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August 24, 2012

Ms. Charlotte Hoffman
Legal Assistant
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Ellicott City, Maryland 21041

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

RE: XXXXXXXX and Similarly-Situated Students
at the XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Reference: #12-101

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 students. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On June 25, 2012, the MSDE received correspondence from Ms. Charlotte Hoffman, hereafter “the complainant,” filed on behalf of the above-referenced student and similarly-situated students. 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 these students.

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This office investigated the allegation that the DHMH does not ensure that students placed in the XX¹ are provided with the special education instruction and related services by highly qualified staff, in accordance with each student's Individualized Education Program (IEP), as required by 34 CFR §§ 300.18, .101, .103, .156, and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, 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 Ms. Mary Sheperd, Deputy Director of the Mental Hygiene Administration – Facilities Management, DHMH².
3. On June 27, 2012 and July 25, 2012, Mrs. Martha J. Arthur, Education Program Specialist, conducted reviews of educational records at the XXXXXXXXXXX location of the XXXXXXXX.
4. On July 6, 2012, Ms. Williams conducted a telephone interview with the complainant to clarify the allegation to be investigated.
5. On July 10, 2012, the MSDE sent electronic correspondence (email) to the complainant, requesting additional information regarding the allegation being investigated.
6. On July 11, 2012, the MSDE received email from the complainant, providing additional information regarding the allegation being investigated.
7. On July 11, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, the MSDE also notified the DHMH of the allegation to be investigated and requested that the DHMH review the alleged violation.
8. On August 8, 2012, Ms. Williams sent email to the complainant, requesting additional information regarding the allegation being investigated.

¹ The XXXXXXXXXXX is a short-term mental health program that is operated by the DHMH - Developmental Disabilities Administration (DDA) at locations in XXXX XXXXXXXXXXXXXXXX. Individuals are committed to the XXXXX by Court Order for XXXX,XXXX,XXXX (<http://dda.dhmf.maryland.gov/xxxx>).

² Responsibility for the XXXXXXXX was recently transferred from the Deputy Director of the Mental Hygiene Administration – Facilities Management, DHMH to the Deputy Director of the DDA, DHMH (Doc. e).

9. On August 8 and 10, 2012, Ms. Williams requested additional information from the DHMH regarding the allegation being investigated.
10. On August 15, 2012, the DHMH sent the MSDE email with documentation to be considered during the investigation.
11. On August 17, 2012, Ms. Williams conducted a telephone interview with Dr. XXXXXXXXXXXX, Psychology Services Chief, XXXXXXXXXXX, DHMH, regarding the allegation being investigated.
12. On August 17, 2012, the complainant sent the MSDE email with documentation to be considered during the investigation.
13. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings listed below.
 - A. Correspondence from the complainant to the MSDE, received on June 25, 2012;
 - B. IEP, dated September 9, 2011 and amended November 29, 2011;
 - C. Order of the Circuit Court for Caroline County, dated March 21, 2012;
 - D. DHMH Contact Log, dated from April 13, 2012 to August 8, 2012;
 - E. Electronic correspondence from the DHMH to the MSDE, dated June 6, 2012;
 - F. IEP, dated September 9, 2011 and amended April 24, 2012;
 - G. IEP Team Meeting Notes, dated April 24, 2012; and
 - H. MSDE Letter of Finding #12-091, issued July 20, 2012.

BACKGROUND:

The named student in this investigation is twenty (20) years old, is identified as a student with an intellectual disability under the IDEA, and has an IEP that requires the provision of special education instruction. Since March 21, 2012, he has been placed by the DHMH at the XXXXXXXXXXXXXXXXXXXX (XXXX)XXXX (Docs. a, b, c, f, and g).

FINDINGS OF FACTS:

1. The above-named student was placed at the XXXXXXXXX on March 21, 2012, pursuant to an Order of the Circuit Court for XXXX XXXX, committing him to the DHMH. At that time, the student had an IEP from the XXXX XXXX Public Schools (XXPS). The XXPS IEP required that he be provided with special education instruction in both general and separate special education classrooms (Docs. a, c, and g).
2. The XXXXXXXXXXXX IEP team convened on April 24, 2012 and revised the XXPS IEP to require that all of the special education instruction be provided in a separate special

education classroom. The team documented that the basis for the determination was that “there is not an option for services inside general education” (Docs. b, d, f, and g).

3. The student was not provided with special education instruction prior to the revision of his IEP on April 24, 2012, because the XXXXXXXXX did not have similar or equivalent services to those required by the XXPS IEP (Docs. f and g).
4. On July 20, 2012, the MSDE completed another State complaint investigation of the allegations of violations of the IDEA with respect to students placed by the DHMH at the XXXXXXXXXX (Complaint #12-091). In that investigation, the MSDE found that the DHMH has not ensured that special education services are provided in a timely manner, that comparable services are determined by the IEP team, and that student’s are provided with special education instruction in accordance with each student’s IEP by highly qualified teachers. As a result, the MSDE required the DHMH to take steps to ensure compliance with the IDEA requirements (Doc. h).

DISCUSSION/CONCLUSIONS:

An IEP team must determine each student’s education program and placement. The IEP team’s decisions must be based on the unique needs of the student that arise from the disability, and be designed to ensure access to the general curriculum so that the student can meet the educational standards that apply to all students. The IEP team’s decisions may not be based solely on factors such as category and severity of the student’s disability, availability of services, configuration of the service delivery system, availability of space, or administrative convenience (34 CFR §§300.39, .101, .320 and .324, and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, pp. 46588 and 46662, August 14, 2006).

Based on the Findings of Facts #1 - #4, the MSDE finds that the DHMH has not ensured that the special education instruction provided to students at the XXXXXXXXXX is based on the individual needs of each student, and has not ensured that students are provided with the special education instruction required by each student’s IEP by highly qualified teachers. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the DHMH to provide documentation, no later than September 24, 2012, that an IEP team meeting has been convened to review and revise the student’s IEP, as

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appropriate, to ensure that it addresses his needs and to determine the amount and nature of *compensatory services*³ required to remediate the violations identified.

Similarly Situated Students

The MSDE requires the DHMH to provide documentation, no later than October 24, 2012, that it has identified other students currently placed at the XXXXXXXXXX with an IEP that was revised based on the Program's service delivery system. For each student identified, the DHMH must also provide documentation that an IEP meeting has been held to review and revise each student's IEP, as appropriate, to ensure that it addresses the student's individual needs and to determine the amount and nature of the *compensatory services*³ for the student. In addition, the DHMH must provide documentation, by October 24, 2012, of the steps taken to ensure that each student's IEP is based on the individual needs of the student.

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 to ensure that each student's IEP addresses the student's individual needs.

As a result of the investigation of State complaint #12-091, the DHMH has been required to provide documentation to the MSDE by November 1, 2012, that all students in the XXXX XXXXX are provided with special education services in a timely manner, that comparable services are determined by the IEP team, and that student's are provided with special education instruction in accordance with each student's IEP by highly qualified teachers. Therefore, the MSDE does not require additional corrective action to ensure compliance with these requirements.

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.

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

³ 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).

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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 of facts, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The parents of students placed at the XXX XXXXX 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 Free Appropriate Public Education, 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/tw

cc: Joshua M. Sharfstein
Mary R. Sheperd
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Tyra Williams