, 2013, Ms. Williams contacted Ms. Steinfelds, via email, to obtain additional information regarding the allegation in the complaint.
7. On May 17, 2013 and June 10, 2013, the AACPS provided the MSDE with documentation to be considered for the investigation.
8. On May 22 and 31, 2013, and June 4 and 6, 2013, Ms. Williams conducted telephone interviews with the complainant and the student's mother.
9. On May 23, 2013, Ms. Williams and Ms. Christine Hartman, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at the XXXXXXXXXXXX XXXXX School, Glen Burnie, (XXXXXXXXXXXX XXX) to review the student's educational record and interviewed the following school staff:
  - a. Ms. XXXXXXX, Special Education Teacher;
  - b. Ms. XXXXXXXXXXX, Principal;
  - c. Ms. XXXXXXXXXXX, Instructional Assistant; and
  - d. Ms. XXXXXXXXXXX, General Education Teacher.

Ms. Steinfelds and Ms. XXXXXXX, Special Education Instructional Coach, AACPS, attended the site visit as representatives of the AACPS and to provide information on the AACPS policies and procedures, as needed.

10. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this Letter of Findings are listed below.
  - a. Correspondence and attachments from the complainant to the MSDE, received on April 18, 2013;
  - b. Worcester County Public Schools (WCPS) IEP, dated January 6, 2012;

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- c. WCPS Withdrawal and Records Transfer form, dated from August 1, 2012 through September 12, 2012;
- d. Math Fact Fluency Software Program description;
- e. AACPS enrollment form, dated August 27, 2012;
- f. Special education substitute lesson plans, dated August 28, 2012 through January 31, 2013;
- g. AACPS IEP, dated September 10, 2012;
- h. AACPS IEP Team meeting notes, dated September 10, 2012;
- i. The special education teacher's attendance data, dated September 11, 2012 and January 31, 2013;
- j. The special education teacher's attendance data, dated October 2, 2012 and October 9, 2012;
- k. Sample lesson plan for the instructional assistant, dated November 14, 2012;
- l. The special education teacher's schedule from August 2012 through May 2013;
- m. The instructional assistant's schedule from August 2012 through May 2013;
- n. The student's attendance record from the XXXXXXXXXXXX XXX, dated August 27, 2012 through April 10, 2013; and
- o. Student work samples and data collection reports for marking periods one (1) through three (3).

### **BACKGROUND:**

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. She has an IEP that requires the provision of special education instruction. At the start of the 2012-2013 school year, the student attended the XXXXXXXXXXXX XXXXXXXX XXXX School, Glen Burnie, (XXXXXXXXXXXX XXX), an AACPS XXXXXXXX XXXX school, after the family relocated to Anne Arundel County, Maryland from Worcester County, Maryland.

- From Monday, August 27, 2012 through Wednesday, April 10, 2013, the student attended the XXXXXXXXXXXX XXX.
- There is no information or documentation that the student received instruction on Thursday, April 11, 2013 and Friday, April 12, 2013.
- On Monday, April 15, 2013, the student began attending XXXXXXXXXXXX School (XXXXXXXXXX ES) in Anne Arundel County, Maryland, the school that she would attend if not disabled.

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 (Docs. a - c, e, g - i, l, and interview with the complainant).

### **FINDINGS OF FACTS:**

1. On August 27, 2012, the student transferred from the XXXXXXXXXXXXXXXX School, located in Worcester County, Maryland, to the XXXXXXXXXXXX XXX, a XXXXXXXX

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XXXX school located in Anne Arundel County, Maryland, as a result of the family's relocation. The complainant provided a copy of the IEP developed by the Worcester County Public Schools (WCPS) to the XXXXXXXXXXXX XXX staff, at the time of the student's enrollment (Docs. a - c, e, n, and interviews with the complainant and school staff).

2. The WCPS IEP required that the student be provided with special education instruction to assist her in achieving annual goals to improve geometry, math calculation, and reading skills. The IEP required that the student be provided with three (3) hours and forty-five (45) minutes per week of special education instruction in the general education classroom and two (2) hours and thirty (30) minutes per week of special education instruction in a separate special education classroom. The IEP indicates that the special education instruction will be provided by a special education teacher or an instructional assistant (Doc. b).
3. On September 10, 2012, the IEP team at the XXXXXXXXXXXX XXX revised the WCPS IEP. The IEP was revised to increase the amount of special education instruction in math to four (4) hours per week. It was also revised to clarify that the special education instruction in math is to be provided in the general education classroom and that the special education instruction in reading is to be provided in a separate special education classroom. The IEP continues to require that the special education instruction be provided by a special education teacher or an instructional assistant (Docs. b, g, and h).
4. The written summary of the September 10, 2012 IEP team meeting documents the team's discussion that the student's WCPS IEP had been implemented since the start of the school year (Doc. h).
5. A review of classroom schedules reflect that the student was scheduled to receive the amount of special education instruction in the educational placements required by the IEP. Because the special education teacher is not a full time employee, the instructional assistant is scheduled to provide the special education instruction when the special education teacher is not present (Docs. a, d, l, and m).
6. There is documentation that on days when neither the special education teacher nor the instructional assistant is available to provide the student with special education instruction, a substitute teacher is assigned to provide the instruction (Doc. j).
7. There is also documentation that the special education teacher develops a lesson plan ("sub plan") for the provision of special education instruction to the student when she will not be providing the special education instruction (Docs. f and k).
8. Some of the sub plans developed by the special education teacher for days when the student was scheduled to receive special education instruction in reading in a separate special education classroom do not reflect the provision of this instruction (See sub plans dated August 31, 2012, September 11, 2012, October 2, 9, and 16, 2012, and January 31, 2013) (Docs. f, i, j, l, and m).

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9. On three (3) days when neither the special education teacher nor the instructional assistant were available to provide the student with special education instruction (September 11, 2012, October 22, 2012, and January 31, 2013), there is no documentation of the assignment of an individual to serve as the substitute teacher (Docs. f and i).
10. Reports of the student's progress towards achievement of the annual IEP goals, data collection reports, and work samples document that the annual IEP goals have been addressed and that the student has made sufficient progress towards achievement of the goals (Docs. g and o).
11. On April 10, 2013, the complainant withdrew the student from the XXXXXXXXXXXX XXX due to his concerns that the IEP was not being implemented on a consistent basis. Since that time, the student has been attending XXXXXXXX ES in Anne Arundel County, Maryland, the school she would attend if not disabled (Docs. a, n, and interview with the complainant).

#### **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 .103). When a student with an IEP in a previous public agency transfers to a new public agency in the same State, the new public agency (in consultation with the parents) must provide the student with a Free Appropriate Public Education (FAPE), including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either adopts the IEP from the previous public agency; or develops, adopts, and implements a new IEP (34 CFR §300.323).

In Maryland, a XXXXXXXX XXXX school is a public school in which parents may choose to enroll students. The XXXXXXXX XXXX school operates under the supervision of the XXXXXXXX XXXX authority, which is the Board of Education of the local public school system. The XXXXXXXX XXXX authority is responsible for ensuring that the XXXXXXXX XXXX school operates consistent with the requirements of the IDEA for students with disabilities (Md. Educ. Code Ann. §§9-102, 9-103, and 9-107). In this case, the complainant alleges that the AACPS, the XXXXXXXX XXXX authority for the XXXXXXXXXXXX XXX, did not ensure that the student was consistently provided with the amount of special education instruction in the educational placements required by the IEP while attending the XXXXXXXX XXXX school due to lack of adequate staff (Doc. a).

Based on the Findings of Facts #1 - #4, the MSDE finds that there is documentation that the WCPS IEP was implemented from the start of the 2012-2013 school year until the IEP was revised on September 10, 2012 by the IEP team at the XXXXXXXXXXXX XXX. Therefore, this office does not find that a violation occurred with respect to this time period.

Based on the Findings of Facts #5 - #11, the MSDE finds that while there is documentation that the IEP goals were addressed, there is no documentation of the consistent provision of special education instruction in the educational placements required by the IEP from September 10, 2012 until April 10, 2013. Therefore, the MSDE finds that a violation occurred during this time period.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the AACPS to provide documentation by August 1, 2013 that the IEP team has determined whether the violation had a negative impact on the student's ability to benefit from the education program, and if so, the amount and nature of *compensatory services*<sup>2</sup> to be provided to the student to remediate the violation.

The MSDE requires the AACPS to provide the complainant with proper written notice of the IEP team's decisions. If the complainant disagrees with the IEP team's decisions, he may request mediation or file a due process complaint to resolve the dispute.

**Similarly-Situated Students**

The MSDE requires the AACPS to provide documentation by the start of the 2013-2014 school year that it has identified similarly-situated students at XXXXXXXXXXXX XXX who did not consistently receive the amount of special education instruction in the educational placement required by the IEP during the 2012-2013 school year. For each student identified, the AACPS must provide documentation that an IEP team has convened and determined whether the violation had a negative impact on the student's ability to benefit from the education program, and if so, the amount and nature of *compensatory services*<sup>2</sup> to be provided to the student to remediate the violation.

**School-Based**

The MSDE requires the AACPS to provide documentation by the start of the 2013-2014 school year of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXX XXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for their consideration during monitoring of the AACPS in the future.

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<sup>2</sup> Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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Documentation of all corrective action taken must be submitted to this office no later than the beginning of the 2012-2013 school year, to the attention of the Chief, Family Support and Dispute Resolution 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 the complainant and the AACPS 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 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.

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 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 due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:tw

cc: Kevin M. Maxwell  
Alison Steinfels  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur

bc: Sandra Marx  
Marjorie Shulbank  
File