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July 15, 2013

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Ms. Ann-Marie Spakowski
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #13-096

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 May 16, 2013, the MSDE received a complaint from Maureen Van Stone, Esq., M.S., hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXX. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and applicable State regulations with respect to the above-referenced student. The MSDE investigated the allegations listed below.

1. The HCPS has not ensured that the student has been provided with the special education instruction, accommodations, and supports required by the Individualized Education Program (IEP) in all classes except English, since the start of the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323.
2. The HCPS has not ensured that the student’s IEP includes appropriate measurable post secondary goals based on age-appropriate transition assessments related to training,

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education, employment, and independent living skills or transition services since May 16, 2012¹ in accordance with 34 CFR §300.320 and COMAR 13A.05.01.09.

3. The HCPS has not ensured that the student has been provided with the eyeglasses necessary to access the special education instruction required by the IEP, in accordance with 34 CFR §§300.101 and .324.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 16, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS; and Ms. Eileen Watson, Coordinator of Compliance, HCPS.
3. On May 30, 2013 and June 6, 2013, Ms. Moyo spoke with the complainant by telephone and clarified the allegations to be investigated.
4. On June 11, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Spakowski of the allegations and requested that her office review the alleged violations.
5. On July 2, 2013, Ms. Moyo reviewed the student's educational record at the HCPS Central Office. Ms. Watson was present at the record review as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.
6. On July 12, 2013, Ms. Moyo conducted an interview with Mr. Tom Barkley, Transition Specialist, MSDE regarding information related to the allegations being investigated.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP and meeting notes, dated November 15, 2011;
 - b. IEP team meeting attendance sheet, dated November 15, 2011;
 - c. Parent's written response, dated October 11, 2012;
 - d. IEP and meeting notes, dated October 16, 2012;
 - e. IEP team meeting attendance sheet, dated October 16, 2012;
 - f. Reports of progress, dated November 12, 2012;
 - g. IEP team meeting notes, dated December 13, 2012;
 - h. Reports of progress, dated February 1, 2013;

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. On June 11, 2013, the complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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- i. Teacher progress reports, dated February 22 and 25, 2013 and March 13, 2013;
- j. IEP team meeting notes and consent for assessment, dated March 13, 2013;
- k. Electronic mail (e-mail) between school staff and the complainant, dated March 16, 2013;
- l. Career Interests and Transition Planning Inventory, dated March 20, 2013;
- m. Reports of progress, dated April 5, 2013;
- n. E-mails between school staff and the student's mother, dated April 9, 14, 15, 17, and 19 2013;
- o. IEP team meeting notes, dated April 24, 2013;
- p. E-mails between school staff and the student's mother, dated April 26, 29, and 30, 2013;
- q. Correspondence and attachments from the complainant to the MSDE, received on May 6, 2013;
- r. E-mails between school staff and the student's mother, dated May 16, 22, and 23 2013;
- s. School Resource Officer incident report, dated May 20, 2013;
- t. Student's incident report, dated May 30, 2013 and June 7, 2013;
- u. E-mails between school staff and the student's mother, dated June 17, 2013;
- v. IEP team meeting notice, dated June 26, 2013;
- w. Report card for the 2012-2013;
- x. Attendance log for the 2012 – 2013 school year;
- y. Teacher's "check off" sheets from March 2012 to the end of 2012-2013 school year; and
- z. Signed Transition Agency Linkage Forms.

BACKGROUND:

The student is nineteen (19) years old and attends XXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction. During the period of time addressed by this investigation, the student's mother participated in the education decision-making process and was provided with written notice of the IEP team decisions and notice of the procedural safeguards (Docs. a – j, m, o, q, v, w, and x).

ALLEGATION #1: PROVISION OF INSTRUCTIONAL SUPPORTS DURING THE 2012-2013 SCHOOL YEAR

Findings of Facts:

1. The IEP identifies needs for the student in the areas of math problem solving and social interaction (Docs. a and d).
2. In order to address these needs, the IEP requires the provision of special education instruction in the general education classroom by a general or special education teacher in math and social interaction skills (Docs. a and d).

3. The IEP also requires that the student be provided with copies of class notes, visual cues, use of a calculator, extended time for processing in math, reduced distractions, and a small group setting for testing. The IEP also requires that the student's teachers monitor all independent work to ensure that the student is "on track" and "working appropriately during the class period," and that the teacher would check for understanding in the general education classroom (Docs. a and d).
4. On October 16, 2012, the IEP team met to review the student's program and discussed the student's difficulties with math. At the meeting, the math teacher reported that the student is being redirected and monitored in class to ensure that he completes his work, as required by the IEP. The teacher also indicated that the tests created by the teacher were modified for the student. The teachers reported that the student was making progress with the provision of these supports (Doc. d).
5. At the meeting, the team determined that preferential seating would be added to the IEP in all classes to assist the student with avoiding distractions and that modified instruction and assessments would be provided to the student in math class to ensure continued progress (Doc. d).
6. On November 12, 2012, the reports of the student's progress towards achievement of the annual IEP goals reflect that he was making sufficient progress at that time (Doc. f).
7. On February 1, 2013, the reports of the student's progress towards achieving the annual goal in math document that the student was no longer making sufficient progress. The reports indicate that the student was not making progress because he had difficulty remaining on task and easily distracted by other students (Docs. h and i).
8. On March 13, 2013, the IEP team convened to review the IEP to address the lack of expected progress. During the meeting, the student's mother expressed concern that the student was not being provided with supports in his classes and that this was impacting his performance and progress in his classes (Doc. j).
9. At the meeting, the IEP team decided that additional data was needed to obtain the student's present levels of performance, and recommended an educational assessment to determine the student's present levels of performance and to determine the strategies to assist the student. The team also decided that in order to address the student's mother's concern that the student was not being provided with supports in all of his classes, the team determined that all of the student's teachers would complete daily "check-off sheets" documenting the supports provided in each class. The team further determined that the student's teachers would contact his mother to provide her with updates regarding the student's progress in class (Doc. j).
10. On April 5, 2013, reports of the student's progress towards achievement of the annual IEP goals in math continued to reflect that the student was not making sufficient progress. These reports indicated that the reason for the lack of progress was that while

the student continued to work toward achieving the objectives, he was unable to demonstrate his understanding of the lesson when completing homework and tests (Doc. m).

11. On April 14 and 15, 2013, the student's mother sent the school staff correspondence expressing concern that the student was not being provided with the supports required by the IEP (Doc. n).
12. On April 17, 2013, school staff indicated, in correspondence to the student's mother, that the "check-off sheets" would now include the student's and the teacher's signatures to ensure that the supports are provided (Doc. n).
13. On April 24, 2013, the IEP team reconvened to review the results of the educational assessment and to discuss the student's lack of expected progress. At the meeting, the team considered information from the student's English teacher that the student was doing well in English class with the provision of the supports in his IEP. The team considered adding a study skills class for the student during the next school year and a "check-off" sheet that the student could use to monitor and complete his own assignments. The team agreed to meet at a later date to revise the IEP based on the information considered at the meeting (Doc. o).
14. There is no documentation that a progress report was completed at the end of the fourth (4th) quarter of the 2012-2013 school year (review of the education record).
15. There is documentation that following the March 13, 2013 IEP team meeting, the student was provided with special education instruction from the special education teacher to work on social skills, as required by the IEP, and with supports in the general education classroom by all of his teachers, including the provision of visual cues, class notes, extended time to complete assignments, and preferential seating. However, there is no documentation of the provision of these services previously during the school year (Docs. k, n, p, o, r, u, and y).
16. The "check-off sheets" completed by the student's U.S. History, Applied Science, Intro Algebra, Intro to Food Prep and Hospitality, and Advanced 3D Design teachers document that the accommodations and supports required by the IEP were provided to the student
17. following the March 13, 2013 IEP team meeting, but there is no documentation that these services were provided on a consistent basis in all of the student's classes, and no documentation of the provision of these services previously during the school year (Doc. y).

Discussion/Conclusions:

The public agency is required to ensure that students are provided with the special education and related services required by the IEP (34 CFR §300.101 and .323). In this case, the complainant asserts that the student was not provided with the supports and accommodations required by the

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IEP in all of his classes except English, and as a result the student was unable to make sufficient progress.

Based on the Findings of Facts #1 - #16, the MSDE finds that the student was provided with supports in all of his classes following the March 13, 2013 IEP team meeting. However, there is no documentation that the student was provided with supports in all but his English class, on a consistent basis, throughout the 2012-2013 school year. Therefore, the MSDE finds that a violation has occurred with respect to this allegation.

ADDITIONAL ISSUE:

The public agency must ensure that the IEP team reviews, and revises, as appropriate, the IEP at least annually in order to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team reviews the IEP to address any lack of expected progress towards achievement of the annual goals, results of any reevaluation that is conducted, information about the student that is provided by the parents, and the student's anticipated needs (34 CFR §300.324).

Based on the Findings of the Facts #13 - #16, the MSDE finds that the HCPS did not ensure that the IEP team convened to review and revise, as appropriate, the IEP to address the lack of expected progress towards achievement of the annual goals since April 24, 2013. Therefore, the MSDE finds that the HCPS has not ensured that the student has been provided with an IEP that addresses his identified needs since April 24, 2013 and that a violation occurred.

ALLEGATION #2: TRANSITION PLANNING

Findings of Facts:

17. The IEP team conducted transition planning on November 15, 2011 and October 16, 2012. There is documentation that the student participated in these meetings, and that information was obtained from the student about his interests and preferences in preparation for the IEP team meetings (Docs. a - d).
18. While there is documentation of transition planning on these dates, there is no documentation that a transition assessment was conducted (Docs. a, d, and review of the education record).
19. On March 20, 2013, a transition assessment was completed. However, there is no documentation that transition planning has been conducted based on this data (Doc.1 and review of the education record).
20. As a result of the transition planning that was conducted, post secondary goals were developed for the student in the areas of employment and training, but not in the area of independent living. There is documentation that the student's mother reported that she wanted the student to be able to conduct basic transactions/interactions as part of "normal daily living," but there is no documentation that the IEP team has considered whether the student requires a post secondary goal in the area of independent living (Docs. a, d and g).

21. There is documentation that the student's mother has been provided with information about the services offered by the Maryland Department of Rehabilitation Services (DORS) and that a DORS representative was invited to participate in the transition planning that was conducted since November 15, 2011 (Docs. a, d, o, and z).

Discussion/Conclusions:

The public agency must ensure that beginning not later than the first IEP that is in effect when a student turns fourteen (14) years old, and younger, if appropriate, the IEP must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate. It must also ensure that the IEP includes the course of study and services needed to assist the student in achieving those goals. When a purpose of the IEP team meeting is to conduct transition planning, the student must be invited to participate in the meeting in order to ensure that the team considers the student's interests and preferences (34 CFR §300.320(b) and .321 and COMAR 13A.05.01.07).

The public agency must also ensure, to the extent appropriate and with the consent of the parents or a child who has reached the age of majority, to invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. The IEP must include a statement of the needed transition services, including if appropriate, a statement of the public agency's and a participating agency's responsibilities or linkages, or both before the student leaves the post secondary school setting (34 CFR §300.320(b) and .321 and COMAR 13A.05.01.07 and COMAR 13A.05.09(A)(3).

Based on the Findings of Facts #17, #20, and #21, the MSDE finds that the public agency took steps to ensure that the student's interests and preferences have been considered when conducting transition planning and that linkages have been made with the DORS. However, based on the Findings of Facts #17 - #20, the MSDE finds that the IEP team has not considered whether the student requires a post secondary goal in the area of independent living and has not ensured that the other post secondary goals have been based on age-appropriate transition assessments. Therefore, this office finds that a violation has occurred since May 16, 2012.

ALLEGATION #3: PROVISION OF EYEGLASSES

Findings of Facts:

22. In correspondence to the school staff, dated April 30, 2013, the student's mother expressed concern about the loss of the student's eyeglasses following a "bullying incident" by another student at school. The student's mother reported the incident to school staff which focused on the school's need to protect the student from bullying². She also reported the student's need for another pair of eyeglasses to avoid headaches

² The complainant was informed through correspondence, dated June 11, 2013, that concerns related to the actions taken by the school system in response to the report of bullying should be addressed with the interim Executive Director of Student Services and Strategic Planning, Division of Student, Family, and School Support, MSDE.

from the outdated pair that he is now wearing. The family is unable to afford to replace them (Docs. s and r).

23. There is no documentation that the IEP team has considered whether the student requires the provision of eyeglasses in order to access special education and related services (review of the education record).
24. The school staff report that they were not aware of the concern about the student's need for eyeglasses in order to access instruction until the State complaint was filed. There is documentation that following the filing of the State complaint, an IEP team meeting has been scheduled for July 15, 2013 to consider the concerns of the student's mother (Docs. u, v and interview with HCPS staff).

Discussion/Conclusions:

The public agency must ensure that a student is provided with the special education and related services needed for the student to receive a Free Appropriate Public Education (FAPE). This includes assistive technology services and devices and supplementary aids and services (34 CFR §§300.101, .320, and .324).

Related services are developmental, corrective, and other supportive services required to assist the student to benefit from special education instruction (34 CFR §300.34).

An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially or off of the shelf, modified or customized, that is used to increase, maintain, or improve functional capabilities of the student (34 CFR §300.5).

Supplementary aids and services means aids, services, and other supports needed to ensure that the student can receive special education instruction with nondisabled peers to the maximum extent appropriate (34 CFR §300.42).

As stated above, the public agency must ensure that the IEP team reviews, and revises, as appropriate, the IEP to address information about the student that is provided by the parents, and the student's anticipated needs (34 CFR §300.324).

The determination of whether eyeglasses constitute a special education and related services must be made by the IEP team based on its consideration of the student's educational needs. Unless the IEP team has determined that eyeglasses are required in order for the student to receive a FAPE, they are considered a personal device that the public agency is not responsible to provide (*Letter to Bachus*, United States Department of Education, Office of Special Education Programs, 22 IDELR 629, January 13, 1995).

Based on the Findings of Facts #22 - #24, the MSDE finds that the IEP team has not determined that eyeglasses are required in order to ensure that the student receives a FAPE, but that an IEP team has been scheduled to consider the concerns of the student's mother that the student

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requires eyeglasses in order to access special education and related services. Therefore, this office does not find that a violation has occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the HCPS to provide the MSDE with documentation by the start of the 2013-2014 school year that the IEP team has conducted a transition planning based on the available data. The MSDE also requires that the IEP team determine the amount and nature of *compensatory services*³ to remediate the violation identified in this Letter of Findings since May 16, 2012. ensure that transition planning is completed.

The HCPS must provide the student's parent with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's parent disagrees with the IEP team's determinations, they maintain the right to request mediation or to file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the HCPS to provide documentation by the October 1, 2013 that steps have been taken to determine whether the violations related to the IEP implementation and transition planning constitute a pattern of noncompliance at XXXXXXXX.

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, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP). Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the HCPS.

³ 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 the corrective action taken is to be submitted to this office to the attention of 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 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 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 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 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/km

cc : XXXXXXXXXXXX
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XXXXXXXXXXXX
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