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January 5, 2011

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Ms. Mary Lee Phelps
Acting Director, Department of Special Education Operations
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #11-029

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 15, 2010, MSDE received a complaint from Wayne D. Steedman, Esq., hereafter, "the complainant," on behalf of the above referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. MCPS did not ensure that the student received special education instruction in mathematics from a special education teacher, as required by the student's Individualized Education Program (IEP) from November 2009¹ until the end of the 2009-2010 school year, in accordance with 34 CFR §300.101; and

¹ The complaint alleges violations dating back to the start of the 2009-2010 school year. However, the complainant was informed in writing on December 1, 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.

2. MCPS did not ensure that the student received special education instruction in English and mathematics from a special education teacher, as required by the student's IEP during the first quarter of the 2010-2011 school year, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 16, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn Mason, Director of Special Education, MCPS; Ms. Judith Pattik, Director, Department of Special Education Operations, MCPS²; and Ms. Alison Steinfelds, Supervisor, Equity Assurance and Compliance Office, MCPS.
3. On November 29, 2010, Ms. Stump spoke with the complainant and clarified the allegations to be investigated. On that same date, MSDE received, via facsimile, written consent from the student's parent to release the results of the investigation to the complainant.
4. On December 1, 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. Pattik of the allegations and requested that her office review the alleged violations.
5. On December 15, 2010, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, reviewed the student's education record at the MCPS Central Office. Ms. Meryl Benko, Paralegal, Equity Assurance and Compliance Office, MCPS, and Ms. Donna Naberhuis, Compliance Specialist, Equity Assurance and Compliance Office, MCPS, were present at the record review to provide information on MCPS policies and procedures, as needed.
6. On December 16, 2010, MCPS provided additional documentation from the student's education record via electronic mail (e-mail).
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 on November 15, 2010;

² Ms. Pattik was the Director of Special Education Operations at the time MSDE received the complaint. As of the date of this LOF, Ms. Mary Lee Phelps is now Acting Director of Special Education Operations.

- b. IEP, dated November 10, 2009;
- c. IEP, dated March 12, 2010;
- d. IEP progress reports for the 2009-2010 school year;
- e. Math Content Specialist's personal calendar for September 2010;
- f. Special Education Resource Teacher's personal calendar for September 2010;
- g. Office of Administrative Hearings (OAH) Decision, dated November 1, 2010;
- h. IEP progress reports for the first quarter of the 2010-2011 school year;
- i. Sample lesson plans from math and English for the first quarter of the 2010-2011 school year;
- j. MCPS *Secondary Teacher Report for Quarterly Progress* for the first quarter of the 2010-2011 school year;
- k. Student's class schedule for the 2010-2011 school year; and
- l. MCPS Regulation on Substitute Teachers.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an other health impairment under IDEA, related to a diagnosis of XXXXXXXXXXXX. The student attends XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXX XXXXXXXX), where she receives special education and related services. During the period of time addressed by this investigation, the student's parents participated in the education decision-making process, and were provided with written notice of IEP team decisions and notice of the procedural safeguards (Docs. a, b, c, and g).

ALLEGATION #1:

PROVISION OF SPECIAL EDUCATION INSTRUCTION IN MATH FROM A SPECIAL EDUCATION TEACHER FROM NOVEMBER 2009 UNTIL THE END OF THE 2009-2010 SCHOOL YEAR

Findings of Fact:

1. The IEP in effect from November 10, 2009 until March 12, 2010 required that the student receive special education instruction in math from "the IEP team" (Doc. b).
2. The IEP in effect from March 12, 2010 until the end of the 2009-2010 school year required that the student receive special education instruction in math from a special education teacher (Doc. c).
3. There is documentation that the student received special education instruction in math from a general education math teacher between November 2009 and the end of the 2009-2010 school year. MCPS acknowledges that the math teacher who provided this instruction is not a certified special education teacher (Docs. d, g, interview with MCPS personnel, and on-site review of the teacher's certification).

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4. IEP progress reports, dated December 3, 2009, February 4, 2010, April 6, 2010, and June 1, 2010 indicate that the student made sufficient progress toward achieving the annual IEP goals related to math (Doc. d).
5. In an OAH due process hearing decision regarding this student, dated November 1, 2010, the administrative law judge found that the student's IEP was implemented during the 2009-2010 school year and that the student made progress toward achieving the annual IEP goals (Doc. g).

Discussion/Conclusions:

The public agency is required to ensure that each student is provided with the special education and related services required by the student's IEP (34 CFR §§300.101 and .103). The IDEA requires that highly qualified personnel provide special education and related services. Public agencies must ensure that personnel are appropriately and adequately prepared and trained. The federal regulations contain specific requirements for personnel who provide special education services in core academic subjects (including language arts, mathematics, science, civics and government, economics, arts, and history) consistent with Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965 (No Child Left Behind Act).

Maryland teachers can meet these requirements in several ways, including the following:

- 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 (*Using Maryland's High, Objective, Uniform State Standard of Evaluation*, March 2005).

In addition to the above requirements under No Child Left Behind Act (NCLB), IDEA requires that special education teachers obtain full State certification as a special education teacher or pass the State special education teacher licensing examination, *and* hold a license to teach in the State as a special education teacher (34 CFR §§300.18 and .156)

Based on Findings of Fact #1-3, MSDE finds that the student did not receive special education instruction in math in accordance with the IEP from November 2009 until the end of the 2009-2010 school year. Therefore, MSDE finds a violation with regard to the allegation.

Notwithstanding the violation, based on Findings of Fact #4 and 5, MSDE finds that there is documentation that the student's IEP was implemented and that she made progress toward

achieving the annual IEP goals related to math. As a result, no student-specific corrective action is necessary to address this matter.

Additional violation: **IEP not written clearly**

The IEP team is a group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability (34 CFR §300.23). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999).³

Based on Finding of Fact #1, MSDE finds that the IEP was not written clearly when it stated that special education instruction in math would be provided by the IEP team. Therefore, MSDE finds that the student's IEP is not written clearly and finds a violation occurred.

Notwithstanding the violation, based on Finding of Fact #2, MSDE finds that the IEP team clarified the IEP at the March 12, 2010 meeting. Therefore, no student-specific corrective action is necessary to address this matter.

ALLEGATION #2: **PROVISION OF SPECIAL EDUCATION INSTRUCTION IN ENGLISH AND MATH FROM A SPECIAL EDUCATION TEACHER FOR THE FIRST QUARTER OF THE 2010-2011 SCHOOL YEAR**

Findings of Fact:

6. XXXXXXXXXXXX MS is not a Title I school under NCLB (review of MCPS website).
7. The IEP in effect since the start of the 2010-2011 school year requires that the student receive special education instruction in English and math from a special education teacher (Doc. c).
8. From August 25, 2010 until October 22, 2010, the student received special education instruction in English and math from a long-term substitute teacher (On-site review of MCPS *Long-Term Substitute Request for Employment or Notice of Termination* form).
9. MCPS Regulations require that a substitute teacher have at least bachelor's degree. An on-site review of the long-term substitute's credentials document that she has a bachelor's degree (Doc. l and on-site review of the substitute teacher's resume and transcripts).

³ In the 2004 reauthorization of the IDEA, no changes were made to this requirement

10. There is documentation that the long-term substitute received supervision and support from the math content area specialist, the special education resource teacher, and the special education teacher for whom the long-term substitute was working (Docs. e, f, i, and k).
11. The IEP progress report dated October 29, 2010 and the MCPS *Secondary Teacher Report for Quarterly Progress* in math and English document that the student is making sufficient progress toward achieving the annual IEP goals related to English and math (Docs. h and j).
12. Since October 22, 2010, the student has received special education instruction in English and math from a certified special education teacher (Doc. k, on-site review of the MCPS *Long-Term Substitute Request for Employment or Notice of Termination* form, and on-site review of the teacher's certification).

Discussion/Conclusions

Under NCLB, substitute teachers who work in Title I schools for four (4) or more consecutive weeks must meet the criteria in the Act for highly qualified teachers (34 CFR §200.61). In schools that do not meet the Title I criteria under NCLB, the United States Department of Education, Office of Special Education Programs (OSEP) has stated that "aside from the 'highly qualified' requirements for teachers and special education teachers...other personnel qualifications are appropriately left to the states" (34 CFR §300, Appendix A, p. 46609).³

Based on Finding of Fact #7, MSDE finds that since the start of the 2010-2011 school year, the student's IEP requires that she be provided with special education instruction in English and math from a special education teacher. Based on Finding of Fact #8, MSDE finds that from the start of the 2010-2011 school year until October 22, 2010, the student received special education instruction in English and math from a long-term substitute teacher.

Based on Finding of Fact #6, MSDE finds that XXXXXXXXXXXXXXXXXXXX is not a Title I school and therefore, the long-term substitute does not have to meet the highly qualified teacher requirements. Based on Finding of Fact #9, MSDE finds that the substitute teacher meets the MCPS qualifications to be a substitute teacher. Based on Findings of Fact #10 and 11, MSDE finds that the substitute teacher was provided with supervision and support and the student made progress toward achieving the annual goals in English and Math.

Based on Finding Find #12, MSDE finds that since October 22, 2010, the student has received special education instruction in English and math from a certified special education teacher. Therefore, MSDE finds no violation with regard to this allegation.

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CORRECTIVE ACTIONS/TIMELINE:

MSDE requires MCPS to provide documentation by April 15, 2011 of the steps it has taken to determine if the violation identified in the LOF is unique to this case or if it represents a pattern at XXXXXXXXXXXXXXXX. 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 and 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 MCPS in January 2011.

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.

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 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.

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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 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 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 : Jerry D. Weast (w/encl.)
Gwendolyn J. Mason (w/encl.)
Alison Steinfels (w/encl.)
XXXXXXXXXX(w/encl.)
Dori Wilson
Martha Arthur
Kathy Stump