



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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February 27, 2014

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

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

RE: XXXXX
Reference: #14-050

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above - referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On January 6, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her son, the above - referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above - referenced student.

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The MSDE investigated the allegation that the MCPS has not provided the student with the accommodation of “extended time,” as required by the Individualized Education Program (IEP), since the beginning of the 2013 - 2014 school year, in accordance with (34 CFR§300.101).

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 7, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn J. Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
3. On January 10, 2014, Ms. Williams conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On January 15, 2014, 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 MCPS of the allegation and requested that the MCPS review the alleged violation.
5. On January 15, 16, and 27, 2014, the complainant sent the MSDE information to be considered as a part of the investigation.
6. On January 21, 2014, the MSDE sent electronic mail (email) correspondence to the MCPS requesting information as a part of the investigation.
7. On January 29, 2014, the MCPS sent email correspondence to the MSDE with documentation to be considered as a part of the investigation.
8. On February 4, 2014, Ms. Williams and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student’s educational record, and interviewed the school staff listed below.
 - a. Mr. XXXXXXXX, Case Manager;
 - b. Ms. XXXXXXXXXXXXXXXXXXXX, Principal;
 - c. Ms. XXXXXXXXXXXX, Honors Algebra Teacher;
 - d. Ms. XXXXXXXX, Ninth Grade Administrator;
 - e. Ms. XXXXXXXXXXXXXXXX, Resource Teacher for Special Education;
 - f. Ms. XXXXXXXXXXXX, Ninth Grade School Counselor; and
 - g. Ms. XXXXXXXX, French Teacher.

Ms. Ashley Vancleef, Supervisor, Equity, Assurance, and Compliance Unit, MCPS;
Ms. Patricia Grundy, Paralegal, Equity, Assurance, and Compliance Unit, MCPS; and

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Mr. Eric P. Kuhn, Special Education Cluster Supervisor, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.
 - a. Correspondence and attachments from the complainant to the MSDE, received on January 6, 2014;
 - b. IEP, dated June 10, 2013;
 - c. IEP, dated August 30, 2013;
 - d. Email correspondence among the school staff, dated October 11, 2013;
 - e. Email correspondence between the school staff and the complainant, dated November 27, 2013;
 - f. Email correspondence between school staff and the complainant, dated December 12, 2013;
 - g. Special Education staff meeting summary, dated December 17, 2013; and
 - h. IEP, dated January 7, 2014.

BACKGROUND:

The student is fourteen (14) years old and attends XXXXXXXXXXXXXXXXXXXX XXXXX (XXXXXXXXXX). He is identified as a student with Autism under the IDEA and receives special education instruction. During the period of time addressed by this investigation, the complainant participated in the education decision – making process and was provided with written notice of the procedural safeguards (Docs. b, c, and h).

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with the instructional and testing accommodation of extended time on “assessments/assignments,” in order to reduce his anxiety and frustration. The IEP does not specify whether “assignments” are to include those to be completed at home or whether they include only those assignments completed in the classroom (Docs. b, c, and h).
2. There is documentation that the complainant has expressed concern to the school staff throughout the 2013 – 2014 school year that, while some of the student’s teachers are providing the accommodation of extended time to complete homework, others have indicated that the accommodation is only to be provided for the completion of work in the classroom (Docs. a, d, e, f, and g).
3. On January 7, 2014, the IEP team met to consider the complainant’s concerns about the implementation of the accommodation of extended time. However, the IEP has not been revised to clarify whether it is to be provided for homework assignments or only those assignments completed in the classroom (Docs. g and h).

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DISCUSSION/CONCLUSION:

The public agency must ensure that the special education, related services, accommodations, and supplementary aids and services, are provided to the student as required by the IEP (34 CFR §§300.101 and .323). 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 (34 CFR §§300.320, .323, and *Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p. 12479, March 1999).¹

Based on the Findings of Facts #1 - #3, the MSDE finds that there is an inconsistent understanding among teachers and between the complainant and the school staff about whether the IEP requires that the student be provided with extended time to complete homework assignments. Thus, the MSDE finds that the IEP is not written clearly with respect to the accommodation of the provision of extended time. Therefore, this office finds that the MCPS has not ensured that the accommodation has been provided in accordance with the IEP team's decisions and that a violation occurred.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the MCPS to provide documentation by April 11, 2014 that the IEP team has reviewed and revised the IEP, as appropriate. The IEP team must also determine the amount and nature of *compensatory services*² or another remedy to redress the violation identified during this investigation.

The MCPS must provide the complainant 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 complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

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¹ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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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Please be advised that the complainant and the MCPS 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 Conclusion 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 Conclusion 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 MCPS must implement the Corrective Action consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the Findings, Conclusion and Corrective Action contained in this letter should be addressed to this office in writing. The complainant and the MCPS 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 due process.

Sincerely,

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

MEF/tw

cc: Joshua P. Starr
Julie Hall
Ashley Vancleef
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Dori Wilson
Anita Mandis
Tyra Williams
Martha J. Arthur