



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

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May 30, 2012

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Mr. Edward Feinberg
Coordinator
Anne Arundel County Infants and Toddlers Program
Point Pleasant Elementary School
1450 Furnace Avenue
Glen Burnie, Maryland 21060

Ms. Mary Tillar
Director of Special Education
Anne Arundel County Public Schools
2644 Riva Road
Annapolis, Maryland 21401

RE: XXXXX
Reference: #12-073

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 April 3, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Anne Arundel County Infants and Toddlers Program (AACITP) and the Anne Arundel County Public Schools (AACPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced child. The MSDE investigated the following allegations:

1. The AACITP did not ensure that the Individualized Family Services Plan (IFSP) team meeting conducted in May 2011 included the proper participants, in accordance with 34 CFR §§303.342 and .343;

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2. The AACITP did not ensure that the child was provided with the classroom instruction or speech-language therapy required by the IFSP during July 2011, in accordance with 34 CFR §303.340;
3. The AACPS did not ensure that the IEP team meeting conducted on March 20, 2012 included the proper participants, in accordance with 34 CFR §300.321; and
4. The AACPS did not provide the complainant with a copy of each assessment, report, data chart, draft Individualized Education Program (IEP), or other documents that the IEP team planned to discuss at IEP team meetings at least five (5) business days before the March 20, 2012 and April 10, 2012 IEP team meetings, in accordance with Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 2, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mr. Edward Feinberg, Coordinator, AACITP; Ms. Mary Tillar, Director of Special Education, AACPS; and Ms. Ellen Meyer, Coordinator of Compliance, AACPS.
3. On April 5, 2012, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 6, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Mr. Feinberg and Ms. Tillar of the allegations and requested that their offices review the alleged violations.
5. On April 17, 2012, the MSDE received a written response to the complaint from the AACITP and the AACPS, via electronic mail (e-mail).
6. On May 3, 2012, the MSDE requested that the AACPS provide documentation from the student's educational record, which were provided to the MSDE on May 7, 2012.
7. On May 8, 2012, the AACPS provided documentation, relevant to the allegations in the complaint, via facsimile.
8. The 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 April 3, 2012;
 - b. IEP team meeting invitation for the March 20, 2012 IEP team meeting;

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- c. IEP team meeting report for the March 20, 2012 IEP team meeting;
- d. IEP team meeting invitation for the April 10, 2012 IEP team meeting;
- e. IEP team meeting report for the April 10, 2012 IEP team meeting; and
- f. Written response to the complaint from the AACITP and the AACPS to the complainant, dated April 17, 2012.

BACKGROUND:

The child is four (4) years old, is identified as a child with autism under the IDEA, and receives special education instruction and related services at the XXXXXXXXXXXXXXXXXXXXXXXX. Prior to being identified as a child with a disability under Part B of the IDEA, the child received early intervention services through an IFSP. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-f).

ALLEGATIONS #1 & #2: IFSP TEAM MEETING PARTICIPANTS AT THE MAY 2011 IFSP MEETING AND IFSP IMPLEMENTATION IN JULY 2011

Summary of Findings/Conclusions:

The AACITP and the AACPS personnel acknowledge that the May 27, 2011 IFSP team meeting did not include the proper participants. Further, they acknowledge that the student did not receive the services required by the IFSP during the month of July 2011 and, in response, have indicated that the child will be provided with the missed services (Doc. f). The MSDE concurs with the findings and appreciates the acknowledgement.

ALLEGATION #3: MEETING PARTICIPANTS AT THE MARCH 20, 2012 IEP TEAM MEETING

Findings of Facts:

1. The IEP team convened on March 20, 2012. The meeting invitation includes the names of specific local school system personnel who would attend the meeting. In the written response to the complaint, the AACPS acknowledges that not all of the listed individuals were present and that the team members should have participated or been properly excused from the meeting (Docs. b, c, and f).
2. There is documentation that at the start of the March 20, 2012 team meeting, after the Speech-Language Pathologist reported the child's progress in speech-language therapy, the complainant requested that the meeting be rescheduled with the proper participants. School staff agreed to reschedule the meeting and no decisions were made by the team regarding the student's program (Doc. c).

Discussion/Conclusions:

The IEP team must include the child's parent and specific school system staff as delineated by the regulations. The specific members of the IEP team may be excused from attending an IEP team meeting if the parent and the public agency consent to the excusal in writing (34 CFR §300.321).

Based on the Finding of Fact #1, the MSDE finds that the March 20, 2012 IEP team did not consist of the proper participants. However, based on the Finding of Fact #2, the MSDE finds that the complainant exercised her parental rights by requesting that the IEP team be rescheduled so that the proper participants could be in attendance. Because school staff did not proceed to conduct the IEP team meeting, the MSDE finds no documentation that a meeting was held without proper participants and finds no violation regarding this allegation.

ALLEGATION #4: PROVISION OF DOCUMENTS PRIOR TO IEP TEAM MEETINGS ON MARCH 20, 2012 AND APRIL 10, 2012

Findings of Facts:

3. There is documentation that before deciding to reschedule the March 20, 2012, team meeting, the complainant expressed concerns about not having received the documents to be considered at the meeting at least five (5) business days before the meeting. School staff agreed to reschedule the meeting and no decisions were made by the team regarding the student's program (Doc. c).
4. On April 10, 2012, the team, including the complainant, reconvened and conducted a review of the student's IEP (Docs. d and e).
5. The documents to be considered at the March 20, 2012 meeting, which was rescheduled to April 10, 2012, included the current IEP, a recent IEP progress report, and "progress notes," which were sent home to the complainant on a daily basis. The AACPS personnel acknowledge that these documents were not provided to the complainant at least five (5) business days before the meeting. However, they further report that the complainant had previously received the documents and, as a result, they were not required to provide them again (Interview with AACPS personnel).

Discussion/Conclusions:

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07).

The MSDE has provided written guidance to school systems regarding the implementation of this law. The MSDE stated that, even if a document was previously provided to a parent, the law

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requires that *any* document to be considered at the meeting must be provided to the parent at least five (5) days prior to the meeting (*Technical Assistance Bulletin 20, Provision of Accessible Copies of Documents to Parents*, MSDE, June 20, 2010, p. 5).

March 20, 2012 IEP team meeting

Based on the Finding of Fact #3, the MSDE finds that no IEP team meeting was held on March 20, 2012, and, as a result, no violation occurred with respect to this aspect of the allegation.

April 10, 2012 IEP team meeting

Based on the Findings of Facts #4 and #5, the MSDE finds that the documents to be considered at the April 10, 2012 IEP team meeting were not provided to the complainant in accordance with the regulation and the MSDE guidance. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

CORRECTIVE ACTION/TIMELINES:

Child-specific

In its written correspondence, the AACITP and the AACPS indicate that compensatory services will be provided to remediate the loss of services to the child. The MSDE concurs with this proposal and requires that the AACITP and the AACPS provide documentation by the start of the 2012-2013 school year that the services have been provided.

AACITP

In its written correspondence, the AACITP indicates that training is being conducted to ensure proper participation on IFSP teams. The MSDE requires the AACITP to provide documentation of completion of this action by the start of the 2012-2013 school year.

AACPS

The MSDE requires the AACPS to provide documentation by the start of the 2012-2013 school year, of the steps it has taken to ensure that parents are provided with documents at least five (5) business days before they are considered by the IEP team in accordance with the regulation and MSDE guidance.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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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 Letter of Findings. If additional information is provided, it will be reviewed and the 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 actions 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 the IDEA. The 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 : Kevin M. Maxwell

Ellen Meyer

Tom Stengel

Nancy Vorobey

Brian Morrison

Martha J. Arthur

Kathy Stump