



Nancy S. Grasmick
State Superintendent of Schools

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February 2, 2011

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Ms. Kristen Mentges
Coordinator of Special Education
Talbot County Public Schools
P.O. Box 1029
Easton, Maryland 21601

RE: XXXXX
Reference: #11-038

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 December 6, 2010, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Talbot County Public Schools (TCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. TCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his social-emotional and behavior needs since December 2009,¹ in accordance with 34 CFR §300.324; and
2. TCPS has not followed proper procedures when determining the student’s educational placement since December 2009,¹ in accordance with 34 CFR §300.324.

¹ The complaint alleged violations dating to the start of the 2009-2010 school year. However, the complainant was informed in writing on December 15, 2010, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 8, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Kristen Mentges, Coordinator of Special Education, TCPS. On that same date, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant and clarified the allegations to be investigated.
3. On December 15, 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. Mentges of the allegations and requested that her office review the alleged violations.
4. On January 5, 2011, MSDE received a written response to the complaint from TCPS, via facsimile.
5. On January 7, 2011, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXX (XXXXXX) to review the student's education record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Behavior Counselor;
 - b. Ms. XXXXXXXXXXXX, School Psychologist;
 - c. Mr. XXXXXXXX, Special Education Teacher; and
 - d. Ms. XXXXXXXXXXXX, Assistant Principal and IEP Team Chairperson;

Ms. Mentges attended the site visit as a representative of TCPS and to provide information on TCPS policies and procedures, as needed.
6. On January 25, 2011, MSDE received additional documentation from the student's education record from TCPS, via facsimile.
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 December 6, 2010;
 - b. IEP, dated October 26, 2009;
 - c. IEP meeting summary, dated October 26, 2009;
 - d. Admission Note, Master Treatment Plan of Care, and Discharge Summary from the student's October 2009 hospitalization;

- e. IEP team meeting summary, dated December 8, 2009;
- f. Electronic mail (e-mail) correspondence between XXXXXXXXXX staff and the student's community-based mental health services provider, dated March 17, 2010;
- g. IEP team meeting summary, dated March 19, 2010;
- h. Admission Note, Master Treatment Plan of Care, and Aftercare Referral form from the student's March 2010 hospitalization;
- i. Correspondence from XXXXXXXXXXXXXXXXXXXX to XXXXXXXXX staff, dated May 20, 2010;
- j. Admission Note, Master Treatment Plan of Care, and Discharge Summary from the student's May 2010 hospitalization;
- k. IEP, dated June 1, 2010;
- l. IEP team meeting summary, dated June 1, 2010;
- m. TCPS *Notice and Consent for Assessment*, dated June 1, 2010;
- n. Admission Note and Master Treatment Plan of Care for the student's June 2010 admission to the residential treatment center;
- o. Student's attendance record from XXXXXXXXX for the 2009-2010 school year;
- p. Autism Spectrum Evaluation report, dated August 16, 2010;
- q. IEP team meeting summary, dated August 27, 2010;
- r. TCPS *Notice and Consent for Assessment*, dated August 27, 2010;
- s. TCPS Occupational Assessment report, dated September 20, 2010;
- t. TCPS Speech-language Assessment report, dated September 21, 2010;
- u. IEP team meeting summary, dated October 11, 2010;
- v. TCPS *Notice and Consent for Assessment*, dated October 11, 2010;
- w. TCPS Educational Assessment report, dated October 18, 2010;
- x. TCPS *Classroom Observation*, dated October 27, 2010;
- y. TCPS Speech-language Assessment report, dated November 2, 2010;
- z. IEP, dated November 9, 2010;
- aa. IEP team meeting summary, dated November 9, 2010;
- bb. IEP, dated January 7, 2011;
- cc. IEP team meeting summary, dated January 7, 2011;
- dd. Notice of IEP team meeting for February 4, 2011;
- ee. Student's attendance record for the XXXXXXXXX for the 2010-2011 school year;
- ff. E-mail correspondence between XXXXXXXXX staff and the complainant, dated October 8, 2009; and
- gg. Special education teacher's notes regarding the student for the 2009-2010 school year.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with an emotional disability under IDEA, and receives special education and related services. Since the start of the 2009-2010 school, the student has been in the following residential and educational placements:

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- From the start of the 2009-2010 school year until October 9, 2009, the student lived at home with his parents and attended XXXXX HS.
- From October 12, 2009 until October 16, 2009, the student was an inpatient at XXXX XXXXXXXXXXXXX, a psychiatric facility located in XXXXX, XXXX. There is no documentation that the student received educational services during this time period.
- From October 16, 2009 until October 21, 2009, the student was living at home with his parents and participating in a partial hospitalization program (PHP) at XXXXXXXX XXXXXXXXXXXXXXXX of the XXXXXXX (XXXXXXXXXX), located in XXXXXXX, XXXXXXXX. There is no documentation that the student received educational services during this time period.
- From October 22, 2009 until March 23, 2010, the student lived at home with his parents and attended XXXX HS.
- From March 24, 2010 until April 6, 2010, the student was living at home with his parents and participating in the PHP at XXXXXXXX. There is no documentation that the student received educational services during this time period.
- From April 7, 2010 until May 5, 2010, the student lived at home with his parents and attended XXXXXXX.
- From May 6, 2010 until May 14, 2010, the student was an inpatient at XXXXXXXXXXXX. There is no documentation that the student received educational services during this time period.
- From May 14, 2010 until May 21, 2010, the student was living at home with his parents and participating in the PHP at XXXXXXXXXXXX. There is no documentation that the student received educational services during this time period.
- There is no documentation that the student received educational services between May 21, 2010 and June 1, 2010.
- From June 1, 2010 until June 14, 2010, the student lived at home with his parents and received Home and Hospital Teaching (HHT) instruction from TCPS.
- From June 14, 2010 until December 17, 2010, the student was in a residential treatment center (XXX) located at XXXXXXXXXXXX. This placement occurred through the Talbot County Local Coordinating Council as a result of a Voluntary Placement Agreement between the student's parents and the Talbot County Department of Social Services (TCOSS). During this time, the student attended the XXXXXXXX, which is a nonpublic

school located on the grounds of the XXXX. The TCDSS funded the student's educational placement.

- On December 17, 2010, the Voluntary Placement Agreement ended and the student returned to the care and custody of his parents. The student continues to attend the XXXXXXXXX, as a parentally-placed private school student.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with notice of the procedural safeguards (Docs. a-e, g, h, j-o, q, r, u, v, z-cc, and ee).

ALLEGATION #1: **IEP THAT ADDRESSES THE STUDENT'S
SOCIAL/EMOTIONAL AND BEHAVIORAL NEEDS**

Findings of Fact:

October 2009

1. The IEP in effect in December 2009 was developed at an IEP team meeting held on October 26, 2009. The summary of that meeting indicates that the team considered the student's progress toward achieving the annual IEP goals, teacher reports, the student's performance on statewide assessments, input from the complainant, the student's progress in the general education curriculum, and information that the student had just returned from an inpatient hospitalization followed by a partial hospitalization as a result of his emotional disability. Based upon its review of this data, the documentation indicates that the team identified needs, in addition to academic needs, in the area of behavior related to anxiety and peer interactions (Docs. b and c).
2. In order to address these needs, the team determined that the student required accommodations, such as verbatim reading of assessments, a scribe, and taking tests in the afternoon as opposed to the morning, to assist the student with not feeling anxious (Docs. b and c).
3. The IEP team also developed annual goals to assist the student with using coping strategies and to improve his social interaction skills. In order to assist the student with achieving the goals, the IEP team determined that the student required special education instruction for twenty (20) hours in both a general education classroom and in a separate special education classroom and counseling as a related service for one (1) hour per week outside of the general education setting (Docs. b and c).
4. The meeting summary also indicates that the team, including the complainant, determined that the student's transition back to classes at XXXXXXXXXX from the hospitalization should be a slow one. As a result, the team modified the student's

schedule of classes. The team agreed that for a short time, the student would attend XXXXXXXX for two (2) periods per day (Docs. b and c).

December 2009

5. On December 8, 2009, the IEP team convened, at the complainant's request, to review the student's program and progress. The documentation indicates that the team considered the student's progress on the modified schedule. The team agreed that the student's transition back to XXXXXXXX was going well and agreed that the student would attend XXXXXXXX for three (3) periods per day (Doc. e).
6. The team at the December 8, 2009 meeting revised the student's annual goals based on the reports of his progress. The team also agreed to reconvene in one month, prior to the start of the second (2nd) semester, to discuss the student's schedule. However, there is no documentation that the team met in January, as agreed (Doc. e and review of education record).

March 2010

7. The special education teacher's notes and e-mail correspondence between the special education teacher and the complainant indicate that the student's behavior could not always be controlled at school with the behavior supports required by the IEP and that school staff contacted the complainant to pick the student up prior to the end of the school day. However, school staff did not document these as disciplinary removals from school (Docs. f, ff, gg, and review of education record).
8. On March 19, 2010, the IEP team convened, at the complainant's request, to review the student's program. The documentation indicates that the team considered the student's progress toward achieving the annual goals related to behavior and discussed a behavior incident involving the student that occurred recently on the school bus. Based on its review, the team revised the annual goal related to behavior to include an additional short-term objective for the student to refrain from throwing objects at peers, and determined that the student required specialized transportation to and from school because "it is too overwhelming for him to ride the regular school bus" (Doc. g).
9. The team at the March 19, 2010 meeting also considered the student's progress on the modified schedule. The team agreed that the student's transition back to XXXXXXXX was continuing to go well and agreed that the student would begin attending the full day of classes at XXXXXXXX, after Spring Break, on April 7, 2010 (Doc. g).
10. At the March 19, 2010 meeting, the team also determined that as a result of the student's change of schedule, he required an additional five (5) hours of special education instruction in a separate special education classroom (Doc. g).

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11. On March 24, 2010, the student was hospitalized in a PHP because of a behavior incident that began during the school day and continued to escalate after he got home. The student returned to school from the PHP on April 7, 2010. The documentation indicates that the student began attending a full day of classes in accordance with the IEP team's determination at the March 19, 2010 IEP team meeting (Doc. h).

May 2010

12. On May 5, 2010, the student was hospitalized because of a behavior incident that occurred in the student's community-based counseling program. The student remained hospitalized until May 21, 2010 (Docs. i and j).

June 2010

13. On June 1, 2010, the IEP team convened, at the complainant's request, to consider the services to be provided to the student while he was on HHT instruction due to the emotional crisis that prevented him from attending school. The documentation indicates that the team determined that the student would receive ten (10) hours weekly of HHT instruction in order to address his academic needs until the end of the 2010-2011 school year or until the student was placed in the XXXXXXXX. The team agreed that it would reconvene prior to the start of the 2010-2011 school year to develop a transition plan for the student after the HHT services ended. The team revised the IEP document to reflect the HHT services (Docs. i, k, and l).
14. The team at the June 1, 2010 meeting also considered information from the student's community-based mental health services providers that the student displays possible traits of Asperger's Syndrome and a recommendation for testing. The team agreed that more data was needed to determine if the student had additional needs related to his behavior and determined that an autism spectrum evaluation would be conducted. The complainant provided consent for the assessment (Docs. k-m).
15. On June 14, 2010, the student was placed in the XXX at XXXXXXXX through a Voluntary Placement Agreement between the student's parents and the TCDSS and began attending the XXXXXXXXXX, the nonpublic school located on the grounds of the XXX (Doc. n).

August 2010

16. On August 27, 2010, the IEP team convened to review the results of the autism spectrum evaluation. The evaluation report indicates that the student "displays definite impairments" in his social interaction skills because he has:

- a. Difficulty with using eye contact, facial expressions, and gestures to initiate, sustain, and regulate social interaction;
 - b. Difficulty with initiating conversation with others, keeping a conversation going, and taking conversation very literally;
 - c. Difficulty with understanding social behavior and social cues;
 - d. Difficulty with understanding others' feelings or his role in social relationships and interactions;
 - e. Sensory sensitivity to touch and loud noises; and
 - f. "Significant difficulty" with adjusting to changes in routine and with all aspects of executive functioning (Docs. p and q).
17. The report of the autism spectrum evaluation also indicates that although the student displays "significant impairments" in his social interaction skills, "there is limited evidence" of the other aspects of autism. The evaluator recommended that a pragmatic language assessment be conducted to help assess the student's level of social language skills and that an occupational therapy (OT) assessment be conducted to further assess his sensory processing skills (Docs. p and q).
18. Based on its review of the autism spectrum evaluation, the team at the August 27, 2010 IEP team meeting determined that the student does not have an autism spectrum disorder. The team also agreed that the assessments recommended by the evaluation report were required to determine the student's educational needs. The complainant provided written consent for the assessments (Docs. p-r).

October 2010

19. On October 11, 2010, the IEP team convened to consider the results of the assessments determined necessary at the August 26, 2010 meeting. The documentation indicates that the team considered the following data:
- a. The results of the pragmatic language assessment, which indicated that the student had average scores and did not display a language disorder related to pragmatic language;
 - b. The results of the OT assessment, which indicated that the student demonstrates sensitivity to auditory stimuli and "sensation avoiding." The report recommended that the student be provided with such supports as moving to a quiet area if he feels overwhelmed by noise, allowing him more time to follow activities,

repetition of auditory information, reducing the amount of stimuli in the environment, use of verbal cues and increased response time;

- c. Input from the student, which indicated that he finds it easier to concentrate and to complete work in a smaller class and that he has learned what coping skills work for him such as asking for a “time out,” squeezing a tennis ball, or shuffling cards;
- d. Input from the student’s parents, which indicated that they believe that the student requires a nonpublic school in order to be successful; and
- e. Input from staff at the XXXXXXXXX, which indicated that in the residential setting, the student is progressing through the program and would likely return home in January 2011. XXXXXXXX staff also indicated that in the educational program, the student sits next to the instructional assistant in each class, asks for assistance when needed, follows classroom rules and procedures, is quiet and respectful to staff and peers, and does not exhibit problem behavior in the classroom. However, the student continues to struggle when he does not understand an assignment and he “shuts down” when he becomes agitated (Docs. s-u).

20. At the October 11, 2010 meeting, IEP team members disagreed on the student’s current levels of academic achievement and functional performance. Therefore, the team determined that an educational assessment, a classroom observation, and a speech-language assessment of the student’s receptive and expressive language skills were necessary. The complainant provided written consent for these assessments (Docs. s-v).

November 2010

21. On November 9, 2010, the IEP team convened to review the results of the assessments determined necessary at the October 11, 2010 meeting. The documentation indicates that the team considered the following data:
- a. The results of the educational assessment, which indicate that the student has “low average” to “average” skills in reading, math, and written language;
 - b. The results of the speech-language assessment, which indicate that the student demonstrates “a language disorder in the area of auditory memory/integration;”
 - c. The results of the classroom observation, which indicate that the student demonstrated no difficulties with any of the skills assessed;

- d. Input from the XXXXXXXX regarding the student's progress in the educational placement, which indicates that the student continues to make progress toward achieving the annual IEP goals and in the general education curriculum;
 - e. Input from the complainant, which indicated that she would like the student to continue attending the nonpublic school because she believes that the smaller class sizes are beneficial to the student's academic success and that the therapeutic environment helps his emotional stability (Docs. w-aa).
22. At the November 9, 2010 meeting, the team revised the student's program by updating levels of academic achievement and functional performance based on the assessment data, adding text-to-speech software as an accommodation, revising the student's behavioral goals based on the student's progress, and including additional behavioral supports to reduce the student's frustration and anxiety, such as "chunking" reading into smaller passages, providing therapeutic breaks, providing access to a "crisis intervention" plan and preferential seating (Docs. z and aa).
23. At the November 9, 2010 meeting, the team also revised the IEP to require special education instruction for twenty-eight and one-half (28½) hours per week in both a general education classroom and a separate special education classroom and one and one-half (1½) hours weekly of counseling services outside of the general education setting (Docs. z and aa).

January 2011

24. On January 7, 2011, the IEP team convened to review the student's program because he had been discharged from the XXX, was again residing with his parents, and continued to attend the XXXXXXXXXXXX as a parentally-placed private school student. The documentation indicates that the team considered the following data:
- a. The history of the student's progress in the residential placement;
 - b. The student's progress toward achieving the annual IEP goals in the general education curriculum at the XXXXXXXX; and
 - c. The behavioral supports in place at the XXXXXXXX (Docs. bb and cc).
25. At the January 7, 2011 meeting, the team revised some of the student's goals and services based on the data, but did not complete its review due to time constraints. An IEP team meeting is scheduled for February 4, 2011 (Docs. bb-dd).

Discussion/Conclusions:

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

Once the IEP is developed, 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. The team must also revise the IEP, as appropriate, to address any lack of expected progress toward achieving the goals, the results of any reevaluation, information about the student provided to or by the parents, the student's anticipated needs, or other matters (34 CFR §300.324).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team shall meet to review and revise the student's IEP and shall:

- Determine the instructional services to be provided to the student as long as the medical restrictions apply; and
- Develop a plan for returning the student to a school-based program (COMAR 13A.05.01.10(C)(5)).

When the period of treatment or convalescence ends, the IEP team shall:

- Review and revise the IEP; and
- Determine the appropriate placement in the LRE (COMAR 13A.05.01.10(C)(5)).

Based on Findings of Fact #1-6 and 8-25 MSDE finds that there is documentation that the team met continually since October 2009 to review the student's program and revise it, as appropriate, based on the data. However, based on Finding of Fact #7, MSDE finds that there is documentation that the student's behavioral needs were not being met and that the student was sent home early because of his behavior.

Further, based on Findings of Fact #8, 13, 16, 19, and 21, MSDE finds that the team did not review or revise, as appropriate, the student's program to provide additional behavioral supports in the classroom until November 2010. Additionally, based on Finding of Fact #6, MSDE finds that there was a delay in the IEP team meeting between January and March 2010. Therefore, MSDE finds violations regarding this allegation between January and November 2010.

Additional Violation: Disciplinary Removal

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) school days in a school year (34 CFR §300.530). When school staff require a student to leave school prior to the end of the school day or when a student is dismissed early from school without explanation following a behavioral incident, the early dismissal is considered a disciplinary removal from school.

In order to ensure that students are provided with services in accordance with the requirements of IDEA, such as the disciplinary procedural protections, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

Based on Finding of Fact #7, MSDE finds that the school system did not ensure that accurate discipline records were maintained for the student. As a result, MSDE finds that the school system did not follow proper procedures to ensure that the student was provided with the required protections during any periods of disciplinary removal in excess of ten (10) school days that may have occurred during the school year, and that a violation occurred.

ALLEGATION #2: PLACEMENT DETERMINATION

Findings of Fact:

26. At the October 26, 2009 meeting, there is documentation that the team considered the least restrictive environment (LRE) in which the student's IEP could be implemented. The team considered information from the student's community-based counselor, who recommended that the student be placed in a nonpublic school. The meeting summary indicates that the team agreed that the student's IEP could be implemented in a public school "with appropriate support," but also agreed that if the transition back to XXX HS was not successful, the team would reconvene to review the placement determination (Docs. b and c).

27. At the June 1, 2010 meeting, there is documentation that the complainant requested that the student be placed in a nonpublic school because she asserted that the student was unable to attend school regularly because of his emotional needs. As a result, she believed that he required a more restrictive environment. The team considered the student's grades and progress toward achieving the annual goals while the student was in school in between his hospitalizations and the modified schedules that were in place to transition the student back to school after each hospitalization. Based upon its review of this data, the team determined that with the provision of supplementary aids and services, the student's IEP can be implemented in a separate special education classroom in a public school (Doc. k).

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28. At the October 11, 2010 meeting, the documentation indicates that the complainant requested that the student's placement be changed to a nonpublic school so that he would continue to attend the XXXXXXXX when he is discharged from the XXX. The team rejected the request based on reports by the school-based members of the team that they believed the student's IEP could be implemented in a public school (Doc. u).
29. At the January 7, 2011 meeting, the complainant again requested that the student be placed in a nonpublic school. School-based members of the team indicated that they continued to believe that the IEP could be implemented in a public school. However, because the team did not have time to conclude the discussion, the team agreed to reconvene on February 4, 2011 to conclude the discussion (Docs. bb-dd).

Discussion/Conclusions:

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 requires that special classes, separate schooling, or other removal of children 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 IEP team makes the placement decision. The placement decision must be determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

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 education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

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).

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).

Based on Findings of Fact #26-29, MSDE finds that there is documentation that the team considered the available information and that there is data to support the team's determination that the student's IEP can be implemented in a public school. Therefore, MSDE finds no violation regarding this allegation.

MSDE understands that the complainant does not agree with the IEP team's determination. MSDE reminds the complainant that if she continues to disagree with the team's decision, she may file a due process complaint to request a due process hearing, pursuant to 34 CFR §§300.507-.508.

CORRECTIVE ACTIONS/TIMELINE:

Student-specific

MSDE requires TCPS to ensure that an IEP team convenes as soon as possible, but no later than April 1, 2011. At the IEP team meeting, the team must determine the nature and amount of *compensatory services*² necessary to redress the following violations identified in the LOF:

1. The student's IEP did not address his social/emotional and behavioral needs between January 2010 and November 2010;
2. The delay in revising the student's program between January 2010 and March 2010; and
3. Not ensuring that the student was offered the protections of IDEA if he was disciplinarily removed from school for more than (10) school days during the 2009-2010 school year.

TCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. 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.

² 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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School-based

MSDE requires TCPS 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 its consideration during monitoring of TCPS 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.

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

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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 : Karen Salmon
XXXXXX
Martha Arthur
Kathy Stump