



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

July 7, 2011

XXX  
XXX  
XXX

Ms. Diane McGowan  
Special Education Supervisor  
Queen Anne's County Public Schools  
202 Chesterfield Avenue  
Centreville, Maryland 21617

RE: XXXXX  
Reference: 11-093

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.

**ALLEGATIONS:**

On May 9, 2011, MSDE received correspondence from Ms. XXXXXXXXXXXX, hereafter "the complainant," filed on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Queen Anne's County Public Schools (QACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. This office investigated the following allegations:

1. QACPS has not provided the complainant with the opportunity to participate in the Individualized Education Program (IEP) team meetings since May 2010,<sup>1</sup> in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D;

---

<sup>1</sup> The complaint alleges violations dating back to August 2009. However, the complainant was informed, in writing, that MSDE has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

XXX

Ms. Diane McGowan

July 7, 2011

Page 2

2. QACPS has not considered the use of positive behavioral interventions and supports, and other strategies, to address behavior since May 2010,<sup>1</sup> in accordance with 34 CFR §300.324(a)(2) and COMAR 13A.05.01.08A(4); and
3. QACPS has not ensured that the student has been provided with the testing accommodations and other behavioral supports required by the IEP since May 2010,<sup>1</sup> in accordance with 34 CFR §300.101 and COMAR 13A.05.01.09D.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 10, 2011, MSDE sent a copy of the correspondence via facsimile, to Ms. Diane McGowan, Special Education Supervisor, QACPS.
3. On May 13, 2011, Ms. Williams contacted the complainant by telephone and clarified the allegations to be investigated.
4. On May 17, 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 also notified Ms. McGowan of the allegations to be investigated and requested that her office review the alleged violations.
5. On June 2, 2011, Ms. Williams and Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at XXXXXXXX XXXXXXXXXXXX (XXXXXXXXXX) in XXXXXXXX, XXXXXXXX to review the student's educational record, and conducted interviews with the following XXXXXXXX personnel:
  - a. Mr. XXXXXXXXXXXX, Jr., Principal;
  - b. Ms. XXXXXXXXXXXX, IEP Chairperson;
  - c. Mr. XXXXXXXX, Case Manager;
  - d. Ms. XXXXXXXXXXXX, School Psychologist; and
  - e. Mr. XXXXXXXX, Behavior Support Staff.

Ms. McGowan attended the site visit as a representative of QACPS and to provide information on QACPS policies and procedures, as needed.

6. On June 14, 2011, Ms. McGowan provided MSDE with additional documents for the investigation.
7. On June 29, 2011, Ms. Williams spoke with Ms. McGowan and requested additional documents.

XXX

Ms. Diane McGowan

July 7, 2011

Page 3

8. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. QACPS Psychological Assessment Report, dated June 8, 2009;
  - b. QACPS Educational Assessment, dated July 10, 2009;
  - c. IEP Team Meeting Notice, dated April 26, 2010;
  - d. IEP, dated May 12, 2010;
  - e. IEP Team Meeting Summary, dated May 12, 2010;
  - f. Student Receipt of "Chill Pass," dated September 1, 2010;
  - g. Notes of behavioral intervention activities, dated September 2010 through December 2010;
  - h. IEP Team Meeting Notice, dated October 5, 2010;
  - i. IEP Team Meeting Summary, dated October 6, 2010;
  - j. IEP Team Meeting Notice, dated February 7, 2011;
  - k. IEP Team Meeting Summary, dated February 9, 2011;
  - l. IEP Team Meeting Notice, dated April 20, 2011;
  - m. IEP Team Meeting Summary, dated May 5, 2011;
  - n. IEP, dated May 5, 2011; and
  - o. Receipt of Parental Rights, dated May 5, 2011.

### **BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with other health impairment (OHI) related to Attention Deficit Hyperactivity Disorder (ADHD) under IDEA, and receives special education services. He attended XXXXXX from the start of the 2010-2011 school year until March 2011, at which time he was administratively transferred to XXXXXXXX a QACPS alternative high school. During the time period covered by this investigation, the complainant has been provided with a copy of the procedural safeguards (Doc. o).

### **ALLEGATIONS #1 AND #2: PARENT PARTICIPATION IN IEP TEAM MEETINGS AND DEVELOPMENT OF IEP THAT ADDRESSES BEHAVIORAL CONCERNS SINCE MAY 2010**

### **FINDINGS OF FACT:**

1. On May 12, 2010, an IEP team meeting was convened, without the complainant, to review the student's program and progress. There is documentation that an invitation to this IEP team meeting was mailed to the complainant on April 26, 2010, but there is no

documentation that the complainant responded and no documentation of any other attempt made by school staff to contact her to inform her in advance of the meeting (Docs. d and e).

2. At the May 12, 2010 IEP team meeting, the team considered teacher input concerning the student's behavioral needs and the results of a psychological assessment conducted in June 2009. The IEP team developed an IEP goal for the student to demonstrate taking responsibility for his academic success, with objectives related to self-management and appropriate behavior, completing assignments in a timely manner, and seeking clarification when needed from teachers. The team included the following behavioral interventions, supports, and strategies to support the goal and address the student's behavior:
  - a. Use of a "chill pass" which the student could use to remove himself from the classroom to avoid confrontation and to take a break to refocus. When the "chill pass" was utilized, the student was to report to the office to speak with behavior support staff;
  - b. Extra time to complete assignments; and
  - c. Reduced distractions.

There is no documentation that the complainant was provided with a written explanation of these decisions or the basis of these decisions (Docs. d, e, and f).

3. On October 6, 2010, the IEP team convened, without the complainant and there is no documentation that the complainant was informed of this meeting. The purpose of this meeting was to discuss the student's behavior, which included a behavioral incident<sup>2</sup> that occurred on October 1, 2010 (Docs. h, i, and review of record).
4. At the October 6, 2010 meeting, the IEP team determined that the goals and objectives in the student's IEP continued to be appropriate, but found that the team needs to consider the student's "need for more structure and supervision." The meeting summary indicates that additional behavioral interventions were to be incorporated into the IEP. However, the team did not revise the IEP at that time, nor is there documentation that they developed a Behavioral Intervention Plan (BIP). Further, there is no documentation that the team's recommendations were subsequently addressed or that another meeting was scheduled. There is documentation that on October 7, 2010, the complainant was mailed a summary of the IEP team meeting discussion (Doc. i and review of record).

---

<sup>2</sup> The complaint does not allege a violation regarding the disciplinary removal requirements of IDEA, and there is no indication that the student was disciplinary removed from school in excess of ten (10) school days during the 2010-2011 school year.

XXX

Ms. Diane McGowan

July 7, 2011

Page 5

5. The student's education record contains a copy of an IEP meeting invitation dated February 7, 2011 for an IEP team meeting scheduled for two (2) days later, on February 9, 2011. However, there is no documentation of any other attempts made to inform the complainant of the meeting so that she might be able to attend (Docs. j, k, and review of record).
6. On February 9, 2011, the IEP team convened without the complainant. The IEP team meeting summary indicates that the complainant gave verbal permission to hold the meeting in her absence, but there is no documentation that the complainant was offered the opportunity to participate by conference call (Doc. k and review of record).
7. Although the summary of the February 9, 2011 IEP team meeting indicates that the IEP team considered the student's BIP, there is no documentation that a BIP had been developed. At the meeting, the team determined that the IEP remained appropriate to meet his needs, but there is no documentation that the complainant was provided with a written explanation of the basis of this decision (Doc. k and review of record).
8. There is documentation that on April 20, 2011, school staff sent the complainant an invitation to an IEP team meeting scheduled for May 4, 2011. There is also documentation that, at the complainant's request, the IEP team meeting was rescheduled to May 5, 2011, and that the complainant participated in this meeting (Docs. l and m).
9. On May 5, 2011, the IEP team reviewed the student's program and determined that it continued to be appropriate because the student's lack of concentration would be "offset by XXXXXXXXXXXXXXXXXX support staff." However, while the IEP requires that the student be provided with social and emotional supports, it does not identify what those supports are or how they are to be provided (Docs. m, n, and review of record).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1**

School systems are required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. These steps include providing the parent with reasonable notice of the meeting early enough to ensure that the parent will have an opportunity to attend. In Maryland, reasonable notice is defined as at least ten (10) days' written notice, unless it is necessary to expedite a meeting to ensure the provision of a free appropriate public education (FAPE) (34 CFR §300.322 and COMAR 13A.05.01.07D).

School systems are also required to schedule the meeting at a time and place that is mutually convenient for the parent and the school system. Examples of attempts to ensure parent participation include detailed records of telephone calls made or attempted and the results of those attempts, copies of correspondence sent to the parent and any responses received, or

XXX

Ms. Diane McGowan

July 7, 2011

Page 6

detailed records of visits made to the parent's home or place of employment and the results of those visits. If the parent is unable to attend an IEP team meeting but would like to, the public agency must use other methods to ensure parent participation, including, but not limited to, conference calls (34 CFR §300.322 and COMAR 13A.05.01.07D).

Based on Findings of Fact #1, #3 and #5, MSDE finds that there is no documentation that the school system took the required steps to ensure that the complainant had the opportunity to participate in the IEP team meetings on May 12, 2010, October 6, 2010, and February 9, 2011. Therefore, MSDE finds a violation occurred with respect to this allegation.

### **Additional Violation**

Written notice must be given to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE). This notice includes a description of the action proposed or refused, the basis for the decision, other options considered, and the data used in making the decision (34 CFR §300.503). In this case, based on Findings of Fact # 2, 4, and 7, MSDE finds that in the instances where the complainant was not provided with the opportunity to participate in IEP team meetings, she was also not provided with written notice of the determinations that were made or the basis of those decisions. Therefore, MSDE finds a violation with respect to this issue.

### **Allegation #2**

An IEP must include special education services designed to address the student's needs that arise from the disability. When developing the IEP, the team must consider assessment results, information from the student's teachers, and input from the parent. In the case of a student whose behavior impedes his learning or that of others, the IEP must include strategies to address that behavior. Additionally, the IEP must be written in a manner that is clear to all persons involved in the development and implementation of the IEP (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999<sup>3</sup>).

In this case, based upon the conclusion found regarding Allegation #1 that the parent was not afforded the opportunity to participate in all of the IEP team meetings, MSDE finds that the student's program had been developed and revised without parent input. Further, based on Finding of Fact #4, MSDE finds that, on October 6, 2010, the IEP team determined the student required additional behavioral interventions, but did not revise the IEP to include these interventions. Based on Finding of Fact #7, MSDE finds that there is no documentation of the BIP which the IEP team reports was reviewed as a part of his program. Finally, based on Finding of Fact #9, MSDE finds that the IEP developed on May 5, 2011 was not written clearly. Therefore, MSDE finds violations with respect to this allegation.

---

<sup>3</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

**ALLEGATION #3: PROVISION OF TESTING ACCOMMODATIONS AND OTHER BEHAVIORAL SUPPORTS REQUIRED BY THE IEP SINCE MAY 2010**

**FINDINGS OF FACT:**

10. The student's IEP developed on May 12, 2010 required that the student be provided with the following testing accommodations and behavioral supports:
  - a. Extra time to complete assignments;
  - b. Reduced distractions; and
  - c. A "chill pass" which would allow the student to excuse himself from class in order to meet with a behavioral specialist (Docs. d and e).
11. There is no documentation that the school system provided the student with extra time to complete assignments or ensured that the student had reduced distractions in which to perform his school work (Review of record).
12. There is documentation that the school system provided the student with a "chill pass" during September 2010 and October 2010. However, although the IEP continued to require that the student be permitted to use the "chill pass," there is documentation that in November 2010, the student was no longer permitted to use the "chill pass" because school staff believed that he was not using it properly (Docs. f, g, and review of record).

**DISCUSSION/CONCLUSIONS:**

The public agency must ensure that special education and related services are available to each student in accordance with the IEP (34 CFR §§300.101 and .323). In this case, based on Findings of Fact #10-#12, the documentation does not indicate that the accommodations and behavioral supports required by the IEP were consistently provided to the student. Therefore, MSDE finds a violation with regard to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific:**

MSDE requires QACPS to provide documentation by the start of the 2011-2012 school year that the IEP team, including the complainant, has convened to review and revise the student's program to ensure that the IEP is appropriate and it addresses the student's identified behavioral needs. At this IEP team meeting, MSDE also requires QACPS to determine the amount and

XXX  
Ms. Diane McGowan  
July 7, 2011  
Page 8

nature of *compensatory services*<sup>4</sup> or other remedy necessary to redress the violations found in this LOF. QACPS must provide the complainant with proper written notice of the team's determinations.

**School-Based:**

MSDE requires QACPS to provide documentation by September 30, 2011 of the steps taken to determine if the procedural violations identified in this LOF are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXX. If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that staff properly implement the requirements of IDEA and COMAR, and provide a description of how QACPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 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 initial date that the school system determines non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements.

Documentation of completion of all corrective actions 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 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

---

<sup>4</sup> 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).



XXX  
Ms. Diane McGowan  
July 7, 2011  
Page 9

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, conclusions and corrective actions 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 to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of FAPE 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/tw

cc: Carol A. Williamson  
XXXXXXXXXXXXX  
XXXXXXXXXX  
Dori Wilson  
Martha Arthur  
Tyra Williams