



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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May 29, 2012

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Ms. Chrisandra A. Richardson
Associate Superintendent
Department of Special Education and Student Services
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason
Director of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #12-072

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATION:

On March 30, 2012, the MSDE received correspondence from Ms. XXXXXXXXX, hereafter “the complainant,” filed on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the allegation that the MCPS has not ensured that the educational needs arising from the student’s disability have been identified and addressed since the start of the 2011-2012 school year, in accordance with 34 CFR §300.324.

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.
2. On April 3, 2012, a copy of the complaint was provided by facsimile to Ms. Gwendolyn Mason, Director, Department of Special Education Services, MCPS, and Ms. Alison Steinfels, Supervisor, Equity Assurance and Compliance, MCPS.
3. On April 10, 2012, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On April 13, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, the MSDE also notified the MCPS of the allegation to be investigated and requested that the MCPS review the alleged violation.
5. On May 2, 2012, the MSDE received correspondence and documentation from the MCPS staff to be considered in the investigation. On the same date, Ms. Moyo conducted a telephone interview with the complainant.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated November 18, 2010;
 - b. IEP team meeting notice, dated August 24, 2011;
 - c. Consent for assessment, dated August 30, 2011;
 - d. Correspondence from the MCPS to the complainant, dated March 21, 2012;
 - e. Correspondence from the complainant to the MSDE, received March 30, 2012;
 - f. IEP team meeting notice, dated March 30, 2012;
 - g. IEP, dated April 10, 2012;
 - h. Correspondence from the MCPS to the MSDE, dated May 2, 2012;
 - i. Electronic Correspondence from the MCPS to the MSDE, dated May 2, 2012; and
 - j. Electronic Correspondence between the complainant and Ms. Moyo, dated May 2, 2012; and
 - k. Electronic Correspondence from MCPS staff to Ms. Moyo, dated May 24, 2012.

BACKGROUND:

The student is six (6) years old, is identified as a student with a developmental delay under the IDEA, and he receives special education instruction and related services. He attends XXXXXXXXXXXXXXXX School. There is documentation that during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. a - g).

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FINDINGS OF FACTS:

1. At an IEP team meeting held on August 30, 2011, the complainant provided school staff with a report of a private neuropsychological assessment that she had obtained, dated July 16, 2011. The IEP team determined additional data was necessary to ensure that the student's needs were identified and the complainant provided consent for additional assessments to be conducted (Docs. c, e, and h).
2. On October 25, 2011, the IEP team reconvened to complete the re-evaluation. There was a disagreement between the school-based members of the IEP team and the complainant related to interpretation of the data and the meeting ended without the re-evaluation being completed (Docs. e and h).
3. On March 21, 2012, the MCPS agreed to fund the cost of an independent psychological assessment. However, to date, the assessment has not been reviewed (Docs. d and k).
4. On April 10, 2012, the IEP team completed the re-evaluation and revised the IEP consistent with the data. The school system reports that the team will re-convene to consider the results of the independent psychological assessment when it is available for review (Docs. j, g, h, k, and interviews with the complainant and the MCPS).
5. As result of the delay in completing the re-evaluation, the IEP was not reviewed at least annually. The IEP review that was conducted on April 10, 2012 should have occurred by November 18, 2011 (Doc. h).

DISCUSSION/CONCLUSIONS:

Re-evaluation Timelines

The purpose of a re-evaluation is to determine whether a student continues to meet the criteria for identification as a student with a disability and to identify the needs that arise out of the disability. A re-evaluation must occur at least once every three (3) years, unless the parent and the public agency agree that a re-evaluation is unnecessary (34 CFR §§300.303 - .306).

When conducting a re-evaluation, the IEP team must review existing assessment data and determine whether additional data is needed. If the team decides that additional data is required, the public agency must ensure that the necessary assessment data is obtained and that the assessment results are considered by the team in reviewing, and as appropriate, revising the IEP within 90 days of the date the team decides that the additional data is required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #1 - #5, the MSDE finds that the MCPS did not ensure that the re-evaluation was completed within required timelines in order to make sure that the student's educational needs were identified. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the violation.

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Review and Revision of the IEP

The IEP team must review the IEP periodically, but not less than annually, to ensure that it continues to address the student's identified needs (34 CFR §§300.320 and .324). Based on the Findings of Facts #1 - #5, the MSDE finds that, as a result of the five (5) month delay in completing the re-evaluation, the timeline for completing the annual review of the IEP was not met. Based on the same Findings, the MSDE finds that the IEP was not reviewed to ensure that it continued to address the student's identified needs, as required, from November 18, 2011 until April 10, 2012. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the evaluation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by June 30, 2012, that the IEP team has considered the results of the Independent Educational Evaluation (IEE) and reviewed and revised the IEP, if appropriate. If the student is identified with additional needs as a result of the data obtained from the IEE, the IEP team must determine the nature and amount of *compensatory services*¹ to be provided to the student from November 28, 2011 until the IEP is revised. If the student is not identified with additional needs as a result of the data, then the IEP team must determine the amount and nature of *compensatory services*² to be provided to the student from November 28, 2011 until April 10, 2012.

The MCPS 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 the IDEA.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring (QAM) is being informed of the violations identified through this investigation for consideration during monitoring activities.

Documentation of completion of the required actions 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.

¹ 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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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 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

cc: Joshua P. Starr
Julie Hall
Alison Steinfels
XXXXXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Koliwe Moyo