



Nancy S. Grasmick  
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

September 28, 2010

XXX  
XXX  
XXX

Ms. Pamela Pencola  
Director of Special Education and Psychological Services  
Frederick County Public Schools  
7630 Hayward Road  
Frederick, Maryland 21702

RE: XXXXX  
Reference: #11-006

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 3 and 6, 2010,<sup>1</sup> MSDE received correspondence from Dr. XXXXXXXXXXXX, the student’s father, hereafter, “the complainant,” filed on behalf of his daughter. In that correspondence, the complainant alleged that Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the allegation that FCPS did not develop an Individualized Education Program (IEP) to address the student’s need for Applied Behavioral Analysis (ABA) therapy,<sup>2</sup> in accordance with 34 CFR §300.324.

---

<sup>1</sup> On August 3, 2010, this office informed the complainant of the legal requirement that a State complaint include a proposed remedy that the local school system could provide in order to resolve the complaint, and that this office could not initiate an investigation into the allegation until a proposed remedy was provided. On August 6, 2010, the complainant provided, by electronic mail, a proposed remedy, and this office initiated a State complaint investigation.

<sup>2</sup> This is a specific instructional methodology.

XXX

Ms. Pamela Pencola

September 28, 2010

Page 2

**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 3 and 6, 2010, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, spoke with the complainant, by telephone, to clarify the allegation to be investigated.
3. On August 10, 2010, a copy of the complaint was provided by facsimile to Ms. Pamela Pencola, Director of Special Education and Psychological Services, FCPS. On that same date, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. By copy of that correspondence, MSDE notified Ms. Pencola of the allegation to be investigated and requested that her office review the alleged violation.
4. On August 17 and 23, 2010 and September 7 and 8, 2010, Ms. Frazier conducted telephone interviews with Mr. Dan Martz, Supervisor of Special Education, FCPS, regarding the allegation in the complaint, and requested documentation from the student's education record.
5. On August 26, 2010, FCPS provided MSDE with a copy of correspondence, dated August 25, 2010, from FCPS to the complainant.
6. On August 27, 2010 and September 8, 2010, FCPS provided MSDE with documentation from the student's education record.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. Correspondence and attachments from the complainant to MSDE, received August 3 and 6, 2010;
  - b. Report of an independent neuropsychological assessment conducted by the XXXXXXXXXXXXXXXX, dated August 11, 2009;
  - c. Written summary of a September 8, 2009 IEP team meeting;
  - d. IEP, developed on April 16, 2009 and revised on September 9, 2009;
  - e. Invitation to the complainant to a December 23, 2009 IEP team meeting;
  - f. Written summary of a January 25, 2010 IEP team meeting;
  - g. IEP, dated January 25, 2010;
  - h. Written summary of a March 30, 2010 IEP team meeting; and
  - i. IEP, dated April 6, 2010.

**BACKGROUND:**

The student is four (4) years old and attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with autism under IDEA and she receives special education instruction and related services. There is documentation that the complainant participated in the educational decision-making process for the student and was provided with information regarding procedural safeguards and parent's rights, as required (Docs. c, d, f, g, h, and i).

**FINDINGS OF FACT:**

1. On September 8, 2009, the IEP team convened to review the student's April 16, 2009 IEP and her progress. At the meeting, the complainant provided the team with a copy of a report of an independent neuropsychological assessment, dated August 11, 2009. The report identifies needs in the areas of attention, language, and behavior, and recommends the provision of ABA therapy for thirty (30) hours a week and speech language therapy for thirty (30) minutes a day to address these needs (Docs. b, c and d).
2. The summary of the September 8, 2009 IEP meeting documents that the team reviewed the report of the independent neuropsychological assessment and decided that school staff needed more time to observe the student in the classroom before making a decision regarding the recommendations contained in the report. The IEP team decided the student would be provided with twelve and one half (12 ½) hours per week of special education instruction and one (1) hour of speech language therapy per week in a half-day separate special education preschool program, and that the team would reconvene in December 2009 (Docs. c and d).
3. An IEP team meeting was scheduled for December 23, 2009 to consider information about the student's classroom performance, but was rescheduled because school was closed due to snow (Doc. e and interview with FCPS staff).
4. On January 25, 2010, the IEP team reconvened and determined that the student was not making sufficient progress toward achieving the annual IEP goals and that the program and placement were not appropriate. The team further decided that it would reconvene with FCPS Central Office staff to determine an appropriate program and placement. There is no documentation that the IEP team made decisions regarding the recommendations contained in the report of the independent neuropsychological assessment at this meeting (Docs. f and g).
5. On March 30, 2010, the IEP team reconvened and revised the student's program to require the provision of special education instruction in a full-day special education preschool program, but did not make decisions regarding the recommendations contained in the report of the independent neuropsychological assessment (Docs. h and i).

### **DISCUSSION/CONCLUSIONS:**

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, and the results of assessment data, including results of independent evaluations obtained by the parents. Based on this data, the team must identify and address the academic, developmental, and functional needs of the student (34 CFR §§300.324 and .502).

Based on Findings of Fact #4 and 5, MSDE finds that there was a two (2) month delay in determining an appropriate program and placement for the student between the January 25, 2010 and March 30, 2010 IEP team meetings. Additionally, based on Finding of Fact #1, MSDE finds that the IEP team reviewed the report of an independent neuropsychological assessment when reviewing and revising the IEP on September 8, 2009, and decided that recommendations for ABA therapy contained in the report would be considered at a subsequent meeting. However, based on Findings of Fact #2 – 5, MSDE finds that the team has not made determinations about the recommendations for ABA therapy at subsequent IEP team meetings. Therefore, MSDE finds that violations occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

MSDE requires that FCPS provide documentation by December 1, 2010, that the IEP team has convened to review the evaluative data, including the report of the independent neuropsychological assessment. At that meeting, FCPS must ensure that the IEP is revised, as appropriate, to address the student's identified needs consistent with the evaluative data.

At the meeting, the team must also determine the amount and nature of *compensatory services*<sup>3</sup> or other remedy to redress the delay in determining an appropriate program and placement for the student from January 25, 2010 until March 30, 2010. Additionally, if the student's program is revised based on the evaluative data, the team must determine the amount and nature of *compensatory services*<sup>3</sup> or other remedy to redress the delay in making determinations regarding the recommendations contained in the independent neuropsychological assessment report.

FCPS shall submit documentation of the actions taken to address this matter to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHINCAL 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.

---

<sup>3</sup> Compensatory services, for 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

Ms. Pamela Pencola

September 28, 2010

Page 5

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings and conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, 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.

Questions regarding the findings of fact, conclusions and corrective actions contained in this LOF should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or file a due process complaint to resolve disputes regarding identification, evaluation, educational placement or provision of a free appropriate public education, including those issues addressed in this investigation, consistent with IDEA. The MSDE recommends that this LOF be included with any request for mediation or due process complaint.

Sincerely,

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

CAH/am

c: Linda D. Burgee  
Dan Martz  
XXXXXXXXXX  
Martha Arthur