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State Superintendent of Schools

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October 15, 2010

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Ms. Sarah Farr
Director of Special Education
Cecil County Public Schools
201 Booth Street
Elkton, Maryland 21921

RE: XXXXX
Reference: #11-008

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 August 18, 2010, MSDE received a complaint from Mr. XXXXXXXX, hereafter, “the complainant,” on behalf of his son. In that correspondence, the complainant alleged that the Cecil County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the allegation that CCPS did not ensure that adult support was consistently provided to the student from April 20, 2010 until the end of the 2009-2010 school year, as required by the student’s Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and.323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 19, 2010, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant

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and clarified the allegation to be investigated. On that same date, MSDE sent a copy of the complaint, via facsimile, to Mr. Mark Zawislak, former Director of Special Education, CCPS.

3. On August 27, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Sarah Farr, Director of Special Education, CCPS, of the allegation and requested that her office review the alleged violation.
4. On August 31, 2010, MSDE contacted CCPS staff and requested documentation from the student's education record.
5. On September 1, 2010, CCPS staff provided MSDE with documentation from the student's education record.
6. On September 9, 2010, Ms. Moyo and Ms. Mandis conducted a site visit at XXXXXXXX XXXXXXXXXXXX (XXXXXXXX) to review the student's education and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Mr. XXXXXXXX, Assistant Principal;
 - c. Ms. XXXXXXXX, Counselor;
 - d. Ms. XXXXXXXX, Special Education Teacher;
 - e. Mr. XXXXXXXXXXXX, Behavior Specialist; and
 - f. Ms. XXXXXXXX, Program Facilitator.

Ms. Samantha Wallace, Program Facilitator for Special Education Compliance, CCPS; and Ms. Rebecca Miller, Program Facilitator for Special Education, CCPS attended the site visit as representatives of CCPS and to provide information on CCPS policies and procedures, as needed.

7. On September 21, 2010, CCPS provided MSDE with copies of electronic correspondence between school staff and the complainant.
8. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Correspondence and attachments from the complainant to MSDE, dated August 18, 2010;
 - b. IEP, dated August 17, 2009;
 - c. Electronic mail correspondence from the complainant to CCPS staff, dated February 26, 2010;

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- d. Excerpt from disciplinary summary log, dated March 3, 2010;
- e. Electronic mail correspondence from the complainant to school staff, dated March 3, 2010;
- f. Electronic mail correspondence between school staff and CCPS central office staff, dated March 3, 2010;
- g. Electronic mail correspondence from XXXXXXXXXX staff to the complainant, dated March 10, 2010;
- h. Electronic mail correspondence between CCPS staff and the complainant, dated March 23 and 24, 2010;
- i. IEP, dated March 29, 2010;
- j. IEP team meeting summary and sign-in sheet, dated March, 29, 2010;
- k. Functional behavior assessment report, dated April 26, 2010;
- l. IEP team meeting summary and sign-in sheet, dated April 26, 2010;
- m. IEP team meeting summary and sign-in sheet, dated May 25, 2010;
- n. Daily escort tracking sheet and behavior log from April 28, 2010 until June 18, 2010; and
- o. Student's daily schedule with assigned daily escort for the 2009-2010 school year.

BACKGROUND:

The student is thirteen (13) years old and he attends XXXXXXXXXX. He is identified as a student with an emotional disability under 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 notice of the procedural safeguards, as required (Docs. a, b, and i-m).

FINDINGS OF FACT:

1. On March 29, 2010, an IEP team meeting was convened at the complainant's request to address his concerns about the student's program. At the meeting, the IEP team considered information from school staff and the complainant regarding the student's involvement in a physical altercation with another student and a recommendation from the student's community-based psychologist that the student be provided with adult assistance during periods of transition and in unstructured settings during the school day (Docs. c-h, and i).
2. At the March 29, 2010, IEP team meeting, the IEP team decided that additional data was necessary in order to determine whether the student required additional adult assistance and recommended that a functional behavioral assessment (FBA) be conducted. The team also agreed that the student would be provided with additional adult supervision on a trial basis. The IEP team meeting summary states that the student would be provided with "adult supervision when he is in the hallway during transitions between classes, during physical education class (PE) and in the lunchroom" (Docs. i and j).

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3. Although the meeting summary indicates that additional adult supervision would be provided to the student during lunch, the IEP developed on March 29, 2010, does not indicate additional adult supervision would be provided during the student's lunch period (Docs. i and j).
4. On April 26, 2010, the IEP team reconvened to review the results of the FBA and the student's progress. The IEP team meeting summary states that the team considered the following:
 - a. The results of a FBA that was conducted by a behavior specialist who provided adult supervision for the student during the trial period, which indicates that:
 - i. The student has difficulty reading social clues and sometimes makes inappropriate or offensive remarks to other students;
 - ii. The student sometimes demonstrates deficits in "behavioral regulation" and decision-making;
 - iii. Teachers reported to the behavior specialist that during the trial period the student displayed good behavior during unstructured periods, did not engage in physical altercations with other students and exhibited socially appropriate behavior;
 - iv. During the trial period, the student demonstrated the ability to control his anger when he felt agitated by other students; and
 - v. The student was able to remain on task and engaged in the classroom.
 - b. The complainant's continued concerns that, despite the student's reports to his community-based therapist that he now feels safe at school, the student can still have "unpredictable and possibly dangerous reactions" during unstructured periods of time at school;
 - c. The complainant's report that since being provided with the support of the behavior specialist at school, the student's behavior has improved at home; and
 - d. Reports from the student's special education teacher and counselor that the student is making progress with his social skills and is able to identify negative feelings, triggers for his temper, appropriate reactions to confrontation and better communication skills when he is angry (Docs. k and l).

5. At the April 26, 2010 meeting, school-based members of the team indicated that they did not believe that the student required the continued provision of additional adult supervision. However, at the complainant's request, the team determined that the student would continue to be provided with "adult supervision during transitions and unstructured activities" (Doc. l).
6. On May 25, 2010, the IEP team re-convened and considered concerns raised by both the complainant and school staff about the student's involvement in conflicts with peers in the cafeteria and in PE class, which had occurred during the previous month, since the last team meeting. When the complainant questioned whether additional adult supervision was being provided in those settings, the school-based members of the team discussed that a staff member had not been assigned to the cafeteria because the cafeteria already had adults assigned to monitor students in that setting and who were able to provide additional support to the student (Docs m-o)
7. At the meeting, the complainant indicated that he believed that the team previously decided that school staff would be assigned specifically to support the student in the cafeteria. In response, the team revised the IEP to clarify that the student would be provided with additional adult support in the cafeteria (Docs. m).
8. The written summary of the May 25, 2010 IEP team meeting documents that the team discussed the fact that extra adult support had been in place in the student's PE class as required by the IEP. However, in response to the complainant's concern about whether an adequate level of support was being provided during PE class, the team revised the IEP to require the assignment of an additional staff member to ensure closer supervision during PE class (Doc. m).

DISCUSSION/CONCLUSIONS:

IDEA requires that the public agency ensure that each student with a disability be provided with the special education and related services determined by the IEP team (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 12, 1999)¹. In this case, the complainant alleges that the student was not provided with adult supervision on a consistent basis, as required by the IEP, in the cafeteria and in PE because the student was involved in altercations in both of these settings.

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

Supports in the Cafeteria

Based on Findings of Fact #1-4, MSDE finds that prior to May 25, 2010, the IEP was not written clearly with respect to the support to be provided to the student in the cafeteria, and that a violation occurred with respect to this aspect of the allegation. Notwithstanding this violation, based on Findings of Fact #5 and 6, MSDE finds that the IEP was revised on May 25, 2010 in order to clarify the matter.

Supports in PE Class

Based on Findings of Fact #1-6, MSDE finds that support was provided in the student's PE class consistent with the IEP, but that the team subsequently determined that the student requires closer supervision and revised the IEP in accordance with this decision. Therefore, MSDE does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTION/TIMELINES:

Student-Specific:

MSDE requires CCPS to ensure that an IEP team meeting is convened by January 31, 2011 to determine whether the violation had a negative impact on the student's ability to benefit from his program. If the IEP team determines that there was a negative impact, then the IEP team must determine the nature and amount of *compensatory services*² necessary to redress violation.

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

School-Based/Systemic:

MSDE requires CCPS to provide documentation of the steps taken to determine if the procedural violation related to ensuring that the student's IEP was clearly written to reflect decisions documented in the meeting summary is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXX. This documentation is due no later than January 31, 2011.

² Compensatory services, for the purpose 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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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 MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirement is not being implemented, the school system must identify the actions that will be taken to ensure that the violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement is currently working with the CCPS to ensure compliance with the requirements for IEP development. Verification of the school system's compliance will also be conducted through this process consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), Memorandum #09-02.

In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that each student's IEP is clearly written to reflect decisions documented in the meeting summary. 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.

Please be advised that both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this LOF. 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 LOF.

If additional information is provided, it will be reviewed and 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 LOF.

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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 free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH:km

c: D'Ette W. Devine
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Dori Wilson
Martha Arthur
Koliwe Moyo