



August 16, 2012

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Mr. Daniel Martz
Director of Special Education & Psychological Services
Frederick County Public Schools
191 South East Street
Frederick, Maryland 21701

RE: XXXXX
Reference: #12-099

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 June 29, 2012,¹ the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son. In that correspondence, the complainant alleged that the Frederick County Public Schools (FCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the following allegations:

1. The FCPS has not ensured that all of the needs that arise from the student’s disability have been identified and addressed since January 2012, in accordance with 34 CFR §300.324; and
2. The FCPS did not follow proper procedures after receiving verification that the student required Home and Hospital Teaching (HHT) services in April 2012,² in accordance with COMAR 13A.05.01.10.

¹ On June 26, 2012, this office received an unsigned copy of the complaint from Mr. XXXXXXXXXXXX, the student’s grandfather. On June 29, 2012, a signed copy of the complaint was received from the student’s father, who is the complainant in this case.

² The allegation originally identified the date as March 2012. During the course of the investigation, it was determined that FCPS received the verification in April 2012.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 27, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mr. Daniel Martz, Director of Special Education & Psychological Services, FCPS.
3. On June 29, 2012, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated. On that same date, the student's grandfather sent Ms. Stump additional information to be considered during the course of the investigation, via electronic mail (e-mail).
4. On July 3, 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. Martz of the allegations and requested that his office review the alleged violations.
5. On July 6, 2012, the MSDE requested documentation from the student's educational record from the FCPS, via e-mail.
6. On July 9 and 11, 2012, the FCPS provided the MSDE with the requested documentation, via e-mail.
7. On July 9, 2012, the student's grandfather sent the MSDE additional information to be considered during the course of the investigation, via e-mail.
8. On July 11, 2012, the MSDE received additional documentation to be considered during the course of the investigation from the student's grandfather, via United States mail.
9. On July 19, 2012, Ms. Stump and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted an interview with Ms. Linda Chambers, Supervisor of Compliance, FCPS, at the FCPS Central Office. On that same date, the FCPS provided the MSDE with additional documentation from the student's educational record.
10. On July 30, 2012, the FCPS sent the MSDE additional documentation from the student's educational record, via United States mail.
11. 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 the MSDE, received on June 26, 2012;
 - b. Correspondence from XXXXXXXXXXXXX to XXXXXXXXXXXXXXXXXXXX staff, dated January 20, 2012;

- c. XXXXXXXX Discharge form, dated January 20, 2012;
- d. Correspondence from the complainant to XXXXXXXXXXXXXXXX staff, dated January 20, 2012;
- e. FCPS *Screening Referral* forms, dated January 20, 2012;
- f. FCPS *Individualized Education Program (IEP) Team Meeting Notes*, dated January 26, 2012;
- g. FCPS Psychological Assessment report, dated February 23, 2012;
- h. FCPS Educational Assessment report, dated March 1, 2012;
- i. FCPS *Individualized Education Program (IEP) Team Meeting Notes*, dated March 23, 2012;
- j. FCPS *Application for Home and Hospital Instruction*, dated April 18, 2012;
- k. FCPS *Individualized Education Program (IEP) Team Meeting Notes*, dated April 19, 2012;
- l. IEP, dated April 19, 2012;
- m. FCPS *Individualized Education Program (IEP) Team Meeting Notes*, dated May 24, 2012;
- n. IEP, dated May 24, 2012;
- o. FCPS *Individualized Education Program (IEP) Team Meeting Notes*, dated July 3, 2012;
- p. IEP, dated July 3, 2012;
- q. FCPS *Home and Hospital Teacher Time Sheet*, dated between April 2012 and June 2012; and
- r. Student's attendance data for the 2011-2012 school year.

BACKGROUND:

The student is fifteen (15) years old and attends XXXXXXXXXXXXXXXX (XXXXXXXXXXXX). On March 23, 2012, the student was identified as a student with an emotional disability under the IDEA and on April 19, 2012, an IEP was developed. 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 the procedural safeguards (Docs. a, f, i, k-o, and p).

FINDINGS OF FACTS:

January 2012

- 1. From January 6, 2012 until January 20, 2012, the complainant hospitalized the student at XXXXXXXXXXXXXXXX. Hospital records indicate that the student was admitted due to "depression, anxiety, and school-related stress" (Docs. a-c).
- 2. Prior to this period of hospitalization, the student was absent for fifteen (15) school days during the 2011-2012 school year, seven (7) of which were unexcused and eight (8) of which were due to physical illness (Doc. r).

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3. On January 20, 2012, the complainant requested, in writing, that an evaluation be conducted to determine the student's eligibility under the IDEA based on difficulty he was experiencing related to anxiety (Doc. d).
4. On January 26, 2012, the IEP team convened and reviewed *Screening Referral* forms completed by the student's teachers in preparation for the meeting. The teachers reported that the student demonstrates behavioral concerns, including a "lack of focus," distractibility, socializing instead of working, difficulty maintaining attention and lack of organization. One of the student's teachers reported that she had been in contact with the complainant during the course of the semester regarding these behaviors and the complaint indicated that he believed that the behaviors were related to the student's Attention Deficit/Hyperactivity Disorder (ADHD) (Docs. e and f).
5. At the January 26, 2012 meeting, the team also considered the concerns of the student's grandfather, who expressed his belief that the student experiences anxiety related to his performance in school (Doc. f).
6. The team considered the XXXXXXXXXXXXX discharge summary, indicating that the student is diagnosed with major depressive disorder, recurrent anxiety disorder, "NOS", ADHD, and asthma (Docs. c and f).
7. The team also considered a letter to XXXXXX staff from XXXXXXXXXXXXX staff, stating that the student "reportedly experiences sudden bouts of anxiety, which sometimes causes physical responses such as vomiting, headache, and fatigue" (Docs. b and f).
8. The team further considered the interventions used by the student's teachers during the first (1st) semester of the 2011-2012 school year to assist the student with his inattentive behaviors, including a change in schedule, provision of a "crisis pass," after-school tutoring in English and geometry, and consultation between the student's teachers and the guidance counselor (Docs. e and f).
9. Based on this information, the team suspected that the student has a disability and recommended that an educational assessment and a psychological assessment be conducted. The complainant provided consent for the assessments to be conducted (Doc. f).

March 2012

10. On March 23, 2012, the IEP team reconvened to consider the assessment results. At the meeting, the team considered information that the student had been absent for twenty (20) school days during the 2011-2012 school year, in addition to being out of school for two (2) weeks due to his hospitalization. The team also considered teacher reports of the student's classroom performance. Some of the teachers reported that the student is talkative but does not demonstrate behaviors that interfere with his learning. Other

teachers reported that the student “completes work quickly,” “does the bare minimum” in class, and does not attempt to gather or complete work that is missed due to absences (Doc. i and r).

11. The team considered information from the complainant that he has experienced difficulty convincing the student to attend school since the student was in the third (3rd) grade and that he believes the cause of the student’s resistance to attend school is an “emotional disability.” The student’s grandfather also reported that he believed the student has an emotional disability and that the student requires “an expert” to deal with his anxiety (Doc. i).
12. The team reviewed the results of the educational assessment, which indicate that the student is functioning in the “average” to “high average” range in all areas of academics (Docs. h and i).
13. The team reviewed the results of the psychological assessment, which indicate that the student’s overall cognitive functioning is in the “superior” range but that he exhibits “significant anxiety” that causes him to seek task avoidance. The report states that the student “struggles with school avoidance” as a result of his anxiety (Docs. g and i).
14. After reviewing this information, the team determined that the student is a student with an emotional disability under the IDEA because he demonstrates a tendency to develop physical symptoms or fears associated with personal or school problems and that this behavior has occurred over a long period of time and to a significant degree. The team agreed to reconvene within thirty (30) days to develop the initial IEP (Doc. i).

April 2012

15. On April 18, 2012, FCPS personnel received an application for HHT services from the complainant with verification from the XXXXXXXXXXXXXXXXXXXXXXXXXXXX that the student was unable to attend school due to an emotional condition. The verification indicates that the student’s anxiety causes him to develop physical symptoms in the morning that prevent him from attending school at the start of the day. The verification recommends that the student “attempt to attend school on a modified day program with one-half (½) day taught at home.” The application for HHT was approved by FCPS personnel on that same date (Doc. j).
16. On April 19, 2012, the team reconvened to develop the initial IEP for the student. The documentation of the meeting indicates that the team considered reports from the student’s teachers that he did not pass his courses for the third (3rd) quarter of the school year because he did not complete work missed as a result of his school absences. The team also considered the input of the complainant that he believed that a proposed draft IEP provided to him prior to the meeting was a “standardized IEP” that was not designed to address the student’s individualized needs (Doc. k).

17. The team reviewed and revised the proposed draft IEP to include annual goals to assist the student with using coping strategies to reduce frustration and anxiety to remain engaged in his work while at school. However, the IEP does not address the student's need to reduce his anxiety in order to attend school (Docs. k and l).
18. The team also determined that the student required twenty (20) minutes per month of special education instruction in a "resource classroom" where he would receive special education instruction from a special educator to work toward achieving the annual goals. The team determined that the IEP could be implemented with the provision of accommodations and supplementary aids and services, including provision of class notes, extended time, multiple breaks, reduced distractions, repetition of directions, and preferential seating (Docs. k and l).
19. The IEP team also determined the HHT services to be provided to the student but did not develop a plan for returning the student to a full-time school-based program (Docs. j-l).
20. The team agreed to reconvene at the end of May 2012 to review the student's progress and revise the program, if necessary (Doc. k).
21. There is documentation that the student received the HHT instruction, as determined by the IEP team, between April 20, 2012 and the end of the 2011-2012 school year. However, the student did not attend school in the afternoon, which was part of his program, as determined by the IEP team (Docs. q and r).

May 2012

22. On May 24, 2012, the IEP team reconvened to review the student's program and progress. The documentation of the meeting indicates that the team considered information that the student did not attend school, even on the modified schedule, since the April 19, 2012 meeting (Docs. m and r).
23. The team considered input from the complainant, who requested that the student be provided with "cognitive-based therapy" to assist him to return to school for the 2012-2013 school year. The IEP team decided to reconvene with participation by FCPS Central Office staff to consider the interventions to be provided to ensure the student's transition back to school (Doc. m).
24. The IEP was revised to include annual goal for the student to improve his self-esteem and ability to self-advocate. The IEP was also revised to require that the student be permitted to leave class to meet with the guidance counselor when needed. However, the team did not address the student's lack of school attendance (Docs. m and n).

July 2012

25. On July 3, 2012, the IEP team reconvened with FCPS Central office staff. Documentation of the meeting indicates that team considered the student's educational and medical history, including his "long history of anxiety and asthma" (Doc. o).
26. The team considered the reports of the student's teachers, which indicate that attendance was the biggest concern for the student and that he did not complete the make-up work from his absences. The teachers report that, when the student is in class, he is easily distracted and has difficulty staying on-task (Doc. o).
27. The team considered the concerns of the complainant about the student's resistance to attend school, his difficulty handling the workload, and how the student's anxiety can cause him to hyperventilate, which can trigger an asthma attack. The team also considered the complainant's request that the student continue to receive HHT services and rejected the request (Doc. o).
28. The team revised the IEP to include goals for the student to attend school and, when in school, to participate in his classes. The team determined that the student requires one and one-half (1½) hours of special education instruction each day and one (1) hour of counseling services each week in order to assist him in achieving the annual goals. The IEP team also determined that the student will be provided with one (1) hour of counseling per week during the remainder of the summer in preparation for the start of the 2012-2013 school year (Docs. o and p).
29. The IEP team determined that the student will receive the special education instruction in the specialized program for students with "significant emotional needs." The team determined that while in this setting, the student will receive direct instruction in "organizational strategies" in order to reduce his anxiety caused by the work load and work completion. The team determined that counseling services will be provided outside of the general education setting in both an individual and a group setting, and will focus on teaching the student coping strategies and problem-solving skills (Docs. o and p).
30. The IEP team determined that the student will be provided with additional supports in both the general education and the separate special education classrooms, including "checklists" to track work completion and to record assignments, weekly home-school communication, daily "check-in" and "check-out" with a designated staff member, the ability to turn in partially completed assignments, and the development of a health/safety plan in order to address anxiety attacks and the relationship to the student's asthma (Docs. o and p).

DISCUSSION/CONCLUSIONS:

Allegation #1: Identifying and Addressing the Needs That Arise From the Student's Disability Since January 2012

Timeline for Evaluation and IEP Development

The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency's receipt of a written referral for evaluation (34 CFR § 300.301 and COMAR 13A.05.01.06(A)). Each public agency must ensure that a meeting to develop an IEP for a student is conducted within thirty (30) days of a determination that the student needs special education and related services (34 CFR §300.323).

In this case, the complainant alleges that the FCPS was required to ensure that the student was provided with special education services to address lack of school attendance due to school-related anxiety when school staff became aware of the student's needs in January 2012 (Doc. a and interview with the complainant).

Based on the Findings of Facts #1-#14, the MSDE finds that the initial evaluation of the student began within six (6) days of the written request for an evaluation and was completed within the required timelines. Based on the Findings of Facts #14-#19, the MSDE further finds that once the student was determined eligible on March 23, 2012, the initial IEP was developed within thirty (30) days, as required. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

IEP That Addresses the Identified Needs

In order to ensure the provision of a Free Appropriate Public Education (FAPE), the public agency must provide services that address the student's identified special education needs. To appropriately identify and address the needs that arise from the disability, the IEP team must consider 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).

In this case, the complainant alleges that the IEP does not address the student's need to develop techniques to reduce the anxiety about work completion which results in physical symptoms that prevent him from attending school (Doc. a and interview with the complainant).

Based on the Findings of Facts #15-#20, #22-#24, and #25-#30, the MSDE finds that while there was information that the student's anxiety resulted in physical symptoms that prevented him from attending school, the IEP did not include goals and services to address those needs from April 19, 2012 until July 3, 2012. Therefore, the MSDE finds a violation regarding this allegation between April 19, 2012 and July 3, 2012.

Allegation #2: Home and Hospital Teaching (HHT) services in April 2012

If a student with a disability is unable to participate in the student's school of enrollment and is provided with instruction at home because of a physical or an emotional condition, the IEP team must determine the HHT services to be provided and develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10). The public agency must ensure that HHT services are provided within ten (10) school calendar days of the receipt of the verification and must ensure that educational placement in the home for a student with an emotional condition does not exceed sixty (60) consecutive school days (COMAR 13A.03.05.03 and 13A.05.01.10) When the period of treatment or convalescence ends, the IEP team must review and revise the IEP and determine the appropriate placement in the Least Restrictive Environment (LRE) (COMAR 13A.05.01.10).

Based on the Findings of Facts #15 and #19, the MSDE finds that, after receiving verification that the student was unable to attend school due to an emotional condition in April 2012, the IEP team determined the instructional services to be provided to the student during the period of his absence. Based on the Finding of Fact #21, the MSDE finds that the services began within the required timeframe and that the period of services did not exceed sixty (60) consecutive school days. Based on the Finding of Fact #19, the MSDE finds that the team determined the appropriate placement in the LRE when the period of treatment ended. Therefore, the MSDE finds no violation regarding these aspects of the allegation.

However, based on the Finding of Fact #19, the MSDE finds that a plan was not developed for returning the student to a school-based program until July 3, 2012. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the FCPS to provide documentation by October 31, 2012, that an IEP team has convened and determined the amount and nature of *compensatory services*³ or other remedy necessary to redress the violations identified in the Letter of Findings.

The FCPS 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, he maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

³ 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).

School-Based

The MSDE requires the FCPS to provide documentation by November 30, 2012, of the steps it has taken to determine if the violation related to the delay in addressing the student's identified needs and in developing a plan for the student to return to a school-based program are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXX.

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 the MSDE. If the school system reports compliance with the requirements, the 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, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the FCPS.

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.

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 the complainant and the school system 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 Facts 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

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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 FAPE for the student, including issues subject to this 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 : XXXXXXXX
XXXXXXX c/o XXXXXXXX
Theresa R. Alban
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XXXXXXXXXX
Martha J. Arthur
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