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State Superintendent of Schools

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February 25, 2011

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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: #11-045

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 January 3, 2011, MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant 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. MSDE investigated the following allegations:

1. HCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his organization and fine motor needs since January 2010,¹ in accordance with 34 CFR §300.324; and

¹ The complaint alleged violations dating to September 2007. However, the complainant was informed in writing on January 13, 2011 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.

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2. HCPS has not ensured that the student has received the accommodations and supplementary aids and services² required by the IEP since January 2010¹, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 17, 2010, this office received written correspondence from the complainant. On that same date, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, contacted the complainant by telephone to inform her of the legal requirement that a State complaint include a proposed remedy that the local school system could provide in order to resolve the complaint. Ms. Mandis also informed her that this office could not initiate an investigation into the allegations until she provided such a remedy.
3. On January 3, 2011, MSDE received a proposed remedy from the complainant, via electronic mail (e-mail). On that same date, this office initiated the complaint investigation.
4. On January 4, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS.
5. On January 13, 2011, 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. Spakowski of the allegations and requested that her office review the alleged violations.
6. On January 21, 2011, Ms. Stump reviewed the student's education record. Ms. Eileen Watson, Coordinator of Compliance, HCPS, was present at the record review.
7. On February 7, 2011, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX) and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Science Teacher;
 - b. Ms. XXXXXXXXXXX, IEP Team Chairperson;
 - c. Ms. XXXXXXXXXXX, Special Education Teacher; and
 - d. Mr. XXXXXXXXXXXXXXX, Assistant Principal.

² This office originally identified the allegation relating only to accommodations based on the complainant's description of the services subject to the allegation. During the course of the investigation, it was determined that these services are listed as both accommodations and supplementary aids and services on the IEP.

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

8. On February 9, 2011, MSDE received additional documentation from the student's education record from HCPS personnel.
9. 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 December 17, 2010 and January 3, 2011;
 - b. XXXXXXXXXXXXXXXX (XXX) Occupational Therapy Evaluation report, dated March 10, 2008;
 - c. IEP and team meeting summary, dated September 8, 2009;
 - d. IEP team meeting summary, dated October 15, 2009;
 - e. IEP team meeting summary, dated January 25, 2010;
 - f. XXX Psychological Evaluation report, dated January 29, 2010;
 - g. IEP team meeting summary, dated March 2, 2010;
 - h. IEP, dated March 17, 2010;
 - i. HCPS Psychological Assessment report, dated March 19, 2010;
 - j. IEP team meeting summary, dated March 22, 2010;
 - k. IEP and team meeting summary, dated April 13, 2010;
 - l. Electronic mail (e-mail) correspondence between the student's teachers and the complainant during the 2009-2010 school year;
 - m. Student work samples from the student's English and "LICW" classes for the 2009-2010 school year;
 - n. HCPS *Data Collection* forms regarding the provision/use of accommodations and supplementary aids and services to the student for the third (3rd) and fourth (4th) quarters of the 2009-2010 school year;
 - o. Student work samples from the student's World History, Spanish, Introduction to Food Preparation, English, and Biology classes for the 2010-2011 school year;
 - p. E-mail correspondence between the student's teachers and the complainant during the 2010-2011 school year;
 - q. HCPS *Data Collection* forms regarding the provision/use of accommodations and supplementary aids and services to the student for the first (1st) and second (2nd) quarters of the 2010-2011 school year; and
 - r. HCPS *Notice and Consent for Assessment*, signed by the complainant, dated February 17, 2011.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with an other health impairment under IDEA, related to a diagnosis of Attention Deficit/Hyperactivity Disorder. The student

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attends XXXXXXXX, where he receives special education and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with written notice of IEP team decisions and notice of the procedural safeguards (Docs. a, c-e, g, h, j, k, and r).

ALLEGATION #1: **IEP THAT ADDRESSES THE STUDENT'S
ORGANIZATION AND FINE MOTOR NEEDS SINCE
JANUARY 2010**

Findings of Fact:

Organization Needs

1. The evaluative data indicates that the student has needs related to executive functioning and indicates that the student has “executive function deficits” in the following areas:
 - a. Impulse control;
 - b. The ability to initiate work;
 - c. The ability to sustain working memory in order to carry out multi-step directions;
 - d. The capacity to plan/organize his approach to assignments, papers, and homework;
 - e. The ability to monitor his progress toward a goal or deadline and self-correct his own work; and
 - f. The ability to “shift,” which includes making transitions, tolerating change, problem-solving, switching or alternating attention, and changing focus from one topic to another (Docs. c, f, h, i, and k).
2. The IEP in effect since January 2010 includes present levels of performance related to the student’s executive functioning and includes goals for the student to improve his ability to develop and utilize strategies to support organization of materials and assignments (Docs. c, h, and k).
3. In order to assist the student with achieving the annual goals, the IEP in effect since January 2010 requires that the student be provided with accommodations, such as multiple or frequent breaks and preferential seating, and supplementary aids and services, such as allowing the student to record his homework assignment due dates electronically on his “iPad” (Docs. c, h, k, and l).

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Fine Motor Skills Needs

4. There is evaluative data that indicates that the student has “decreased fine motor skills” that affect his writing skills. The IEP in effect since January 2010 includes present levels of performance related to the student’s writing difficulty and includes goals for the student to improve his ability to produce written documents (Docs. b, c, h, and k).
5. In order to assist the student with achieving the annual goals, the IEP in effect since January 2010 requires that the student be provided with accommodations, such as extended time to complete assignments and providing the student with “explicit, detailed rubrics,” detailed expectations, and models to use as a reference for summative assessments. The IEP also requires supplementary aids and services, such as providing him with “skeletal notes” at the start of each class and “chunking” information (Docs. c, h, and k).
6. There is documentation that the student frequently refuses to use the accommodations offered to assist him in completing his assignments because he believes that using the accommodations will make him appear different from his peers. There is documentation that on January 25, 2010, the IEP team determined that additional data was needed in order to determine how this refusal affects the student’s progress. The team requested consent from the complainant to conduct a social/emotional assessment to determine whether the student is experiencing anxiety that interferes with his work performance. The complainant did not provide consent for such testing because she wanted to have her own testing done by an independent evaluator (Docs. c-g, j, k, l, n, p, and q).
7. On March 2, 2010, the IEP team convened to review the results of a private psychological assessment, obtained by the complainant, which was conducted at XXX on January 29, 2011. The report of the assessment indicates the following:
 - a. The student scored “at-risk” for “hyperactivity and attention problems” but otherwise he scored “within normal limits on the social/emotional functioning assessment;”
 - b. The student “demonstrates less energy than many adolescents and is inclined to be somewhat passive and unassertive at this time in his life. He feels somewhat aimless and undirected in life;” and
 - c. The student’s scores in written expression are “consistent with a developmental writing disorder,” but indicates that the scores may not be valid because the student was reluctant to complete some of the items on the assessment. The examiner recommended further testing in this area to either confirm or rule out the presence of a graphomotor disorder (Docs. f and g).

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8. The documentation of the March 2, 2010 meeting indicates that the team did not determine whether additional data was needed to either confirm or rule out the suspected writing disorder as recommended. There is also no documentation that the team determined whether the student's refusal to accept accommodations is a result of a graphomotor disorder or a behavioral issue. There is no documentation that the team revised the student's program to address the student's refusal to use the accommodations (Doc. g).
9. The IEP team convened on February 17, 2011 and determined that a written language assessment, an expressive/receptive language assessment, and a fine motor skills assessment are necessary in order to determine the student's educational needs (Doc. r).

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).

Organization Needs

Based on Findings of Fact #1-3, MSDE finds that the student's program identifies and addresses the student's organization needs. Therefore, MSDE finds no violation regarding this aspect of the allegation.

Fine Motor Skills Needs

Based on Finding of Fact #4, MSDE finds that the evaluative data indicates that the student's fine motor skills may be impacted by a graphomotor disorder. Based on Findings of Fact #5-9, MSDE finds that the IEP team did not consider whether additional data was needed to determine if he has a graphomotor disorder until February 2011.

Based on Findings of Fact #6-9, MSDE finds that while there is documentation that the student frequently refuses to use the accommodations offered to him, the IEP team has not determined whether this refusal is related to a graphomotor disorder or to behavioral issues and has not revised the student's IEP to address the behavior that interferes with the student's learning. Therefore, MSDE finds a violation regarding this aspect of the allegation.

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ALLEGATION #2: **PROVISION OF ACCOMMODATIONS AND
SUPPLEMENTARY AIDS AND SERVICES SINCE
JANUARY 2010**

Findings of Fact:

10. The IEP in effect since January 2010 requires the provision of the following accommodations and supplementary aids and services on a daily basis in all classes:
 - a. Provision of “explicit, detailed rubrics,” detailed expectations, and “models to use as a reference for summative assessments (*i.e.*, papers and projects);”
 - b. A hard copy of “skeletal notes” at the start of each class and a completed copy of those notes posted to the school-wide computer database prior to the next class;
 - c. A hard copy of PowerPoint presentations;
 - d. A “dedicated laptop” for the student to use in his classes with spelling and grammar programs and software designed to assist the student with organizing written products loaded onto the laptop;
 - e. Extended time to complete “extensive writing assignments;”
 - f. Multiple or frequent breaks “if anxious or irritable;”
 - g. Preferential seating away from “loud and/or busy” activities;
 - h. “Chunking” of information;
 - i. The ability to forward an electronic copy of assignments and homework through e-mail;
 - j. An accessible copy of all assignments by hard copy, laptop, or “flashdrive;” and
 - k. Allowing the student to record his homework assignment due dates electronically on his “ipad” (Docs. c, h, and k).

11. A review of work samples, HCPS *Data Collection* forms, and e-mail correspondence indicate that the student has been provided with the accommodations and supplementary aids and services. However, they are not provided consistently in all classes on a daily basis as required by the IEP (Docs. l-q).

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Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). As stated in Allegation #1, the documentation indicates that the student frequently refuses to use the accommodations offered to him. However, based on Findings of Fact #10 and 11, MSDE finds that even when the student does not refuse the accommodations and supplementary aids and services, they have not been provided consistently in accordance with the IEP. Therefore, MSDE finds a violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

MSDE requires HCPS to provide documentation by April 15, 2011 that immediate steps have been taken to ensure that the student is provided with the accommodations and supplementary aids and services consistently as required by the IEP.

In addition, MSDE requires HCPS to provide documentation by May 31, 2011 that an IEP team has convened and done the following:

1. Determined whether a graphomotor disorder impacts the student's education, and if so, revised the IEP to ensure that it addresses this need and determined the *compensatory services*³ needed for the delay in addressing this need between March 2010 and the date of the revised IEP;
2. Reviewed and revised the IEP to ensure that it addresses the interfering behaviors and determined *compensatory services*³ to redress the delay in revising the IEP since March 2010, if the IEP team determines that the IEP requires revision for this purpose; and
3. Determined the nature and amount of *compensatory services*³ necessary to redress the violation related to the provision of accommodations and supplementary aids and services.

HCPS 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.

³ 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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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 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 : Robert M. Tomback
Eileen Watson
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Martha Arthur
Kathy Stump