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July 20, 2012

Ms. Charlotte Hoffman
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Dr. Stanley J. Butkus
Deputy Director
Department of Health and Mental Hygiene
Developmental Disabilities Administration
201 West Preston Street
Baltimore, Maryland 21201-2399

RE: XXXXX XXXX
Reference: # 12-091

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 our investigation.

ALLEGATIONS:

On May 21, 2012, the MSDE received correspondence from Ms. Charlotte Hoffman, hereafter “the complainant,” filed on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Department of Mental Health and Hygiene (DHMH) 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 allegations listed below.

1. The DHMH has not ensured the student has been provided with a Free Appropriate Public Education (FAPE) since March 8, 2012, in accordance with 34 CFR §300.101. Specifically, the complainant alleged that the following has occurred since March 8, 2012:
 - a. The DHMH has not obtained the student’s Individualized Education Program (IEP) and supporting documents related to the provision of special education services from the Baltimore City Public Schools (BCPS), in accordance with 34 CFR §300.323(g); and

- b. The DHMH has not ensured the student has been provided with the special education services, as required by the IEP, in accordance with 34 CFR §§300.101 and .323(e).
- 2. The DHMH has not ensured that the student has received the special education instruction from a highly qualified teacher since March 8, 2012, in accordance with 34 CFR §§300.18, .101, and .156.

INVESTIGATIVE PROCEDURES:

- 1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegations in the complaint.
- 2. On May 23, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Mary Sheperd, Deputy Director of the Mental Hygiene Administration – Facilities Management, DHMH¹.
- 3. On June 7, 2012, Ms. Williams conducted a telephone interview with the complainant to clarify the allegations to be investigated.
- 4. On June 12, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On that same date, the MSDE also notified the DHMH of the allegations to be investigated and requested that the DHMH review the alleged violations.
- 5. On June 18, 2012, Ms. Williams and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXX, XXXXXX location of the XX to review the student's educational record, and conducted interviews with Dr. XXXXXXXXXXXXX, Psychology Services Chief, XXXXXXXXX, DHMH – Developmental Disabilities Administration (DDA), and Ms. XXXXXXXXX, Special Education Teacher, XXXXXXXXX, DHMH - DDA.
- 6. On June 27, 2012, Mrs. Arthur met with the DHMH - DDA staff and reviewed educational records at the XXXXXXXX, XXXXXX location of the XXXXXXXXX.
- 7. On July 11, 2012, Ms. Williams conducted a telephone interview with the complainant to obtain additional information regarding the allegations being investigated.

¹ During the course of this investigation, the DHMH staff informed this office that responsibility for the XXXXXXX XXXX (XXXX) Program was transferred from the Deputy Director of the Mental Hygiene Administration – Facilities Management, DHMH to the Deputy Director of the Developmental Disabilities Administration, DHMH (Docs. f and g).

8. On July 12, 2012, Ms. Williams conducted an interview with the MSDE Division of Certification and Accreditation staff to obtain information regarding the allegations to be investigated.
9. On July 12, 16, and 17, 2012, Ms. Williams contacted the DHMH – DDA staff to obtain additional information regarding the allegations being investigated.
10. On July 13, 2012, the MSDE, DSE/EIS received electronic correspondence from the MSDE Division of Certification and Accreditation staff regarding the allegations being investigated.
11. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Correspondence from the complainant to the MSDE, received May 21, 2012;
 - b. DHMH *Core Special Education Policy*, dated July 17, 2009;
 - c. IEP, dated February 7, 2012;
 - d. XXXXXXXX teacher's academic instruction logs, dated April 16, 2012 to May 15, 2012;
 - e. XXXXXXXX Schedule for the Student, undated;
 - f. Electronic correspondence from the DHMH to the MSDE, dated June 6, 2012;
 - g. XXXXXXXXXX IEP team Meeting Invitation, dated June 27, 2012;
 - h. Correspondence from the DHMH to the MSDE, dated June 27, 2012; and
 - i. Electronic correspondence from the MSDE Division of Certification and Accreditation staff to the MSDE, DSE/EIS, dated July 13, 2012.

BACKGROUND:

The student is twenty (20) years old and is identified as a student with an intellectual disability under the IDEA. The student has an IEP that requires the provision of special education instruction.

On March 8, 2012, the student was placed by the DHMH at the XXXXXXXXXXXXXXXXXXXX XXXXXXXX. This placement was made pursuant to an Order of the District Court of Maryland for Baltimore City committing the student to the DHMH (Docs. a, c, and review of the educational record).

FINDINGS OF FACTS:

1. The XXXXXXXXXXXX is a short-term mental health program that is operated by the DHMH - Developmental Disabilities Administration (DDA) at locations in XXXXX and XXXXXXX, Maryland. Individuals are committed to the XXXXXXXXXXXX for evaluation, care, and treatment, by Maryland Courts. The XXXXXXXXXXXX has developed procedures for identifying students with disabilities and for ensuring the provision of special

education instruction and related services to those students (Doc. b and <http://dda.dhmf.maryland.gov/sett/SitePages/services.aspx>).

2. On March 8, 2012, the student was placed by the DHMH for evaluation at the XXXXX, Maryland location of the XXXXXXXXX, after he was committed to the DHMH by the District Court of Maryland for Baltimore City. The DHMH transferred the student on April 12, 2012 to the XXXXXX location for treatment (Interview with the DHMH – DDA staff and review of the educational record).
3. On March 8, 2012, the DHMH - DDA staff requested and received the student's IEP from the Baltimore City Public Schools (BCPS), the school system in which the student received special education instruction prior his commitment to the DHMH. The BCPS IEP, dated February 7, 2012, required that the student be provided with special education instruction in math, reading, and written expression. It required that the instruction be provided by a general education teacher in a general education classroom for twelve (12) hours per week and by a special education teacher in a separate special education classroom for twelve (12) hours per week (Doc. c).
4. The DHMH – DDA staff report that no evaluation or intake process is required upon placement at the XXXXXXXXX before students can participate in activities, such as educational instruction (Interview with the DHMH – DDA staff).
5. There is no documentation that, from March 8, 2012 to April 15, 2012, the student was provided with education services (Review of the educational record).
6. From April 16, 2012 to May 15, 2012, the student was provided with forty-five (45) minutes of academic instruction in the areas of mathematics, language arts, and reading comprehension twice a week by a general education teacher. There is no documentation that the general education teacher who provided this instruction is a highly qualified teacher or that the general education teacher had access to the student's IEP (Docs. d and e).
7. There is no documentation that, from May 15, 2012 to June 14, 2012, the student was provided with education services (Review of the educational record).
8. Since June 14, 2012, a special education teacher employed by DHMH – DDA has been assigned to coordinate the IEP process for each student with a disability and to provide special education instruction to students with disabilities in the XXXXXXXXX, but there is no documentation that she has provided special education instruction to the student in accordance with the IEP. This teacher has obtained the education and passed the required licensing exam to demonstrate that she meets the standards for highly qualified special education teachers. However, there is no documentation that the teacher meets the requirements for certification in specific academic subject areas or that special education instruction is provided at the XXXXXXXXX by teachers with such certification (Doc. i and Interview with the DHMH - DDA staff).

9. On June 18, 2012, at a site visit conducted as part of the complaint investigation, the MSDE staff observed that the special education teacher had a copy of the student's IEP (MSDE staff observation).
10. On July 12, 2012, an IEP team convened to review the student's IEP. The DHMH – DDA staff report that the team revised the IEP at that time, but to date, there is no documentation of the IEP team's decisions (Doc. g and Interviews with the DHMH – DDA staff).

DISCUSSION/CONCLUSIONS:
ALLEGATION #1 PROVISION OF FAPE

Responsibilities of Public Agencies

The public agency is required to ensure that a student is provided with the special education instruction and related services required by the IEP (34 CFR §§300.101 and .103). The term “public agency” is defined as a State or local government responsible for the provision of a FAPE to students with disabilities under the IDEA (34 CFR § 300.33). In Maryland, public agencies are defined as local school systems, as well as other State agencies, including the DHMH. The DHMH is the public agency responsible for ensuring a FAPE to students who are placed in its facilities (COMAR 13A.05.01.03B(59)).

Based on the Findings of Facts #1 and #2, the DHMH has been the public agency responsible for providing a FAPE to the student since March 8, 2012, when the student was placed at the XXXX XXXXX.

Transferring Students

When a student with an IEP in a previous public agency transfers to a new public agency in the same State, the new public agency (in consultation with the parents) must provide the student with a FAPE, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either adopts the IEP from the previous public agency; or develops, adopts, and implements a new IEP (34 CFR §300.323).

“Comparable services” is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

In order to ensure that the student is provided with a FAPE at the new public agency, the new public agency must take reasonable steps to promptly obtain the student's educational records, including the IEP, supporting documents, and any other records related to the provision of special education or related services to the child, from the previous public agency in which the student was enrolled. Once the new public agency obtains the IEP, it must be made accessible to each teacher and service provider responsible for implementation in order to ensure that the

student is provided with the special education instruction and related services required by the IEP (34 CFR §300.323).

Based on the Findings of Facts #3, #5, and #7, the MSDE finds that, while the DHMH obtained the student's IEP from the BCPS in a timely manner, it did not ensure that education services were provided from March 8, 2012 to April 15, 2012 or from May 15, 2012 to June 14, 2012.

Based on the Findings of Facts #3 and #6, the MSDE finds that, while the student was provided with education instruction from April 16, 2012 to May 15, 2012, there is no documentation that the teacher had access to the IEP. Based on the Finding of Fact #3 - #10, the MSDE finds that there is no documentation that special education instruction has been provided in accordance with the IEP since the student was placed at the XXXXX. Therefore, the MSDE finds that violations occurred with respect to the allegation.

ALLEGATION #2 HIGHLY QUALIFIED TEACHERS

The IDEA requires that special education instruction and related services be provided by highly qualified staff consistent with Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965 (34 CFR §§300.18 and .156).

In order for a special education teacher to be highly qualified, the teacher must hold at least a Bachelor's Degree and must have obtained State certification as a special education teacher. Teachers who provide special education instruction in core academic subjects (including language arts, mathematics, science, civics and government, economics, arts, and history) must

- hold at least a Bachelor's Degree; *and*
- hold a valid Maryland Standard Professional Certificate or Resident Teacher Certificate; *and*
- pass applicable State content tests in each subject in which the teacher is assigned and/or have completed an academic major or equivalent in each of the subject areas (34 CFR §§300.18 and .156 and *Using Maryland's High, Objective, Uniform State Standard of Evaluation*, March 2005).

Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the general education teacher who provided instruction from April 16, 2012 to May 15, 2012 met the highly qualified teacher requirements. Based on the Finding of Fact #8, the MSDE finds that special education instruction is not provided to students at the XXXXXXXXXXXXXXX by teachers who are certified to teach in the content areas covered by the instruction. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the DHMH to provide documentation no later than September 1, 2012, that special education instruction is being provided to the student in accordance with the IEP. The MSDE also requires documentation that an IEP team meeting has been convened to review and revise the IEP, as appropriate, to ensure that it addresses the student's needs and to determine the amount and nature of *compensatory services*² required to remediate the loss of services to this student since his placement at the XXXXXXXXXX.

The DHMH must provide the student's parent 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. The parent maintains the right to request mediation or file a due process complaint to resolve a dispute with the IEP team's decisions, in accordance with the IDEA.

Systemic

The MSDE requires the DHMH to provide documentation by November 1, 2012 of the steps taken for all students with disabilities committed to the XXXXXXXXXX, as indicated below.

- An IEP team determines comparable services to be provided until the IEP from the previous public agency is either adopted or revised;
- The student's teachers and service providers have access to the IEP and special education instruction and related services required by the IEP are provided without delay; and
- Special education instruction is provided by highly qualified staff.³

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

TECHNICAL ASSISTANCE:

Technical assistance is available to both the complainant and the public agency through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

² Compensatory services, for the purposes of this letter, means the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR § 300.151).

³ The MSDE has identified violations at the XXXXXXXXXX through a previous State complaint investigation (Complaint # 11-098) and is monitoring the implementation of the corrective actions related to the provision of special education instruction by highly qualified teachers.

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Please be advised that both the complainant and the public agency 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 request for reconsideration, the public agency 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 student's parents and the public agency 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 the 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/tw

cc: Joshua M. Sharfstein
Mary R. Sheperd
XXXXXXXXXXXXXXXXX
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