



October 1, 2012

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Ms. Ann-Marie Spakowski
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, Maryland 21014

RE: XXXXX
Reference: #13-005

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.

ALLEGATIONS:

On August 2, 2012, the MSDE received a complaint from Mr. XXXXXXXX and Mrs. XXXXXXXX, hereafter, “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Harford 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 allegations listed below.

1. The HCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s needs since the start of the 2011-2012¹ school, in accordance with 34 CFR §§300.320 and .324. Specifically, the complainants allege that the IEP does not contain:
 - a. present levels of academic achievement and functional performance that include how the student’s disability affects his involvement and progress in the general curriculum;

¹ The complainant alleged violations that occurred more than a year before complaint was received. In response they were advised, in writing, on August 7, 2012, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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- b. measurable annual goals designed to meet the student's needs that result from the his disability to enable the him to be involved in and make progress in the general education curriculum; and
 - c. the special education instruction and related services and supplementary aids and services to enable the student to achieve the annual IEP goals and make progress in the general education curriculum.
2. The HCPS has not ensured that the student has been provided with the special education instruction and accommodations required by the IEP since the start of the 2011-2012¹ school, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 3, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS; and Ms. Eileen Watson, Coordinator of Compliance, HCPS. On the same date, Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, spoke with the student's mother by telephone and clarified the allegations to be investigated.
3. On August 7, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Spakowski of the allegations and requested that her office review the alleged violations.
4. On August 17, 2012, Ms. Moyo contacted the HCPS staff and requested documentation from the student's educational record.
5. On August 27, 2012, Ms. Moyo reviewed the student's educational record at the HCPS Central Office.
6. On September 6, 2012, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX (XXXXXXXX XXXXXX) and interviewed the staff listed below.
 - a. Ms. XXXXXX, Acting Principal;
 - b. Ms. XXXXXXXX, Speech Language Pathologist; and
 - c. Ms. XXXXXXXXXXX Special Education Teacher.

Ms. Watson attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed.

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7. On September 6 and 13, 2012, the HCPS staff provided Ms. Moyo with additional documentation from the student's educational record.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Functional Behavior Assessment, dated April 19, 2010;
 - b. Behavior Intervention Plan (BIP), April 19, 2010;
 - c. IEP, dated October 11, 2010;
 - d. Consent for Assessment, dated June 20, 2011;
 - e. IEP Team Meeting Notes, dated August 19, 2011;
 - f. IEP Team Meeting Notes, dated September 12, 2011;
 - g. IEP, dated September 23, 2011;
 - h. IEP Team Meeting Notes, dated September 23, 2011;
 - i. IEP Team Meeting Notes, dated March 22, 2012;
 - j. Consent for Assessment, dated March 22, 2012;
 - k. Educational Assessment Report, dated April 17, 2012;
 - l. Psychological Assessment Report, dated April 23, 2012;
 - m. Speech/Language Assessment Report, dated April 26, 2012;
 - n. IEP Team Meeting Notes, dated May 17, 2012;
 - o. IEP, dated June 5, 2012;
 - p. IEP Team Meeting Notes, dated June 5, 2012;
 - q. XXXXXXXXXXXX Withdrawal Form, dated June 18, 2012;
 - r. HCPS Release of Confidential Information Form, dated August 1, 2012;
 - s. Correspondence and attachments from the complainant to the MSDE, received on August 2, 2012;
 - t. Maryland School Assessments Results for the 2011-2012 School Year;
 - u. Student's Attendance Record for the 2011-2012 School Year;
 - v. Speech/Language Service and Attendance Logs for the 2011-2012 School Year;
 - w. Counseling Services Attendance Log for the 2011-2012 School Year;
 - x. Special Education Teacher Class Schedule for the 2011-2012 School Year;
 - y. Para-Educators Schedule for the 2011-2012 School Year;
 - z. Student's Class Schedule for the 2011-2012 School Year;
 - aa. Examples of Modified Assignments for the 2011-2012 School Year;
 - bb. Examples of Daily Scripts utilized during the 2011-2012 School Year;
 - cc. Examples of Supplementary Aids, Accommodations, and Supports Monitoring Sheets for the 2011-2012 School Year;
 - dd. Examples of Rubrics utilized during the 2011-2012 School Year; and
 - ee. Report Card for the 2011-2012 School Year.

BACKGROUND:

The student is fourteen (14) years old. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services. During the period of time addressed by this investigation, the complainants participated in the

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education decision-making process and were provided with written notice of the IEP team decisions and notice of the procedural safeguards (Docs. a – i, n – p, s, and u - ee).

During the 2011-2012 school year, the student attended the XXXXXXXXXXXXXXXXXXXX. Since the start of the 2012-2013 school year the student has attended school in XXXXXXXXXXXXXXXX. (Docs. q – s and interview with the student’s mother).

ALLEGATION #1: IEP DEVELOPMENT

Findings of Facts:

IEP in Effect at the Start of the 2011-2012 School Year

1. The IEP in effect at the start of the 2011-2012 school year was developed on October 11, 2010. The IEP indicates that that the student has needs in the areas of reading comprehension, written language expression, speech and language pragmatics, social/emotional/behavioral skills, social interaction skills, and fine and gross motor skills (Doc. c).

Reading Comprehension

2. The IEP indicates that, while the student is able to answer explicit questions, he is unable to make inferences from text and answer implicit questions (Doc. c).
3. The IEP includes an annual goal for the student to utilize “before, during, and after” reading strategies to prepare for reading, make meaning from text, and demonstrate understanding of text on four (4) out of five (5) trials. The goal includes an objective that the student identify and explain the main idea, identify and explain information directly stated in the text, and summarize and paraphrase reading assignments (Doc. c).
4. The IEP requires that the student receive special education instruction for reading in the general education classroom from the special or general education teacher. The IEP also indicates that the student be provided with supports such as additional time, rubrics, models, quiet time to process his thoughts, repetition of directions, and checks for understanding (Doc. c).

Written Language Expression

5. The IEP indicates that the student demonstrates weakness with paragraph development. It states that his sentences tend to be short and literal, and lack descriptive detail. The IEP also identifies weaknesses in the area of handwriting and translating thoughts onto paper, which can cause him to lose focus during class (Doc. c).
6. The IEP includes an annual goal for the student to compose texts using prewriting, drafting, revising and editing strategies of effective writers and speakers on four (4) out

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of five (5) written assignments. It includes objectives for the student to utilize specific prewriting strategies, develop ideas, and to revise texts for clarity, completeness and effectiveness (Doc. c).

7. The IEP requires that the student receive special education instruction in written language expression with supports in the general education classroom from the special or general education teacher. The IEP requires that the student be provided with supports including guided notes, a copy of the teacher's or a peer's notes if extensive note taking is required, a scribe, if necessary, and additional time to complete assignments (Doc. c).

Speech/Language

8. The IEP indicates that the student experiences difficulty using pragmatic language skills which negatively impacts his social interactions with others. The IEP identifies needs in the areas of improving his social skills in a group setting and "generalizing his social skills in unstructured environments" (Doc. c).
9. The IEP includes an annual goal for the student to apply and demonstrate listening skills appropriately in a variety of circumstances when given verbal and visual stories (Doc. c).
10. The goal includes objectives for the student to maintain attention and remain on topic during a structured conversation on four (4) out of five (5) trials with the provision of visual cues. It also includes objectives for the student to recognize and use verbal and non-verbal turn taking rules and identify and manage appropriate and listening and conversational skills, and determine how a speaker's attitude is conveyed through verbal and non-verbal cues including tone of voice, inflections, body language, and facial expressions (Doc. c).
11. The IEP requires that the student receive speech/language services in a separate special education classroom provided by the speech/language pathologist to work on social interaction skills (Doc. c).

Social/Emotional/Behavioral

12. The IEP indicates that the student demonstrates difficulty with controlling his inhibitions, modulating his emotions, changing settings, remaining on task and completing his agenda book (Docs. a - c).
13. The IEP includes an annual goal for the student to use organizational strategies and minimal adult support to participate in instruction throughout the school day (Doc. c).
14. The goal includes objectives for the student to maintain an organized notebook for each class and use an agenda book to record daily short term and long term assignments, stay on task as directed, follow a daily routine and come prepared to class (Doc. c).

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15. The IEP requires that the student be provided with adult support throughout the school day to assist him with remaining on task and completing his assignments. The instructional assistant or classroom teacher should redirect the student when he loses focus and calm him down if he begins to perseverate. The IEP also indicates that the student should be provided with breaks to reduce anxiety and assist him with focus and fatigue. Additionally, the student has access to “comfort boxes” that include items that calm him which he can access when he becomes anxious (Docs. b - c).

Social Interaction Skills

16. The IEP indicates that the student has difficulty interpreting communication, communicating his feelings to others, understanding the meaning in a conversation and social situations, and focusing his attention on others (Doc. c).
17. The IEP includes an annual goal for the student to express himself clearly and concisely and to facilitate social interactions with peers as well as in the classroom with the use of modeling prompts and practice (Doc. c).
18. The goal includes an objective for the student to ask for clarification and listen carefully and to articulate words at a rate and volume that others can understand (Doc. c).
19. The IEP requires that the student receive prompts to demonstrate that he understands information that is being communicated to him and request further explanation if he does not understand something that is communicated to him (Doc. c).

Fine Motor Skills

20. The IEP indicates that the student uses a non-traditional pencil grasp when writing, which forces him to write slowly and require additional time to complete assignments (Doc. c).
21. The IEP requires that the student be provided with additional time to complete writing assignments and if he becomes fatigued from writing, a scribe can be used to allow him a break from the writing (Doc. c).

Development of the September 23, 2011 IEP

22. On August 19, 2011 and September 12 and 23, 2011, the IEP team convened to consider the results of the occupational therapy, psychological, and speech/language assessments that were conducted in order to address concerns expressed by the student’s mother that the IEP does not provide enough information about the skills the student needs to improve in order to ensure that the annual goals are designed to measure the student’s progress in these areas (Docs. e - h).
23. The psychological assessment report considered by the team indicates that the student has difficulty in the areas of working memory, problem solving, monitoring and regulating

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motor control, and understanding social expressions used in social settings. The report further indicates that since the student takes literal meaning from all things, he often cannot focus his attention where the rest of the group is focused and may not be able to understand the situation, which can cause him frustration in social situations. Additionally, the report indicates that the student's lack of flexibility with schedule changes during the school day, may result from the anxiety he experiences when routines are not maintained (Docs. f - h).

24. The speech and language assessment report considered by the team indicates that the student has difficulty understanding the purpose of communication and demonstrating appropriate interactions in social settings (Docs. f - h).
25. The occupational therapy assessment report considered by the team indicates that the student has needs in the areas of fine motor integration, manual dexterity, and sensory processing. The report also indicates that due to the pressure and poor positioning the student uses when writing, he can experience pain in his joints, neck or back. The discomfort and effort can cause the student to perseverate while writing and prolong these tasks (Docs. f - h).
26. The team considered the mother's concern that the student needs additional speech/language services and reading intervention services (Docs. g and h).
27. A review of a sensory profile considered by the team indicates that noises and sounds can cause the student to become distracted and overwhelmed which can impact his emotional responses, behavior, and social interactions (Docs. f and h).
28. Based on the above data, the team updated the present level of academic achievement and functional performance and revised the annual goals consistent with the information regarding his levels of performance. The team determined that the student would receive counseling services provided by the school psychologist, special education teacher or the guidance counselor to assist him with achieving the social/emotional/behavioral goal (Doc. h).

Reading Comprehension

29. The team revised the reading comprehension goal to include additional objectives for the student to determine the cause and effect from an event in a passage, support an inference with details, identify and explain sequence and chronology in a reading, select a theme and summarize or paraphrase texts. The goal includes an objective that the student identify and explain the main idea, identify and explain information directly stated in the text, and summarize and paraphrase reading assignments (Doc. h).
30. The team revised the IEP to reflect an increase in the amount of special education instruction in reading to be provided to the student and determined that the student would

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be placed in a reading intervention class during the second, third, and fourth quarters of the school year (Doc. h).

Written Language Expression

31. The IEP team revised the objectives of the written language goal for the student to revise texts to include complex and compound sentences, vary sentences, and edit work to include adjectives, adverbs and other sensory details (Doc. h).
32. The team revised the IEP to reflect an increase in the amount of special education instruction in written language to be provided to the student (Doc. h).

Speech/Language

33. The team revised the speech/language goal to indicate that the student will participate in conversation using verbal and non-verbal communication strategies with eighty percent (80%) accuracy (Doc. h).
34. The goal includes revised objectives for the student to identify, define, and request clarification of verbal absurdities and idioms (Doc. h).
35. The team increased the amount of special education instruction in speech which requires that the student receive speech/language services in a separate special education classroom provided by the speech/language pathologist to work on social interactions skills. The team also determined that the speech/language pathologist would consult with the special education teacher on a weekly basis regarding speech pragmatics (Doc. h).

Social/Emotional/Behavioral

36. The team revised the IEP to include an additional social/emotional/behavioral goal for the student to identify problem-solving strategies, coping skills, and self-monitoring techniques using strategies provided to him during counseling sessions (Doc. h).
37. The goal includes revised objectives for the student to highlight appropriate keywords on his homework with the provision of reminders recorded on a board (Doc. h).
38. The IEP team determined that the student would be provided with counseling as a related service to address his social/emotional/behavioral goals (Doc. h).
39. The team revised the student's IEP to require that he be provided with preferential seating adjacent to the computer to address processing and executive functioning challenges. The team also determined that the student would be provided with a bathroom break schedule to reduce his anxiety regarding leaving the classroom during class time (Doc. h).

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Social Interaction Skills

40. The team revised the social interaction skills annual goal to indicate that the student will demonstrate appropriate interpersonal skill using the strategies provided to him during counseling sessions (Doc. h).
41. The goal includes an objective for the student to demonstrate appropriate conversational qualities by identifying the main idea in a conversation and communicating his ideas and feelings. The goal also includes an objective that the student demonstrate the ability to recognize an opinion or position other than his own and identify and demonstrate ways to compromise (Doc. h).
42. The IEP team also determined that a checklist will be used to monitor the student's conversational skills on a weekly basis. The monitoring is to be completed in all classes throughout the school day (Doc. h).

Fine Motor Skills

43. The team revised the IEP to require the provision of consultative services between the occupational therapist and special or general education teacher and the para-educator to ensure that the student's sensory and fine motor are addressed in the general education classroom (Doc. h).

Development of the June 5, 2012 IEP

44. The team reviewed the IEP on May 17, 2012, and June 5, 2012, following a reevaluation that began on March 22, 2012 (Docs. i - p).
45. The team considered the results of an updated psychological assessment that was conducted as part of the reevaluation, which indicated that the student's high levels of anxiety impact his ability to communicate and cause him to withdraw from activities in the classroom (Doc. l).
46. The team also considered the results of an updated speech/language assessment which indicates that the student demonstrates weakness with sentence assembly which may impact his ability to formulate descriptions, ask questions, or respond while engaged in conversation (Doc. m).
47. The team considered reports that the student was making sufficient progress toward achieving all of the IEP goals, and that he was progressing through the general curriculum with the use of the supports required by the IEP. The team revised the annual goals consistent with the reports of his progress (Docs. o and p).

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Discussion/Conclusions:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present level of academic achievement and functional performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to make progress in the general curriculum, the annual IEP goals must be aligned with the student's present level of academic achievement and functional performance (34 CFR §§300.101, .320 and Analysis of Comments and Changes to the IDEA Regulations Fed. Reg., Vol. 71, No. 156, August 14, 2006 p. 46662).

In this case, the complainant alleges that the HCPS has not ensured that the IEP includes this information, and that as a result, the IEP has not addressed the reading, written language, speech/language, social/emotional, and fine motor skills needs that arise out of the student's disability.

Based on the Findings of Facts #1 - #47, the MSDE finds that the IEP includes a statement of the present level of academic achievement and functional performance that contains information about the specific areas of weakness that impact the student's progress in the general curriculum, consistent with the evaluation data. Based on the Findings of Facts #1 - #47, the MSDE finds that the IEP includes measurable annual goals for the student to improve the specific skills identified as areas of weakness in the present level of academic achievement and functional performance, and the special education instruction and related services needed to assist the student in achieving those goals. Therefore, the MSDE does not find that a violation has occurred with respect to this allegation.

ALLEGATION #2: IMPLEMENTATION OF THE IEP DURING THE 2011-2012 SCHOOL YEAR

Findings of Fact:

Provision of Special Education Instruction

48. There is no documentation that the student was provided with the special education instruction to address his speech/language needs, as required by the IEP from the start of the 2011-2012 school year until September 23, 2011. However, speech/language attendance and service logs document that following the development of the September 23, 2011 IEP, the student was provided with special education instruction to address speech/language needs, as required by the IEP (Doc. v and review of the educational record).

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49. A review of the class schedules for the student, the para-educators, and the special education teacher indicate that the student was provided with special education instruction in reading and written language as required, during the 2011-2012 school year (Docs. u and x - z).
50. Reports of the student's progress towards achieving the IEP team goals completed each quarter of the 2011-2012 school year indicate that the student made sufficient progress to achieve all his academic goals throughout the school year (Doc. o).

Provision of Supplementary Aids and Services

51. There is no documentation that the student was provided with supplementary aids and services such as, guided notes, graphic organizers, or rubrics, as required, from the start of the school year until September 23, 2011. However, there is documentation that the student was provided with the adult support throughout the school days from the start of the 2011-2012 school year in accordance with the IEP (Docs. o, y, z, and review of the educational record).
52. There is documentation that, following the development of the September 23, 2011, until the end of the school year, school staff maintained a daily log in each of his classes of the provision of supplementary aids and services. The log reflects the provision of additional time to complete an assignment or test, cues, and the monitoring of the student's behavior and any challenges that the student faces during the school day (Docs. aa - dd).
53. There is documentation that, subsequent to the September 23, 2011 IEP team meeting each of the student's teachers monitored the use of the supplementary aids and services provided in each class. The "monitoring sheets" maintained by school staff indicate the supplementary aids, services, and accommodations required by the IEP and when they were provided (Doc. cc).

Provision of Related Services

54. Counseling logs maintained by the school psychologist indicate that the student received counseling, as a related service, three (3) times per month, as required by the IEP, from September 23, 2011 until the end of the 2011-2012 school year (Doc. w).
55. Reports of progress toward achieving the social/emotional/behavioral goals completed by the school psychologist indicate that the student made sufficient progress towards achieving each objective of each goal, during each quarter of the 2011-2012 school year (Doc. o).

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Discussion/Conclusions:

The public agency is required to ensure that students are provided with the special education and related services required by the IEP (34 CFR §300.101 and .323). In this case, the complainant alleges that the student was not provided with the special education instruction, related services, and supports required by the IEP, during the 2011-2012 school year.

Based on the Findings of Facts #48 and #51, the MSDE finds that there is no documentation that the student was consistently provided with all of the supplementary aids, services, and accommodations and special education instruction to address speech/language needs, as required by the IEP, from the start of the 2011-2012 school year until September 23, 2011. Therefore, this office finds that a violation occurred from the start of the 2011-2012 school year until September 23, 2011.

However, based on the Findings of Facts #48 - #55, the MSDE finds that subsequent to the September 23, 2011 IEP team meeting, the student was provided with the special education instruction, related services, and supplementary aids, services and accommodations as required by the IEP. Therefore, the MSDE does not find that a violation occurred from September 23, 2011 until the end of the 2011-2012 school year.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the HCPS provide documentation, no later than November 30, 2012 that the IEP team has convened to consider whether the violation negatively impacted the student's ability to benefit from the educational program from the start of the 2011-2012 school year until September 23, 2011. If the team determines that there was a negative impact, then the HCPS must determine the nature and amount of *compensatory services*² to be provided to the student if he is re-enrolled in the school system.

The HCPS must provide the complainants with proper written notice of the determinations made at the IEP team meeting, including a 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 the corrective action taken is to be submitted to this office to the attention of 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.

² Compensatory services, for the purpose of *this* letter, mean the determination regarding how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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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 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 FAPE 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 complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/km

cc : Robert M. Tomback
Eileen Watson
XXXX XXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo