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March 31, 2011

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

RE: XXXXX  
Reference: #11-055

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 our investigation.

**ALLEGATIONS:**

On January 31, 2011, MSDE received correspondence from Ms. XXXXXXXXX, hereafter "the complainant," filed on behalf of her son. In that correspondence, the complainant 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. This office investigated the following allegations:

1. WCPS did not ensure that the Individualized Education Program (IEP) team followed proper procedures when determining the student's educational placement for the 2010-2011 school year, in accordance with 34 CFR §§300.114 and .116; and
2. WCPS did not ensure that proper procedures were followed in response to the complainant's request for an IEP team meeting during the 2010-2011 school year, as required by 34 CFR §§300.324 and .503.

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 1, 2011, a copy of the complaint was provided by facsimile to Mr. Glen Hammerbacher, Supervisor of Special Education, WCPS.
3. On February 11, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. MSDE also notified Mr. Hammerbacher of the allegations to be investigated and requested that his office review the alleged violations.
4. On February 14 and 22, 2011, Ms. Moyo spoke with the complainant, by telephone, to answer her questions regarding the complaint investigation.
5. On March 4, 2011, Ms. Moyo and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX School, hereafter, "XXXXXXXXXXXXX," to review the student's education record, and interviewed the following WCPS staff:
  - a. Mr. XXXXXXXX, Principal, XXXXXXXXXXXX;
  - b. Ms. XXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXXX;
  - c. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXX;
  - d. Ms. Lynda Koehler, Behavioral Specialist, WCPS; and
  - e. Ms. Stephanie Caceres, Assistive Technology Specialist, WCPS.

Mr. Hammerbacher attended the site visit as a representative of WCPS and to provide information on WCPS policies and procedures, as needed. Mr. P. Tyson Bennett, Legal Counsel for WCPS, also attended the meeting.

6. On March 10, 2011, Ms. Moyo contacted WCPS staff and requested additional documentation from the student's education record.
7. On March 17, 2011, Ms. Moyo conducted a telephone interview with the complainant regarding the allegations in the case. On the same day, Ms. Moyo contacted WCPS staff, via electronic mail, and requested additional documentation from the student's education record.
8. On March 21, 2011, Ms. Moyo spoke with Mr. Bennett, by telephone, and requested additional information regarding the allegations.
9. On March 22, 2011, Mr. Bennett provided Ms. Moyo with additional documentation from the student's education record.

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10. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
- a. IEP team meeting notice, dated July 2, 2010;
  - b. IEP, dated July 7, 2010;
  - c. Electronic mail correspondence from the complainant to school staff, dated September 13, 2010;
  - d. Electronic mail correspondence from the complainant to school staff, dated September 22, 2010;
  - e. Electronic mail correspondence from school staff to the complainant, dated September 22, 2010;
  - f. IEP team meeting notice, dated September 23, 2010;
  - g. IEP, dated September 28, 2010;
  - h. Correspondence from WCPS staff to the complainant, dated September 30, 2010;
  - i. Correspondence from the complainant regarding consent, dated October 11, 2010;
  - j. Correspondence from WCPS staff to the complainant, dated October 12, 2010;
  - k. Electronic mail correspondence from the complainant to school staff, dated October 12, 2010
  - l. Home and Hospital Teaching Verification, dated October 12, 2010;
  - m. Pre-hearing Order, dated October 20, 2010;
  - n. Home and Hospital Teaching teacher log, dated November 10, 2010;
  - o. Due process hearing complaint decision, dated November 22, 2010;
  - p. Electronic mail correspondence from the complainant to WCPS staff, dated December 1, 2010;
  - q. IEP team meeting notice, dated December 3, 2010;
  - r. IEP, dated December 20, 2010;
  - s. Electronic mail correspondence from the complainant to school staff, dated January 3, 2011;
  - t. Electronic mail correspondence from the complainant to school staff, dated January 11, 2011;
  - u. Correspondence from the complainant containing allegations of violations of IDEA, received by MSDE on January 31, 2011;
  - v. IEP team meeting notice, February 14, 2011;
  - w. IEP, dated February 18, 2011;
  - x. Functional Behavioral Assessment (FBA), dated February 18, 2011; and
  - y. Behavior Intervention Plan (BIP), dated February 18, 2011; and
  - z. Classroom attendance calendar for the 2010-2011 school year.

**BACKGROUND:**

The student is thirteen (13) years old. He is identified as a student with a specific learning disability under IDEA. During the period addressed by this investigation, the complainant was provided with information regarding procedural safeguards and parental rights, as required.

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From the start of the 2010-2011 school year until October 12, 2010 the student attended XXXXXXXXXXXXXXX where he received special education instruction and related services. From October 18, 2010 until November 16, 2010, the student was provided with home and hospital teaching (HHT) services after verification was submitted by the student's community-based psychiatrist that the student could not attend school due to an emotional condition. On November 16, 2010, the student returned to XXXXXXXXXXXXXXX where he continues to receive special education instruction and related services (Docs. a, b, f- h, l, n, q, r, u, v, w, and z).

**ALLEGATION #1:**                    **DETERMINING THE STUDENT'S EDUCATIONAL PLACEMENT FOR THE 2010-2011 SCHOOL YEAR**

**Findings of Fact:**

1. On July 7, 2010, the IEP team met to conduct a re-evaluation of the student. At the meeting, the IEP team revised the student's program and determined that the IEP can be implemented in the general education classroom with the provision of the following supplementary aids and services that included the use of a word processor with word prediction, spell checker, thesaurus, voice to text, and text to voice capabilities. There is no documentation that concerns were raised about the potential harmful effects of providing the student with special education services in the general education classroom. (Docs. a and b)
2. Since the July 7, 2010 team meeting, additional IEP team meetings have been convened during the 2010-2011 school year. However, the documentation from these meetings indicates that the team has not considered the educational placement decision since the July 7, 2010 meeting (Docs. b, g, r, w-y and review of the student's education record).

**Discussion/Conclusions:**

The IDEA requires that the public agency ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Further, the IDEA requires that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116).

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team. The placement decision must be:

- made in conformity with the least restrictive environment (LRE) provisions;
- determined at least annually;
- based on the student's IEP; and
- as close as possible to the student's home (34 CFR §300.116).

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Unless the IEP of a student requires some other arrangement, the student is educated in the school setting that the student would attend if not disabled. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability may not be removed from an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR §300.116).

Based on Findings of Fact #1 and 2, MSDE finds that the team considered supplementary aids and services that would be provided and determined that the general education classroom was the LRE in which the IEP could be implemented. Therefore, MSDE does not find that a violation occurred with regard to this allegation.

**ADDITIONAL ISSUE:      PROPER PROCEDURES WHEN PROVIDING HHT SERVICES**

**Findings of Fact:**

3. On September 28, 2010, the IEP met again at the complainant's request to discuss the student's educational placement. However, while the complainant indicated that her concerns were about the student's placement, documentation of the meeting indicates that her concerns were about the type of reading program being used to provide instruction to the student. The documentation from the meeting, which was sent to the complainant on September 30, 2010, indicates that the IEP team decided the reading program was appropriate (Docs. f-h).
4. On October 8, 2010, the complainant filed a due process complaint to resolve her dispute regarding the reading program being provided to the student by WCPS (Doc. o).
5. On October 11, 2010, in response to the IEP team decision that the student would continue in the same program, the complainant sent correspondence to school staff stating that she wanted to revoke her consent for the provision of special education services to the student (Doc. i).
6. On October 12, 2010, WCPS staff provided the complainant with procedural safeguards and notified her in writing that "WCPS is withdrawing special education [instruction] and related services from the student per the complainant's request." On the same date, the complainant sent electronic mail to WCPS staff indicating that she wished to withdraw her revocation of consent. Further, the complainant indicated that when she submitted her revocation of consent she did not understand the full impact to the student of revoking consent for special education services. However, upon being provided with procedural safeguards she withdrew her revocation (Doc. j).
7. On October 12, 2010, the complainant also submitted verification from the student's community-based psychiatrist that the student was unable to attend school due to an emotional crisis (Doc. l).

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8. On October 18, 2010, WCPS initiated HHT services to the student as a non-disabled student. The IEP team did not determine the services to be provided to the student at home or develop a plan for the student to return to a school-based program (Docs. l, n, z and review of the student's education record).
9. On October 19, 2010, WCPS staff and the complainant attended a due process pre-hearing conference. There is documentation that, during that conference, the complainant, WCPS staff, and the administrative law judge agreed that the complainant withdrew her revocation of consent and that the student should continue to be provided with special education instruction (Doc. m).

**Discussion/Conclusions:**

Upon receipt of the verification of the need for HHT for a student with a disability, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program. These services are, generally, to be provided for a short time while the IEP team develops a plan to assist the student to return to a school-based program, consistent with the regulations (COMAR 13A.05.01.10).

The United States Department of Education, Office of Special Education Programs (OSEP), has indicated that special education services are to be discontinued in a timely manner when a public agency is informed that the parent has revoked consent to the provision of those services. However, OSEP noted that public agencies are required to ensure that parents are fully informed of their rights when revoking consent. OSEP explained that it would not require a specific timeline for the public agency to discontinue services upon receiving notice of the parent's revocation, indicating that public agencies should be provided with flexibility due to parent-specific factors.

In this case, based on Findings of Fact #5 and 6, MSDE finds that although the complainant notified WCPS that she was revoking consent to the provision of services, she later withdrew the revocation after reviewing the procedural safeguards. Based on Finding of Fact #9, MSDE further finds that an administrative law judge considered this matter and determined that WCPS should continue to provide special education services.

Based on Findings of Fact #3-9, MSDE finds that once the decision was made on October 19, 2010 that the student continued to be a student with a disability, WCPS was required to ensure that an IEP team convened to determine the services the student would be provided while receiving HHT and develop a plan to return the student to school. Based on the same Findings of Fact, MSDE finds that the IEP team did not determine the HHT services to be provided or develop a plan for the student to return to a school-based program, but treated the student as a non-disabled student. Therefore, MSDE finds that a violation occurred with respect to this issue, from October 19, 2010 to November 16, 2010, when the student returned to school based program.

**ALLEGATION #2:**                    **RESPONSE TO THE COMPLAINANT'S REQUESTS FOR IEP TEAM MEETINGS**

**Findings of Fact:**

10.     On September 13 and 22, 2010, the complainant sent correspondence, via electronic mail, to WCPS staff requesting that an IEP team meeting be convened to discuss the student's placement (Docs. c and d).
11.     On September 28, 2010, an IEP team meeting was convened in response to the complainant's request (Docs. e-g).
12.     On December 1, 2010, the complainant sent correspondence, via electronic mail, to WCPS staff requesting that an IEP team meeting be convened to discuss the student's assistive technology services and devices to be provided to the student (Doc. p).
13.     On December 20, 2010, an IEP team meeting was convened in response to the complainant's request (Docs. q and r).
14.     On January 3 and 11, 2011, the complainant requested an IEP team meeting via electronic mail to discuss the student's program and his class schedule (Docs. s and t).
15.     On February 18, 2011, an IEP team meeting was convened in response to the complainant's request (Docs. v and w).

**Discussion/Conclusions:**

The public agency must ensure that the IEP team reviews each student's IEP periodically, but not less than annually. In addition, the public agency must ensure that the IEP is reviewed, as appropriate, to address information about the student provided to or by the parent (34 CFR §300.324). If a parent requests an IEP team meeting and the public agency rejects the request, the public agency must provide the parent with prior written notice of the decision, including the basis for the decision (34 CFR §300.503).

Based on Findings of Fact #10-15, MSDE finds that WCPS followed proper procedures by convening IEP team meetings in response to the complainant's requests. Therefore, MSDE does not find that a violation occurred with regard to this allegation.

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**CORRECTIVE ACTION/TIMELINE:**

MSDE requires that WCPS provide documentation by June 1, 2011 that an IEP team has determined whether the violation identified in this LOF had a negative impact on the student's ability to benefit from his program. If the team determines that there was a negative impact on the student's ability to benefit from his program, then the team must determine the amount and nature of *compensatory services*<sup>1</sup> or other remedy needed to redress the violation.

The school system must provide the complainant with proper written notice of the team's determinations, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the team's decisions, she maintains the right to request mediation and to file a due process complaint to resolve the dispute consistent with IDEA.

Documentation of completion of the corrective action 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.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of facts or conclusions. 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 LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of fact, conclusions, and corrective actions contained in this LOF 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 the provision of a free appropriate public education to the student, including issues subject to a State complaint investigation, in accordance with IDEA.

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<sup>1</sup> 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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The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Carol Ann Heath, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAH/km

c: Jon Andes  
XXXX  
Dori Wilson  
Martha J. Arthur  
Koliwe Moyo