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June 15, 2012

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Ms. Melissa Charbonnet
Director of Special Education and Student Services
St. Mary's County Public Schools
P.O. Box 1410
Leonardtown, Maryland 20650

RE: XXXXX
Reference: #12-080

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 18, 2012¹ the MSDE received a complaint from Dr. XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her grandson. In that correspondence, the complainant alleged that the St. Mary's County Public Schools (SMCPS) 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 SMCPS has not ensured that proper procedures were followed when determining the student's educational placement², in accordance with 34 CFR §§300.114 and .116 and COMAR 13A.05.01.10; and

¹ On April 18, 2012, the complainant provided the additional information required for the initiation a State complaint investigation, which supplemented her initial correspondence received by the MSDE on April 17, 2012 (34 CFR 300.153).

² While the allegation was initially identified by this office as beginning in February 2012, during the course of the investigation, the MSDE determined that the placement determinations were made at several meetings throughout the period of time investigated.

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2. The SMCPS has not ensured that the student has been provided with the special education instruction in the educational placement required by the IEP since April 2011³, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 17 and 18, 2012, the MSDE received written correspondence from the complainant containing allegations of violations of the IDEA.
3. On April 17, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegations and discussed the need for the complainant to provide a proposed remedy in order for a State complaint investigation to be initiated.
4. On April 18, 2012, the MSDE received the proposed remedy from the complainant. On the same day, the MSDE sent a copy of the complaint, via facsimile, to Ms. Melissa Charbonnet, Director of Special Education and Student Services, SMCPS.
5. On April 24, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Charbonnet of the allegations and requested that her office review the alleged violations.
6. On April 19, 2012, Ms. Moyo conducted a telephone interview with Ms. Charbonnet regarding the allegations in the complaint.
7. On April 20, 2012, Ms. Moyo contacted the complainant by telephone and indicated that this office would need consent from the student's parent to release the results of the investigation to her.
8. On April 24, 2012, Ms. Moyo conducted a telephone interview with Ms. Charbonnet, Mr. Wallace Roberts, Supervisor of Special Education, SMCPS, and Ms. Marcie Hough, Supervisor of Special Education, Non-Public Placements, SMCPS.
9. On April 26, 2012, the student's mother provided this office with written consent to provide the complainant with a copy of the Letter of Findings once the investigation is completed.

³ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, on April 24, 2012, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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10. On April 27, 2012, the MSDE contacted SMCPS staff and requested documentation from the student's educational record, via electronic mail (e-mail).
11. On May 2, 2012, the SMCPS provided the MSDE with a written response to the complaint and with documentation from the student's educational record, via United States mail.
12. On May 9, 2012, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX (XXXXXXXXXX) and interviewed the following SMCPS personnel:
 - a. Ms. XXXXXXXXX, IEP Chairperson, XXXXXXXX;
 - b. Ms. Jeanne Huett, Instructional Resource Teacher, Non-public Placements, SMCPS;
 - c. Mr. XXXXXXXXX, School Counselor, XXXXXXXX;
 - d. Mr. XXXXXXXXX, Case Manager, XXXXXXXX;
 - e. Ms. XXXXXXXXX, School Counselor, XXXXXXXX;
 - f. Mr. XXXXXXXXX, XXXX XXXX XXXX Teacher, XXXXXXXX; and
 - g. Mr. XXXXXXXXX, Assistant Principal, XXXXXXXX.

Ms. Charbonnet and Mr. Roberts attended the site visit as representatives of the SMCPS and to provide information on the SMCPS policies and procedures, as needed. On the same date, the SMCPS staff provided the MSDE staff with copies of documents from the educational record.

13. On June 12, 2012, Ms. Moyo conducted a telephone interview with SMCPS staff and was provided with additional information regarding the allegations being investigated.
14. On June 14, 2012, the SMCPS staff provided the MSDE with additional documentation via e-mail.
15. The MSDE, reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Attendance log for the 2010-2011 school year;
 - b. Discipline record for the 2010-2011 school year;
 - c. IEP, dated November 8, 2010;
 - d. IEP team meeting notes, dated April 12, 2011;
 - e. IEP team meeting notes, dated May 18, 2011;
 - f. XXXXXXXXX class schedule from August 26, 2011 until November 30, 2011;
 - g. IEP, dated October 11, 2011;
 - h. IEP team meeting notes, dated October 11, 2011;
 - i. Student point sheets from August 26, 2011 until November 18, 2011;
 - j. IEP progress reports, dated November 30, 2011;
 - k. IEP team meeting notes, dated November 30, 2011;
 - l. IEP team meeting notes, dated January 10, 2012;
 - m. IEP team meeting notes, dated February 23, 2012;

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- n. Correspondence and attachments from the complainant to the MSDE, received on April 17 and 18, 2012;
- o. IEP team meeting notes, dated April 25, 2012;
- p. Audio recording of the IEP team meeting conducted on April 25, 2012;
- q. Release of Information from the student's mother to the MSDE, dated April 26, 2012;
- r. SMCPS written response to the complaint and attachments, received on May 2, 2012;
- s. IEP team meeting notes, dated June 1, 2012;
- t. SMCPS program description and procedures for placement in the Interim Alternative Educational Center (XXXX);
- u. Attendance log for the 2011- 2012 school year;
- v. Discipline record for the 2011-2012 school year;
- w. Electronic mail (email) correspondence between the student's mother and SMCPS staff, dated June 4, 2012; and
- x. SMCPS student handbook for the 2011-2012 school year.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and he receives special education instruction and related services. During the period of time addressed by this investigation, the student's mother participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. c – e, g, h, j - p, s, v, and w).

During the period of time addressed by this investigation, the student had the following educational placements:

2010-2011 School Year

- From April 18, 2011 until May 18, 2011, the student attended the XXXXXXXXXXXXXXXX XXXX.
- From May 19, 2011 until June 16, 2011, the last day of the 2010-2011 school year, the student was provided with one-to-one instruction at XXXXXXXXXXXXXXXXXXXX XXXX (XXXXXXX).

2011-2012 School Year

- From the start of the 2011-2012 school year until November 30, 2011, the student attended XXXXXXXXXXXX.

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- From December 1, 2011 until February 15, 2012 the student received services in the XXXX XXXX XXXX (XXXX) ⁴ at XXXXXXXXXXXXXXXXXXXX.
- Since February 16, 2012, the student has been placed in the XXXX XXXX XXXX (XXXX) ⁵ at XXXXXXXXX (Docs. c – p, s, v and w).

FINDINGS OF FACTS:

2010-2011 School year

1. The IEP in effect in April 2011 required the student to be provided with special education instruction in the general education classroom with supports to assist him with maintaining his focus (Doc. c).
2. On April 12, 2011, the IEP team convened to review the student's IEP. At the meeting, the team considered whether the student could continue to make progress in the general education classroom with supports, given the behavioral concerns he continued to exhibit. The team agreed that the student would benefit from being provided with additional time to complete his work without distractions and with more access to staff providing him with additional assistance (Docs. b, c, and d).
3. Based on the team's review, it determined that when the student returned to school for the 2011-2012 school year, he would be provided with special education instruction in both a general education classroom with supports as well as a separate special education classroom. The IEP was revised to reflect this change in placement (Docs. b, c, and d.).
4. On May 18, 2011, the IEP team convened to discuss a behavioral incident which had occurred at school. In response to the concerns raised, the IEP team determined that the student would be provided with one-to-one instruction in all of his subjects at Forrest Tech for the remainder of the 2010-2011 school year. However, there is no documentation that the team considered IEP implementation in a less restrictive environment and IEP was not revised to reflect a change in the student's placement or program (Docs. c and e).

⁴The XXXX is a program to provide students with the "opportunity to continue their educational program" in an "individualized learning environment." Students may be referred to the XXXX following an expulsion from school or by an IEP team without an expulsion (Doc. t).

⁵The XXXX program is designed for students who are experiencing behavior and emotional problems and who have demonstrated the need for a more structured educational setting to be academically successful. The XXXX program includes a behavior management system, group and/or individual counseling, based on recommendations from the IEP team, and social skills training (Doc. x).

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2011-2012 School year

5. There is documentation that at the start of the 2011-2012 school year, the student was provided with instruction in both the general education classroom and in a special education classroom, as required by the IEP (Docs. a and f - k).
6. On October 11, 2011, the IEP team convened to conduct the annual review of the student's IEP. At the meeting, the team considered reports from school staff documenting that the student was not making progress and continued to experience behavioral issues, including being tardy to class, refusing to comply with school rules, and not completing assignments. The team discussed the behavioral supports currently in place including the provision of a daily escort to ensure successful transitions between classes, preferential seating, and anger management counseling. A "screen reader" would be provided to the student to assist him with maintaining focus while reading (Docs. g - i).
7. On November 30, 2011, the IEP team convened to discuss the student's progress. At the meeting, the team considered school staff reports documenting that the student was not making sufficient progress towards the achievement of IEP goals and that the behavior interventions included in the IEP had not been successful. School staff indicated that the student is more successful when in a "small, structured setting" (Docs. i - k).
8. The school staff suggested that the student be transferred to the "therapeutic environment" of the XXXX XXXX XXXX (XXXX)⁴. While the IEP team agreed with this recommendation, there is no documentation the team considered whether the IEP could be implemented in a less restrictive environment. Further, while the IEP was revised to reflect this change in placement, it does not indicate the specific services which would be provided while in this setting (Docs. i - k).
9. At the meeting, the student's mother expressed the concern that at the XXXX⁴, the student would be exposed to other students with behavior issues. In response to her concerns, the team agreed to meet again in January to review the student's progress (Doc. k).
10. On January 10, 2012, the IEP team re-convened to review the student's progress. At the meeting, school staff reported that he continued to exhibit behaviors which interfered with his ability to access the curriculum. School staff reported that the student was often sleeping in class, disrupting the class, using inappropriate language, and damaging furniture (Doc. l).
11. At the meeting, the team considered whether the IEP could be implemented in the general education with supports in the general education classroom with supports, a combination of the general education classroom and a separate special education classroom, a separate special education classroom, or a non-public separate special education classroom (Doc. l).

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12. Following the IEP team's review of the information, it determined that the student required a more restrictive environment than is available in the SMCPS and determined the least restrictive environment in which the student could be educated is a non-public separate special education school. However, the IEP was not revised to reflect this determination and continued to require the student to be provided with special education services in both a general education classroom and a separate special education classroom (Docs. g and l).
13. On February 16, 2012, the SMCPS placed the student in the XXXX XXXX XXXX (XXXX)⁵, a separate special education classroom at XXXXXXXXXX. However, there is no documentation that the IEP team met to determine the appropriateness of this placement (Docs. a and m).
14. On February 23, 2012, IEP team re-convened to discuss the parent's concern regarding the length of the bus ride to and from the proposed non-public school. The student's mother also indicated she would need to visit the school before agreeing to the placement. Based on this discussion, the team determined that the student would remain in the XXXX⁵ program until an appropriate non-public school was agreed upon by the parent (Doc. m).
15. On April 25, 2012, the IEP team met again to discuss the student's progress and proposed placement. At the meeting, school staff stated that, while the student made some progress in the XXXX⁵ program, he continues to struggle as a result of his non-compliant behavior. However, school staff further stated that, while they continue to believe that the student cannot be served in a SMCPS and continues to require a non-public separate special education day school, he would remain at the XXXX⁵ program until the end of the 2011-2012 school year (Docs. o and p).
16. At the meeting, the student's mother stated her disagreement with the IEP team determination that the student continues to require a non-public placement and informed school staff that, following her visit to the non-public school recommended, she did not believe the specific nonpublic school recommended was an appropriate placement for the student (Docs. o and p).
17. School staff report that following an IEP team meeting held on June 1, 2012, the IEP team, including the student's mother, agreed upon a non-public school which the student will attend for the 2012-2013 school year (Docs. s, w, and interview with school system staff).

DISCUSSION/CONCLUSIONS:

Allegation #1: Determination of the Student's Educational Placements

The IDEA requires that the public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Further, the IDEA

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requires that special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116).

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team. The placement decision must be made in conformity with the Least Restrictive Environment (LRE) provisions, determined at least annually, be based on the student's IEP, and be as close as possible to the student's home (34 CFR §300.116).

Unless the IEP of a student requires some other arrangement, the student must be educated in the school setting that the student would attend if not disabled. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability may not be removed from an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR §300.116).

Based on the Findings of Facts #1 - #4, the MSDE finds that on May 18, 2011, the IEP team did not consider any less restrictive environments when determining the student would be provided with one-to-one instruction in all of his subjects until the end of the 2010-2011 school year. Further, based on the Findings of Facts #5 - #16, the MSDE finds the IEP team did not consider any less restrictive environments when determining the student would be placed in the XXXX⁴ on November 30, 2011 or at the XXXX⁵ program on February 16, 2012. As the result of these findings, the MSDE determines violations occurred with regard to this allegation.

Allegation #2: Provision of Special Education in the Placement Required by the IEP

The public agency is required to ensure that each student is provided with the special education and related services in the placement required by the IEP (34 CFR §§300.101 and .323). Based on the Findings of Facts #1 - 4, the MSDE finds that on May 18, 2011, the IEP team determined that the student would be provided with one-to-one instruction but did not revise the IEP to reflect this decision or the services to be provided. Further, based on the Findings of Facts #7 - #9, the MSDE finds that, while the IEP was revised to reflect the change in placement on November 30, 2011, when the student was placed in the XXXX⁴, it was not revised to indicate the specific services which would be provided in this setting. As the result of these findings, the MSDE determines violations occurred with regard to this allegation.

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CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the SMCPS to provide documentation by the start of the 2012-2013 school year that an IEP team has convened and determined the nature and amount of *compensatory services*⁶ or other remedy necessary to redress the violations identified in this Letter of Findings.

The SMCPS must provide the student's mother 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 student's mother disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-based/Systemic

The MSDE requires the SMCPS to provide documentation by the start of the 2012-2013 school year of the steps it has taken to determine if the procedural violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance. 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 the IDEA and COMAR, and provide a description of how the SMCPS will evaluate the effectiveness of the steps taken and provide agency monitoring 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 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 (QAM) for its consideration during present or future monitoring of the SMCPS.

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.

⁶ 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).

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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 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's mother 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/km

cc : XXXXXXXX
Michael J. Martirano
XXXXXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo
Martha Arthur