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April 10, 2012

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Ms. Annette Lagana
Director of Special Education
Calvert County Public Schools
1305 Dares Beach Road
Prince Frederick, Maryland 20678

RE: XXXXX
Reference: #12-050

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 February 10, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above referenced student. In that correspondence, the complainant alleged that the Calvert County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the following allegations:

1. The CCPS has not followed proper procedures when providing Home and Hospital Teaching (HHT) services since September 9, 2011, in accordance with COMAR 13A.03.05.03 and .04 and COMAR 13A.05.01.10(C)(5);
2. The CCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his social/emotional/ behavioral needs since September 9, 2011, in accordance with 34 CFR § 300.324;

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3. The CCPS did not follow proper procedures when determining the student's educational placement on September 9, 2011, in accordance with 34 CFR §§300.114 and .116 and COMAR 13A.05.01.10; and
4. The CCPS did not provide the complainant with copies of documents at least five (5) business days prior to the IEP team meeting on September 9, 2011, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07D(3).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 10, 2012, the MSDE received correspondence from the complainant containing allegations of violations of IDEA.
3. On February 13, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Annette Lagana, Director of Special Education, CCPS.
4. On February 15, 2012, Ms. Moyo spoke with the complainant by telephone and clarified the allegations to be investigated. The complainant also provided the MSDE with documentation to be considered as part of the investigation, via facsimile.
5. On February 23, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Lagana of the allegations and requested that her office review the alleged violations.
6. On March 9, 2012, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at the CCPS Central Offices to review the student's educational record, and interviewed the following CCPS staff:
 - a. Ms. Melissa Farrell, Behavior Analyst;
 - b. Ms. Judy Buckler, Autism Spectrum Facilitator; and
 - c. Ms. Christy Harris, Supervisor of Special Education.

Ms. Robin Welsh, Deputy Superintendent, CCPS, and Ms. Lagana attended the site visit as representatives of the CCPS and to provide information on the CCPS policies and procedures, as needed.

7. On March 14, 2012, the CCPS staff provided the MSDE with documentation from the student's educational record.
8. On April 2 and 3, 2012, Ms. Moyo conducted telephone interviews with Ms. Harris, and was provided with additional documentation from the student's educational record.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Daily behavior logs from June 6, 2011 to September 2, 2011;
 - b. Reports of progress, dated August 12, 2011;
 - c. IEP and meeting summary, dated September 8, 2011;
 - d. HHT verification, dated September 8, 2011;
 - e. Electronic mail (E-mail) correspondence from the complainant to school staff, dated September 19, 2011;
 - f. Correspondence from CCPS staff to the student's father re: HHT teacher assignment, dated September 20, 2011;
 - g. E-mail correspondence from CCPS staff to the complainant, dated September 23, 2011;
 - h. HHT teacher service logs since September 25, 2011;
 - i. IEP and meeting summary, dated November 1, 2011;
 - j. Correspondence from XXXXX staff, dated November 10, 2011;
 - k. IEP and meeting summary, dated December 6, 2011;
 - l. Correspondence from CCPS staff to XXXXXXXXXXXXXXXX Staff, dated December 8, 2011;
 - m. Pre-meeting document list, dated January 31, 2012;
 - n. XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXX) XXXXXXXX Behavior Plan, dated February 2, 2012;
 - o. IEP and meeting summary, dated February 10, 2012;
 - p. Correspondence and attachments from the complainant to the MSDE, received February 10, 2012; and
 - q. XXX Outpatient Clinic program description, printed on March 22, 2012.

BACKGROUND:

The student is six (6) years old. He is identified as a student with autism under the IDEA and receives special education instruction and related services. During the period addressed by this investigation, the complainant was provided with information regarding parental rights, as required.

From the start of the 2011-2012 school year until September 8, 2011, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXX) where he participated in the Intensive Structured Learning Environment (ISLE) program¹. Since September 9, 2011, the student has not attended school and is receiving Home and Hospital Teaching (HHT) as a result of verification by the school psychologist that he cannot attend school due to an emotional condition (Docs. b-d, h-k, o and p).

¹ This program is designed to meet the needs of students who exhibit characteristics of autism spectrum disorders and educational services are provided in a separate special education classroom (www.calvertnet.k12.md.us).

ALLEGATIONS #1 - #3: PROVISION OF HHT, ADDRESSING NEEDS, AND DETERMINING EDUCATIONAL PLACEMENT

Findings of Facts:

1. On September 8, 2011, the CCPS school psychologist provided verification that the student was unable to attend school due to an emotional condition. On the same day, the IEP team met and determined the HHT services that would be provided to the student (Docs. c and d).
2. At the September 8, 2011 meeting, the team considered information regarding the student's behavior as listed below.
 - a. Reports from the student's teachers and service providers on August 12, 2011 indicating that the student was not making sufficient progress towards achieving the annual IEP goals due to his behaviors, such as hitting school staff and making loud noises to disrupt the class;
 - b. Reports from the student's teachers and the CCPS behavior specialist that the student was displaying increased aggression on a daily basis and was harming himself and his peers. School staff further reported that although the student was assigned two (2) assistants to provide additional supports such as "time outs" and rewards, these interventions were not effective in addressing the interfering behaviors;
 - c. Reports from the complainant and the student's father indicating that the student has been prescribed medication in order to address his behaviors;
 - d. Reports from the school system's behavior analyst of the behavioral interventions that have been used, including verbal praise, feedback regarding behavior, and reinforcement of appropriate behavior; and
 - e. Verification by the school psychologist that the student cannot attend school due to an "emotional crisis". The school psychologist reported that the student's "emotional and behavioral functioning have deteriorated" and that the intensity and frequency of the student's behaviors have required a significant amount of adult assistance in order to maintain his safety. The school psychologist indicated that the student has been provided with intensive supports that have not been successful in reducing his interfering behaviors, and that as a result of those behaviors the student has not been able to access instruction (Docs. a - c).
3. Based on its review of the above information, the team determined that additional data was necessary to identify all of the student's social/emotional/ behavioral needs and that this data would be collected through "an interim placement at the XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXX) for diagnostic purposes and intensive behavior

- treatment.” The team further determined that, while awaiting acceptance into the inpatient program at XXX, the student would receive six (6) hours per week of HHT services and that the complainant and the student’s father would be provided with training in the home one (1) hour per month by the HHT instructor in order to develop additional strategies to address the student’s social/emotional/behavioral needs (Doc. c).
4. A review of the HHT teacher’s service logs document that the student began receiving HHT services on September 25, 2011, seventeen (17) days after receipt of the verification. However, additional hours of instruction were provided to the student in order to compensate for the delay in the initiation of services (Docs. f - h).
 5. On November 1, 2011, the IEP team met and determined that the student was making sufficient progress with the provision of HHT services. The team discussed that the student was still awaiting acceptance into the XXX inpatient program. Because the XXX inpatient program has an educational component, the team anticipated that the student would transition back to a school setting when he began participating in the XXX program. The team decided that, while awaiting the student’s placement in the program, the amount of HHT instruction would be increased to ten (10) hours per week. The team also decided the student would be provided with the use of a “visual schedule” to familiarize him with a routine, the repetition and rephrasing of directions, and reduced visual and auditory distractions (Doc. i).
 6. On December 6, 2011, the IEP team convened again and discussed the fact that the student was not accepted into the XXX inpatient program. At the meeting, the complainant informed the team that the student would begin attending the XXX intensive outpatient program on December 19, 2011 for intensive behavioral treatment and assessment. The team determined that data obtained from the student’s participation in this program would be used to develop a plan to transition him back to a school setting. However, as of the date of this letter, the student has not returned to a school setting since the XXX outpatient program does not have an educational component (Docs. j and k).
 7. On February 10, 2012, the IEP team met to review data obtained from the student’s participation in the outpatient program at XXX. At the meeting, the team reviewed the information listed below.
 - a. A report from the psychologist at XXX containing the following recommendations:
 - i. The student’s inappropriate behaviors should be ignored unless the behaviors are a danger to the student, his peers or his sibling;
 - ii. A report of the student’s behavior during the school day should be sent to the complainant on a daily basis in order to reinforce appropriate behaviors at home;

- iii. The complainant and the student's father should work with the student during the school day and provide the student with all of his academic work while gradually decreasing their involvement;
 - iv. When the student returns to a school based program, he should begin with a shorter school day that gradually increases in duration;
 - v. The student should be provided with a "dedicated aide" since he works best with people with whom he is familiar; and
 - vi. If the student needs to calm down, he should be placed in a room without preferred activities while being monitored by a teacher or aide, who will work with him every fifteen (15) minutes, so that he can earn tokens to return to the classroom.
- b. Reports from the HHT teacher indicating that the student has responded well to the provision of incentives and rewards for appropriate behavior;
 - c. Reports from the complainant and the student's father that the student had been in engaging in play with his peers, but continues to display inappropriate behaviors when he cannot get what he wants; and
 - d. Concerns expressed by the complainant and the student's father about the length of time the student has been receiving HHT services and their desire to have him transition to a school-based program within the Prince Georges County School System, where the complainant works (Docs. n and o).
8. Based on the data, the IEP was revised as indicated below.
- a. An annual goal was developed for the student to demonstrate compliance and appropriate behavior when participating in school activities with peers and during transitions;
 - b. Services were revised to require special education instruction provided in a small group setting with a high staff to student ratio and minimal distractions;
 - c. Services were revised to include repetition of directions, a visual picture schedule, a dedicated aide, positive reinforcements and incentives, "planned ignoring" of inappropriate behavior, and crisis intervention service; and
 - d. Services were revised to include a flexible classroom schedule allowing the student to request activities throughout the school day, breaks when

the student becomes agitated, availability of a safe area where the student can go to calm down, a behavior chart to assist the student with identifying appropriate and inappropriate behavior, and use of a timer (Doc. o).

9. At the February 10, 2012 IEP team meeting, the team determined that the IEP cannot continue to be implemented in a separate special education classroom even with the provision of supplementary aids and services. The team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a non-public separate special education school due to the student's need for an intensively structured small group setting with one-to-one support and an on-site behavioral or crisis team (Doc. o).

Discussion/Conclusions:

Allegation #1: **Provision of Home and Hospital Teaching Services since September 9, 2011**

Verification of the Need for Home and Hospital Teaching

Home and Hospital Teaching (HHT) is to be provided only when a psychologist, physician or psychiatrist provides verification that a student is unable to attend school due to a physical or emotional condition (COMAR 13A.03.05.04). Based on the Finding of Fact #1, the MSDE finds that HHT services were provided as a result of verification of the student's inability to attend school due to an emotional condition. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Determination of Services and Plan to Return to School

Upon receipt of the verification, 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. The HHT services must be provided to the student as soon as possible, but no later than ten (10) days after receipt of verification of the need for services. 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).

Based on the Findings of Facts #2, #3, #5, and #6, the MSDE finds that the IEP team determined the services to be provided to the student while receiving HHT and developed a plan for returning the student to a school-based program. Based on the Finding of Fact #4, the MSDE finds that teaching services were not provided to the student within ten (10) days after receipt of the September 8, 2011 verification. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Notwithstanding this Finding, based on the Finding of Fact #4, the MSDE finds that services have been provided to compensate the student for the delay in the initiation of services. Therefore, no student-specific corrective action is required to remediate the violation.

Provision of HHT Service Due to an Emotional Condition

Educational placement in the home, for a student with an emotional condition, may not exceed sixty (60) consecutive school days (emphasis added) (COMAR 13A.05.01.10). The intent of COMAR is to ensure that no student with a disability continues to receive educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students and denies the student access to the general curriculum.

Prior to the enactment of the COMAR regulations, a significant number of students remained in their homes and received a minimum amount of education services solely on the basis of a one-time statement by a school psychologist. Often this occurred for students when the school system was unable or unwilling to identify an appropriate day or residential placement needed for the student to receive a Free Appropriate Public Education (FAPE) to meet his or her needs. Therefore, public agencies must make HHT services available to students consistent with both the least restrictive environment requirements of the IDEA and the requirements of the COMAR (34 CFR §§300.114-116 and COMAR 13A.05.01.10).

Based on the Findings of Facts #1 - #7, the MSDE finds that HHT services have been provided to the student as a result of an emotional condition in excess of sixty (60) consecutive school days. Therefore, the MSDE finds a violation with respect to this aspect of the allegation.

Allegation #2: IEP that Addresses the Student's Social/Emotional/Behavioral Needs since September 9, 2011

The IEP must include a statement of the student's present levels of academic achievement and functional performance, and annual goals and services designed to address the student's needs identified in that data (34 CFR §300.320). When determining the levels of academic achievement and functional performance, the team must consider the evaluative data, information from the student's teachers, and the parent's concerns (34 CFR §300.324). The team must also consider, in the case of a student whose behavior impedes his learning or that of other, strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

In this case, the complainant alleges that the student was not provided with a program that addresses his social/emotional/behavioral needs because he displayed increased behaviors that interfere with his ability to learn. Based on the Findings of Facts #2, #3, and #5 - #9, the MSDE finds that, while the student's interfering behaviors increased, the IEP team met throughout the school year to address those behaviors. Based on the Findings of Facts #2, #3, and #5 - #9, the MSDE finds that the IEP team considered assessment data, information from the student's

teachers, and information from the complainant and the student's father, and developed an IEP to address the student's needs consistent with the data. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

Allegation #3: **Determining the Student's Educational Placement since September 9, 2011**

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).

Based on the Findings of Facts #2, #3, and #7 - #9, the MSDE finds that the team considered supplementary aids and services and determined that the LRE in which the IEP can be successfully implemented with the provision of those services based on the student's identified needs. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #4: **PROVISION OF DOCUMENTS FIVE (5) DAYS PRIOR TO THE SEPTEMBER 9, 2011 IEP MEETING**

Findings of Facts:

10. At the meeting held September 8, 2011, the team considered a written plan proposed by school staff to address the student's behavior based on data collected during the provision of services to the student (Doc. c).
11. There is documentation that the CCPS utilizes a standard form that indicates the documents that will be reviewed at an IEP team meeting. This form and the necessary documents are provided to the student's parent at least five (5) days prior to an IEP team meeting. There is no documentation that this form was completed or that the complainant was provided with a copy of the plan proposed by school staff prior to the meeting held on September 8, 2011² (Doc. m and review of the student's educational record).

Discussion/Conclusions:

The public agency must ensure that the parent of a student with a disability is provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at that meeting, at least five (5) business days before the scheduled meeting (Md. Code Ann., Educ.,

² There is documentation that for a subsequent meeting the complainant was provided with the completed form and the documents that would be reviewed prior to the meetings as required (Doc. m).

§8-405(c) (2010) and COMAR 13A.05.01.07). Based on the Findings of Facts #10 and #11, the MSDE finds that that the complainant was not provided with the documents five (5) days prior to the IEP team meeting, as required. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the CCPS provide documentation by May 3, 2012 of the steps taken to transition the student back to a school based program. The CCPS must also provide documentation to the MSDE by June 3, 2012 that the IEP team has convened and determined the nature and amount of *compensatory services*³ to redress the loss of any educational benefit that occurred as the result of the violation identified.

The CCPS 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, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or to file a due process complaint, in accordance with the IDEA.

Documentation of the corrective actions must be provided to this office within fifteen (15) days of completion. The documentation should be submitted to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the complainant and the school system have the right to submit additional written documentation to this office 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.

³ Compensatory services, for the purpose 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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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 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/km

c: Jack R. Smith
Robin Welsh
Diane Black
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