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Interim State Superintendent of Schools

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May 22, 2012

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

RE: XXXXX
Reference: #12-067

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 our investigation.

ALLEGATION:

On March 27, 2012, the MSDE received correspondence from Ms. XXXXXXXX, the student's mother, hereafter "the complainant," filed on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Worcester County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the student. This office investigated the allegation that the WCPS did not ensure that the student was provided with adult assistance, as required by the Individualized Education Program (IEP) on March 23, 2012, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.
2. On March 30, 2012, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.

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3. On April 2, 2012, a copy of the complaint was provided, via facsimile, to Mr. Glen Hammerbacher, Supervisor of Special Education, WCPS.
4. On April 10, 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 WCPS of the allegation to be investigated and requested that the WCPS review the alleged violation.
5. On April 13, 2012, the MSDE requested, via electronic mail (email), that the WCPS provide this office with documents relevant to the investigation of the complaint.
6. On April 24, 2012, the MSDE received the WCPS' written response to the complaint, via email, which included documents to be considered during the complaint investigation.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated October 4, 2011;
 - b. Individualized Healthcare Plan, dated October 25, 2011;
 - c. The WCPS' written response to the allegation, received by the MSDE on April 24, 2012; and
 - d. State complaint submitted by the complainant and received by the MSDE on March 27, 2012.

BACKGROUND:

The student is ten (10) years old. He is identified as a student with autism under the IDEA and receives special education instruction and related services at XXXXXXXXXXXXXXXXXXXX. There is documentation that the student's father participated in the education decision-making process and was provided with notice of the procedural safeguards during the time period covered by this investigation (Doc. a).

FINDINGS OF FACTS:

1. An Individualized Health Plan (IHP), dated October 25, 2011, indicates that the school nurse will administer prescription medicine to the student for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) every school day after lunch, at 12:30 PM (Doc. b).
2. The IEP in effect on March 23, 2012 requires that the student be provided with "adult support" to escort him to the nurse's office so that his medication can be administered, but does not require that a specific member of the school staff provide this service (Docs. a and c).

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3. In its written response to the complaint, the WCPS acknowledges that, on March 23, 2012, a school-wide activity took place that resulted in a change to the student's schedule for the day, and that he was not escorted to the nurse's office until after the scheduled time for administration of his medication (Doc. c).
4. In its written response to the complaint, the WCPS staff reports that, in order to prevent the violation from reoccurring, the student's teacher has been given primary responsibility for ensuring that an adult escorts the student to the nurse's office for administration of his medication, each day, in a timely manner. The WCPS further reports that the school nurse has been given responsibility to contact the student's teacher if the student does not arrive at the appointed time to receive his medication (Doc. c).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that students are provided with the special education instruction and related services required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the IEP requires that an "Education Assistant" escort the student to the nurse's office in order for the nurse to administer medication to the student, and that the individual assigned to serve as the "Education Assistant" did not provide this service in a timely manner on March 23, 2012 (Doc. d).

Based on the Finding of Fact #2, the MSDE finds that, while the IEP requires that the student be provided with adult support, it does not require that a particular school staff member escort the student to the nurse's office. However, based on the Findings of Facts #1 - #4, the MSDE finds that student was not escorted to the nurse's office in a timely manner on March 23, 2012 in order to be administered his ADHD medication. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the WCPS to provide documentation by the end of the 2011-2012 school year that the steps taken to ensure that the student receives assistance to access his medication have been successful, and documentation of any additional action that was taken, if needed, to ensure that the violation does not recur.

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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TECHNICAL ASSISTANCE:

Technical assistance is available to both the complainant and the WCPS 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 facts 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/ch

c: Jon Andes
XXXXXXX
P. Tyson Bennett
Dori Wilson

Anita Mandis
Martha J. Arthur
Christine Hartman