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December 22, 2010

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Ms. Kathleen White
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Maryland State Department of Education
Division of Career and College Readiness
200 West Baltimore Street
Baltimore, Maryland 21201

Ms. Betsy Reich
Supervisor of Special Education
Somerset County Public Schools
7982-A Tawes Campus Drive
Westover, Maryland 21871

RE: XXXXX
Reference: #11-014

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. There is a sixty (60) day timeline for completion of the complaint investigation process. During the course of the investigation, this office determined that additional public agencies may have had educational responsibility for the student. Therefore, in order to obtain the needed information to complete the investigation, it was necessary to extend the timeline for completion of this Letter of Findings (LOF). This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On September 8, 2010,¹ MSDE received correspondence from Ms. Ileana B. Luciani, the student's advocate, hereafter, "the complainant," filed on behalf of the student. In that correspondence, the complainant alleged that the Somerset County Public Schools (SCPS) 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 On August 19, 2010, the complainant provided MSDE with correspondence containing allegations of violations of IDEA. On August 20, 2010, MSDE informed the complainant that additional information was needed to initiate a State complaint investigation, in accordance with 34 CFR §300.153. On September 8, 2010, the complainant provided the required information and a complaint investigation was initiated.

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1. Maryland State Department of Education, Division of Career and College Readiness, Juvenile Service Education (MSDE/JSE) did not follow proper procedures to notify Wicomico County Public Schools (WCPS) when the student was placed by the Somerset County Department of Juvenile Services (SCDJS) in a group home located in Wicomico County and did not ensure that the student's education record was transferred to WCPS, in accordance with Md. Code Ann., Educ. §§8-503 and 8-504.
2. SCPS did not follow proper procedures when providing home and hospital teaching from September 8, 2009² until November 27, 2009, in accordance with COMAR13A.05.01.10(C)(5).
3. WCPS did not ensure that the student was provided with the special education instruction and related services required by the Individualized Education Program (IEP) from September 8, 2009² until November 27, 2009, in accordance with 34 CFR §§101, .323, and Md. Code Ann., Educ. §4-122.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 20 and 24, 2010,¹ Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE spoke with the complainant, by telephone, to clarify the allegation against SCPS to be investigated and to inform the complainant that additional information was necessary to initiate a State complaint investigation.
3. On September 8, 2010, the complainant provided MSDE with the additional information necessary to initiate the State complaint investigation.
4. On September 10, 2010, MSDE provided the complaint, by facsimile, to Ms. Betsy Reich, Supervisor of Special Education, SCPS.
5. On September 20, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation with respect to SCPS subject to this

² The complaint included allegations of violations that occurred more than a year before the date the complaint was received. MSDE informed the complainant, in writing on September 20, 2010, that this office may only investigate allegations of violations which occurred not more than one year prior to the date a complaint was received, in accordance with 34 CFR §300.153.

- investigation. MSDE also notified Ms. Reich of the allegation to be investigated and requested that her office review the alleged violation.
6. On September 24 and 29, 2010, and October 2, 2010, Ms. Moyo contacted SCPS staff and requested documentation from the student's education record.
 7. On October 12, 2010, SCPS staff provided MSDE staff with a written response to the allegation related to that school system and documentation from the student's education record via electronic mail and facsimile.
 8. On October 25, 2010, Ms. Moyo conducted a telephone interview with the complainant about the allegations in the complaint.
 9. On October 27, 2010, MSDE determined that additional public agencies, including MSDE/JSE and WCPS would be added as parties in the investigation. On that same date, a copy of the complaint was provided by facsimile to Ms. Zondra Johnson, Special Education Coordinator, MSDE/JSE, and Ms. Bonnie Walston, Director of Special Education, WCPS.
 10. On October 29, 2010, MSDE sent correspondence to the complainant that identified the additional allegations against MSDE/JSE and WCPS subject to this investigation. MSDE also notified Ms. Kathleen White, Special Education Coordinator, MSDE/JSE, and Ms. Walston of the additional allegations to be investigated and requested that their offices review the alleged violations. On that same date, Ms. Mandis and Mrs. Martha Arthur, Education Program Specialist, MSDE, conducted a telephone interview with Ms. Walston and Ms. Lynne Smoak, Supervisor of Compliance Special Education, WCPS.
 11. On November 1, 2010, Mrs. Arthur conducted a review of the student's education record at the SCPS Central Office.
 12. On November 1, 2010, WCPS personnel provided Mrs. Arthur with additional documentation from the student's education record.
 13. On November 3, 2010, Ms. Moyo and Mrs. Arthur reviewed the student's education record with Ms. Johnson at MSDE. At that meeting, Ms. Johnson provided MSDE with additional information and documentation. Also, on that same date, Ms. Moyo requested, via electronic mail, additional information from SCPS.
 14. On November 8, 2010 and December 6, 2010, Ms. Moyo conducted telephone interviews with Ms. Pamela Hardy-Cyran, Director of Educational Services, Department of Juvenile Services (DJS), regarding the allegations in the complaint.

15. On December 4, 2010, SCPS provided additional documentation to MSDE through electronic mail correspondence and via facsimile to MSDE.
16. On December 6, 2010, Ms. Moyo conducted a telephone interview with Ms. XXXXXXXXXXXX, Director of Education, at XXXXXXXXXXXXXXXXXXXX, a non-public separate special education school located on the grounds of the XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX in Baltimore City (XXXXXXXXXXXXXXXXX).
17. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. IEP, dated May 11, 2009;
 - b. Circuit Court for Somerset County Docket of Court Orders regarding the student;
 - c. MSDE/JSE Education Profile for the student;
 - d. Home teacher service log, dated October 12, 2009 to November 17, 2009;
 - e. Correspondence from the complainant to MSDE alleging violations of IDEA, received on September 8, 2010; and
 - f. SCPS' written response to the complaint allegations, dated October 11, 2010.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with a specific learning disability under IDEA. He is committed to the custody of the Somerset County Department of Juvenile Services (SCDJS) and is placed by SCDJS at the XXXXXXXXXXXX. The student receives special education instruction at XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school located on the grounds of the XXXXXXXXXXXX (Docs. a, e, and Interview with the complainant).

During the time period addressed in this investigation (September 8, 2009 to November 27, 2009), the student was placed by SCDJS at the XXXXXXXXXXXXXXXXXXXX, located in XXXXXX County, Maryland. The student did not receive special education instruction during that period of time (Docs. d and f).

FINDINGS OF FACT:

1. On May 13, 2009, the Circuit Court for Somerset County issued a Court Order continuing the commitment of the student to SCDJS, ordering that the student be placed in "a residential program," and stating that the student must "not attend a regular public school without the permission of the Court" (Doc. b).

2. Prior to being placed at XXXXXXXXXXXXXXXXXXXX, SCDJS had placed the student at the XXXXXXXXXXXXXXXXXXXX, also located in XXXXXXXX County, where he received instruction from MSDE/JSE (Doc. c).
3. On May 15, 2009, the student was placed by SCDJS at the XXXXXXXXXXXXXXXXXXXX, a therapeutic group home located in XXXXXXXX County. He remained at XXXXXXXXXXX XXXXXXX until November 27, 2009 (Docs. e and f).
4. On September 29, 2009, the student's grandmother, who serves as the student's parent under IDEA, contacted SCPS, the school system in which the student had attended school prior to his DJS involvement, and requested that SCPS provide educational services to the student (Doc. f).
5. In response to the grandmother's request, SCPS staff made attempts to provide the student with instruction in the student's residence at the XXXXXXXXXXXXXXXXXXXX. There is no information or documentation that SCPS convened an IEP team to determine whether the IEP could be implemented in a school setting other than "a regular public school" before initiating services in the student's home. Attempts by SCPS staff to provide the student with instruction in his residence were unsuccessful, due to the student's refusal to accept educational services in the group home (Docs. d, f, and review of the education record).
6. While SCPS reports that it requested the student's education record, there is no documentation that SCPS made a written request for the student's education record from MSDE/JSE or that SCPS contacted WCPS to notify them that the student was residing in Wicomico County (Doc. f and review of the education record).
7. Both WCPS and XXXXXXXXXXXXXXXXXXXX staff report that there is an agreement that group home staff are to notify WCPS when students from other counties are placed in the group home so that WCPS can ensure that those students receive appropriate services. However, XXXXXXXXXXXXXXXXXXXX staff report that in this case, they did not contact WCPS because SCPS had contacted the group home to arrange for the provision of services to the student in the group home (Interviews with WCPS and XXXXXXXXXXX XXXXXX staff).

DISCUSSION/CONCLUSIONS:

Allegation #1 Obligation of MSDE/JSE to Transfer the Education Record

A child in State-supervised care is defined as a child who is in the custody of, committed to, or otherwise placed by a placement agency. A placement agency includes local departments of social services and juvenile services (Md. Code Ann., Educ. §8-501).

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Prior to or concurrent with the placement of a child in State supervised care, the placement agency, such as a local department of juvenile services, must provide notice to a receiving school regarding the enrollment of the student in school (Md. Educ. Code Ann. §8-503).

In order to ensure that a student who transfers to a new public agency receives comparable services until the IEP from the previous public agency is adopted or revised, the new public agency must take reasonable steps to promptly obtain the student's education records, including the IEP and supporting documents (34 CFR §300.323).

In the case of a student who is in State-supervised care, the new public agency must, among other things, request, in writing, the education record from the previous public agency within two (2) days of receiving notice that the student is enrolling. Within three (3) days of receiving such a request, the sending school must provide the receiving school with the student's education record (Md. Code Ann., Educ. §8-504).

In this case, based on Findings of Fact #3 and 6, MSDE finds there is no documentation that a request was made to MSDE/JSE for the student's education record. Therefore, MSDE does not find that a violation occurred with respect to MSDE/JSE regarding this allegation.

Allegation #2 Provision of HHT by SCPS

HHT is the provision of instructional services to students who are unable to participate in their school of enrollment due to a physical or emotional condition. HHT is to be provided only when a school psychologist, licensed physician or psychiatrist provides verification that a student is unable to attend school due to that physical or emotional condition (COMAR 13A.03.05.01 and .04).

The intent of COMAR is to ensure that no student with a disability under IDEA receives educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students and denies the student access to the general curriculum.

Prior to the enactment of the COMAR regulations, a significant number of students with disabilities remained in their homes and received a minimum amount of education services solely on the basis of a one-time statement by a school psychologist. Often this occurred for students when the school system was unable or unwilling to identify an appropriate day or residential placement needed for the student to receive a free appropriate public education (FAPE) to meet his or her needs. Therefore, it is required that public agencies make home and hospital teaching services available to students that are consistent with both the least restrictive

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environment requirements of IDEA and the requirements of COMAR (34 CFR §§300.114-.116 and COMAR 13A.05.01.10).

In this case, SCPS asserts that the instruction they attempted to provide to the student in the residence was not HHT, but an “alternative placement” (Doc. f). Based on Findings of Fact #2, and 4 - 6, MSDE finds that the services SCPS attempted to provide in the residence was, in fact HHT. Based on Findings of Fact #1, 5, and 6, MSDE further finds that SCPS did not follow proper procedures when offering HHT services to the student, and that a violation occurred with respect to this allegation.

**Allegation #3 Provision of Special Education Services From
September 8, 2009 to November 27, 2009**

For a child in an out-of-county living arrangement, the local education agency responsible for providing special education services is the local education agency for the county where a child in an out-of-county living arrangement is placed. The financially responsible county is the local education agency in the county where the parent or legal guardian in an out-of-county living arrangement resides (Md. Code Ann., Educ. §4-122). The service providing local school system and the financially responsible local school system must participate collaboratively in the education decision making process for the student to ensure the full implementation of the student’s IEP (Memorandum to Local Education Agencies from MSDE, dated April 24, 2001).

WCPS

Based on Findings of Fact #1, 2, 5, and 6, MSDE finds that WCPS was the local education agency responsible for providing education services to the student while he was placed in Wicomico County, and SCPS remained financially responsible for his education. However, based on those Findings of Fact, because SCPS took responsibility for providing educational services to the student while he was placed in Wicomico County, MSDE does not find that a violation occurred with respect to WCPS.

SCPS

Based on Findings of Fact #2, 5, and 6, MSDE finds that SCPS did not take appropriate steps to obtain the student’s IEP and did not ensure that the student received special education instruction and related services required by the IEP from September 8, 2009 until November 27, 2009, and that a violation occurred.

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CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

MSDE requires SCPS to provide documentation by March 1, 2011 that the student's parent was offered *compensatory services*³ or other remedy to redress the loss of services to the student from September 8, 2009 until November 27, 2009. If the student's parent disagrees with the amount and nature of the services offered, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

Systemic

MSDE requires SCPS to provide documentation of the steps taken to determine if the procedural violations identified in this LOF represent a pattern of noncompliance in SCPS. This documentation is due no later than May 1, 2011.

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 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 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.

The findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring. Verification of the school system's compliance will also be conducted consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), Memorandum.

Documentation of completion of the required actions is to be submitted to this office to:
Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

³ 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).

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TECHINICAL 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 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 of fact or 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 student's parent 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 a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/km

c: XXXXXXXXX
Karen-Lee Brofee
John Fredericksen
Mark Mechlinski
Zondra Johnson