



Nancy S. Grasmick
State Superintendent of Schools

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November 10, 2010

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Mrs. Kristin Mentges
Coordinator of Special Education
Talbot County Public Schools
P.O. Box 1029
Easton, MD 21601

RE: XXXXX
Reference: #11-018

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 our investigation.

ALLEGATION:

On September 16, 2010¹, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Talbot County Public Schools (TCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and corresponding federal and State regulations with respect to the above-referenced student. MSDE investigated the allegation that TCPS did not ensure that the student’s Individualized Education Program (IEP) was written in a manner that was clear with respect to the “close supervision” that would be provided to the student, in accordance with COMAR 13A.05.01.09 and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999.

¹ On September 7, 2010, the complainant provided MSDE with correspondence containing allegations of violations of IDEA, which did not contain all of the necessary information to initiate a State complaint investigation. On September 16, 2010 the complainant provided the required information and a complaint investigation was initiated (34 CFR §300.153).

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 7, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Kristin Mentges, Coordinator of Special Education, TCPS.
3. On September 9, 2010, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegation and to inform her that additional information was necessary to initiate a State complaint.
4. On September 16, 2010, the complainant provided MSDE with the additional information required and MSDE initiated the State complaint investigation.
5. On September 20, 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. Mentges of the allegation and requested that her office review the allegation.
6. On September 23, 2010, TCPS personnel provided MSDE with documentation from the student's education record.
7. On September 24, 2010, the complainant provided MSDE with additional information.
8. On September 27, 2010, Ms. Moyo conducted a telephone interview with the complainant.
9. On October 2, 2010, TCPS provided MSDE with additional documentation from the student's education record.
10. 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 September 7, 2010;
 - b. Individualized School Health Care Plan, dated May 31, 2006;
 - c. IEP, dated November 4, 2009;
 - d. Correspondence from school staff to the complainant, dated August 26, 2010;
 - e. Letter from the student's physician to school staff, dated August 30, 2010
 - f. IEP, dated September 16, 2010;
 - g. IEP team meeting notes, dated September 16, 2010;

- h. Correspondence from TCPS staff to MSDE staff, dated September 17, 2010;
- i. Correspondence from the complainant to TCPS staff, dated September 24, 2010;
and
- j. Individualized School Health Care Plan, dated September 28, 2010.

BACKGROUND:

The student is eight (8) years old and attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with a speech and language impairment under IDEA and receives special education instruction and related services. 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-c, f, g and j).

FINDINGS OF FACT:

1. The IEP in effect at the start of the 2010-2011 school year was developed on November 4, 2009. At that meeting, the IEP team reviewed the student's health care plan². The health care plan indicated the student has "XXXXXXXXX³ and feeding problems," which can increase the student's possibility of choking. The health care plan further indicated that school staff would provide "close supervision, during any eating activity, in class, lunch or breakfast," observe the student for choking, and remind the student to chew and swallow small bites (Docs. b and c).
2. Based on its review of this information, the IEP team included a statement in the student's IEP that the student would be provided with "supervision while eating, as stated in the student's health plan." Additionally, the IEP stated that "the student will have someone with her when she is eating lunch or eating in the classroom in order to avoid any complications with choking" (Docs. b and c).
3. On August 25 and 26, 2010, the complainant visited the student at school so she could observe the student during her lunch period. The complainant states that she observed the student seated at a table with twenty (20) students and one (1) adult. She further reports that following this observation, she informed school staff that the student's IEP and health care plan require that the student be provided with supervision while eating and that the supervision that she witnessed being provided was not the "close supervision" intended by the student's IEP and health care plan (Docs. a, h, and report from the complainant).

² The health care plan is a document that is maintained by the school nurse and in the student's education record. It is developed for students with specialized medical needs and includes medical recommendations for school personnel to follow to ensure that these needs are addressed. It is based on medical information provided to the school by the student's physician and parents (Docs. b, f, g, and j).

³ XXXXXXXXXXXX is difficulty or pain in swallowing that can be caused by problems in the nerves or with muscle control (www.britannica.com).

4. On August 26, 2010, school staff responded to the complainant's concerns by sending a letter to her which stated that neither the student's IEP nor her health care plan specified the ratio of adult to students required when supervision was provided during eating activities, such as lunch. Therefore, school staff indicated that the adult that was supervising the students during lunch was also providing supervision to her daughter, in accordance with her IEP and health care plan (Doc. d).
5. On September 16 and 28, 2010, the IEP team met to address the complainant's continuing concerns about how adult supervision was being provided during eating activities. At the meetings, the team considered the following:
 - a. A letter from the student's physician which stated that the student has oral abnormalities and has experienced several instances of choking. As a result of this choking risk, the student "requires close monitoring while engaging in eating activities." The physician's letter also recommends that the student be supervised by an adult with a maximum of a one-to-three ratio of adult to student;
 - b. A report from the complainant that the student has several medical issues that heighten the possibility of choking, such as, removal of her tonsils and adenoids, sleep apnea, and reflux. Additionally, the student experienced a choking incident during the summer; and
 - c. A report from school staff indicating that the student has not choked at school in the past and that they believe that the student was being provided with the supervision required by her IEP (Docs. e, g, and i).
6. Based on the information reviewed, the team decided to revise the IEP and health care plan to reflect that the adult providing supervision, when the student is eating, will be responsible for no more than three (3) students at any time. The team also updated the student's health plan to state that the adult supervising the student will "sit next to or across from the student during all eating activities" (Docs. f, g, and j).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with an IEP that addresses all of the needs that arise from the student's disability. When developing the IEP, the IEP team must consider the concerns of the parent (34 CFR §300.324). 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).⁴

⁴ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

Based on Findings of Fact #1-4, MSDE finds that complainant and school staff disagreed about how the "supervision" required by the IEP would be provided to the student. However, based on Findings of Fact #5 and 6, MSDE finds that the IEP team convened to address this concern and at that meeting, the IEP team reviewed information provided by the student's physician and the complainant. Following that review, the IEP team revised the IEP to clarify how supervision would be provided to the student during eating activities. Therefore, MSDE finds that no violation has occurred.

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 conclusions reached in this LOF. The additional written documentation must not have been provided or 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents and the school system maintain the right to request mediation or 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: Karen Salmon
XXXXXXXXXX
Anita Mandis
Koliwe Moyo