



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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

August 25, 2011

XXX
XXX
XXX

Ms. Ann-Marie Spakowski
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #11-108

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 June 30, 2011,¹ MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Harford County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. HCPS has not ensured that the student’s Individualized Education Program (IEP) has included positive behavioral interventions and strategies to address the student’s interfering behaviors, since November 2010, in accordance with 34 CFR §300.324;

¹ On June 21, 2011, 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 June 30, 2011, the complainant provided the additional required information and the complaint investigation was initiated (34 CFR §300.153).

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 2

2. HCPS did not ensure that the student was provided with the accommodations and supplementary aids and services required by the IEP during the 2010-2011 school year, in accordance with 34 CFR §300.101; and
3. HCPS did not ensure that the student's Behavioral Intervention Plan (BIP), was implemented between May 12, 2011 and the end of the 2010-2011 school year, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 21, 2011, MSDE received written correspondence from the complainant containing allegations of violations of IDEA.
3. On June 22, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegations and discussed the need for the complainant to provide a proposed remedy in order for a State complaint investigation to be initiated.
4. On June 30, 2011, MSDE received the proposed remedy from the complainant, via electronic mail (e-mail).
5. On July 5, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS; and Ms. Eileen Watson, Coordinator of Compliance, HCPS.
6. On July 7, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Spakowski of the allegations and requested that her office review the alleged violations.
7. On July 13, 2011, Ms. Stump reviewed the student's education record at the HCPS Central Office. Ms. Watson was present at the record review.
8. On July 21, 2011, HCPS provided MSDE with documentation from the student's education record.
9. On July 26, 2011 and August 1 and 4, 2011, Ms. Stump conducted telephone interviews with the complainant.

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 3

10. On August 4, 2011, Ms. Stump reviewed documentation related to the allegations at XXXXXXXXXXXX (XXXXXXX). Mr. XXXXXXXXXXXX, Assistant Principal, XXXXXXXX attended the record review and provided information related to the allegations in the complaint.
11. On August 9, 2011, the complainant provided MSDE with additional documentation related to the allegations, via e-mail.
12. On August 17, 2011, HCPS provided MSDE with additional documentation from the student's education record, via e-mail.
13. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to MSDE, received on June 21 and 30, 2011;
 - b. IEP, dated September 13, 2010;
 - c. Prior Written Notice form, dated October 13, 2010;
 - d. Notice and Consent for Assessment form, dated October 13, 2010;
 - e. Behavior Specialist Consultation Notes, dated November 11, 2010;
 - f. Functional Behavioral Assessment, dated November 22, 2010;
 - g. Behavioral Intervention Plan, dated November 22, 2010;
 - h. IEP, dated November 23, 2010;
 - i. Prior Written Notice form, dated November 23, 2010;
 - j. Prior Written Notice form, dated January 21, 2011;
 - k. IEP, dated January 25, 2011;
 - l. Notice and Consent for Assessment form, dated February 9, 2011;
 - m. IEP, dated February 28, 2011;
 - n. Prior Written Notice form, dated February 28, 2011;
 - o. Notice and Consent for Assessment form, dated February 28, 2011;
 - p. Educational Assessment Report, dated March 3, 2011;
 - q. Prior Written Notice form, dated April 4, 2011;
 - r. IEP, dated April 11, 2011;
 - s. Prior Written Notice form, dated April 11, 2011;
 - t. Notice and Consent for Assessment form, dated April 12, 2011;
 - u. Psychological Assessment report, dated April 18, 2011;
 - v. IEP, dated April 18, 2011;
 - w. Prior Written Notice form, dated April 19, 2011;
 - x. Prior Written Notice form, dated May 12, 2011;
 - y. Functional Behavioral Assessment, dated May 23, 2011;
 - z. Behavior Intervention Plan, dated May 23, 2011;
 - aa. Prior Written Notice form, dated May 24, 2011;
 - bb. Invitation to the August 11, 2011 IEP team meeting, dated July 8, 2011;

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 4

- cc. Excerpt from the student's daily planner from the 2010-2011 school year;
- dd. Teacher Input for Present Level of Performance forms for the 2010-2011 school year;
- ee. E-mail correspondence between school staff and the complainant for the 2010-2011 school year;
- ff. "Daily behavior point sheets" for the 2010-2011 school year;
- gg. Special Education – Teacher Specialist service log for the 2010-2011 school year; and
- hh. HCPS related service provider logs for the 2010-2011 school year.

BACKGROUND:

The student is sixteen (16) years old. She is identified as a student with multiple disabilities under IDEA, related to a XXXXX (XXXX) and an XXXXXX impairment, and receives special education instruction and related services.

The student attended XXXXXXXX during the 2010-2011 school year. On August 11, 2011, the IEP team determined that the student will attend the XXXXXXXXXXXXXXXXXXXX, a nonpublic separate special education school, for the 2011-2012 school year.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of IEP team decisions and notice of the procedural safeguards (Docs. a-d, h-o, q-t, v-x, aa, bb, and interview with school staff).

ALLEGATION #1: **IEP THAT INCLUDES POSITIVE BEHAVIORAL INTERVENTIONS AND STRATEGIES TO ADDRESS THE STUDENT'S INTERFERING BEHAVIORS SINCE NOVEMBER 2010**

Findings of Fact:

1. The IEP in effect in November 2010 was developed on September 13, 2010. The documentation of the September 13, 2010 meeting indicates that the team considered, among other things, reports from the student's teachers that the student was demonstrating behaviors that interfered with her learning. These behaviors included rejecting instruction, "pushing away" her instructional helper, refusing to use the modified assignments and homework, refusing to follow directions, and attempting to leave class. The teachers also reported that the student demonstrated difficulty remaining focused on her work (Docs. b and dd).
2. At the September 13, 2010 meeting, the team decided that the student required additional supports to "promote focus and attention" and to "reduce frustration," including

- “chunked” texts and assignments, “modified content,” and reduced number of answer choices and length of exams and classroom assessments. The team also decided that the opportunity to earn rewards for appropriate behavior through the use of “daily point sheets” continues to be an appropriate support for the student (Doc. b).
3. On October 13, 2010, the IEP team reconvened to review the student’s progress and to address reports from the student’s teachers of increased incidents where the student became aggressive toward the instructional helper when attempts were made to provide her with assistance. The team determined that a functional behavioral assessment (FBA) and a consultation with the behavioral specialist would be conducted, and the complainant provided written consent (Docs. c, d, and dd).
 4. At the October 13, 2010 IEP team meeting, the team determined that a male staff member would be assigned as the student’s instructional helper based on the complainant’s belief that the student would respond better to a male. The team also decided that the instructional helper will be instructed to “back off from direct contact” with the student, but remain in the classroom with the student (Doc. c and interview with school staff).
 5. On November 23, 2010, the IEP team reconvened and considered the results of the consultation with the behavior specialist. The report indicates that the student “continues to be very impulsive, experiences attentional difficulties, exhibits emotional outbursts, and experiences ongoing frustrations associated with her disability.” The report lists strategies to assist the student, including giving her specific behavioral praise, reducing the number of demands placed on the student, telling the student ahead of time what the consequences are for aggressive behavior and providing clear choices so that she can make choices and feel in control, alerting the student to transitions, and providing the instructional helper with training regarding the student’s disability (Docs. e-i).
 6. The IEP team at the November 23, 2010 meeting also considered the results of the FBA. The report indicates that the student’s aggressive behavior occurs when she believes that she is being “singled out” from her peers by the offer of academic assistance or by placing demands on her (Docs. e-i).
 7. At the November 23, 2010 IEP team meeting the team developed a behavior intervention plan (BIP) to address the student’s interfering behaviors. The BIP requires that the student be provided with supports, including preferential seating; reminders that “verbal communication is the type of communication that will get her needs met without needing to involve discipline strategies;” a continuation of the rewards system, with a revision to the “daily point sheets” so that the student can “make a better connection between her classroom behavior and her positive or negative consequences;” “creative consequences” that have her write out explanations of the behavior and alternative behaviors to get what she needs; and “positive experiences” after a consequence is given (Doc. g).

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 6

8. On January 21, 2011, the IEP team reconvened to review the student's progress. The documentation of the meeting indicates that the team considered reports from the student's teachers documenting that the student continues to refuse the supports being offered to her and continues to hit school staff when they attempt to provide those supports. After the IEP team's review of this information, it recommended that that an educational and a psychological assessment be conducted. The school-based members of the IEP team also recommended that the student receive counseling as a related service. The complainant indicated that she did not believe that counseling was needed and the team agreed that such services would not be initiated, based on the complainant's concerns (Docs. j, k, and dd).
9. On February 9, 2011, the complainant provided written consent for the educational assessment to be conducted, but did not provide consent for the psychological assessment to be conducted (Doc. l).
10. On February 28, 2011, the IEP team reconvened to review the student's program and progress. The team reviewed information from the student's service providers and teachers that the student continued to demonstrate interfering behaviors. Based on this information, the team once again recommended a psychological assessment and the complainant provided written consent. The school-based members of the team again recommended that the student be provided with counseling services as a related service, but the IEP was not revised to require these services because of the complainant's continued objection to them (Docs. m-o and dd).
11. There is documentation that the IEP team convened on April 4, 11, and 19, 2011 in order to review assessment data. The documentation of these meetings indicates that the team considered reports from the student's teachers indicating that the student continues to refuse supports, including extended time, assistance from the instructional helper, and modified assignments (Docs. p-w).
12. At the April 2011 meetings, the IEP team also considered the results of the educational assessment identifying the student's continuing academic needs in reading, math, and written language. The team also considered the results of the psychological assessment. The report indicates that the student's overall language functioning continues to be "significantly impaired." Specifically, the report states that the impairment "manifests as aphasia in which she has difficulty retrieving the words needed to express her thoughts as well as in miscues in which she produces an incorrect word instead of the correct one when thinking and speaking. These miscues actually serve to interfere with the accuracy of her interpretation of both verbal and nonverbal material that she is processing" (Docs. p-w).
13. The report of the psychological assessment includes recommendations including "scaffolding" the student's response formats, "scaffolding" and support to display

behavior that is appropriate throughout the school day, reviewing social expectations at the beginning of an “instructional unit,” giving the student more cues and reminders before the behavior becomes a problem, and structuring an opportunity for her to “replay” the situation using the appropriate replacement response (Doc. u).

14. At the April 19, 2011 meeting, the team revised the student’s program to include additional supports, including using a “word bank;” providing the student with a copy of student/teacher notes; simplifying sentence structure, vocabulary, and graphics on assignments and assessments; reminding the student of established rules frequently; reinforcing positive behaviors through non-verbal and verbal communication; encouraging the student to ask for assistance when needed; teaching the student strategies to initiate and sustain attention; and preparing the student in advance for schedule changes (Docs. v and w).
15. There is documentation that the IEP team reconvened on May 12 and 24, 2011 in order to review the student’s program and progress. The team considered the reports from the student’s teachers that the student continues to refuse accommodations and supports. Based on this review, the team revised the student’s BIP to include additional strategies such as earning behavior points “equating to school store money for meeting her target behaviors,” and giving the student a “quick pass” to use “to prevent incidents that require negative consequences” (Docs. x-aa).

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, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student’s learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324). The public agency must ensure that the IEP team reviews each student’s IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and revises the IEP to, among other things, address any lack of expected progress toward achieving the goals (34 CFR §300.324).

In this case, the complainant has acknowledged that the student’s program included interventions and strategies to address the behaviors that have interfered with her learning. However, the complainant alleges that those supports are not *positive* interventions (Doc. a and interviews with complainant).

Based on Findings of Fact #1-15, MSDE finds that the team considered assessment data, information from the student’s teachers, and the complainant’s concerns, and developed an IEP and BIP that does include positive behavioral interventions to address the behavior needs identified through the data. Based on those same Findings, MSDE finds that while these interventions have not been successful, the IEP team continues to revise the IEP to address the

lack of expected progress. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #2: **PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SERVICES DURING THE 2010-2011 SCHOOL YEAR**

Findings of Fact:

Training of the Instructional Helper

16. The IEP in effect for the 2010-2011 school year requires that “staff working with [the student] will receive training as necessary,” (Docs. b, h, k, m, r, and v).
17. The physical therapist’s related service provider log for the 2010-2011 school year indicates that she provided training to, and regularly consulted with, the instructional helper throughout the school year (Doc. hh).
18. The occupational therapist’s observation report and the occupational therapist’s service provide log for the 2010-2011 school year indicates that she provided training to, and regularly consulted with, the instructional helper throughout the school year and that the student refused to accept the accommodations and supplementary aids and services offered to her (Doc. hh).
19. The special education teacher specialist’s service provider log for the 2010-2011 school year documents that the instructional helper was provided with training on the student’s needs and that consultation with the instructional helper took place to ensure the instructional helper’s understanding of those needs during the school year (Doc. gg).

Accommodations and Supplementary Aids and Services

20. The IEP in effect for the 2010-2011 school year requires that the student be provided with supports including “chunked” assignments, extended time, and “modified assignments” (Docs. b, h, k, m, r, and v).
21. An excerpt from the student’s daily planner and an e-mail communication between the complainant and one of the student’s teachers document that there was a disagreement between them regarding how some of the supports are to be implemented (Doc. cc).

22. Despite this misunderstanding, there is documentation that the student was offered but frequently rejected the supports required by the IEP.
- a. HCPS *Teacher Input for Present Levels of Performance* forms dated throughout the 2010-2011 school year document the provision of the accommodations and supplementary aids and services, including extended time, modified assignments, “chunked” assignments, and the instructional helper. These forms also indicate that the student refuses these supports.
 - b. HCPS *Prior Written Notice* forms dated throughout the 2010-2011 school year documents that the IEP team discussed the provision of the accommodations and supplementary aids and services.
 - c. *Notes and Recommendations* from the Behavior Specialist Consultation, dated November 11, 2010, documents “current supports and positive interventions” used with the student in the background section of the report. The report also documents the behavior specialist’s observation of accommodations and supplementary aids and services that are provided to the student during the actual observation.
 - d. E-mail correspondence between the complainant and school staff, dated January 13, 2011, documents that the student was offered but rejected the provision of services and lists the accommodations that the student receives during assessments.
 - e. HCPS *Notice and Consent for Assessment*, signed on February 9, 2011 documents that the student is provided with accommodations.
 - f. The “daily point sheets” for the 2010-2011 school year document the use of the behavioral interventions (Docs. c, i, j, l, n, q, s, w, x, aa, dd, ee, and ff).

Discussion/Conclusions:

Training of the Instructional Helper

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the instructional helper did not have training in the area of the student’s disability and was therefore unable to provide support to the student in an appropriate manner (Doc. a and interviews with complainant).

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 10

Based on Findings of Fact #16-19, MSDE finds that there is documentation that the instructional helper received training in order to provide support to the student. Therefore, MSDE finds that there is no violation regarding this aspect of the allegation.

Accommodations and Supplementary Aids and Services

As stated above, the public agency must ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). 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).²

In this case, the complainant specifically alleges that the student did not receive modified assignments, extended time, and “chunking” of materials, as required by the IEP (Doc. a and interviews with the complainant). Based on Findings of Fact #20 and 22, MSDE finds that, there is documentation that the accommodations and supplementary aids and services were offered, but that the student did not accept those services. Therefore, MSDE finds no violation regarding this aspect of the allegation.

However, based on Finding of Fact #21, MSDE finds that despite this documentation, there remains a disagreement between the parties regarding how some supports are to be provided to the student. Therefore, MSDE finds that the IEP is not written clearly and that a violation has occurred.

ALLEGATION #3: IMPLEMENTATION OF THE BIP BETWEEN MAY 12, 2011 AND THE END OF THE 2010-2011 SCHOOL YEAR

Findings of Fact:

23. The BIP completed on May 24, 2011 requires the use of “daily point sheets” in order to permit the student to earn school store “money” called “behavior bucks,” by demonstrating appropriate behavior. The BIP does not require that the student’s “daily point sheets” be sent home (Doc. z).
24. A review of the “daily point sheets” and charts of the “behavior bucks” earned by the student document that the student was provided with the supports listed in the BIP beginning on May 31, 2011, three (3) school days after development of the BIP (Doc. ff).

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 11

Discussion/Conclusion:

As stated above, the public agency is required to ensure that the student is provided with the special education and related services required by the IEP, including the services required by a BIP (34 CFR §300.101). The public agency must ensure that the special education and related services are made available to the student in accordance with the IEP as soon as possible following the development of the IEP (34 CFR §300.323).

In this case, the complainant alleges that there was a delay in the implementation of the BIP, that the “daily point sheets” were not used on a daily basis, and they were not sent home (Doc. a and interviews with the complainant).

Based on Finding of Fact #23, MSDE does not find that there was a delay in the implementation of the BIP. Based on Finding of Fact #24, MSDE finds that “daily point sheets” were used on a daily basis and that the BIP did not require that they be sent home. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

CORRECTIVE ACTION/TIMELINE:

MSDE requires HCPS to provide documentation, no later than October 31, 2011, that an IEP team has reviewed and revised the IEP to ensure that it is clearly written with respect to how accommodations and supplementary aids and services are to be provided, particularly “extended time” and “modified assignments.”

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

Documentation of the corrective action taken is to be submitted to this office to the attention of 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, which must be *received* within fifteen (15) days of the date of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. 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

XXX

Ms. Ann-Marie Spakowski

August 25, 2011

Page 12

Letter of Findings. 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 Letter of Findings.

Questions regarding the findings, conclusions and corrective action 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 a free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:ks

cc : Robert M. Tomback
Eileen Watson
XXXXXXXXXXXX
Martha J. Arthur
Kathy Stump