



January 15, 2014

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Director of Project HEAL
Maryland Center for Developmental Disabilities
Kennedy Krieger Institute
716 N. Broadway, Office 106
Baltimore, Maryland 21205

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

RE: XXXXX
Reference: #14-037

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 5, 2013, the MSDE received a complaint from Maureen van Stone, Esq., M.S., Director of Project HEAL at the Maryland Center for Developmental Disabilities, Kennedy Krieger Institute, hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

There is a sixty (60) day timeline for completion of the complaint investigation process. However, the timeline may be extended for exceptional circumstances (34 CFR §300.152). In this case, three (3) business days prior to the issuance of the Letter of Findings, the student’s mother submitted documentation for consideration in the investigation process. On the same date, the HCPS informed the MSDE that it would be submitting additional documentation for consideration one (1) business day prior to the issuance of the Letter of Findings. Therefore, in order to obtain and review the needed information to complete the investigation, it was necessary to extend the timeline for completion of this Letter of Findings.

The MSDE investigated the allegations listed below:

1. The HCPS did not ensure that the student was provided with the accommodation required by the Individualized Education Program (IEP) during Extended School Year (ESY) services, from July 1, 2013 through July 25, 2013, in accordance with 34 CFR §§300.101 and .323.
2. The HCPS has not ensured that the student was provided with the services of an “adult assistant” for the purpose of close adult supervision as required by the IEP since July 1, 2013, in accordance with 34 CFR §§300.101 and .323.
3. The HCPS did not ensure that the confidentiality of the student’s personally identifiable information was maintained during the 2013-2014 school year, in accordance with 34 CFR §§300.611 - .625.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 6, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS.
3. On November 21, 2013, Ms. Hartman conducted a telephone interview with the complainant about the allegations being investigated.
4. On November 26, 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 the HCPS of the allegations and requested that the HCPS review the alleged violations.
5. On December 4, 16, and 18, 2013, and January 8 and 10, 2014, the HCPS provided the MSDE with information and documentation to consider, via email.
6. On December 16, 2013, Ms. Hartman and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX School to review the student’s educational record, and interviewed the following HCPS staff:
 - a. Ms. XXXXXXXXXXXX, School Nurse, XXXXXXXXXXXX;
 - b. Ms. XXXXXXXXXXXX, Inclusion Helper, XXXXXXXXXXXX;
 - c. Ms. XXXXXXXX, Special Educator, XXXXXXXXXXXXXXXX;¹
 - d. Mr. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXXX;
 - e. Ms. XXXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXX;

¹ These teachers provided special education instruction to the student at XXXXXXXXXXXXXXXX from July 1, 2013 to July 25, 2013 as the ESY services.

- f. Ms. XXXXXXXXXXXX, Special Educator, XXXXXXXXXXXXXXXXXXXX;¹ and
- g. Mr. XXXXXXXXXXXX, Special Educator, XXXXXXXXXXXX.

Dr. Susan Austin, Coordinator of Secondary Special Education Programs, HCPS, attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.

- 7. On December 17, 18, and 23, 2013, and January 7, 8, and 9, 2014, the MSDE requested information and documentation from the HCPS.
- 8. On December 26, 2013, Ms. Hartman conducted a telephone interview with the student's mother to discuss the allegations contained in the complaint.
- 9. On December 27, 2013, the student's mother provided the MSDE with documents to consider regarding the allegations contained in the complaint, via hand-delivery. On the same date, Ms. Spakowski informed the MSDE that the HCPS would be providing additional documentation for consideration after the school staff returned from the winter break, via email.
- 10. On December 30, 2013, the MSDE sent correspondence to the complainants informing them that the timeline for completion of the investigation had been extended to January 17, 2014 for exceptional circumstances to allow time to review the additional documents.
- 11. 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(s) to the MSDE, received on November 5, 2013;
 - b. IEP, dated February 14, 2013;
 - c. IEP, dated September 11, 2013;
 - d. Samples of the student's class work completed during ESY;
 - e. Note from the student's physician, dated February 2, 2011;
 - f. Nurse's log, dated from July 16, 2013 through July 24, 2013;
 - g. Attendance log for the student's ESY class for July 1, 2013 through July 25, 2013;
 - h. Nurse's log, dated from August 26, 2013 to November 22, 2013;
 - i. Contract for the long-term loan of a gym uniform, dated August 28, 2013;
 - j. Discipline reports, dated September 20 and 23, 2013;
 - k. Statement of Incident provided by the additional staff member assigned to assist the student, dated September 23, 2013; and
 - l. Daily log notes from the additional staff member assigned to assist the student, dated September 20 and 23, 2013.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with an Other Health Impairment under the IDEA related to diagnoses of XXXXX and Attention Deficit Hyperactivity Disorder (ADHD). He attends the eighth (8th) grade at XXXXXXXXXXXXXXX, where he receives special education and related services, and where he also received Extended School Year (ESY) services in July 2013.

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 procedural safeguards (Docs. a-c, and interviews with the HCPS staff, the complainant, and the student's mother).

ALLEGATION #1: PROVISION OF A GRAPHIC ORGANIZER AND DAILY MONITORING OF THE STUDENT'S PERFORMANCE DURING ESY (JULY 1, 2013 TO JULY 25, 2013)

FINDINGS OF FACTS:

Graphic Organizer

1. The IEP requires that the student be provided with the use of graphic organizers, when appropriate, throughout the day and across all subject content areas (Doc. b).
2. The samples of the classwork completed by the student during the provision of ESY services documents his use of graphic organizers (Doc. d).

Monitoring of the Student's Performance

3. The IEP requires that the student's educational and behavioral progress be monitored by his teachers on a daily basis and that the results of the monitoring be documented on a "checksheet" (Doc. b).
4. The HCPS acknowledges that the student's teachers did not document the daily monitoring of the student's performance from July 1, 2013 to July 25, 2013 (Interviews with the HCPS staff).

DISCUSSION/CONCLUSIONS:

Each public agency must ensure that students with a disability receive the special education instruction and related services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 - #4, the MSDE finds that, while there is documentation that the student was provided with the use of a graphic organizer, the HCPS acknowledges that there is no documentation that his performance was monitored and recorded, on a daily basis, by school staff from July 1, 2013 through July 25, 2013. Therefore, this office finds that a violation occurred with regard to this aspect of the allegation.

**ALLEGATION #2: PROVISION OF ADDITIONAL ADULT SUPPORT SINCE
JULY 1, 2013**

FINDINGS OF FACTS:

July 1, 2013 to July 25, 2013

5. The IEP requires that “additional adult support” be provided throughout the school day, including during transitions between classes and during bathroom breaks. The IEP specifies that a purpose of the support is to provide the student with supervision in order to ensure that he does not eat inedible objects due to a diagnosis of XXXXX and difficulty with impulsivity (Docs. b and c).
6. There is no indication in the IEP that a purpose of the support is to ensure that the student’s diet is limited in amount and types of food or water (Docs. b and c).
7. While the student’s mother has provided documentation from the student’s private physician that recommends limiting the amount and types of food the student eats, there is no documentation that this information has been shared with the school staff and considered by the IEP team, and there is no documentation that the team has been informed that the student’s water intake is to be limited (Docs. b, c, and e, and review of the student’s educational record).
8. The parties agree that, by July 1, 2013, an additional school staff member was assigned to the class in which the student was scheduled to receive ESY services. There is documentation that the student was provided with adult supervision outside of the classroom (Doc. f and interviews with the HCPS staff and the student’s mother).
9. There is no documentation that the student became ill and missed school as a result of engaging in XXXXX at school from July 1, 2013 to July 25, 2013 (Doc. g, interviews with the HCPS staff, and review of the student’s educational record).

Since the Start of the 2013-2014 School Year

10. The parties agree that, since the start of the 2013-2014 school year, an additional school staff member has been assigned to the student’s class (Doc. a and interviews with the HCPS staff, the complainant, and the student’s parent).
11. There is documentation that the student was provided with adult supervision outside of the classroom. The documentation reflects that when the school staff takes the student to the restroom located in the nurse’s office, the staff member stands outside of the restroom while it is being used by the student (Doc. h).
12. On two occasions this school year, disciplinary action was taken with the student when he took candy that did not belong to him. The first incident occurred in the presence of

school staff who had attempted to provide re-direction to the student to prevent him from taking the candy, which the student ignored (Docs. j-l).

13. There is documentation that the second incident took place while the student was serving an in-school suspension as a consequence for the first incident. While there is documentation that the staff person who normally provides “additional adult supervision” was not present at the time of the incident, there is documentation that school staff is present in the in-school suspension room (Docs. j-l, interviews with the HCPS staff, and review of personnel records).
14. Although the complainant reports that the student was found “playing in and eating stool,” there is no information from school staff or documentation that this behavior has occurred at school (Doc. a, interviews with the HCPS staff, and review of the student’s educational record).
15. There is documentation that a gym uniform was loaned to the student at the start of the 2013-2014 school year. There is no documentation or information from school staff that he subsequently misplaced his gym uniform while at school during the 2013-2014 school year (Doc. i and interviews with the HCPS staff).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that students are provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

July 1, 2013 to July 25, 2013

In this case, the complainant alleges that the school system did not ensure that sufficient additional adult support was provided to supervise the student outside of the classroom from July 1, 2013 through July 25, 2013. The complainant asserts that, as a result of the lack of adult supervision, the student engaged in XXXXX at the school, causing him to become ill and miss instruction (Doc. a).

Based on the Findings of Facts #5 - #9, the MSDE finds that there is documentation of the assignment of additional adult support for the student’s classroom and the provision of this support, including outside of the classroom during the provision of ESY services. Based on the Finding of Fact #9, the MSDE finds that there is no documentation that the student became ill as a result of ingesting an inedible item at school and missed instruction. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation from July 1, 2013 through July 25, 2013.

Since the Start of the 2013-2014 School Year

The complainant further alleges that the individual assigned to provide additional adult support since the start of the 2013-2014 school year has permitted the student to eat food that is not consistent with the diet prescribed by his physician and to drink excessive amounts of water while in the restroom. The complainant also alleges that this staff member has not been

providing close enough supervision of the student, which has resulted in his losing several gym uniforms, demonstrating impulsive behaviors that resulted in disciplinary action, and “playing in and eating stool” (Doc. a).

Based on the Findings of Facts #5 - #7, the MSDE finds that, while a purpose of the “additional adult support” was to prevent the student from ingesting inedible substances, there is no documentation that the purpose included preventing the student from ingesting specific amounts or types of food and water. Based on the Findings of Facts #10 and #11, the MSDE finds that there is documentation that adult support is provided to the student, including outside of the classroom. Based on the Findings of Facts #10 - #13, the MSDE finds that there is no documentation that the student’s impulsive behavior resulted from a lack of adult supervision. Based on the Finding of Fact #14, the MSDE finds that there is no documentation that the student was found “playing in and eating stool” while at school. Further, based on the Finding of Fact #15, the MSDE finds that there is no documentation that the student has misplaced his gym uniform at school. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #3: MAINTENANCE OF CONFIDENTIALITY

FINDINGS OF FACTS:

16. There is no information from school staff or documentation that the staff has shared with the class that the student wears diapers (Interviews with the HCPS staff and review of the student’s educational record).
17. There is no information from school staff or documentation that the student is being teased by his classmates about wearing a diaper (Interviews with the HCPS staff and review of the student’s educational record).

DISCUSSION/CONCLUSIONS:

Parental consent must be obtained before personally identifiable information can be disclosed, unless the information is contained in educational records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (34 CFR §99.30 and 34 CFR §§300.610 and .622).

In this case, the complainant alleges that the additional staff member assigned to the student’s class since the start of the 2013-2014 school year has shared information about the student’s disability with his classmates without parental consent, and that this has resulted in his experiencing difficulty with his peers. The complainant specifically alleges that the student’s class was informed that the student wears diapers (Doc. a).

Based on the Findings of Facts #16 and #17, the MSDE finds that there is no documentation to support the assertion. Therefore, this office does not find that a violation occurred with regard to this allegation.

ADDITIONAL DISCUSSION:

If the student's mother has concerns about the manner in which the additional adult assistance is being provided, or if she believes that the student requires additional or more intensive supports, she is reminded that she maintains the right to request an IEP team meeting to consider her concerns.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the HCPS to provide documentation by April 1, 2014, that an IEP team has been convened to determine whether the violation related to the documentation of the student's daily educational and behavioral progress during ESY services resulted in a negative impact on the student's ability to benefit from his education program, and, if so, the amount and nature of *compensatory services*² needed to redress the violations identified in this investigation.

The HCPS must provide the student's mother 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 mother disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint in order to resolve the dispute, in accordance with IDEA.

School-based

The MSDE requires the HCPS to provide documentation by April 1, 2014, of the steps it has taken to ensure that students at XXXXXXXXXXXXXXXX are provided with the supplementary aides and services required by each student's IEP during the provision of ESY services.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the HCPS by 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 HCPS 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.

² 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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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 student's mother 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 this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/ch

cc: XXXXXXXXXXXX
Barbara P. Canavan
Eileen Watson
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