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Interim State Superintendent of Schools

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June 8, 2012

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

RE: XXXXX
Reference: #12-076

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 10, 2012, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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. The MSDE investigated the allegations listed below.

1. The HCPS did not ensure that proper procedures were followed when restraint was used with the student from the start of the 2011-2012 school year through October 14, 2011¹, in accordance with COMAR 13A.08.04.02 and .05;
2. The HCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s behavioral needs from the start of the 2011-2012 school year through October 14, 2011¹, in accordance with 34 CFR §300.324;

¹ On October 14, 2011, the student stopped attending XXXXXXXXXXXX, which is where the alleged violations occurred (Docs.).

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3. The HCPS did not ensure that the student was provided with behavioral supports as required by the IEP from the start of the 2011-2012 school year through October 14, 2011¹, in accordance with 34 CFR §§300.101 and .323; and
4. The HCPS did not ensure that proper procedures were followed when providing Home and Hospital Teaching services during the 2011-2012 school year, in accordance with COMAR 13A.03.05.03 and .04 and COMAR 13A.05.01.10(C)(5).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 10, 2012, the 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.
3. On April 17, 2012, Ms. Moyo spoke with the complainant by telephone to clarify the allegations to be investigated.
4. On April 18, 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 Ms. Spakowski of the allegations and requested that her office review the alleged violations.
5. On April 24 2012, Ms. Moyo reviewed the video recording provided by the complainant.
6. On May 3, 2012, Ms. Moyo and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, reviewed the student's education record at the HCPS Central Office. Ms. Watson was present at the record review. On the same date, Ms. Moyo and Mrs. Arthur conducted a site visit at the XXXXXXXXXXXX and interviewed the HCPS staff listed below.
 - a. Ms. XXXXXXXX, Acting Principal, XXXXXXXXXXXX;
 - b. Ms. XXXXXXXXXXXX, Behavior Technician, XXXXXXXXXXXX;
 - c. Ms. XXXXXXXX, School Counselor, XXXXXXXXXXXX;
 - d. Dr. Collette C. Horn, School Psychologist, HCPS;
 - e. Ms. XXXXXXXXXXXX, Classroom Teacher, XXXXXXXXXXXX; and
 - f. Ms. Maryanne Crawford, Physical Therapist, HCPS.

Ms. Watson attended the site visit as representatives of the HCPS and to provide information on the HCPS policies and procedures, as needed. On the same date, the HCPS staff provided the MSDE staff with documentation from the student's education record regarding the allegations being investigated.

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7. 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 April 10, 2012;
 - b. IEP, dated February 24, 2011;
 - c. Communication Log from September 1, 2011 until November 4, 2011;
 - d. HCPS Attendance Report from August 29, 2011 until October 28, 2011;
 - e. Data Collection Form from September 6, 2011 until October 14, 2011;
 - f. IEP Revision Notes from the Complainant, sent October 3, 2011;
 - g. Prior Written Notice, dated October 4, 2011;
 - h. Notice and Consent for Assessment, dated October 4, 2011;
 - i. School Staff Notes, dated October 4, 2011;
 - j. Electronic Mail (email) Correspondence between school staff, dated October 4, 2011;
 - k. Student Intervention Plan, dated October 7, 2011;
 - l. Daily Transitions Activity Chart from October 11, 2011 to October 14, 2011;
 - m. Harford County Sheriff's Office Report, dated October 14 and 21, 2011;
 - n. Home and Hospital Teaching Services (HHT) Verification, dated October 31, 2011;
 - o. Email Correspondence between HCPS Staff, dated October 31, 2011;
 - p. Correspondence from the HCPS Staff to the Complainant, dated November 2, 2011;
 - q. IEP Meeting Notice, date October 3, 2011;
 - r. IEP, dated November 4, 2011;
 - s. HHT Teacher Time Reports from November 4, 2011 until February 10, 2012;
 - t. Correspondence from XXXXXXXXX to the Complainant, dated January 27, 2012;
 - u. XXXXX XXXXX XXXXX Methods Manual; and
 - v. Video Recording of the Student Transitioning from the School Bus into the School, undated.

BACKGROUND:

The student is fourteen (14) years old. He is identified as a student with an intellectual disability under the IDEA, and receives special education instruction and related services. 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 - c, e, f, o, q, and r).

The student attended the XXXXXXXXXXXXX, a public separate special education school, from the start of the 2011-2012 school year through October 14, 2011. From October 15, 2011 until November 3, 2011, the complainant did not send the student to school due to her concerns about the behavioral interventions being used at the school. From November 4, 2011 until February 12, 2012, the student was provided with special education instruction at the XXXXX

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XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX). On February 13, 2012, the HCPS placed the student at XXXXXXXXXXXXXXX, a nonpublic separate special education school (Docs. a, d, p, s, t and v).

ALLEGATIONS #1 - #3: PROPER PROCEDURES WHEN USING RESTRAINT, ADDRESSING BEHAVIORAL NEEDS, AND PROVISION OF BEHAVIORAL SUPPORTS

Findings of Facts:

1. The IEP in effect at the start of the 2011-2012 school year was developed on February 24, 2011. It included a goal to address the student's behavior of "dropping" to the floor and refusing to walk when he did not want to participate in an activity and included objectives to assist the student with increasing his independent transitions from the bus to the school building. It also required that school staff provide the student with verbal and "gestural" prompting to walk, with time to respond to these prompts, and with physical assistance when he did not respond (Doc. b).
2. A daily log maintained by school staff documents that, from the start of the school year until October 14, 2011, the student was consistently physically assisted by school staff when making transitions. However, there is no documentation that the student was provided with verbal and gestural prompts prior to being physically assisted (Doc. e and review of the educational record).
3. On October 4, 2011, the IEP team convened to address the complainant's concerns about the manner in which the student was physically assisted during transitions. At the meeting, the team considered school staff reports that the student was not responding to prompts and refused to walk in order to avoid non-preferred activities. The complainant requested that the student be physically assisted, during transitions, by a preferred male staff member. She also requested the use of a daily schedule for the student to follow and the development of a positive support plan that would allow the student to earn rewards for compliance during transition periods (Docs. f and g).
4. At the October 4, 2011 IEP team meeting, the team determined that additional assessments were needed to develop strategies to address the student's behavior, and the complainant provided consent for the assessments to be conducted. The team revised the IEP to require the provision of "edible rewards" paired with praise in order to encourage appropriate behavior when transitioning to and from the bus. The team agreed that it would consider the complainant's remaining requests after reviewing the assessment results (Docs. g and h).
5. On October 7, 2011, school staff met, without the complainant, to discuss additional strategies to facilitate transitions pending the IEP team's consideration of the assessment data. The school staff decided that the student would be asked to walk and be offered the use of a tricycle to transport himself from one area to another. If he did not comply, the

physical therapist recommended utilizing a wheeled “tumble form²” to assist the student with moving from one area to another (Docs. i and j).

6. There is no documentation that the physical therapist determined the manner in which the student could be safely positioned when using the device, including how the appropriate padded wedge form would be used to support the student’s torso, during the use of the device (Review of the educational record and interview with the HCPS staff).
7. On October 14, 2011, the complainant observed school staff using the tumble form² device to transport the student between classes. The student was placed in “a prone position, with his arms behind his back” with Velcro straps holding his torso in place while using the device (Docs. a and m).
8. The tumble form² manufacturer’s *Methods Manual* states that therapeutic positioning be done in consultation with a therapist. Further, when determining whether the student should be placed in the prone position on the tumble form² device, the therapist must consider the student’s tolerance for remaining in the prone position and the appropriate wedge to be utilized in relation to the student’s size, motor ability, and postural needs (Doc. u).
9. On October 14, 2011, the complainant stopped sending the student to XXXXXXXXXXXX due to her concern about the manner in which the tumble form² was being used (Docs. a, d).

Discussion/Conclusions:

Allegation #1

Proper Procedures when Using Restraint from the Start of the 2011-2012 School Year until October 14, 2011

A mechanical restraint is defined as any device or material attached to or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body and that the student cannot easily remove. Mechanical restraint does not include a protective or stabilizing device (COMAR 13A.08.04.02).

A protective or stabilizing device is any device or material attached or adjacent to the student’s body that restricts freedom of movement or normal access to any portion of the student’s body for the purpose of enhancing functional skills, preventing self-injurious behavior, or ensuring safe positioning. A protective or stabilizing device includes adaptive equipment prescribed by a health professional, if used for the purpose for which the device is intended by the manufacturer,

² According to the manufacturer’s *Methods Manual*, this device, also referred to as a “Grasshopper,” is a mobile adaptive positioning device which consists of a padded base with wheels, forms, and straps to ensure that a student is safe and stable while using the device. Students may be placed in many different positions using the device, including the prone position. When used in this position, a padded wedge form is placed under the student’s torso to ensure proper support of the student’s upper body (Doc. u).

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seatbelts, or other safety equipment to secure students during transportation in accordance with a transportation plan. School personnel may use a protective or stabilizing device for a student with a disability, as prescribed by a health professional or in accordance with the student's IEP or BIP (COMAR 13A.08.04.02).

In this case, the complainant alleges that the HCPS school staff used the tumble form² positioning system as a mechanical restraint in response to the student's refusal to transition in and around the school building. She further alleges that school staff did not consider the student's history of seizure disorder and his orthopedic problems when deciding how he would be positioned using the device and as a result, the student was not provided with sufficient stability for his head when using the device (Doc. a).

Based on the Finding of Fact #5, the MSDE finds that, while the free movement of the student's body was restricted during the use of the device, it was used for the purpose of positioning him to ensure his safety during transportation from one area to another, and not for the purpose of preventing him from dropping to the floor and refusing to walk. Therefore, the MSDE finds that the mobile adaptive device or tumble form² was utilized as a stabilizing device and as a result, its use did not constitute the use of mechanical restraint.

Based on the Finding of Fact #5, the MSDE finds that the device was used based on the recommendation of a physical therapist. However, based on the Findings of Facts #5 - #10, the MSDE further finds that there is no documentation that the device was used in accordance with the manufacturer's guidance and, as a result, finds that the HCPS did not follow proper procedures when using the stabilizing device with this student. Based upon these findings, the MSDE determines that a violation occurred with respect to this allegation.

Allegation # 2

Addressing the Student's Behavioral Needs from the Start of the 2011-2012 School Year until October 14, 2011

In developing each student's IEP, the public agency must ensure that the IEP team 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).

Based on the Findings of Facts #3 and #4, the MSDE finds that the IEP team considered information from the student's teachers and the complainant about the student's progress with the behavioral interventions being used. Based on the same Findings, the MSDE further finds that, based upon its review of the information, the IEP team determined that assessment data was needed to identify additional behavioral interventions to utilize with the student. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

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treatment center or in the student's home. As a result, the MSDE finds that the HHT procedures which are required to determine the need for HHT services do not apply in this instance and the MSDE finds no violation with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires that the HCPS provide documentation, by July 31, 2012, that the HCPS determine the nature and amount of *compensatory services*³ necessary to redress the violation related to the lack of the provision of behavioral supports required by the IEP from the start of 2011-2012 school year until October 14, 2011.

The 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 to file a due process complaint, in accordance with the IDEA.

School Based

The MSDE requires that the HCPS provide documentation by August 31, 2012, of the steps taken to determine if the violation regarding the use of the protective or stabilizing device is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXX. If it is determined that a pattern of noncompliance exists with regard to the requirements, the HCPS must review each IEP at XXXXXXXXXXXX which requires the use of a protective or stabilizing device, and revise, as appropriate, to ensure the use of protective and stabilizing devices is utilized in accordance with the regulations.

In addition, the HCPS must inform the MSDE of the steps taken to ensure the violation does not recur, including a description of how the HCPS will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violations do not recur.

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.

³ Compensatory services, for the purpose of this letter, mean the determination regarding how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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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 complaint.

Sincerely,

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

MEF/km

cc : Robert M. Tomback
Eileen Watson
XXXXXXXX
Dori Wilson
Martha J. Arthur
Anita Mandis
Koliwe Moyo