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State Superintendent of Schools

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December 13, 2012

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Mr. Glen Hammerbacher
Supervisor of Special Education
Worcester County Public Schools
6270 Worcester Highway
Newark, Maryland 21841

RE: XXXXX
Reference: #13-014

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 October 17, 2012¹, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In their correspondence, the complainants alleged that the Worcester County Public Schools (WCPS) 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 WCPS has not ensured that the student has been provided with the supports and accommodations at the Worcester Technical High School, as required by the Individualized Education Program (IEP), since the start of the 2012 - 2013 school year, in accordance with 34 CFR §§300.101 and .323.

¹ On October 15, 2012, the complainants provided the MSDE with correspondence containing allegations of violations of the IDEA that did not include all of the necessary information to initiate a State complaint investigation. On October 17, 2012, the complaints provided the required information and a complaint investigation was initiated (34 CFR §300.153).

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INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 15, 2012, the MSDE received correspondence from the complainant that contained allegations of violations of the IDEA.
3. On October 15 and 16, 2012, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, conducted telephone interviews with the student's father and mother, respectively to clarify the allegation to be investigated and to inform them of the additional information required in order to file a State complaint.
4. On October 17, 2012, the complainants provided the MSDE with the additional information required, and the MSDE initiated the State complaint investigation.
5. On October 22, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mr. John B. Gaddis, Assistant Superintendent of Schools, WCPS; and Mr. Glen Hammerbacher, Supervisor of Special Education, WCPS.
6. On October 31, 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 Mr. Hammerbacher of the allegation and requested that his office review the alleged violation.
7. On November 5, 7, 9, 13, and 20, 2012, Ms. Williams conducted telephone interviews with the WCPS staff and requested documents.
8. On November 5, 9, and 19, 2012, Ms. Williams conducted telephone interviews with the complainants, separately, regarding the investigation.
9. On November 7, 11, 13, and 19, 2012, the complainants provided the MSDE with information to be considered during the investigation, via electronic mail (email).
10. On November 19, 2012, the WCPS provided the MSDE with documents to be considered during the investigation, via facsimile.
11. On November 21, 2012, legal counsel for the WCPS provided the MSDE with information to be considered for the State complaint investigation, via email.
12. 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 October 15 and 17, 2012;
 - b. The WCPS IEP, dated May 11, 2012;

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- c. The WCPS Prior Written Notice Document, dated August 23, 2012;
- d. List of locations at the XXXXXXXXXXXXXXXX where supports were to be made available to the student, dated September 25, 2012;
- e. Email from the WCPS to the complainants, dated October 15, 2012;
- f. The WCPS Attendance Sheet, dated August 27, 2012 through December 28, 2012;
- g. The WCPS Prior Written Notice Document, dated October 26, 2012;
- h. Email from the MSDE to the WCPS, dated November 7, 2012;
- i. Email from the MSDE to the WCPS, dated November 9, 2012;
- j. Email from the legal counsel for the WCPS to the MSDE, dated November 12, 2012;
- k. Email from the MSDE to the WCPS, dated November 13, 2012;
- l. IEP and teacher statements provided by the WCPS on November 19, 2012;
- m. Email from the MSDE to the WCPS, dated November 20, 2012; and
- n. Email from the legal counsel for the WCPS to the MSDE, dated November 21, 2012.

BACKGROUND:

The student is seventeen (17) years old, is identified as a student with an Other Health Impairment, related to XXXX XXXX, under the IDEA, and he receives special education instruction. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX).

At the start of the 2012-2013 school year, the student also attended XXXXXXXXXXXXXXXXXXXX XXXXX (XXXXXXXXXXXXXXXX), where he received special education instruction in two classes through the Career and Technology Education Program. On November 12, 2012, the student withdrew from these classes.

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, and g).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2012-2013 school year was developed on May 11, 2012, and addresses the student's need to manage anxiety that results from the disability. The IEP requires that the student be provided with fifteen (15) hours per week of special education instruction in the general education classroom at the XXXX XXXX, the school he would attend if not disabled. It also requires that the student be provided with ten (10) hours per week of "Career and Technology Education Program [with] Support Services" at the XXXXXXXXXXXXXXXXXXXX (Doc. b).
2. The IEP requires that the student be provided with supports in all classes to help him manage stress. These supports include frequent breaks, verbatim reading of tests, and a setting away from other students during testing. The IEP also requires the provision of teacher notes, additional response time when the student is having difficulty answering

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- questions, preferential seating near an exit, additional time to travel from class to class, and a reduced workload (Doc. b).
3. The IEP states that the student's "supplementary aids and services are extensive because without them he is not successful. Even with [one-on-one] support, [the student] is sometimes unable to attend general education classes due to anxiety." The IEP indicates that while the severity of the student's symptoms varies, the supports are to be provided regardless of the severity of his symptoms (Doc. b).
 4. The IEP includes transition planning that identifies the student's interest in computers and graphic design and includes a goal for the student to obtain employment in the computer technology field. The IEP indicates the student will graduate with four (4) credits earned through the Career and Technology Education Program at the XXXXXX XXXXXXXX, in order to prepare him to address the employment goal after high school (Doc. b).
 5. At the start of the 2012-2013 school year, the student was enrolled in Geometry and an *A+ Computer Certification* class at the XXXXXXXXXXXXXXXXXXXX, where he was to receive the ten (10) hours per week of "Career and Technology Education Program [with] Support Services" (Docs. b and f).
 6. On August 23, 2012, the IEP team met and discussed the complainants' reports that the XXXXXXXXXXXXXXXXXXXX staff were refusing to provide the student with required supports to assist him with addressing anxiety. The team decided that the XXXXXXXXXXXXXXXXXXXX staff would designate specific areas at the school in which the student could access required supports (Docs. c and d).
 7. On October 26, 2012 the IEP team reconvened and considered information from the complainants that the student was unable to return to the XXXXXXXXXXXXXXXXXXXX due to his anxiety about working with his assigned teachers. The IEP team decided that the concerns were a personnel issue and that the complainants could meet with school staff to resolve them (Docs. e and g).
 8. There is no documentation that the student was consistently provided with the supports to manage anxiety at the XXXXXXXXXXXXXXXXXXXX, as required by the IEP (Docs. h through n).
 9. On November 12, 2012, the student was transferred to a Geometry class at the XXXXXXXXXXXXXXXX. Because the *A+ Computer Certification* class can only be provided at the XXXXXXXXXXXXXXXXXXXX and the student is unable to manage his anxiety in the class offered at the XXXXXXXXXXXXXXXXXXXX, the complainant's withdrew the student from the class (Docs. f and g).
 10. There is no documentation that the IEP team has reviewed and revised the IEP, as appropriate, since the student's disenrollment in the computer course, in order to ensure that the transition planning includes appropriate services to prepare the student to achieve

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the goal to obtain employment in the computer technology field following his graduation from high school (Docs. b and h through i).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education instruction, supplementary aids and services, and related services are available to each student in accordance with the IEP (34 CFR §§ 300.101 and .323). The public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address information provided to, or by, the parents and to address the student's needs (34 CFR §300.324).

In this case, the complainants allege that the student has not been provided with the supports needed to access instruction at the XXXXXXXXXXXXXXXX. They assert that, as a result, the student has been unable to complete coursework that will allow him to obtain certification needed to seek employment in his area of interest (Doc. a).

Based on the Findings of Facts #1 - #8, the MSDE finds that there is no documentation that the student was provided with supports to manage his anxiety, in accordance with the IEP, at the XXXXXXXXXXXXXXXX. Further, based on the Findings of Facts #1 and #8 - #10, the MSDE finds that the WCPS has not ensured that the student's transition planning has remained appropriate since November 12, 2012. Therefore, the MSDE finds that violations have occurred.

ADDITIONAL DISCUSSION:

In this case, the WCPS did not provide requested documentation of implementation of the IEP at the XXXXXXXXXXXXXXXX. Although the WCPS did submit written statements from school staff that supports were provided to the student, these statements were prepared by school staff in rebuttal to the allegation raised by the complainant in the State complaint. The WCPS asserts that these written statements demonstrate that certified education professionals are willing to testify to the implementation of the IEP. Because the only evidence that the complainants have provided to the contrary is their own statements that the services required by the IEP were not provided, the WCPS asserts that the MSDE should not find that a violation occurred.

The United States Department of Education, Office of Special Education Programs (OSEP) has indicated that, while the State may conduct interviews with complainants and school staff in order to obtain information needed to make an independent determination regarding the IDEA compliance, that process is not intended to be comparable to the right to present evidence and cross examine witnesses in a due process hearing (*Analysis or Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, pp.46601 – 46605, August 14, 2006). Therefore, when conducting a State complaint investigation in which the only evidence is the conflicting reports of the parties, which are not taken under oath, the MSDE does not place more weight on the information provided by one party over another, as suggested by the school system.

The WCPS is required, as a subgrantee of the IDEA grant to the State, to maintain records of the IDEA compliance for three years, in accordance with 34 CFR §§76.731 and 80.42. For this reason, and because parents do not normally have access to school records needed to determine

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compliance, the MSDE finds that it is reasonable to expect the school system to provide such documentation upon request during a State complaint investigation. This position is consistent with guidance from the OSEP that, when conducting State complaint investigations into allegations regarding IEP implementation, the State Education Agency may require public agencies to provide documentation to demonstrate compliance (*Letter to Broussides*, (56 IDELR 108, 110 LRP 73612)). Because the WCPS was unable to provide the MSDE with documentation of compliance with the IDEA, the MSDE finds that a violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the WCPS to provide documentation by January 15, 2013 that the IEP team has reviewed and revised, as appropriate, the IEP to ensure that it addresses the student's transition needs. The WCPS must ensure that the IEP includes transition planning that describes the services needed in order to assist the student in achieving the transition goals. If the IEP team decides that the required services cannot be provided by the end of the 2012-2013 school year, the WCPS must ensure that the team determines the *compensatory services*² or other remedy for the loss of appropriate transition planning during the 2012 – 2013 school year.

The WCPS must also provide documentation by January 15, 2013 that the IEP team has determined the *compensatory services*² or other remedy for the loss of supports in the Geometry and A+ *Computer Certification* classes from the start of the 2012-2013 school year until November 12, 2012.

When determining the remedy for the loss of services, the IEP team may consider services to assist with transition to post-school activities, which may be provided to the student after he finishes high school, if necessary. The WCPS must provide the complainants with proper written notice of the determinations made at the IEP team meeting, including written explanation of the basis for the determinations, as required by 34 CFR § 300.503. If the complainants disagree with the IEP team's determinations, they maintain the right to request mediation or to file a due process complaint, in accordance with the IDEA.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution 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 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

² Compensatory services, for the purposes of this letter, means the determination by the IEP team as to how to remediate the denial of appropriate services to the student even when the student is no longer eligible for an IEP under the IDEA (34 CFR §300.151 and *OSEP Letter to Riffel*, August 22, 2000).

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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 been 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 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 this 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 : Jerry B. Wilson
John B. Gaddis
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XXXXXXXXXX
Dori Wilson
Anita Mandis
Tyra Williams
Martha J. Arthur