



Nancy S. Grasmick
State Superintendent of Schools

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

June 13, 2011

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Ms. Mary Lee Phelps, Interim Acting Director
Department of Special Education Operations
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #11-088

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 April 21, 2011, MSDE received correspondence from Mr. XXXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, the student's parents, hereafter "the complainants," on behalf of their son. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. MSDE investigated the allegation that MCPS has not ensured that the student has been provided with the special education instruction, accommodations, supplementary aids, services, and supports required in the Individualized Education Program (IEP) since the start of the 2010-2011 school year, in accordance with 34 CFR §§300.101, .323, and COMAR 13A.05.01.09D.

INVESTIGATIVE PROCEDURES:

1. On April 26, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the student's father to clarify the allegation to be investigated.

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2. On May 2, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Lee Phelps, Interim Acting Director, Department of Special Education Operations, MCPS; Ms. Gwendolyn Mason, Director, Special Education Services, MCPS; and Ms. Alison Steinfels, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On May 6, 2011, MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to the investigation. On the same date, MSDE notified Ms. Phelps of the allegation and requested that her office review the alleged violation.
4. On May 24, 2011, Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit to review the student's education record at XXXXXXXXX XXXXXXXXXXXXX (XXXXXXXXXX) and interviewed the following school system staff:
 - a. Ms. XXXXXXXXXXX, Principal, XXXXXXXXXXX;
 - b. Ms. XXXXXXXX, Resource Teacher, XXXXXXXXXXX;
 - c. Ms. Alissa Dalgewicz, Speech Language Pathologist, MCPS;
 - d. Mr. XXXXXXXXXXX, School Counselor, XXXXXXXXXXX; and
 - e. Ms. XXXXXXXXXXX, Classroom Teacher, XXXXXXXXXXX.

Ms. Steinfels; Ms. Donna Naberhuis, Compliance Specialist, Equity Assurance and Compliance Office, MCPS; and Ms. Patty Grundy, Paralegal, MCPS, were present as representatives of MCPS, in order to provide information on MCPS policies and procedures, as needed.

5. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. IEP, dated June 10, 2010 and revised on December 23, 2010 and March 17, 2011;
 - b. School staff notes of meetings to discuss accommodations provided and strategies utilized, dated September 24, 2010 to March 3, 2011;
 - c. Reports of the student's progress toward achieving the annual IEP goals for the 2010-2011 school year;
 - d. Teacher reports of the student's classroom performance during the 2010-2011 school year;
 - e. The student's weekly school schedule for the 2010-2011 school year;
 - f. Speech Language Therapist's service logs for the 2010-2011 school year;
 - g. Speech Language Therapist's communication logs for the 2010-2011 school year;
 - h. Report of a classroom observation conducted on March 28, 2011 by staff from XXXXXXXXXXXXXXXXXXXX; and

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- i. Correspondence from the complainants alleging a violation of IDEA, received by MSDE on April 21, 2011.

BACKGROUND:

The student is twelve (12) years old and attends XXXXXXXXXXXX. He is identified as a student with a specific learning disability, and receives special education instruction and related services under IDEA. The complainants have participated in the education decision-making process and have been provided with notice of IEP team decisions and the procedural safeguards (Docs. a and i).

FINDINGS OF FACT:

IEP Requirements

1. The IEP requires that the student be provided with the following services by a general education teacher and other members of the IEP team in order to assist him to achieve goals to improve reading, written language, math, work habits, and expressive and receptive language skills:
 - a. Fifteen (15) hours per week of special education instruction in all academic areas in the general education classroom;
 - b. Two and one-half (2.5) hours per week of special education instruction in the area of reading comprehension and two (2) hours per week in the area of reading decoding skills, utilizing research-based interventions, in a separate special education classroom;
 - c. Supports in both the general and separate special education classrooms, including the following:
 - i. use of a scribe and graphic and visual organizers;
 - ii. extended time;
 - iii. reduced distractions;
 - iv. small group instruction;
 - v. breakdown of tasks into smaller items;
 - vi. checks for student's understanding of materials presented;
 - vii. prompts to stay on task;
 - viii. use of a calculator, Judy clock, fraction pieces, number lines, 3-D shapes, charts, and other manipulatives in math;
 - ix. verbatim reading of text during presentation of instruction;
 - x. provision of notes and outlines;

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- xi. reduced work load; and
 - xii. modified materials (Doc. a).
- 2. The IEP also requires that the student be provided with one (1) forty-five (45) minute session of speech/language therapy per week to be provided by a speech/language therapist in a separate special education classroom (Doc. a).
- 3. At IEP team meetings held on June 10, 2010 and December 23, 2010, the complainants expressed concerns about whether the supports that the student requires can be provided in the current educational placement. The team considered teacher reports that while the student is making progress toward achieving the annual IEP goals, he continues to perform below grade level and requires a great deal of support, especially in math and science. The team reviewed the supports being provided to the student and determined that with the use of supplementary aids and services, the least restrictive environment in which the IEP can be implemented continues to be a combination of general and separate special education classrooms (Doc. a).
- 4. In order to address the complainants' continuing concerns about the availability of appropriate supports for the student, the IEP was revised on March 17, 2011 to state more specifically the types of calculation devices to be provided to the student. The IEP was revised to specify that the student is to be provided with a calculator, Judy clock, fraction pieces, number lines, hundreds charts, counters, multiplication charts, 3-D shapes, and manipulatives. At that time, the team decided that the educational placement remains appropriate and that the student will be attending XXXXXXXXXXXXXXXXXXXX¹ at the start of the 2011-2012 school year (Doc. a).

IEP Implementation

- 5. The student's weekly school schedule documents that he is assigned to classes for time periods and in settings consistent with the special education instruction and related services required by the IEP (Doc. e).
- 6. Teacher reports of the student's classroom performance during the school year document that the student has been provided with instruction using research-based interventions in reading, that he is receiving prompting, that he is provided with the use of organizers, a protractor, a compass, 3-D shapes, a number line, and adult assistance in class (Doc. d).

¹ This is the middle school to which the student will transition for the 2011-2012 school year (Interviews with school system staff).

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7. A review of the student's classrooms indicates that he receives instruction in small groups within classrooms where graphic and visual organizers, calculators, and a Judy clock are used (Review of the student's classrooms).
8. A review of the class work completed by the student throughout the school year demonstrates that he is provided with organizers, a scribe, modified materials, breakdown of tasks into smaller items, and a reduced workload (Review of the student's class work for the 2010-2011 school year).
9. A March 28, 2011 report of a classroom observation of the student conducted by staff from XXXXXXXXXXXXXXXXXXXX in the student's math class documents that the student is being provided with instruction in a small group setting using manipulatives and that he is provided with prompts and checks for understanding by both general and special education teachers (Doc. h).
10. The Speech Language Pathologist's service logs document that the student has been provided with forty-five (45) minute sessions of speech/language therapy each week by a speech/language therapist in a separate special education classroom. The Speech Language Pathologist's communication logs reflect that the complainants have been provided with reports on the topics being addressed with the student (Docs. f and g).
11. School staff notes document that general and special education teachers and the Speech Language Pathologist have met throughout the school year to discuss the accommodations being provided and to share successful strategies being used to assist the student (Doc. b).
12. Reports of the student's progress toward achieving the annual IEP goals document that the goals are being addressed. These reports indicate that the student was making sufficient progress toward achieving the goals by January 2011 and that he had achieved several of the goals by March 2011 (Doc. c).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP. In order to ensure implementation, the public agency must make the IEP accessible to each teacher and service provider who is responsible for implementation of the IEP so that they are informed of their specific responsibilities related to implementation of the IEP (34 CFR §§300.101, .323, and COMAR 13A.05.01.09D).

In this case, the complainants allege that the student is not being provided with the special education instruction and related services required by the IEP because he brings home drawings that he creates during the school day and continues to struggle with completion of work. The

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complainants indicate that they have expressed concerns about this matter at IEP team meetings, and that school staff were unable to provide them with documentation of the provision of services to the student in order to address these concerns (Doc. i and interview with the student's father).

Based on Findings of Fact #1 – 12, MSDE finds that there is documentation that the student's teachers and speech language therapist are aware of their responsibilities for implementing the IEP and that the student has been provided with the special education instruction, related services, and accommodations and supports required by the IEP. Based on Findings of Fact #3 and 4, MSDE further finds that the complainants' concerns about the availability of supports for the student have been addressed by the IEP team. Therefore, this office does not find that a violation occurred.

MSDE understands that the complainants disagree with the team's decisions that the student's needs can be met at the school the student would attend if not disabled. During a State complaint investigation, the state educational agency may determine that proper procedures were not followed when making determinations about the placement and whether there is data to support those decisions.

When it is determined that the public agency has not followed proper procedures, the state agency can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services. However, the state educational agency may not overturn an IEP team's decisions (United States Department of Education, Office of Special Education Programs, Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, MSDE has not identified a procedural violation, either with regard to the allegation investigated or with respect to the student's educational placement, and may not overturn the team's decisions. However, the complainants are reminded that they maintain the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding the student's educational placement.

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 findings of fact or conclusions reached in this LOF. 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 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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainants 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 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/am

cc: Jerry D. Weast
Gwendolyn J. Mason
Alison Steinfels
Donna Naberhuis
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