



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

April 1, 2013

XXX
XXX
XXX

Dr. Laura Cochran
Supervisor of Special Education
Kent County Public Schools
215 Washington Avenue
Chestertown, Maryland 21620

RE: XXXXX
Reference: #13-045

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 1, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Kent County Public Schools (KCPS) 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 KCPS did not ensure that the student was provided with the special education instruction required by the Individualized Education Program (IEP) from a highly qualified special education teacher between February 2012¹ and the end of the 2011-2012 school year, in accordance with 34 CFR §§300.18 and .156;

¹ The complaint included allegations of violations dating back to the start of the 2011-2012 school year. The complainant was informed, in writing, on February 8, 2013, 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.

XXX

Dr. Laura Cochran

April 1, 2013

Page 2

2. The KCPS did not ensure that the student was provided with the “silent pass²” required by the IEP between August 2012 and October 2012, in accordance with 34 CFR §300.101;
3. The KCPS did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were provided to the student following its January 29, 2013³ receipt of verification from a physician that the student was unable to attend school, in accordance with COMAR 13A.05.01.10;
4. The KCPS has not ensured that a reevaluation has been conducted at least every three (3) years, in accordance with 34 CFR §300.303;
5. The KCPS has not followed proper procedures when disciplinarily removing the student from school since February 2012,¹ in accordance with 34 CFR §§300.530-.536;
6. The KCPS has not provided the student with the social skills training required by the IEP since February 2012,¹ in accordance with 34 CFR §300.101; and
7. The KCPS has not ensured that the student’s IEP addresses his social, emotional, and behavioral needs since February 2012,¹ in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 4, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Laura Cochran, Supervisor of Special Education, KCPS.
3. On February 7, 2013, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On February 7, 8, 11, 12, 13, and 20, 2013 and March 7, 2013, the complainant provided the MSDE with electronic mail (e-mail) correspondence between the complainant and school system staff to be considered during the course of the investigation.
5. On February 8, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the

² This behavioral support was identified as a “crisis pass” in this office’s February 8, 2013 correspondence to the complainant.

³ This date was identified as January 25, 2013 in this office’s February 8, 2013 correspondence to the complainant. During the course of the investigation, it was determined that the verification was provided on January 29, 2013.

XXX

Dr. Laura Cochran

April 1, 2013

Page 3

same date, the MSDE notified Dr. Cochran of the allegations and requested that her office review the alleged violations.

6. On February 8 and 11, 2013, the complainant provided the MSDE with documentation from the student's educational record, via facsimile, to be considered during the course of the investigation.
7. On February 27, 2013, the MSDE requested, via e-mail, that the KCPS provide documentation from the student's educational record.
8. On March 1, 2013, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the KCPS Central Office to review the student's educational record, and interviewed the following KCPS personnel:
 - a. Ms. Sue Nickerson, Transition Coordinator, KCPS; and
 - b. Ms. Kathy Spence, Teacher Support Consultant, KCPS.

Dr. Cochran attended the site visit as a representative of the KCPS and to provide information on the KCPS policies and procedures, as needed.

9. On March 7 and 18, 2013, Ms. Stump conducted telephone interviews with the complainant.
10. On March 14, 2013, the MSDE requested, via e-mail, that the KCPS provide additional documentation from the student's educational record. On the same date, Ms. Stump conducted a telephone interview with Dr. Cochran.
11. On March 15, 2013, the KCPS provided the MSDE with additional documentation from the student's educational record.
12. On that same date, the complainant provided the MSDE with information that her home address had changed.
13. On March 25, 2013, the KCPS provided the MSDE with additional documentation from the student's educational record, via e-mail.
14. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence from the complainant to the MSDE, received on February 1, 2013;
 - b. IEP, dated August 21, 2011;
 - c. E-mail correspondence between school staff and the complainant, dated between December 6, 2011 and January 19, 2012;
 - d. IEP meeting notice and meeting summary notes, dated March 13, 2012;

XXX

Dr. Laura Cochran

April 1, 2013

Page 4

- e. Consent to Evaluate form, dated March 13, 2012;
- f. Request for Home/Hospital Teaching form, dated March 27, 2012;
- g. IEP meeting notice and meeting summary notes, dated April 12, 2012;
- h. IEP, dated April 12, 2012;
- i. IEP meeting notice and meeting summary notes, dated May 1, 2012;
- j. Receipt of Parental Rights Document form, dated May 1, 2012;
- k. Manifestation Determination form, dated May 1, 2012;
- l. IEP, dated May 1, 2012;
- m. Request for Home/Hospital Teaching form, dated May 3, 2012;
- n. Daily points sheets, dated between October 24, 2011 and February 16, 2012;
- o. Student's discipline record for the 2011-2012 school year;
- p. School Psychologist's service provider log for the 2011-2012 school year;
- q. Home and Hospital Teaching reporting forms for May and June 2012;
- r. Student's class schedule for the second (2nd) semester of the 2011-2012 school year;
- s. IEP meeting notice and meeting summary notes, dated August 13, 2012;
- t. IEP, dated August 13, 2012;
- u. Receipt of Parental Rights Document form, dated August 13, 2012;
- v. IEP meeting notice and meeting summary notes, dated September 25, 2012;
- w. IEP, dated September 25, 2012;
- x. Correspondence from the KCPS personnel to the complainant, dated October 5, 2012;
- y. IEP meeting notice and meeting summary notes, dated October 5, 2012;
- z. Manifestation Determination form, dated October 5, 2012;
- aa. IEP meeting notice and meeting summary notes, dated October 9, 2012;
- bb. IEP, dated October 9, 2012;
- cc. Correspondence from the KCPS personnel to the complainant, dated November 12, 2012;
- dd. IEP meeting summary notes, dated December 18, 2012;
- ee. Consent to Evaluate form, dated December 18, 2012;
- ff. IEP meeting notice and meeting summary notes, dated January 22, 2013;
- gg. Request for Home/Hospital Teaching form, received on January 29, 2013 by the KCPS;
- hh. Report of Educational Assessment, dated January 30, 2013;
- ii. E-mail correspondence between the KCPS personnel and the complainant, dated January 30, 2013;
- jj. Request for Home/Hospital Teaching form, received by the KCPS on February 8, 2013;
- kk. IEP meeting notice and meeting summary notes, dated February 11, 2013;
- ll. IEP, dated February 11, 2013;
- mm. E-mail correspondence between the KCPS personnel and the complainant, dated February 13, 2013;
- nn. Home and Hospital Teacher reporting forms for February and March 2013;
- oo. Student's discipline record for the 2012-2013 school year;

XXX

Dr. Laura Cochran

April 1, 2013

Page 5

- pp. Service provider logs, dated between December 2012 and January 2013; and
- qq. Special education teacher's student calendar, dated between August 2012 and October 2012.

BACKGROUND:

The student is eighteen (18) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. During the time period covered by this investigation, the student received educational instruction as listed below:

- Between February 2012 and April 27, 2012, the student attended XXXXXXXXXXXXX (XXXXXXXX), the school he would attend if he were not disabled.
- Between April 27, 2012 and May 1, 2012,⁴ the student was disciplinarily removed from school and was not provided with educational instruction.
- Between May 8, 2012 and the end of the 2011-2012 school year, the student received HHT instruction due to an emotional condition.
- Between the start of the 2012-2013 school year and October 2, 2012, the student attended XXXXXXXXXXXX.
- Between October 2 and 11, 2012, the student was disciplinarily removed from school and was not provided with educational instruction.
- Between October 11, 2012 and December 23, 2012 the student was placed in an Interim Alternative Educational Setting (IAES) located at the XXXXXXXXXXXXX as a result of a disciplinary removal.
- Between January 2, 2013⁵ and January 22, 2013, the student continued to receive educational instruction at the XXXXXXXXXXXXX as a result of a change in educational placement determined by the IEP team.
- Between January 23, 2013 and February 11, 2013, the complainant did not make the student available to attend school due to her concern that he was experiencing an emotional crisis.
- Since February 11, 2013, the student has been unable to attend school due to an emotional condition and has been receiving HHT services since February 15, 2013.

⁴ The student was to return to XXXXXXXXXXXX on May 2, 2012, but the complainant did not return him to school due to her concern that he was experiencing an emotional crisis (Doc. k).

⁵ The KCPS was closed for winter break between December 24, 2012 and January 1, 2013 (Review of MSDE *Public School Openings and Closings* calendar).

XXX

Dr. Laura Cochran

April 1, 2013

Page 6

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 the procedural safeguards (Docs. a, b, d, f-m, o, s-w, y-bb, dd, ff, gg, jj-ll, nn, and oo).

FINDINGS OF FACTS:

2011-2012 school year

1. The IEP in effect in February 2012 states that the student's disability impacts his involvement in the general education curriculum because he "exhibits an inability to understand social cues. Social awkwardness makes it difficult for him to understand social situations." The IEP also documents that the student has difficulty distinguishing appropriate social interactions, and that "meltdowns, blow ups, and tantrums may occur when his senses have been overloaded." The IEP also identifies academic needs in the areas of math and written language (Doc. b).
2. The IEP includes annual goals for the student to improve his skills in each of the areas identified as weaknesses. In order to assist the student in achieving the annual goals, the IEP requires that the student be provided with special education instruction and indicates that the service providers include a special education teacher, a general education teacher, and an instructional assistant (Doc. b).
3. The IEP requires the provision of supplementary aids and services, including social skills training. The IEP states that the anticipated frequency of this service is "weekly" and is to be provided by the guidance counselor, the special education teacher, or the instructional assistant. The IEP further states that "*when needed* to address social struggles or difficulties with pragmatics, [the student] benefits from social skills training to better understand social situations" (emphasis added) (Doc. b).
4. On March 13, 2012, the IEP team convened and considered information from the complainant that the student was taking new medications and was "not adjusting well." The complainant informed school staff that the student's psychiatrist was in the process of providing verification that the student could not attend school due to an emotional condition. The complainant also requested an educational assessment. While school staff expressed concern about testing the student while he was "in crisis," the documentation of the meeting indicates that the team agreed to recommend the assessment and the complainant provided written consent for it to be conducted (Docs. d and e).
5. On March 27, 2012, the complainant provided the KCPS with verification of the student's inability to attend school due to an emotional condition (Doc. f).

XXX

Dr. Laura Cochran

April 1, 2013

Page 7

6. On April 12, 2012, the IEP team convened to complete the reevaluation⁶ begun on March 13, 2012. The documentation of the meeting indicates that the team discussed that the student was not available for the educational assessment as a result of his emotional condition and determined the services to be provided to the student while he was unable to attend school⁷ (Docs. g and h).
7. At the April 12, 2012 meeting, the team also decided that no additional data was needed to determine whether the student continues to meet the criteria for identification as a student with a disability. However, the IEP continued to report the present levels of academic achievement and functional performance determined in April 2011 and the team documented that it could not determine the student's current levels due to the student's absences (Docs. g and h).
8. On April 16, 2012, the student returned to school prior to implementation of the HHT services that were determined by the IEP team on April 12, 2012 (Doc. i).
9. On April 27, 2012, the student was disciplinarily removed from school for ten (10) school days because he violated the code of student conduct (Doc. o).
10. On May 1, 2012, the IEP team convened and determined that the behavior that led to the disciplinary removal was caused by the student's disability. The documentation of the meeting indicates that the team decided that the student would, therefore, return to school. However, there is no documentation that the IEP team conducted a Functional Behavioral Assessment (FBA) and implemented a Behavior Intervention Plan (BIP) to address the behavior that led to the disciplinary removal (Docs. i, k and l).
11. At the May 1, 2012 meeting, the team also considered information from the complainant that she believed that the student could not attend school due to an emotional condition. The team determined the services that would be provided to the student upon receipt of verification of the student's emotional condition (Docs. i, k, and l).
12. On May 3, 2012, the KCPS received verification that the student was unable to attend school due to an emotional condition (Doc. m).
13. From May 8, 2012 until the end of the 2011-2012 school year, the student was provided with HHT instruction, as determined by the IEP team on May 1, 2012 (Doc. q).
14. The student's daily point sheets document that, on at least four (4) occasions during the 2011-2012 school year, the student was dismissed from school prior to the end of the school

⁶ Documentation indicates that the previous reevaluation was conducted on April 21, 2009 (Doc. b).

⁷ Spring break for the KCPS occurred from April 5-10, 2012 (Review of MSDE *Public School Openings and Closings* calendar).

XXX

Dr. Laura Cochran

April 1, 2013

Page 8

day due to his interfering behaviors. However, these early dismissals were not documented as disciplinary removals (Docs. n and o).

15. There is no documentation that the student was provided with social skills training during periods when he was attending school between February 2012 and the end of the 2011-2012 school year (Docs. c, p, and review of educational record).
16. There is documentation that the student received his specialized instruction from general education teachers, who are highly qualified in the subjects for which they provided instruction with support provided by the instructional assistant (Docs. b, h, l, n, r, and on-site review of certification information).

2012-2013 school year

17. On August 13, 2012, the IEP team convened to develop a plan for returning the student to a school-based program. The documentation of the meeting indicates that the IEP team determined that, at the start of the 2012-2013 school year, the student would be provided with special education instruction in the general education classroom and be provided with “chunks of instruction paired with sensory breaks (silent breaks).” The IEP clarifies that the student would be provided with a “silent pass” to allow him to take these breaks when needed (Docs. s and t).
18. On September 25, 2012, the IEP team convened and considered teacher reports that the student cannot focus or complete work in the general education classroom even with the supports being provided. Based on this information, the team determined that the least restrictive environment in which the IEP can be implemented is the separate, special education classroom (Docs. v and w).
19. On October 2, 2012, the student was disciplinarily removed from school for ten (10) school days with a recommendation for a long-term suspension for bringing a weapon to school (Doc. oo).
20. On October 5, 2012, the IEP team convened and determined that the behavior that led to the disciplinary removal was not a manifestation of the student’s disability. The documentation of the meeting indicates that the team determined that because the student had not demonstrated this type of behavior before, additional assessments and planning were needed (Docs. y and z).
21. On the same date, the student appeared at a suspension hearing before the Superintendent’s Designee. The documentation of the hearing indicates that the student was removed to an interim alternative educational setting (IAES) for forty-five (45) days (Doc. x).
22. On October 9, 2012, the IEP team convened and determined the location of the IAES and the services to be provided to the student while he was placed at the IAES. The

XXX

Dr. Laura Cochran

April 1, 2013

Page 9

- documentation indicates that the student would receive twelve (12) hours per week of special education instruction and one (1) hour per week of social skills training (Docs. aa and bb).
23. On November 12, 2012, the school staff requested that the complainant provide consent for the student to participate in a social skills group. There is no information or documentation of the basis for the request to have the complainant consent to the provision of this service. The documentation indicates that the complainant denied the request because she believed the proposed group was inappropriate for the student (Doc. cc).
 24. There is documentation that the student received the instructional services required by the IEP while he was removed to the IAES (Doc. pp).
 25. On December 18, 2012, the IEP team convened and determined that the student would continue to participate in the program located at the IAES until the end of the grading period on January 22, 2013 due to his need for continuation of the supports provided in that program (Docs. dd and ee).
 26. At the December 18, 2012 meeting, the complainant renewed her request for an educational assessment and the team agreed that an educational assessment would be conducted (Docs. dd and ee).
 27. On January 22, 2013, the IEP team convened and determined that the student was now able to receive special education instruction in the program at Kent County HS. The complainant expressed concern that the student continued to require the supports provided in the program at the IAES but the team decided that the student was ready to transition back to Kent County HS (Doc. ff).
 28. The parties agree that, following the January 22, 2013 IEP team meeting, the complainant did not return the student to his school because he was experiencing an emotional crisis (Interview with the complainant and school system personnel).
 29. On January 29, 2013, the complainant provided the KCPS with a HHT services request form, indicating that the student was unable to attend school due to an emotional condition (Doc. gg).
 30. On January 30, 2013, the KCPS rejected the complainant's application for HHT services because the verification was not provided by a certified school or licensed psychologist or licensed psychiatrist (Doc. ii).
 31. On February 8, 2013, the KCPS received verification from a licensed psychiatrist that the student is unable to attend school due to an emotional crisis (Doc. jj).

XXX

Dr. Laura Cochran

April 1, 2013

Page 10

32. On February 11, 2013, the IEP team determined the instructional services to be provided to the student while he is unable to attend school. The team determined that the student would receive six (6) hours per week of special education instruction and one (1) hour per week of social skills training. The team discussed several options for providing the social skills training but did not make a decision as to how it would be provided. Rather, the team determined that the complainant would present different options to the student and together the complainant and the student would decide the manner in which the service would be delivered (Docs. kk and ll).
33. At the February 11, 2013 meeting, the team considered the results of the educational assessment, which was conducted on January 30, 2013, indicating that the student was performing at the same levels at which he had been performing the previous year (Docs. hh, kk, and ll).
34. On February 15, 2013, the student began receiving special education instruction determined necessary by the IEP team on February 11, 2013. However, social skills training has not been initiated (Doc. nn and interview with KCPS personnel).
35. On March 22, 2013, the IEP team convened but the documentation of the meeting is not yet available (Doc. mm and interview with KCPS personnel).
36. There is documentation that indicates that the student used his "silent pass" on several dates in September 2012 during his transition back to Kent County HS (Doc. qq).
37. There is no documentation that the student has been provided with social skills training during the 2012-2013 school year (Review of educational record and interviews with the complainant and school system personnel).

DISCUSSION/CONCLUSIONS:

Allegation #1: Provision of Special Education Instruction from a Highly Qualified Special Education Teacher Between February 2012 and the End of the 2011-2012 School Year

The public agency is required to ensure that each student is provided with the special education and related services required by the student's IEP (34 CFR §300.101). The IDEA requires that highly qualified personnel provide special education and related services. Public agencies must ensure that personnel are appropriately and adequately prepared and trained. The federal regulations contain specific requirements for personnel who provide special education services in core academic subjects (including language arts, mathematics, science, civics and government, economics, arts, and history) consistent with Section 1119(a)(2) of the Elementary and Secondary Education Act of 1965 (No Child Left Behind Act).

XXX

Dr. Laura Cochran

April 1, 2013

Page 11

Maryland teachers can meet these requirements by holding at least a Bachelor's Degree, holding a valid Maryland Standard Professional Certificate or Resident Teacher Certificate, and passing applicable State content tests in each subject in which the teacher is assigned and/or have completed an academic major or equivalent in each of the subject areas (*Using Maryland's High, Objective, Uniform State Standard of Evaluation*, March 2005).

Paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy may be used to assist in the provision of special education and related services (34 CFR § 300.156).

In this case, the complainant alleges that special education instruction was provided by instructional assistants who were not highly qualified teachers. Based on the Findings of Facts #2 and #16, the MSDE finds that the student was provided instruction from general education teachers who are highly qualified, and that instructional assistants are used to support the special education instruction. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #2: Provision of the "Silent Pass" Between August 2012 and October 2012

As stated above, the public agency is required to ensure that each student is provided with the special education and related services required by the student's IEP (34 CFR §300.101). Based on the Findings of Facts #17 and #36, the MSDE finds that the student was provided with the "silent pass" between the start of the 2012-2013 school year and October 2012 when he was disciplinarily removed from school and subsequently began receiving HHT services. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #3: Provision of Home and Hospital Teaching (HHT) Services Following Receipt of the January 29, 2013 Verification

Each local school system must make HHT services available to students who are unable to attend school due to a medical or emotional condition (COMAR 13A.03.05.03). The need for services is determined by verification of the physical condition by a licensed physician or verification of the emotional condition by a certified school, or licensed psychologist, or licensed psychiatrist and a statement by the physician or psychologist verifying that the current physical or emotional condition prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.04).

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team shall meet to review and revise the student's IEP and shall determine the instructional services to be provided to the student while the student is unable to attend school (COMAR 13A.05.01.10(C)(5)).

XXX

Dr. Laura Cochran

April 1, 2013

Page 12

HHT services must begin as soon as possible, but not later than ten (10) school calendar days following receipt of verification of the need for services (COMAR 13A.03.05.03(D)(4) and 13A.05.01.10(C)(5)).

In this case, the complainant alleges that there was a delay in the provision of HHT services after she provided the KCPS with verification from the student's physician on January 29, 2013. Based on the Findings of Facts #29 - #31, the MSDE finds that the complainant did not provide verification of the student's inability to attend school due to an emotional condition, in accordance with the regulations, until February 8, 2013. Based on the Findings of Facts #32, #34, and #35, the MSDE finds that HHT services were initiated within ten (10) school calendar days of the receipt of the February 8, 2013 verification. Therefore, the MSDE finds no violation regarding the allegation.

Allegation #4: Reevaluation at Least Every Three Years

The IDEA requires that the public agency ensure that a reevaluation of each student with a disability is conducted at least once every three (3) years. In addition, a reevaluation must be conducted if the educational or related service needs warrant a reevaluation or if the student's parent or teacher requests a reevaluation (34 CFR §300.303).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, is needed to determine whether the student continues to meet the criteria for identification as a student with a disability and *whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP* (emphasis added) (34 CFR §300.305 and COMAR 13A.05.01.06).

If the IEP team determines that additional data is needed, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #4, #6, and #7, the MSDE finds that while the team had sufficient information on April 12, 2012 to determine that the student continues to meet the criteria for identification as a student with a disability, it was unable to determine the present levels of academic achievement and functional performance in order to ensure that all of the needs that arise from the student's disability were identified and addressed. Based on the Findings of Facts #26, #30, and #33, the MSDE finds that the reevaluation was not completed until February 11, 2013, more than three (3) years from the previous reevaluation conducted on April 21, 2009, and more than ninety (90) days from the date the team decided that additional data was needed. Therefore, the MSDE finds a violation regarding this allegation.

XXX

Dr. Laura Cochran

April 1, 2013

Page 13

Notwithstanding the violation, based on the Finding of Fact #33, the MSDE finds that when the reevaluation was completed, no new areas of need were identified by the evaluative data. Therefore, the MSDE does not find that the student's ability to benefit from his program was adversely impacted by the violation. As a result, no student-specific corrective action will be required.

Allegation #5: Disciplinary Removal Procedures Since February 2012

The IDEA and the COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) school days in a school year (34 CFR §300.530).

When school staff require a student to leave school prior to the end of the school day or when a student is dismissed early from school without explanation following a behavioral incident, the early dismissal is considered a disciplinary removal from school.

In order to ensure that students are provided with services in accordance with the requirements of IDEA, such as the disciplinary procedural protections, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

A student with a disability may be disciplinarily removed from the current placement for up to ten (10) consecutive school days for each incident of misconduct in a school year if the cumulative effect of the removals does not constitute a change in placement (34 CFR §300.530). A change in placement occurs if the removal is for more than ten (10) consecutive school days or the student has been subjected to a series of removals that constitute a pattern because they total more than ten (10) school days in a school year and the student's behavior is substantially similar to the behavior in previous incidents that resulted in the removals (34 CFR §§300.530 and .536).

Within ten (10) school days of the date in which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability. If the team determines that the behavior was a manifestation of the student's disability, it must return the student to the educational placement from which the student was removed. Additionally, the IEP team must either:

- Conduct a FBA, unless a FBA had been conducted before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or
- If a BIP has already been developed, review the BIP, and modify it, as necessary, to address the behavior (34 CFR §300.530 and COMAR 13A.08.03.08).

XXX

Dr. Laura Cochran

April 1, 2013

Page 14

School personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student carries or possesses a weapon, knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled dangerous substance, or inflicts serious bodily injury on another person (34 CFR §300.530 and COMAR 13A.08.03.08).

2011-2012 school year

Based on the Finding of Fact #14, the MSDE finds that the KCPS did not ensure that accurate discipline records were maintained for the student. As a result, the MSDE finds that the school system did not follow proper procedures to ensure that the student was provided with the required protections during any periods of disciplinary removal in excess of ten (10) school days that may have occurred during the school year.

Based on the Finding of Fact #9, the MSDE further finds that the April 27, 2012 disciplinary removal constituted a change in placement. Based on the Finding of Fact #10, the MSDE further finds that at the May 1, 2012 IEP team meeting, the team did not conduct an FBA and implement a BIP as required. Therefore, the MSDE finds that the KCPS did not follow proper procedures when disciplinarily removing the student from school during the 2011-2012 school year and that a violation occurred regarding this aspect of the allegation.

2012-2013 school year

Based on the Findings of Facts #19 - #22 and #24, the MSDE finds that the student was disciplinarily removed to an IAES and that the IEP team followed proper procedures before and after that removal. However, based on the Findings of Facts #23 and #37, the MSDE finds that the social skills training was not provided as required by the IEP during the period of disciplinary removal. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Allegation #6: Provision of Social Skills Training Since February 2012

As stated above, the public agency is required to ensure that each student is provided with the special education and related services required by the student's IEP (34 CFR §300.101). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).⁸

A public agency that is responsible for making a Free Appropriate Public Education (FAPE) available to a student with a disability must obtain informed consent from the student's parent for the *initial* provision of special education and related services to the student (emphasis added) (34 CFR §300.300(b)(1)). Once a public agency receives that consent, it need not obtain consent to

⁸ The reauthorization of the IDEA in 2004 made no changes were made to this requirement.

XXX

Dr. Laura Cochran

April 1, 2013

Page 15

implement a subsequent IEP that is developed for the student. The public agency *must* continue to provide special education and related services to the student in accordance with the IEP unless the student's parent revokes consent for the provision of services, in writing (emphasis added) (34 CFR §300.300(b)(4)).

Based on the Findings of Facts #3, #15, and #37 the MSDE finds that the KCPS has not ensured that the IEP is written in a manner that is clear with respect to the social skills training to be provided since February 2012. Therefore, the MSDE finds that the KCPS has not ensured that it has been provided in accordance with IEP team decisions. As a result, the MSDE finds a violation regarding this allegation.

Allegation #7: IEP That Addresses the Student's Social, Emotional, and Behavioral Needs Since February 2012

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).

Based on the conclusions reached in Allegation #5, related to the violations related to disciplinary removals and on the conclusions reached in Allegation #6, related to the clarity of the IEP with respect to social skills training, the MSDE finds that the student's IEP has not addressed the student's social, emotional, and behavioral needs since February 2012. As a result, the MSDE finds a violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the KCPS to provide documentation by the end of the 2012-2013 school year, that an IEP team has convened and done the following, if not already completed at the March 22, 2013 IEP team meeting:

1. Review and revise the IEP to ensure that it contains a clear statement of the social skills training to be provided; and
2. Determine the nature and amount of *compensatory services*⁹ necessary to address the violations identified in the Letter of Findings.

⁹ 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).

XXX

Dr. Laura Cochran

April 1, 2013

Page 16

The KCPS 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 file a due process complaint, in accordance with IDEA.

School-Based

The MSDE requires the KCPS to provide documentation by the start of the 2013-2014 school year, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXX.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the KCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution 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 complainant and the school system 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

XXX

Dr. Laura Cochran

April 1, 2013

Page 17

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 FAPE 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:ks

cc : A. Barbara Wheeler

XXXXXXXXXX

Dori Wilson

Anita Mandis

Martha J. Arthur

Kathy Stump