



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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January 2, 2013

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Ms. Melissa Charbonnet
Executive Director of Special Education/
Student Services
St. Mary's County Public Schools
23160 Moakley Street
P.O. Box 1410
Leonardtown, Maryland 20650

RE: XXXXX
Reference: # 13-017

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On November 5, 2012, the MSDE received a complaint from Mr. XXXXXXXXXXX and Mrs. XXXXXXXXXXX, hereafter, "the complainants," on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the St. Mary's County Public Schools (SMCPS) 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 SMCPS has not ensured that the student has been provided with the amount of Applied Behavior Analysis (ABA) instruction, in the home and community setting, as required by the Individualized Education Program (IEP) since August 16, 2012, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On November 8, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Melissa Charbonnet, Executive Director of Special Education/Student Services, SMCPS.
3. On November 13, 2012, Ms. Williams spoke with the student's mother by telephone to clarify the allegation to be investigated.
4. On November 16, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Charbonnet of the allegation and requested that her office review the alleged violation.
5. On November 26 and 28, 2012, Ms. Williams discussed the allegation with Ms. Charbonnet.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.
 - A. Correspondence and attachments from the complainants to the MSDE, received on November 5, 2012;
 - B. IEP, dated January 6, 2012;
 - C. IEP Team Meeting Notes, dated October 22, 2012;
 - D. IEP Team Meeting Notes, dated November 8, 2012; and
 - E. IEP, developed on November 8, 2012.

BACKGROUND:

The student is six (6) years old and is identified as a student with Autism under the IDEA. The student attends XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX), where he participates in the Regional Autism Program. He has an IEP that requires that he be provided with special education instruction using Applied Behavior Analysis (ABA).

During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. b, c, d, and e).

FINDINGS OF FACTS:

1. The IEP in effect on August 16, 2012 required fifteen (15) hours of ABA instruction per week. The IEP was revised on November 8, 2012 and now requires ten (10) hours of ABA instruction per week (Docs. b and d).
2. The SMCPS staff reports that, since August 16, 2012, the student has not received the amount of ABA instruction required by the IEP, due to staff attrition. The SMCPS staff reports that the school system has addressed this staffing shortage by hiring

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a sufficient number of staff to provide the instruction. They further report that the staff are being trained in the use of ABA (Docs. a, c, d, and e and Interview with school staff).

3. On November 8, 2012, the IEP team determined the amount of compensatory of services to remediate the student's loss of services since August 16, 2012 (Docs. c, d, and e).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education instruction, supplementary aids and services, and related services are provided to each student in accordance with the IEP (34 CFR §§ 300.101 and .323).

Based on Findings of Facts #1 - #3, the MSDE finds that the SMCPS has not ensured that the student has been provided with the amount of ABA instruction required by the IEP since August 16, 2012. The MSDE appreciates the acknowledgement by the SMCPS and the steps they have taken to address the issue. Based upon the Findings of Facts, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the SMCPS to provide documentation by January 21, 2013 that the student is being provided with the number of hours of ABA instruction required by the IEP.

The SMCPS must also provide documentation by January 21, 2013 that the IEP team has reviewed the *compensatory services*¹ determined on November 8, 2012, in order to ensure that those *compensatory services*¹ remediate the total period of time that the student was without the amount of ABA instruction required by the student's IEP.

Similarly Situated Students

The MSDE requires the SMCPS to provide documentation, by February 21, 2013, that it has identified other students who have not received the amount of ABA instruction required by their IEP since August 16, 2012. For each student identified, the SMCPS must also provide documentation that *compensatory services*¹ will be provided to remediate the loss of ABA instruction.

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.

¹ Compensatory services, for the purposes of this letter, means 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 the complainants and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the Findings of Facts or Conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the Conclusions is necessary. Upon consideration of this additional documentation, this office may leave its Findings and Conclusions intact, set forth additional Findings and Conclusions, or enter new Findings and Conclusions. Pending the decision on a request for reconsideration, the school system must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The complainants 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:tw

cc : Michael J. Martirano
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Allison Layland
Dori Wilson
Nancy Vorobey
Anita Mandis
Tyra Williams
Martha J. Arthur