



Bernard J. Sadusky, Ed.D.  
Interim State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

November 8, 2011

XXX  
XXX  
XXX

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

RE: XXXXX  
Reference: #12-017

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.

**ALLEGATION:**

On September 23, 2011, the MSDE received a complaint from Dr. XXXXXXXXXXXXXXX, hereafter “the complainant,” filed on behalf of her son. 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.

The MSDE investigated the allegation that the HCPS has not implemented the student’s Individualized Education Program (IEP) since the beginning of the 2011-2012 school year, in accordance with 34 CFR §300.101. Specifically, the allegation is that the HCPS has not ensured that the student has received special education instruction using Applied Behavior Analysis (ABA),<sup>1</sup> as required by the IEP.

---

<sup>1</sup> ABA is a teaching program for children with autism that is based on the premise that appropriate behavior can be taught using scientific principles, and that children are more likely to repeat behaviors or responses that are rewarded (<http://www.autismweb.com/aba/htm>).

XXX

Ms. Patty Daley

November 8, 2011

Page 2

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 27, 2011, the 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 October 6, 2011, Ms. Hartman conducted a telephone interview with the complainant and clarified the allegation to be investigated.
4. On October 12, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Daley of the allegation and requested that her office review the alleged violation.
5. On October 19, 2011, Ms. Hartman and Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a review of the student's record at XXXXXXXXXXXXXXXX School, and were provided copies of documents relevant to the investigation. Ms. Ashley Van Cleef, Special Education Resource Teacher, HCPS, attended the record review as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed. At that record review, Ms. Hartman and Ms. Mandis requested Ms. Van Cleef provide this office with additional documentation relevant to the investigation.
6. On October 24, 2011 and October 25, 2011, the HCPS staff provided to the MSDE, via electronic mail, the documents requested during the record review on October 19, 2011.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated May 23, 2011;
  - b. IEP Team Meeting Report, dated August 24, 2011;
  - c. IEP Team Meeting Report, dated September 27, 2011;
  - d. List of student's teachers and staff, dated October 22, 2011;
  - e. Training Log, undated;
  - f. Listing of definitions of terms utilized by the HCPS, undated; and
  - g. Electronic mail between the complainant and HCPS staff, dated September 18, 2011.

**BACKGROUND:**

The student is nine (9) years old. He is identified as a student with autism under the IDEA and receives special education instruction and related services. Since the start of the 2011-2012 school year, the student has attended XXXXXXXXXXXX School. During the period of time addressed by this investigation, the complainant has participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. a-c, and interviews with the complainant and HCPS staff).

**FINDINGS OF FACTS:**

1. The student's IEP in effect for the 2011-2012 school year does not specify a particular teaching program to be used when providing the student with special education instruction. The IEP requires that staff receive training on a variety of "methodologies to be used when teaching [the student] novel information," including prompting, reinforcement, and shaping. The IEP further states that the training will begin before the start of the 2011-2012 school year (Doc. a).
2. There is documentation that the staff, who would be working with the student, were provided with seven and one-half (7-1/2) hours of training prior to the start of the 2011-2012 school year (Docs. d and e).
3. On August 24, 2011, the IEP team convened at the complainant's request to discuss training for the student's teachers. At the meeting, the team decided that the student requires instruction using the "errorless learning"<sup>2</sup> teaching methodology. The team considered the complainant's request that the ABA Program be utilized in the provision of instruction to the student and that all school staff responsible for the provision of instruction be fully trained in the use of the ABA Program (Doc. b).
4. The team rejected this request at the meeting based on reports of school staff that they were able to provide instruction using "errorless learning"<sup>2</sup> without being fully trained in the use of the ABA Program. However, the team decided that school staff would be provided with weekly training from the HCPS' Autism Consultant in the methodologies utilized in the ABA Program until such time that the trainings "were no longer necessary." The amount of training was to alternate between thirty (30) minutes and two (2) hours per week (Doc. b).
5. On September 27, 2011, the IEP team convened and reviewed the training provided to the student's instructors. The IEP team revised the training schedule to require continued

---

<sup>2</sup> Errorless learning is a methodology that uses prompts for each teaching trial, along with reinforcements, so that a student is always correct and always reinforced by a reward (<http://www.autismweb.com/aba.htm>).

XXX

Ms. Patty Daley

November 8, 2011

Page 4

training through the use of observations of “Intensive Structural Teaching”<sup>3</sup> sessions by a staff member certified to conduct these observations (Docs. c and f).

6. Based upon the decisions of the IEP team on August 24, 2011, the student’s teachers and teaching support staff were to have received weekly training for a total of five (5) hours of training between August 24, 2011 and September 27, 2011. There is documentation that, with the exception of the week of September 12, 2011, training was provided each week, in sessions that were longer than required, resulting in the student’s special educators, teaching support staff, and speech/language pathologist receiving eight and one-half (8-1/2) hours of training during this time period (Docs b, d, e and g).
7. There is also documentation that the training required by the IEP team on September 27, 2011 has been provided in accordance with the team’s decisions (Docs. d and g).

#### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student was not provided special education instruction as required by the IEP because school staff have not completed ABA Program training. However, based on Finding of Fact #1, the MSDE finds that the student’s IEP does not require that the student be provided instruction utilizing the ABA Program.

Based on Findings of Facts #1 and #3-#5, the MSDE finds that the IEP required that the student’s special educators and teaching support staff receive training in methodologies that are utilized in the ABA Program. Based on Finding of Fact #2, the MSDE finds that training required by the May 23, 2011 IEP was provided consistent with the IEP team’s decisions.

Based on Finding of Fact #6, the MSDE finds that, while training was not provided during the week of September 12, 2011, the student’s teachers and teaching support staff were provided with more training than was required by the IEP team on August 24, 2011. Further, based on Finding of Fact #7, the MSDE finds that the student’s teachers were provided with the training required by the IEP team on September 27, 2011. Therefore, the MSDE does not find that a violation occurred.

Please be advised that the complainant and the HCPS 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.

---

<sup>3</sup> Intensive Structural Teaching is the HCPS term used for the provision of instruction that is structured and which utilizes a variety of effective and proven procedures through the use of reinforcers contingent on the child performing tasks correctly (Doc. f).

XXX

Ms. Patty Daley  
November 8, 2011  
Page 5

The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions 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 a free appropriate public education for the student, including issues subject to a 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/ch

cc : Sydney L. Cousin  
Janet Zimmerman  
Ashley Van Cleef  
XXXXXX  
XXXXXX  
Dori Wilson  
Christine Hartman