



May 16, 2014

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Dr. Susan Austin
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #14-077

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 March 19, 2014,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that complaint, 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.

The MSDE investigated the allegation that the HCPS has not ensured that the student’s Individualized Education Program (IEP) has addressed his transportation, travel training, and life skills needs since January 23, 2014, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

¹ On March 18, 2014, the MSDE received correspondence from the complainant containing an allegation of a violation of the Individuals with Disabilities Education Act (IDEA). On March 19, 2014, the complainant provided this office with the requested remedy, which is required to initiate the complaint investigation (Doc. a)

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2. On March 20, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, former Director of Special Education, HCPS.
3. On March 21, 2014, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. March 24 and 29, 2014, and April 22, 2014, the MSDE received additional information and documentation regarding the allegation from the complainant, via electronic mail (email).
5. On March 25, 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 HCPS of the allegation and requested that the HCPS review the alleged violations.
6. On March 25, 26, and 29, 2014, April 7, 2014, and May 8, 12, and 13, 2014, the MSDE received documentation regarding the allegation from the HCPS, via email.
7. On April 4, 2014, Ms. Hartman and Dr. Linda F. Bluth, Special Initiatives Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXX to review the student's educational record, and interviewed the following HCPS staff:
 - a. Ms. XXXXXXXXXX, Occupational Therapist;
 - b. Ms. XXXXXX, Assistant Principal;
 - c. Ms. XXXXXXXXXX, Special Education Teacher and IEP Chairperson;
 - d. Ms. Danielle M. Lister, Supervisor of Transportation, HCPS;
 - e. Mr. Charles Taibi, Director of Transportation, HCPS;
 - f. Ms. XXXXXXXXXX, Special Education Teacher; and
 - g. Ms. XXXXXXXXXXXX, Principal.

Ms. Eileen Watson, Coordinator of Compliance, HCPS, attended the site visit as a representative of the HCPS and to provide information on the HCPS' policies and procedures, as needed.

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 March 18 and 19, 2014;
 - b. IEP and Prior Written Notice document, dated June 4, 2013;
 - c. Prior Written Notice document and Consent for Assessments, dated October 15, 2013;
 - d. IEP and Prior Written Notice document, dated January 14, 2014;
 - e. Functional Behavioral Assessment and Behavioral Intervention Plan, dated January 14, 2014;
 - f. IEP and Prior Written Notice document, dated March 10, 2014;

- g. IEP and Prior Written Notice document, dated April 23, 2014;
- h. The HCPS *2013-2014 Parent-Student Handbook Calendar*;
- i. Email correspondence between the complainant and the HCPS staff, and Transportation Request for Special Services, dated April 15, 2013;
- j. Email correspondences among the HCPS staff, dated January 27, 2014 and February 4, 2014;
- k. Email correspondences between the complainant and the HCPS staff, dated January 16, 23, 24, and 25, 27, 2014, and March 10 and 11, 2014; and
- l. Occupational therapy provider notes, dated January 13, 2014 to May 7, 2014.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with Multiple Disabilities (Autism and Intellectual Disability) under the IDEA. He attends XXXXXXXXXXXX, a public separate special education school, where he receives special education and related services. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-g and i-l).

FINDINGS OF FACTS:

1. The HCPS Parent-Student Handbook states that “parents are responsible for the safety of their children from the time they leave home in the morning until the time they board the school bus and, at the end of the school day, from the time the school bus departs the bus stop and the children reach home” (Doc. h).²
2. The documentation reflects that, prior to April 15, 2013, the HCPS had determined that the student required adult supervision when disembarking from the bus. The documentation further reflects that the HCPS Transportation Department learned that the complainant had not been providing adult supervision when the student disembarked from the bus, and that the bus staff had been providing the student with assistance in order for him to be able to enter his residence. As a result of this concern, the HCPS Transportation Department informed the complainant that she must either provide the student with the adult supervision determined necessary, or request that the requirement for adult supervision be removed (Doc. i).
3. In response, on April 15, 2013, the complainant requested that the HCPS not require adult supervision of the student upon drop-off by the bus, as had previously been required, and the school staff agreed with the request (Doc. i).
4. The IEP in effect at the start of the 2013-2014 school year was developed on June 4, 2013, and indicates that the student receive specialized instruction in a life skills program to improve his ability to function independently (Doc. b).

² The HCPS Parent-Student Handbook is not specific as to the manner in which parents should exercise their responsibility for the safety of their children when traveling to and from the bus, with the exception of pre-Kindergarten students. The HCPS has determined that parents must provide adult supervision for pre-Kindergarten students when they are dropped off by the bus (Doc. h).

5. The June 4, 2013 IEP indicates that the student is able to independently walk from the school bus to the school building, and the school building to the school bus. It requires that the student receive instruction on how to unlock a door with a key as part of the annual goal to increase his fine motor skills with an aim to increasing his ability to travel independently (Doc. b).
6. The June 4, 2013 IEP also reflects that the IEP team determined that the student requires specialized transportation, including an “attendant to monitor the bus ride.” However, there is no documentation of the basis for the decision (Doc. b).
7. On October 15, 2013, the IEP team convened to discuss the student’s interfering behaviors in school. The documentation reflects that the student was displaying increased aggression recently due to his transition to a new classroom for the current school year. The IEP team recommended that a Functional Behavior Assessment (FBA) be conducted to determine if the current behavioral interventions were sufficient to address the student’s behavioral needs, or whether additional strategies were needed (Doc. c).
8. On January 14, 2014, the IEP team convened to review the FBA, which indicates that the student becomes noncompliant and aggressive when he is required to perform a non-preferred activity. The strategies recommended to address the behavior included giving advance warning of transitions, providing a reward activity for completing required tasks, and ensuring that staff do not use the word “no” with either the student or other students in the class (which triggers a negative response in the student). Based on a review of the FBA, the IEP team developed a Behavior Intervention Plan (BIP) that incorporated the recommendations contained in the FBA, and revised the IEP to include an annual goal for the student to improve his behavioral skills related to demonstrating compliant behavior and requesting breaks when needed (Docs. d and e).
9. There is documentation that, on two (2) occasions in January 2014, the student was unable to unlock the door and independently enter his residence after he disembarked from the bus. On these occasions, the bus driver contacted the HCPS Transportation Department to inform the staff of his concern that the student would not be safe if left alone outside of his house, and arrangements were made to transport the student to an alternative location so that he could be met by the complainant (Docs. f, j, and k).
10. The documentation reflects that, in response to the HCPS Transportation Department’s concerns, the school staff and the HCPS Transportation Department staff attempted to schedule a conference with the complainant to discuss concerns about the student’s safety on those occasions when the student was unable to independently enter his residence after disembarking from the bus. The documentation further reflects that the complainant did not agree to meet with the HCPS staff, and indicated her belief that the bus staff should be allowed to assist the student when he was unable to independently enter his residence (Docs. j and k).

11. On March 10, 2014, the IEP team convened in response to the concerns expressed by the HCPS Transportation Department regarding the student's ability to be safely transported home in the afternoon without adult supervision at the bus stop (Docs. f, j, and k).
12. At the March 10, 2014 IEP team meeting, the IEP team documented its determination that the student continues to require specialized transportation with an attendant on the bus to monitor the bus ride. At that meeting, the IEP team also documented that the student "requires adult supervision at drop-off," effective March 11, 2014. The documentation also reflects that the basis for the decision that the student requires adult supervision at drop-off was the determination that he lacks the reasoning skills needed to appropriately and safely respond to emergency situations, as evidenced by the two (2) incidents that occurred in January 2014 (Doc. f).
13. The HCPS acknowledges that the IEP was not written clearly. The school system staff reports that the IEP team did not intend to document its decision about the need for adult supervision at drop off as a basis for the need for specialized transportation, but rather to assist the HCPS Transportation Department with determining whether the student has the functional skills to be safely dropped off at a site where there is no adult who will be responsible for him (Interviews with the HCPS staff).
14. The documentation further reflects that the IEP team determined that the HCPS Transportation Department would work with the complainant to identify an alternative drop-off location, such as a location near the complainant's place of employment, where adult supervision would be available until the complainant is able to obtain adult supervision for the student at his regular bus stop (Doc. f).
15. At the March 10, 2014 meeting, the IEP team also considered concerns expressed by the complainant regarding the student's weaknesses related to seeking help in emergency situations and increasing his skills related to unlocking doors. In response to the concerns expressed regarding the student's weaknesses related to asking for help, the IEP team revised the annual communication goal to include an objective for the student to improve his ability to ask for assistance. In response to the concerns expressed regarding the student's ability to unlock doors, the school-based members of the IEP team noted that the IEP already required that the student receive instruction on how to unlock doors as part of the annual goal related to increasing his fine motor skills to be provided by the occupational therapist (Doc. f).
16. However, the documentation reflects that the student did not receive instruction to increase his fine motor skills from the start of the 2013-2014 school year until January 13, 2014 due to the unavailability of an occupational therapist to provide the service. There is documentation that these services resumed on January 13, 2014, and that the HCPS has begun providing the student with compensatory occupational therapy services in order to make up for the loss of services (Docs. b, f, and l).
17. At the March 10, 2014 IEP team meeting, the IEP team also considered information from the student's teachers that, since the implementation of the BIP, the student's behavior had improved and he was making sufficient progress toward achievement of the goal to

improve his behavior. Based on this information, the IEP team determined that no changes to the student's BIP were required (Doc. f).

18. On April 22, 2014, the IEP team convened to conduct an annual review of the IEP. At that time, the complainant expressed concern about the student's ability to twist his wrist, which impacts his ability to turn door knobs and open containers with twist tops. The school-based members of the IEP team reported that the student was able to turn knobs with proper positioning of his hands, and that he was doing well opening his drink bottles at school. The IEP team also considered information from the student's teachers that he had made progress in learning how to independently unlock doors, and that, while the student has the *ability* to ask for help, he doesn't always know when help is needed (Doc. g).
19. At the April 22, 2014 IEP team meeting, the team revised the annual goals based on reports of the student's progress and added a goal to identify emergency situations and appropriate responses. The IEP team also decided that the student would be provided with the use of a mock telephone with pictures and automatic dialing to practice how to dial emergency support services (Doc. g).
20. At the April 22, 2014 IEP team meeting, the team revised the IEP to include an emergency transportation plan in the event that the adult supervision arranged by the complainant was not present when the student was dropped-off by the bus at the end of the school day. The emergency transportation plan provides that, should the adult support not be at the drop-off location when the bus arrives, the bus driver would contact the HCPS Transportation Department regarding whether to drop off the other students on the bus and return to the student's home, or whether to return the student to school (Doc. g).
21. The documentation of the April 22, 2014 IEP team meeting reflects that the complainant reported that the student was displaying inappropriate behaviors at home since being required to have adult supervision from the bus stop to his house. The documentation reflects that the IEP team considered information from the student's teachers that his interfering behaviors have "significantly decreased" at school since the implementation of the BIP, and that he was making progress toward achievement of the annual behavior goal. Based on the data about the student's behavior at school, the IEP team determined that the IEP and BIP remain appropriate to address the student's behavioral needs (Doc. g).

DISCUSSION/CONCLUSIONS:

A Free Appropriate Public Education (FAPE) means special education instruction and related services that are provided at public expense without charge to the parent in conformity with an IEP that addresses the student's identified needs (34 CFR §300.17). In order to ensure that a FAPE is made available to a student with a disability, the public agency must provide the student with an IEP that includes goals and special education instruction and related services to address the needs that are identified in the evaluation data. Special education instruction includes travel training, which is instruction designed to enable a student to develop an awareness of the

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environment in which the student lives, and to learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community) (34 CFR §§300.39, .101, and .320).

Related services include transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education instruction (34 CFR §300.34). It is generally accepted that a public agency's responsibilities for transporting students begins and ends at the curb when the student embarks or disembarks from the bus. The IDEA does not require the provision of transportation services from the bus to the student's home unless the IEP team has determined that the student requires this support in order to receive a FAPE (*Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46576, August 14, 2006).

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

The public agency is required to ensure that the student is provided with the special education instruction and related services 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 (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p.12479, March 1999).³

In this case, the complainant alleges that the IEP team's decisions regarding the student's functional skills and travel training needs related to his transportation to and from school are not consistent with the evaluation data. The facts asserted by the complainant as the basis for the allegation are that:

- (a) She believes that the student had been successfully dropped off at his home independently until the bus driver and attendant were required to have the complainant meet them at an alternative location when the student was unable to unlock the door to his house on two (2) occasions in January 2014;
- (b) She asserts that there is no prohibition against the bus staff providing the student with assistance in getting into his house or dropping the student off at an alternative location on those occasions when he cannot independently enter his house; and
- (c) Despite the IEP team's knowledge that the occupational therapy services to assist the student with improving his ability to unlock doors were not provided from the start of the

³ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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school year until January 13, 2014, no action was taken to ensure that these skills were addressed.

The complainant further reports that, since being required to have adult supervision at his drop-off location each afternoon, the student has “regressed significantly” with respect to his emotional functioning, as evidenced by increased “emotional outbursts” (Doc. a and interviews with the complainant).

Based on the Findings of Facts #1 - #21, the MSDE finds that the student has been identified with life skills needs in the area of travel training, and that the IEP has included goals and services to address those needs consistent with the evaluation data, including information provided by the complainant. Based on those same Findings of Facts, the MSDE finds that there is documentation that the IEP team has addressed the student’s interfering behaviors and reviewed his progress toward achieving the annual IEP goals, consistent with the data. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #9 - #12, the MSDE finds that there is documentation that the student has experienced difficulty independently entering his residence after being dropped off by the bus after school on two (2) occasions in January 2014, requiring the school bus staff to intervene on his behalf. Based on the Findings of Facts #12 - #14 and #20, the MSDE finds that both the March 10, 2014 and April 22, 2014 IEPs were not written clearly regarding whether the IEP team determined that the student requires adult supervision at drop-off as a specialized transportation need. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

In addition, based on the Findings of Facts #5, #15, and #16, the MSDE finds that the student was not provided with the occupational therapy services required by the IEP from the start of the 2013-2014 school year until January 13, 2014, and that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The HCPS must provide documentation, by the end of the 2013-2014 school year, that the student has been provided with all of the missed occupational therapy services that occurred between the start of the 2013-2014 school year until January 13, 2014.

The HCPS must also provide documentation, by the end of the 2013-2014 school year, that an IEP team has convened to review and revise the student’s IEP, as appropriate, to ensure that it accurately reflects the IEP team’s decision concerning whether the student requires adult supervision when disembarking from the bus in order to receive a FAPE. If the IEP team determines that the adult supervision is required in order for the student to receive FAPE, the HCPS must immediately ensure that the student is provided with this service, at no cost to the complainant, and that the complainant is reimbursed for any cost she incurred since March 10, 2014 in providing the student with adult supervision when the student disembarks from the bus.

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The HCPS must ensure that the complainant is provided with proper written notice of the decisions made, including the options considered, the basis for the decisions, and the data upon which the decisions were based.

Similarly Situated Students

The HCPS must provide documentation by the start of the 2014-2015 school year that it has identified any other students who were not provided with occupational therapy services due to the occupational therapist vacancy, and developed a plan for the provision of missed services within a year of the date of this Letter of Findings.

School Based

The HCPS must provide documentation by the start of the 2014-2015 school year that steps have been taken to determine whether the violation related to the IEP accurately reflecting the team's determination as to whether the adult supervision from the bus stop to the student's house is required for a FAPE is unique to this case or whether it constitutes a pattern of noncompliance at the school. 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 date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. 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.

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

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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 a due process complaint.

Sincerely,

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

MEF/ch

c: Barbara P. Canavan
Eileen Watson
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Dori Wilson
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