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State Superintendent of Schools

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February 2, 2007

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Ms. Ann-Marie Spakowski
Director of Special Education
Harford County Public Schools
102 South Hickory Avenue
Bel Air, MD 21014

RE:XXXXX
Reference: #07-042

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 December 5, 2006, MSDE received correspondence from Ms. XXXXXXXXXXXXXXX, the student's mother, hereafter, "the complainant," filed on behalf of the above-referenced student. In that correspondence, the complainant alleged that Harford County Public Schools (HCPS) 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. HCPS did not follow proper procedures in May 2006 when determining that the student was no longer eligible for special education services as required by 34 CFR §300.534(c).¹
2. HCPS did not follow proper procedures in November 2006 when the parent requested that the student be re-identified as a student with a disability under IDEA, as required by 34 CFR §§300.301, .303-306 and .308-.311 and COMAR 13A.05.01.04-.06.

¹ This citation reflects the IDEA regulations that were in effect at the time of the alleged violation.

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INVESTIGATIVE PROCEDURES:

1. Ms. Kendra Riley, Education Program Specialist, MSDE was assigned to investigate the complaint.
 2. On December 7, 2006, a copy of the complaint was provided by facsimile to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS.
 3. On December 14, 2006, Ms. Dori Wilson, Chief, Complaint Investigation Section, MSDE, contacted the complainant to clarify the allegations to be investigated.
 4. On December 15, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE also notified Ms. Spakowski of the allegations to be investigated and requested that her office review the alleged violations.
 5. On January 18, 2007, HCPS personnel provided MSDE with relevant documentation from the student's education record.
 6. On January 25, 2007, Ms. Riley and Ms. Lesley A. Morrissey, Education Program Specialist, MSDE, conducted a site visit to XXXXXXXX High School (XXX HS) to conduct interviews with the following HCPS staff:
 - a. Ms. XXXXXXXX, Special Education Department Chair, XXXXX HS;
 - b. Mr. XXXXXXXX, Special Educator, XXXXXXX HS;
 - c. Ms. XXXXXXXX, Special Educator, XXXX Middle School (XXXX MS);
and
 - d. Ms. Margarita M. Kwoka, Educational Evaluator, HCPS.
- Ms. Susan Austin, Assistant Supervisor of Special Education, HCPS, attended the site visit as a representative of the HCPS Central Office and to provide information on HCPS policies and procedures, as needed.
7. Documentation provided by the parties was reviewed. The documents referenced in the Letter of Findings (LOF) include:
 - a. Correspondence from complainant to MSDE, dated December 5, 2006;
 - b. IEP and IEP meeting summary, dated February 8, 2006;
 - c. IEP meeting summary, dated April 12, 2006;
 - d. IEP meeting summary, dated May 17, 2006; and
 - e. IEP meeting summary, dated November 2, 2006.

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BACKGROUND:

The student is fourteen (14) years old. He was identified as a student with an other health impairment related to a diagnosis of Attention Deficit Hyperactive Disorder (ADHD), under IDEA, and received special education and related services until May 17, 2006 when HCPS determined that he was no longer a student in need of special education services under IDEA.

During the 2005-2006 school year, the student attended XXXXX MS. Currently, he attends XXXXX HS. During the period addressed by the investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parent's rights as required (Doc. a).

ALLEGATION #1: RE-EVALUATION AND DETERMINATION THA THE STUDENT WAS NO LONGER ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

FINDINGS OF FACT:

1. On February 8, 2006, the IEP team at XXXXX MS met to review the results of assessments provided by the complainant that had been conducted at XXXXXXXXX XXXXX (XXX) and to address the complainant's concern that the student, who was identified as a student with an other health impairment, may have a specific learning disability (SLD). Based upon the review of the results of the evaluative data, the team determined that additional data was needed in order to determine whether the student had a SLD and to evaluate the current educational impact of ADHD. The team recommended that a classroom observation be completed and that educational, psychological, and occupational therapy assessments be conducted (Doc. b).
2. On April 12, 2006, the IEP team reconvened to review the results of the occupational therapy assessment. Based on the evaluative data, the team determined that the student did not require occupational therapy as a related service. There is no documentation from this meeting that the results of the classroom observation were completed or reviewed (Doc. c).
3. On May 17, 2006 the IEP team met to review the results of the educational and psychological assessments. The meeting summary indicates that, based on the evaluative data, the team determined "that ADHD is not currently impacting [the student's] learning. [The student] no longer qualifies for special education services." There is no documentation that the classroom observation was completed or reviewed, neither is there documentation of a determination, including the written report certified by each member of the team, of whether the student was a student with a SLD, (Doc. d).

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is no documentation of the team's determinations, neither is there documentation that the complainant was given proper written notice of the team's decisions (Doc. e).

DISCUSSION/CONCLUSION:

When a referral to the IEP team is made for a student suspected of having a disability under IDEA, the IEP team must meet to review existing data, information from the parent, current classroom-based assessments, and observations by teachers and related service providers (COMAR 13A.05.01.04A). On the basis of the review of this information, the IEP team must determine if additional data is needed and, if so, it must ensure that assessment procedures are administered in accordance with the regulations (COMAR 13A.05.01.04B).

The school system must provide proper written notice to the parent of the IEP team's decisions, in accordance with 34 CFR §300.503. Notice to parents is required when the IEP team proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of free and appropriate public education for the student. Specific content is required to inform the parents of the decisions and of their rights, including a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action (34 CFR §300.503(b)).

Based on Finding of Fact #4, MSDE finds that at the November 2, 2006 meeting the IEP team reviewed the evaluative data and information provided by the complainant. However, based on that same finding, MSDE finds that HCPS did not determine whether the student was suspected of being a student with a disability and did not provide the complainant with proper written notice of the team's determinations, in accordance with 34 CFR §300.503. Therefore, MSDE finds a violation with regard to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

MSDE requires HCPS to convene an IEP team meeting as soon as possible, but no later than twenty days (20) from the date of this LOF, unless the complainant agrees to meet at a later date. At the meeting, the IEP team must determine the amount and nature of *compensatory services*² or other remedy necessary to redress the continuing failure of HCPS to provide the student with appropriate educational services since May 17, 2006, when the team improperly determined that the student no longer required special education services.

Additionally, MSDE requires HCPS to complete the classroom observation without delay. The IEP team must then promptly reconvene to complete the written report to document whether the

² 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 §300.660(b) (1)).

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student meets the eligibility requirements as a student with an SLD and continues to require special education and related services, as required by the regulations.

If the IEP team determines that the student continues to be eligible for special education and related services, the team must ensure that an IEP is developed and implemented in accordance with the regulations. If necessary, the IEP team may develop an interim IEP pending completion of the evaluation process if there is some question about the student's special education or related services needs.

HCPS must provide the complainant with proper written notice of the determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the decisions, she maintains the right to initiate a due process hearing and/or mediation to resolve the dispute consistent with IDEA 2004.

School-Specific

XXXXXX MS

MSDE requires that HCPS take steps to determine if the violation regarding the reevaluation process identified in this LOF is unique to this case or if it represents a pattern of noncompliance at XXXXX MS. If it is determined that a pattern of noncompliance exists with regard to the requirements, HCPS must inform MSDE of the steps that will be taken to ensure that appropriate staff properly implement the requirements, including a description of how HCPS will evaluate the effectiveness of the steps taken.

XXXXX HS

Additionally, HCPS must take steps to determine if the violation regarding proper written notice, identified in this LOF is unique to this case or if it represents a pattern of noncompliance at XXXXX HS. If it is determined that a pattern of noncompliance exists with regard to the requirements, HCPS must inform MSDE of the steps that will be taken to ensure that appropriate staff properly implement the requirements, including a description of how HCPS will evaluate the effectiveness of the steps taken.

The school-based corrective action must be completed within sixty (60) days of the date of this LOF. Within fifteen (15) days of completing each corrective action, HCPS shall submit documentation of completion of the required action. This documentation is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Ms. Martha Roulette, Education Program Specialist, MSDE. Ms. Roulette may be contacted at (410) 767-0255.

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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 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, or corrective actions contained in this LOF should be addressed to this office in writing. The student's parent and the school system maintain the right to initiate mediation or a due process hearing consistent with IDEA 2004. The MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

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

CAB/kr

c: Jacqueline C. Hass
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Edward L. Wulkan
Kendra Riley