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State Superintendent of Schools

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January 18, 2010

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Ms. Patty Daley
Director of Special Education
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #11-032

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 November 23, 2010, MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her daughter. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. HCPS has not ensured that the Individualized Education Program (IEP) team convened to address the lack of expected progress toward achieving the annual IEP goals related to behavior since November 2009,¹ in accordance with 34 CFR §300.324;
2. HCPS has not ensured that the student's Behavior Intervention Plan (BIP) has been implemented since November 2009,¹ in accordance with 34 CFR §300.101;

¹ The complainant alleged violations dating back to the start of the 2009-2010 school year. However, the complainant was informed in writing on December 6, 2010, that this office only has authority to investigate allegations of violations of IDEA that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

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3. HCPS did not follow proper procedures when conducting a reevaluation of the student in February 2010, in accordance with 34 CFR §§300.303-.311;
4. HCPS has not ensured that the student's IEP addresses the student's behavior and social/emotional needs since February 2010, in accordance with 34 CFR §300.324;
5. HCPS did not provide prior written notice of the team's decision to reject the recommendations regarding strategies to include in the student's BIP, which were made by the complainant's evaluators at the May 20, 2010 IEP team meeting, in accordance with 34 CFR §300.503;
6. HCPS did not follow proper procedures when disciplinarily removing the student from school in October 2010, in accordance with 34 CFR §§300.530-.536; and
7. HCPS did not follow proper procedures when revising the student's IEP in November 2010 without convening an IEP team meeting and without agreement to amend the IEP without convening an IEP team meeting, in violation of 34 CFR §300.324(a)(4).

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 30, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Director of Special Education, HCPS; and Ms. Janet Zimmerman, Instructional Facilitator, HCPS.
3. On December 2, 2010, Ms. Stump spoke with the complainant by telephone and clarified the allegations to be investigated.
4. On December 6, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Daley of the allegations and requested that her office review the alleged violations.
5. On December 20, 2010, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's education record, and interviewed Mr. XXXXXXX, School Psychologist, XXXXXXXXXXXX. Ms. Zimmerman and Ms. XXXXXXXXXXX, Resource Teacher, HCPS attended the site visit as representatives of HCPS and to provide information on HCPS policies and procedures, as needed.

6. On the same date, Ms. Stump conducted a telephone interview with Ms. Emily Kinsler, Communication Facilitator, HCPS.
7. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Correspondence and attachments from the complainant to MSDE, received November 23, 2010;
 - b. BIP, dated May 11, 2009;
 - c. IEP, dated June 3, 2009;
 - d. HCPS *Reevaluation Report*, dated December 3, 2009;
 - e. HCPS *Parental Consent for Reevaluation* forms, dated December 3, 2009;
 - f. Psychological Assessment report, dated January 29, 2010;
 - g. Speech-Language Assessment report, dated February 22, 2010;
 - h. Educational Assessment report, dated February 25, 2010;
 - i. HCPS *Reevaluation Report*, dated February 25, 2010;
 - j. Notice of IEP team meeting for March 18, 2010 meeting;
 - k. Functional Behavior Assessment, dated March 18, 2010;
 - l. BIP, dated March 18, 2010;
 - m. Draft IEP, dated March 18, 2010;
 - n. IEP Progress Report, dated May 5, 2010;
 - o. Draft IEP, dated May 20, 2010;
 - p. IEP, dated June 15, 2010;
 - q. IEP Progress Report, dated June 23, 2010;
 - r. Counseling logs, dated between December 2009 and April 2010;
 - s. IEP team meeting summary, dated October 28, 2010;
 - t. HCPS *Manifestation Determination Report*, dated October 28, 2010;
 - u. HCPS *Suspension to the Superintendent Packet*, dated October 28, 2010;
 - v. Electronic mail (e-mail) correspondence between HCPS personnel, dated November 15, 2010;
 - w. IEP progress report, dated, November 15, 2010;
 - x. Correspondence from HCPS personnel to the complainant, dated November 16, 2010;
 - y. E-mail correspondence between HCPS personnel, dated November 17, 2010;
 - z. IEP, dated November 29, 2010;
 - aa. E-mail correspondence between HCPS personnel, dated November 30, 2010;
 - bb. E-mail correspondence between HCPS personnel, dated December 2, 2010;
 - cc. Teacher logs of provision of accommodations and services to the student, dated between September and December 2010; and
 - dd. Student's discipline record for the 2010-2011 school year.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with a specific learning disability under IDEA. The student attends XXXXXXXXX, where she receives special education 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, m, o, q, t, u, and aa).

ALLEGATION #1: **IEP TEAM MEETING TO ADDRESS THE LACK OF EXPECTED PROGRESS TOWARD ACHIEVING THE ANNUAL IEP GOALS RELATED TO BEHAVIOR SINCE NOVEMBER 2009**

Findings of Fact:

2009-2010 school year

1. The IEP in effect from November 2009 until the end of the 2009-2010 school year included one (1) annual goal related to assisting the student with peer interactions. The IEP indicates that the complainant will be notified of the student's progress toward achieving the IEP goals on a quarterly basis by a progress report (Doc. c).
2. While there is documentation that school staff sent IEP Progress Reports to the complainant, dated May 5, 2010 and June 23, 2010, the reports on the behavior goal do not indicate whether the student was making sufficient progress toward achieving that goal (Docs. n and q).
3. The IEP team convened on December 3, 2009, February 25, 2010, March 18, 2010, May 20, 2010, and June 15, 2010 to review the student's program but documentation from these meetings does not indicate that the team considered the student's progress toward achieving the annual goal related to behavior (Docs. d, i, j, m, o, and p).

2010-2011 school year

4. The IEP in effect since the start of the 2010-2011 school year contains two (2) goals related to assisting the student with complying with school rules and with peer interactions (Doc. p).
5. The education record contains an IEP progress report, dated November 15, 2010, which indicates that the student is making sufficient progress toward achieving the annual goals (Doc. w).

Discussion/Conclusions:

The IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the disability, enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational needs that result from the disability (34 CFR §300.320). The public agency must ensure that the IEP team reviews each student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward achieving the goals (34 CFR §300.324).

2009-2010 school year

Based on Findings of Fact #1-3, MSDE finds that there is documentation that while the IEP team met throughout the school year, there is no documentation that they considered whether there was sufficient progress on the annual goal related to behavior, and therefore, the IEP team could not ensure that the student's IEP was revised to address any lack of expected progress. Therefore, MSDE finds a violation regarding this allegation from November 2009 until the end of the 2009-2010 school year.

2010-2011 school year

Based on Findings of Fact #4 and 5, MSDE finds that there is documentation that the student is making sufficient progress toward achieving the annual goals related to behavior. Therefore, the IEP team is not required to meet to address any lack of expected progress. As a result, MSDE finds no violation regarding this allegation for the 2010-2011 school year.

ALLEGATION #2: **IMPLEMENTATION OF THE BIP SINCE**
NOVEMBER 2009

Findings of Fact:

2009-2010 school year

6. The BIP in effect between November 2009 and March 18, 2010 requires that the student be provided with behavioral supports. These supports include being given redirection, having conferences with the student, using an alternate setting to complete her work, being given reminders, being able to "take a break," communicating with an adult about her peer interactions, and providing positive attention to the student (Doc. b).
7. The BIP in effect since March 18, 2010, requires that the student be provided with behavioral supports. These supports include clarifying of classroom expectations and routines, prompting the student to use problem-solving skills or to take a break outside the classroom, allowing the student to go directly to a designated staff member for

assistance or to peer mediation if a problem cannot be resolved, notifying the complainant immediately when a problem arises, and addressing any peer problems with the student if they are carried over from outside the class (Doc. l).

8. There is documentation that the student met with a counselor as needed throughout her school day pursuant to the BIP, but there is no documentation that she was provided with the other supports required by the BIP between December 2009 and the end of the 2009-2010 school year (Doc. r).

2010-2011 school year

9. The following document that the student has been provided with the services required by the BIP since the start of the 2010-2011 school year:
 - a. The IEP team meeting summary, dated October 28, 2010, which documents that the team discussed how the BIP was being implemented and provided written clarification as to how the “flash pass” was being used;
 - b. The HCPS *Suspension to the Superintendent Packet*, which includes two written statements from XXXXXXXX administrators regarding the behavioral supports that were used with the student on the day that she was involved in the behavior that led to a disciplinary removal;
 - c. Teacher logs that document the provision of the behavioral supports, dated between September 2010 and December 2010; and
 - d. E-mail correspondence between XXXXXXXXXXXX staff, dated November 30, 2010 and December 2, 2010 documenting that the student’s teachers met to discuss the student’s BIP (Docs. s, u, aa, bb, and cc).

Discussion/Conclusions:

In the case of a student whose behavior impedes the student’s learning or that of others, the public agency must ensure that the IEP team considers the use of positive behavioral interventions and supports and other strategies to address that behavior when developing a student’s IEP (34 CFR §300.324). The public agency must ensure that the student is provided with the special education and related services required by the IEP, including such behavioral supports (34 CFR §§300.101). In order to do so, the public agency must ensure that the IEP is accessible to all service providers responsible for implementation (34 CFR §300.323).

2009-2010 school year

Based on Findings of Fact #6-8, MSDE finds that there is no documentation that the student received all of the interventions required by the BIP between November 2009 and the end of the

2009-2010 school year. Therefore, MSDE finds a violation regarding this allegation from November 2009 until the end of the 2009-2010 school year.

2010-2011 school year

Based on Finding of Fact #9, MSDE finds that there is documentation that the student's BIP has been implemented since the start of the 2010-2011 school year. Therefore, MSDE finds no violation regarding this allegation for the 2010-2011 school year.

ALLEGATIONS #3-5: REEVALUATION PROCEDURES, IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL AND SOCIAL/EMOTIONAL NEEDS, AND PRIOR WRITTEN NOTICE

Findings of Fact:

10. On December 3, 2009, one (1) month after the student re-enrolled in HCPS after living out of state, the IEP team convened to conduct a three (3)-year reevaluation. The documentation of the meeting indicates that the team determined that the following additional data was necessary:
 - a. A psychological assessment with both cognitive and social/emotional components;
 - b. A speech-language assessment to measure receptive and expressive language;
 - c. An educational assessment to measure the student's performance in reading, math, and written expression; and
 - d. A FBA.

At the meeting, the complainant provided her consent for the assessments to be conducted (Docs. d and e).

11. There is documentation that the psychological, educational, and speech-language assessments were conducted in January 2010 and February 2010. There is documentation that the IEP team convened on February 25, 2010 to review the results of these assessments. The documentation of this meeting indicates that after its review of the results, the team determined that the student continues to be a student with a specific learning disability in need of special education services but did not review the student's program to determine whether it remained appropriate (Docs. f-i).
12. There is documentation that the FBA was conducted on March 18, 2010 and that the IEP team reconvened on this date in order to review the results of the FBA. The

documentation of the meeting indicates that based upon its review of the results of the assessments, the team determined that, in addition to academic needs, the student continues to have behavior needs related to peer relationships and self-management. There is no indication in the documentation that the student's behavior needs are linked to her specific learning disability in reading (Docs. j-m).

13. In order to address the student's needs related to her behavior, the team revised the IEP to include an annual goal to assist her with complying with school and classroom rules and interacting with peers and teachers in a more appropriate manner. The team determined that the student requires counseling as a related service, and that the BIP remains appropriate (Docs. m and p).
14. The documentation of the March 18, 2010 meeting indicates that the complainant did not agree with the revised program and that the team agreed to reconvene to address her continuing concerns regarding the program (Docs. m and p).
15. The team reconvened on May 20, 2010 and June 15, 2010 and revised the IEP to include a second behavior goal related to resolving peer conflicts. The IEP was also revised to reduce the amount of counseling from four (4) hours per month to two (2) hours per year, but there is no documentation of the basis for this decision (Docs. m and p).
16. There is documentation that the complainant brought a psychologist and a licensed clinical social worker (LCSW) to the June 15, 2010 meeting.² School staff acknowledge that they provided input regarding the student's behavior supports, and assert that the team incorporated all of the suggestions into the student's program. However, there is no documentation to indicate what suggestions were made at the meeting or the basis for the revisions made regarding the required behavior supports (Docs. a and p).

Discussion/Conclusions:

Allegation #3: Reevaluation procedures in February 2010

Comprehensiveness of the Reevaluation

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of disability determined by the IEP team. When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the

² The complainant alleges that the psychologist and the LCSW attended the May 20, 2010 meeting. The documentation indicates that they attended the June 15, 2010 meeting. While there is some confusion about which IEP team meeting they actually attended, there is no dispute between the parties that they did attend one of these meetings and provide input into the student's program (Docs. a, p, and interviews with the complainant and school staff).

disability category in which the student has been classified. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and the needs that arise from the disability (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents; current classroom-based, local, or State assessments; classroom-based assessments; and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, is needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on Finding of Fact #10, MSDE finds that the IEP team assessed the student or had data in all the areas of concern raised by the IEP team at the December 3, 2009 IEP team meeting and that there is no documentation that indicates that the student's behaviors are linked to her specific learning disability in reading. Therefore, MSDE finds that the reevaluation was comprehensive and does not find a violation regarding this aspect of the allegation.

MSDE reminds the complainant that if she disagrees with the results of the assessments, she maintains the right to request an independent educational evaluation (IEE) at public expense, pursuant to 34 CFR §300.502. Should the complainant request an IEE, MSDE reminds HCPS that it must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that the IEE is provided at public expense, pursuant to 34 CFR §300.502.

Reevaluation Timelines

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on Findings of Fact #10-12, MSDE finds that the reevaluation process should have been completed by March 3, 2010, but was not completed until March 18, 2010. Therefore, MSDE finds a violation with regard to this aspect of the allegation.

Allegation #4: IEP that addresses the student's social/emotional needs since February 2010

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student,

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the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. As stated above, the team also must consider the use of positive behavioral interventions and supports and other strategies to address behavior that impedes the student's learning or that of others (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the state agency can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46601, August 14, 2006).

The state educational agency may not, however, overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p. 46601, August 14, 2006).

Based on Findings of Fact #10-13, MSDE finds that the IEP team developed a program that is consistent with the data used to develop the program in effect until June 15, 2010. However, based on Findings of Fact #14 and 15, MSDE finds that there is no documentation of the basis for the team's decision to reduce the amount of counseling required since June 15, 2010. Therefore, MSDE finds that there is no documentation that the decision is consistent with the data and that a violation has occurred with respect to this allegation since June 15, 2010.

Allegation #5: Prior Written Notice

The public agency is required to provide parents with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student. Prior written notice includes, among other things, the basis for the decisions and the data relied upon in making the decision (34 CFR §300.503).

Based on Finding of Fact #16, MSDE finds that the complainant has not been provided with prior written notice of the team's decisions regarding recommendations made by the complainant's experts. Therefore, MSDE finds a violation regarding this allegation.

ALLEGATION #6:

DISCIPLINARY REMOVAL IN OCTOBER 2010

Findings of Fact:

17. The IEP in effect in October 2010 states that the student is identified as a student with a specific learning disability related to her reading difficulties. The IEP also states that the student “exhibits behaviors that interfere with the learning of self and others” and that “behavioral supports and interventions are needed in order for [the student] to be successful in the classroom environment” (Doc. p).
18. Prior to October 2010, the student’s disciplinary record indicates that she had been disciplinarily removed from school for a total of two (2) school days during the 2010-2011 school year (Doc. dd).
19. On October 27, 2010, there is documentation that the student engaged in a physical altercation with another student and was disciplinarily removed from school for eight (8) school days, with a recommendation to the Superintendent for a long-term suspension (Docs. u and dd).
20. On October 28, 2010, the IEP team convened to determine whether the student’s behavior that led to the disciplinary removal was a manifestation of her disability. The documentation of that meeting indicates that the team decided that the student’s behavior was not caused by and did not have a direct and substantial relationship to, the student’s disability. The documentation also indicates that the team decided that the student’s behavior was not a direct result of the lack of implementation of the IEP. The team determined that the student’s program could be implemented at either the alternative school or at evening school during the period of her disciplinary removal (Doc. s).
21. On November 8, 2010, the Superintendent’s Designee held a hearing. The documentation of that hearing indicates that the student’s disciplinary removal was extended for five (5) additional days and that it was determined that the student would attend evening school to receive her educational services beginning on November 9, 2010. The documentation also indicates that the student would be permitted to return to XXXXXXXXX on November 18, 2010 (Docs. v and x).
22. There is documentation that services were made available to the student beginning on November 9, 2010, but that the complainant did not send her to the evening school. There is documentation that the student returned to XXXXXXXXX on November 18, 2010 (Docs. v, w, y, and interview with complainant).

Discussion/Conclusions:

IDEA and COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) consecutive school days in a school year or have been subjected to a

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series of removals that constitute a pattern because they total more than ten (10) non-consecutive school days in a school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals (34 CFR §§300.530 and .536).

Within ten (10) school days of the date in which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability. In order to make the manifestation determination, the IEP team must review all relevant information to decide if the conduct in question:

- Was caused by, or had a direct and substantial relationship to the student's disability; or
- Was the direct result of the school's failure to implement the IEP (34 CFR §300.530).

If the IEP team determines that the behavior was a manifestation of the student's disability, it must return the student to the educational placement from which the student was removed (34 CFR §300.530 and COMAR 13A.08.03.08). If the behavior is determined not to be a manifestation of the student's disability, the public agency may apply discipline procedures to students with disabilities in the same manner as would be applied to students without disabilities, except:

- the student with a disability who is removed from the current placement must continue to receive educational services, determined by the IEP team, to enable the student to progress in the general curriculum and advance toward achieving the goals of the student's IEP, although those services may be provided in an alternative setting, and
- the student must receive, as appropriate, a FBA and behavior intervention services that are designed to address the behavior violation so that it does not recur (34 CFR §300.530 and COMAR 13A.08.03.08).

In this case, the complainant alleges that the student's IEP includes behavioral supports that specifically address the type of behavior for which she was disciplinarily removed. Additionally, the complainant alleges that the student's BIP has not been implemented. For these reasons, the complainant asserts that the team was required to find that the behavior was a manifestation of the student's disability (Doc. a and interview with complainant).

Based on Finding of Fact #17, MSDE finds that there is documentation that the student does exhibit behaviors that interfere with her learning and that her program addresses those behaviors. However, based on Findings of Fact #12 and 20, MSDE further finds that the IEP team determined that these behaviors are not linked to the student's disability. Additionally, as determined in Allegation #2, above, MSDE finds that the student's BIP was being implemented at the time of her disciplinary removal. Therefore, MSDE finds no violation regarding the IEP team's determination that the student's behavior that led to the disciplinary removal was not a manifestation of her disability.

Further, based on Findings of Fact #18-20, MSDE finds that the IEP team conducted the manifestation determination meeting within ten (10) school days of the date in which the decision was made to change the student's placement. Based on Findings of Fact #21 and 22, MSDE finds that HCPS made available educational services to enable the student to progress in the general education curriculum and make progress toward achieving the annual IEP goals on November 9, 2010, which was the eleventh (11th) day of disciplinary removal. Therefore, MSDE finds no violation with respect to the meeting within the required timeline or with the provision of services to the student.

ALLEGATION #7: **REVISING THE IEP IN NOVEMBER 2010 WITHOUT CONVENING AN IEP TEAM MEETING AND WITHOUT AGREEMENT TO AMEND WITHOUT AN IEP TEAM MEETING**

Findings of Fact:

23. There is documentation that, at the HCPS suspension hearing, the Superintendent's Designee indicated that the student may benefit from the support of a one-to-one aide. There is documentation that this support was provided upon the student's return to school on November 18, 2010, on a trial basis, in order for the team to have data to consider regarding the effectiveness of this intervention (Docs. x and y).
24. The IEP team convened on November 29, 2010, in order to consider whether the one-to-one aide was an appropriate behavior support for the student. The documentation of the meeting indicates that the team, which included all of the proper participants, determined that the support was appropriate and revised the student's program to include adult support "for transitions and unstructured time periods to intervene as potential conflicts arise with peers and adults" (Doc. z).

Discussion/Conclusions:

Changes to the IEP may be made in one of two ways:

- By the entire IEP team at an IEP team meeting; or
- By amending the IEP without convening an IEP team meeting (34 CFR §300.324(a)(6)).

In order to amend the IEP without convening an IEP team meeting, the student's parent and the public agency must agree not to convene an IEP team meeting in order to change the IEP and must develop a written document to amend or modify the current IEP (34 CFR §300.324(a)(4)).

In this case, the complainant alleges that the IEP was amended to include the one-to-one aide outside of the IEP team process (Doc. a and interview with complainant). However, based on Findings of Fact #23 and 24, MSDE finds that the IEP was revised by the IEP team, which

included the complainant, as required. Therefore, MSDE finds no violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

MSDE requires HCPS to ensure that an IEP team convenes as soon as possible, but no later than March 15, 2011. At the IEP team meeting, the team must determine the nature and amount of *compensatory services*³ necessary to redress the violations identified in the LOF.

HCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

School-based

MSDE requires HCPS to provide documentation by May 1, 2011, of the steps it has taken to determine if the violations identified in the LOF are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX. 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 MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch 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, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of OSEP Memorandum #09-02. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during monitoring of HCPS in the future.

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.

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).

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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 fact or conclusions reached in this LOF. 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 LOF. If additional information is provided, it will be reviewed and 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 LOF.

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 FAPE for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

CAH:ks

cc : Sydney L. Cousin
Janet Zimmerman
XXXXXXXXXX
XXXXXXXXXX
Martha Arthur
Kathy Stump