



March 11, 2014

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Mr. Daniel Martz  
Director of Special Education and  
Psychological Services  
Frederick County Public Schools  
191 South East Street  
Frederick, Maryland 21701

RE: XXXXX  
Reference: #14-057

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 January 15, 2014,<sup>1</sup> the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) 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 FCPS did not ensure that the student has been provided with the behavior supports required by the Individualized Education Program or the Behavior Intervention Plan from January 15, 2013<sup>2</sup> until the start of the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.

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<sup>1</sup> On January 8, 2014, the complainant provided the MSDE with correspondence containing allegations of violations of the IDEA, which did not contain all of the necessary information to initiate a State complaint investigation. On January 15, 2014, the complainant provided the required information and a complaint investigation was initiated (34 CFR §300.153).

<sup>2</sup> The complaint included allegations of violations that occurred more than one (10 year before the date it was received. 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).

2. The FCPS did not ensure that proper procedures were followed when behavior interventions were used with the student from January 15, 2013<sup>2</sup> until the start of the 2013-2014 school year, in accordance with COMAR 13A.08.04.02, .03, and .05.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 8, 2014, the MSDE received correspondence from the complainant alleging violations of the IDEA.
3. On January 13, 2014, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant 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 January 15, 2014, the MSDE received a proposed remedy from the complainant. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Mr. Daniel Martz, Director of Special Education and Psychological Services, FCPS.
5. On January 16, 2014, the FCPS staff provided the MSDE with documentation from the student's educational record, via electronic mail (mail), related to the allegations being investigated.
6. On February 10, 2014, 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 FCPS of the allegations and requested that his office review the alleged violations.
7. On February 27, 2014 and March 5, 2014, Ms. Moyo conducted a telephone interviews with Ms. Linda Chambers, Special Education Supervisor, FCPS regarding the allegations being investigated.
8. 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 January 8 and 15, 2014; and
  - b. MSDE Letter of Findings #14-026, dated November 26, 2013.

### **BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with Multiple Disabilities under the IDEA, including an Emotional Disability and Other Health Impairment related to Attention

Deficit Hyperactivity Disorder. He attends The XXXXXXXXXX,<sup>3</sup> a nonpublic, separate, special education school where he was placed by the FCPS. 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 IEP team decisions and notice of the procedural safeguards.

On November 26, 2013, the MSDE issued the Letter of Findings (#14-026) following an investigation of the same allegations that are the subject of this complaint, but which addressed a different period of time (January 15, 2013 to August 14, 2013). As a result of that investigation, the MSDE identified violations with respect to both allegations. Based on the violations that were found, the MSDE required that both student-specific and systemic corrective actions be completed by April 1, 2014 (Docs. a and b and interviews with school staff).

#### **SUMMARY OF FINDINGS/CONCLUSIONS:**

The FCPS acknowledges that violations also occurred with respect to both allegations during the time period covered in this investigation. The FCPS has proposed to remediate the violations for this time period by convening an IEP team meeting to review data and the student's progress, determine *compensatory services*<sup>4</sup> or other remedy to be provided.

The MSDE appreciates the acknowledgement of the FCPS and concurs with the school system's finding regarding the violations and the proposed remedy (Doc. b and interviews with school staff).

#### **CORRECTIVE ACTIONS/TIMELINE:**

The MSDE requires the FCPS to provide documentation by April 1, 2014 that the IEP team has determined the amount and nature of *compensatory services* or other remedy for the loss of a Free Appropriate Public Education (FAPE) since January 15, 2013.

The FCPS 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 to 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, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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<sup>3</sup> XXXXXXXXXXXXXXX has a twelve (12) month special education program for students with emotional and behavioral disabilities (XXXXXXXXXXXX).

<sup>4</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).

XXX  
Mr. Daniel Martz  
March 11, 2014  
Page 5

**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 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/km

cc : Theresa R. Alban  
Linda Chambers  
XXXXXXXXX  
XXXXXXXXX  
Sarah Spross  
Dori Wilson  
Cynthia Amirault  
Anita Mandis  
Martha J. Arthur  
Koliwe Moyo