



Nancy S. Grasmick  
State Superintendent of Schools

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September 10, 2010

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Ms. Judith Pattik, Director  
Department of Special Education Operations  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #11-003

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.

**ALLEGATIONS:**

On July 19, 2010, MSDE received correspondence from Ms. XXXXXXXXX, the student's mother, hereafter "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the following allegations:

1. MCPS did not provide the student with the special education and related services required by the Individualized Education Program (IEP) during the 2009-2010 school year, in accordance with 34 CFR §300.101.
2. MCPS has not followed proper procedures when responding to the complainant's request that assessments be conducted since September 2009<sup>1</sup>, in accordance with 34 CFR §§300.303 and .503 and COMAR 13A.05.01.06.

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<sup>1</sup> Specifically, this allegation concerns the complainant's request that assessments be conducted in order to secure accommodations for the student when he takes the Preliminary Scholastic Aptitude Test, a college entrance examination administered independently by the College Board, a non-profit association.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 20, 2010, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, spoke with the complainant, by telephone, to clarify the allegations to be investigated. On that same date, a copy of the complaint was provided by facsimile to Ms. Judith Pattik, Director, Department of Special Education Operations, MCPS; and Ms. Alison Steinfelds, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On July 27, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. By copy of that correspondence, MSDE notified Ms. Pattik of the allegations to be investigated and requested that her office review the alleged violations.
4. On August 3, 2010, Ms. Frazier conducted a telephone interview with the complainant.
5. On August 4, 2010, MSDE received documentation from the complainant for consideration in the investigation, via electronic mail (e-mail).
6. On August 12, 2010, Ms. Frazier and Ms. Mandis conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX), interviewed Ms. XXXXXXXX, Special Education Resource Teacher, and reviewed documents from the student's education record. Ms. Steinfelds and Ms. Meryl Benko, Paralegal, Equity Assurance and Compliance Unit, MCPS, attended the site visit as representatives of the MCPS Central Office and to provide information regarding MCPS policies and procedures, as needed.
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, dated July 15, 2010;
  - b. IEP Reevaluation Planning and Reevaluation Determinations form, dated February 2, 2009;
  - c. IEP, dated June 15, 2009;
  - d. *GT/LD and GT/ADHD Students: Supporting the Academic Needs of Gifted Students with IEPs* PowerPoint presentation, presented August 26, 2009;
  - e. Electronic mail (e-mail) correspondence from the complainant to school staff, dated September 25, 2009;
  - f. E-mail correspondence from school staff to the complainant, dated September 29, 2009;

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- g. *Final Exam IEP Accommodation Form* completed by the student in January 2010;
- h. IEP, dated March 12, 2010;
- i. E-mail correspondence between school staff and the complainant, dated April 27, 2010;
- j. *Final Exam IEP Accommodation Form* completed by the student in June 2010;
- k. Class schedule for the 2009-2010 school year;
- l. Report card for the 2009-2010 school year; and
- m. Reports on the student's progress toward achieving the IEP goals for the 2009-2010 school year.

**BACKGROUND:**

The student is sixteen (16) years old and he attends XXXXXXXXXXXXXXXX. He is identified, under IDEA, as a student with an other health impairment related to attention deficit/hyperactivity disorder and he receives special education services. There is documentation that, during the time period covered by this investigation, 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. b, c and h).

**ALLEGATION #1:                      PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES DURING THE 2009-2010 SCHOOL YEAR**

**Findings of Fact:**

1. The IEP in effect at the start of the 2009-2010 school year required that the student be provided with special education instruction in a separate special education classroom for one (1) period each day to assist him with the organization of his work and with completing written assignments. The IEP stated that this special education instruction was to be provided in order to assist the student with achieving annual goals to improve his written expression and his self-advocacy skills (Doc. c and interview with school staff).
2. The IEP also included accommodations to be provided to the student in the general education classroom. The student's self-advocacy goal contained objectives for the student to choose the specific accommodations to be provided in each class and for the student to accept those accommodations. The accommodations to be provided included the provision of notes, use of a scribe, extended time to complete assignments and reduced distractions (Doc. c and interview with school staff).
3. On March 12, 2010, the IEP team convened to review the student's program and progress. At this meeting, the team discussed the accommodations that the student was utilizing, including the student's preference that he utilize a computer to type his classwork assignments instead of relying upon a scribe to hand-write his responses, and determined that the student no longer requires assistance with advocating for the provision of accommodations. As a result, the team removed those accommodations, such as the scribe, that were not being utilized by the student (Doc. h).

4. The following information documents that the student received special education instruction and the accommodations required by the IEP during the 2009-2010 school year:
  - a. Documentation that, on August 26, 2009, an instructional specialist from the MCPS Central Office provided training to school staff, including the student's general education teachers, regarding the manner in which accommodations were to be provided;
  - b. The student's class schedule and report card, which document that the student was assigned to one (1) period of "resource class" in a separate special education classroom and was in a general education setting for all other academic subjects;
  - c. E-mail correspondence, dated April 27, 2010, in which school staff responded to the complainant's concerns regarding how accommodations were being provided to the student in the general education classroom;
  - d. The March 12, 2010 IEP, which documents the team's discussion that the student was making progress toward achieving the annual IEP goals;
  - e. Reports on the student's progress for each quarter of the 2009-2010 school year, documenting that the student continued to make sufficient progress toward achieving the annual IEP goals; and
  - f. Final Examination Accommodation Forms completed by the student for the first (1<sup>st</sup>) and second (2<sup>nd</sup>) semesters of the 2009-2010 school year. These forms were used to provide the student with the opportunity to choose the accommodations that he wished to utilize when taking final examinations, and document the specific accommodations that the student requested each semester. While the form completed for the first (1<sup>st</sup>) semester documented that the student only chose extended time as an accommodation, the form completed for the second (2<sup>nd</sup>) semester documented that the student chose various accommodations for each examination (Docs. d, g, and i - m).

**Discussion/Conclusion:**

The public agency must provide the special education services, accommodations and modifications required by each student's IEP in the educational placement determined by the IEP team (34 CFR§300.101). In this case, the complainant alleges that the student was not provided with the special education instruction required by his IEP, and that the only accommodation provided was extended time to complete his school assignments (Doc. a and interview with the complainant).

Based on Findings of Fact #1-4, MSDE finds that there is documentation that the student was provided with the special education instruction and accommodations required by the IEP. Therefore, MSDE does not find a violation with regard to this allegation.

**ALLEGATION #2:                    PROPER PROCEDURES WHEN RESPONDING TO THE  
COMPLAINANT'S REQUESTS FOR ASSESSMENTS**

**Findings of Fact:**

5.        The complainant reported to MCPS that she requested that the College Board provide the student with accommodations on the Preliminary Scholastic Aptitude Test<sup>1</sup>. In response to this request, she was informed by the College Board, the non-profit association that administers this test, that more recent assessments than the last ones conducted by MCPS were required (Doc. e and interview with MCPS staff).
6.        On September 25, 2009, in order to obtain updated assessments for the College Board, the complainant requested that MCPS conduct assessments (Doc. e and interview with MCPS staff).
7.        On September 29, 2009, MCPS staff informed the complainant, via e-mail, that they were not required to conduct assessments to meet College Board requirements. In that e-mail, MCPS staff also reminded the complainant that, on February 2, 2009, a reevaluation was conducted and the IEP team determined that no additional assessments were needed to determine the student's eligibility for special education services or to identify and address the needs that arise from the student's disability (Docs. b and f).

**Discussion/Conclusion:**

The purpose of conducting a reevaluation is to determine whether the student continues to meet the criteria for identification as a student with a disability and the special education and related services needed to provide the student with a free appropriate public education (FAPE) (34 CFR §300.305). Pursuant to the United States Department of Education, Office of Special Education Programs, there is no requirement that local school systems conduct a reevaluation of a child with a disability solely to satisfy the eligibility criteria established by the College Board or other testing program that is not related to the provision of a FAPE (*Letter to Tara Moffett*, August 24, 2009)<sup>2</sup>.

In this case, the complainant alleges that the school system was required to conduct assessments as she had requested. Based on Findings of Fact #5 and 6, MSDE finds that the complainant requested assessments for the purpose of securing accommodations for the student from the College Board, and not as part of a reevaluation to ensure the provision of FAPE for the student, and thus the school system was not required to ensure that the assessments were conducted. Therefore, MSDE does not find that a violation occurred with regard to this allegation.

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<sup>2</sup> A copy of this letter may be found on the website for the United States Department of Education at <http://www2.ed.gov/policy/speced/guid/idea/letters/2009-3/moffett082409eligibility3q2009.pdf>.

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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.

Questions regarding the findings of fact and conclusions 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 FAPE, 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.

Sincerely,

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

CAH/vf

c: Jerry D. Weast  
Gwendolyn J. Mason  
Alison Steinfels

XXXXXX  
Dori Wilson  
Anita Mandis

Vickie Frazier