



Nancy S. Grasmick
State Superintendent of Schools

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September 11, 2006

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Ms. Stephany Savar
Supervisor of Special Education
Carroll County Public Schools
125 North Court Street
Westminster, Maryland 21157

RE: XXXXX
Reference: #07-006

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 July 27, 2006, MSDE received correspondence from Ms. XXXXXXXXXXXXX, hereafter, "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that the Carroll County Public Schools (CCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and the corresponding federal and State regulations with respect to the above-referenced student. The allegations investigated by this office are:

1. The CCPS did not follow proper procedures when determining the student's need for extended school year (ESY) services during the 2005-2006 school year, in accordance with 34 CFR §300.309, Code of Maryland Regulations (COMAR)13A.05.01.08B(2), and *MM v. School District of Greenville Co.*, 303 F3d 523 (4th Cir. 2002); and
2. The CCPS did not ensure that proper written notice of the IEP team's determination regarding the student's need for ESY services was provided, in accordance with 20 U.S.C. §1414.

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INVESTIGATIVE PROCEDURES:

1. Ms. Anita Mandis, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 2, 2006, a copy of the complaint was provided by facsimile to Ms. Stephany Savar, Supervisor of Special Education, CCPS.
3. On August 3, 2006, Ms. Mandis conducted a telephone interview with the complainant and clarified the allegations to be investigated.
4. On August 4, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation, notified Ms. Savar of the allegations to be investigated, and requested that her office review the alleged violations.
5. On August 30, 2006, CCPS provided MSDE with copies of documents from the student's education record and a written response that addresses the allegations in the complaint.
6. On August 31, 2006, MSDE received additional documentation from CCPS. On the same date, Ms. Mandis conducted telephone interviews with the complainant and Ms. Savar, respectively, regarding the allegations in the complaint.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Written summary of the April 3, 2006 IEP team meeting;
 - b. IEP, dated April 3, 2006;
 - c. ESY matrix completed on April 3, 2006; and
 - d. The CCPS' written response to the allegations, received by MSDE on August 30, 2006.

BACKGROUND:

The student is four (4) years old and is identified as a student with autism under IDEA. He attended a preschool program at XXXXX Elementary School, hereafter, "XXXXX ES," during the 2005-2006 school year (Docs. a and b).

FINDINGS OF FACT:

1. The IEP team convened on April 3, 2006 and revised the IEP. The IEP and an ESY matrix (worksheet that reflects the criteria considered by the team) indicate that the team considered the required criteria in determining the student's need for ESY services. The documents further indicate that the team decided that the student requires ESY services

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based on the nature and severity of the disability, emerging skills, and breakthrough opportunities. The IEP states that the student requires special education instruction and speech/language therapy as ESY services, but it does not state the amount of the ESY services to be provided (Docs. a - c).

2. Subsequent to the April 3, 2006 IEP team meeting, school system staff agreed to also provide the student with occupational therapy as an ESY service in response to the complainant's request (Doc. d and interview with the complainant).

DISCUSSION/CONCLUSIONS:

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student's IEP (34 CFR §300.309 and COMAR 13A.05.01.03B(23)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a free appropriate public education (FAPE) by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)). When determining whether ESY services are required for the provision of FAPE, the IEP team must consider:

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student's degree of progress toward mastery of IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08B(2)(b)).

After consideration of the required factors, the IEP team must decide whether the benefits that a student received from the educational program during the regular school year will be significantly jeopardized if the student is not provided with ESY services (*MM v. School District of Greenville Co.*, 303 F3d 523, (4th Cir. 2002)).

The school system must provide written notice to parents when the IEP team proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE for the student, including decisions regarding ESY services (20 U.S.C. §1415(b) and 34 CFR §300.503). 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 (20 U.S.C. §1415(b) and 34 CFR §300.503).

In this case, based upon Finding of Fact #1, MSDE finds that the team considered the required criteria when determining the student's need for ESY services, in accordance with 34 §300.309, COMAR 13A.05.01.08B (2), and *MM v. School District of Greenville Co.*, 303 F3d 523 (4th Cir. 202). However, based on Findings of Fact #1 and 2, MSDE finds that there is no

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documentation that the IEP team determined the amount of special education instruction and speech/language services, or that the team determined that the student required the occupational therapy services that were provided during the summer of 2006. In addition, based upon the Findings of Fact, MSDE also finds that CCPS did not provide the complainant with proper written notice of the ESY services to be provided to the student during the summer of 2006, in accordance with 20 U.S.C. §1415(b) and 34 CFR §300.503.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires CCPS to convene an IEP team meeting within thirty (30) days of the date of this LOF, unless the complainant agrees to a later date. At the meeting, the team must consider any concerns the complainant has regarding the ESY services provided to the student during the summer of 2006. The team shall also determine whether the procedural violations identified through this investigation negatively impacted the student's ability to benefit from his education program and, if so, determine the amount and nature of *compensatory services*¹ or other remedy to remediate the violation. The CCPS shall provide the complainant with proper written notice of the IEP team's determinations. If the complainant disagrees with the IEP team's determinations, she maintains the right to initiate a due process hearing and/or mediation to resolve the dispute consistent with IDEA 2004.

School-Specific

The MSDE requires that CCPS take steps to determine if the procedural violations identified in this investigation are unique to this student or if they represent a pattern of noncompliance at XXXXXX ES. If it is determined that a pattern of noncompliance exists, CCPS must inform MSDE of the steps that will be taken to ensure that XXXXXX ES staff properly implement the requirements of IDEA, including those related to the determination of ESY services and provision of proper written notice of IEP teams' decisions. The school-based corrective action must be completed within sixty (60) days of the date of this LOF.

All Corrective Actions

Within fifteen (15) days of completing each corrective action, CCPS shall submit documentation of completion to MSDE. 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.

¹ 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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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, and corrective actions contained in this LOF should be addressed to this office in writing. The complainant and the school system maintain the right to initiate mediation or a due process hearing if they disagree with the identification, evaluation, placement, or provision of FAPE for the student in accordance with IDEA 2004. The MSDE recommends that this LOF be included with any request for mediation or a due process hearing.

Sincerely,

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

CAB/aam

c: Charles I. Ecker
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Edward L. Wulkan
Martha Roulette