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September 18, 2006

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

RE: XXXXX
Reference: #07-004

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.

ALLEGATION:

On July 24, 2006, MSDE received correspondence from Mr. and Mrs. XXXXXXXXXXXX, Jr., hereafter, "the complainants," filed on behalf of their son. In that correspondence, the complainants alleged that the Harford County Public Schools (HCPS) 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 allegation investigated by this office is that the HCPS did not ensure that the student was consistently provided with modifications and supplementary aids and services required by the Individualized Education Program (IEP) during the 2005-2006 school year, in accordance with 20 U.S.C. §§1412(a)(1) and (a)(4), 1414(d)(3), and 34 CFR §300.350; specifically:

- a. The student was not provided with a permanent or temporary aide;
- b. The student was not provided with assistance in preparing for gym class;
- c. The student was not provided with class work and homework materials in eighteen (18) font pitch;

XXX

Ms. Ann-Marie Spakowski

September 18, 2006

Page 2

- d. The student's tests were not modified to require short answers or multiple choice questions in order to ensure that lengthy written responses were not required; and
- e. Distractions were not eliminated during administration of tests and completion of assignments.

INVESTIGATIVE PROCEDURES:

1. Ms. Anita Mandis, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 25, 2006, Mr. Edward L. Wulkan, Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with the student's mother and clarified the allegation to be investigated. On the same date, a copy of the complaint was provided by facsimile to Ms. Ann-Marie Spakowski, Director of Special Education, HCPS.
3. On July 26, 2006, MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation, notified Ms. Spakowski of the allegation to be investigated, and requested that her office review the alleged violations.
4. On August 8, 2005, HCPS provided MSDE with copies of documents from the student's education record and a record of the individuals assigned to provide adult assistance to the student during the 2005-2006 school year and the time periods for which they were assigned.
5. On August 15, 2006 and September 11, 2006, Ms. Mandis conducted telephone interviews with the student's mother regarding the allegation in the complaint.
6. On September 5, 2006, Ms. Mandis and Ms. Martha Roulette, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXX Middle School, hereafter, "XXXXXX MS," to review the student's education record, and conducted interviews with Mr. XXXXXXXXXXXX, Assistant Principal; and Ms. XXXXXXXX, Principal. Ms. Spakowski and Ms. Susan Austin, Assistant Supervisor in Special Education, HCPS, attended the site visit as representatives of the HCPS Central Office and to provide information regarding HCPS policies and procedures, as needed.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. IEP, dated November 29, 2004;
 - b. Written summary of the November 29, 2004 IEP team meeting;
 - c. IEP, dated May 11, 2005;
 - d. Written summary of the May 11, 2005;

XXX

Ms. Ann-Marie Spakowski

September 18, 2006

Page 3

- e. Written summary of the September 27, 2005 IEP team meeting;
- f. IEP, dated December 7, 2005;
- g. Written summary of the December 7, 2005 IEP team meeting;
- h. Written summary of the April 11, 2006 IEP team meeting;
- i. Record of individuals assigned to work with the student as inclusion helpers;
- j. Reports of the student's progress toward achieving the annual IEP goals, made in November 2005, February 2006, April 2006, and June 2006;
- k. Sample pages from the student's agenda book from April 2006;
- l. Samples of reading and math tests completed by the student in May 2006;
- m. Written summary of the May 30, 2006 Continued Academic and Personal Success Planning meeting; and
- n. Correspondence from the complainants alleging violations of IDEA, received by MSDE on July 24, 2006.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with multiple disabilities (visual and orthopedic impairments) under IDEA. He attended XXXXXXXX MS during the 2005-2006 school year, and began attending XXXXXXXX High School, hereafter, "XXXXXX HS;" at the start of the 2006-2007 school year. During the time period addressed by this investigation, the complainants participated in the education decision-making process and were provided with notice of the procedural safeguards (Docs. a - h and m).

FINDINGS OF FACT:

1. The IEP in effect during the 2005-2006 school year was developed on May 11, 2005 and revised on December 7, 2005. The IEP requires that the student be provided with, among other things, the following:
 - a. "adult assistance as needed;"
 - b. "adult assistance for changing and extra dressing time as needed;"
 - c. materials presented in large print (18 pitch font);
 - d. verbatim reading of assignments/tests;
 - e. shortened assignments;
 - f. use of a magnifying bar and reading stand; and
 - g. "accommodations for evaluation and testing as needed," including administration of tests in a small group setting and reduction of distractions.

The IEP does not state who is to determine when accommodations are "needed." The complainants and school system staff report that adult assistance is provided through the use of "inclusion helpers," and the student requires assistance of an inclusion helper throughout the day to assist him with traveling in and around the school, dressing for

gym, and providing accommodations in the classroom (Docs. a – h and interviews with the student’s mother and school system staff).

2. On September 27, 2005, the IEP team reviewed the student’s program and progress. The written summary of the meeting states that the IEP team “reviewed the full time inclusion helper status and it was deemed acceptable (by [the student] also).” The summary also states that “the [physical education] procedure was discussed by [school staff] and the parents and [the student] approved.” The team discussed that the student would wear his physical education uniform shorts underneath his pants so that he would not be required to completely undress for physical education class. The inclusion helper was to assist the student in removing his shoes, pants, and shirt and putting on his physical education shoes and shirt (Doc. e and interviews with the student’s mother and school system staff).
3. On April 11, 2006, the IEP team convened to review the student’s program and progress. The written summary of the April 11, 2006 IEP team meeting states that the student’s mother expressed concern that not all of the student’s work materials had been provided in large print. The summary indicates that school staff discussed that the IEP requires the use of different accommodations, including the magnifying bar as well as large print materials, and does not require that all materials be provided in large print. The written summary states that, at the complainants’ request, the team agreed that “all testable materials will be enlarged,” but the IEP was not revised to reflect the determination that other accommodations could not be used in place of enlarging testing materials (Docs. f and h).
4. School records document that the following individuals were assigned to work with the student as his “inclusion helper” during the time periods indicated below:
 - a. Ms. XXXXXXX - first (1st) week of school;
 - b. Ms. XXXXXXXXXXXX - second (2nd) week of school;
 - c. Ms. XXXXXXXXXXXX – three (3) days of the third (3rd) week of school;
 - d. Ms. XXXXXXXXXXX – the end of the third (3rd) week of school until September 22, 2005;
 - e. Ms. XXXXXXXXXXXX – September 22, 2005 until February 2, 2006; and
 - f. Ms. XXXXXXXXXXXX – February 2, 2006 until the end of the school year.

Ms. XXXXXXX, Instructional Assistant, was assigned to work with the student when the inclusion helper was absent from school. School system staff acknowledge that the student’s mother escorted him into the school building on the first (1st) day of school because there were no school staff outside to assist him into the building. School staff further report that the student was provided with adult assistance by the individuals listed above upon his arrival in the school on the first (1st) day of school and on each school day since that date (Doc. i and interviews with school system staff).

5. The following data document that the annual IEP goals were addressed during the 2005-2006 school year:
 - a. Reports of the student's progress toward achieving the annual IEP goals, made in November 2005, February 2006, April 2006, and June 2006, which document that the student made progress toward achieving all of the annual goals;
 - b. Written summary of the December 7, 2005 IEP team meeting, which states that, in response to concerns expressed by the student's mother regarding whether accommodations were be provided to assist the student with reading, school staff "corroborated [the student's] accommodations of large print, reading stand, and magnifying bar;
 - c. Sample pages from the student's agenda book from April 2006, documenting that school staff read materials to the student and that the student's mother stated that she wanted all materials provided in large print instead of being read to the student;
 - d. Samples of reading and math tests completed by the student during May 2006, which document that materials were presented to him in eighteen (18) pitch font. The samples also document that the student was administered tests that required short, one (1) sentence answers; and
 - e. Written Summary of a May 30, 2006 Continued Academic and Personal Success Planning meeting, which included the student, his mother, and staff from XXXXXX MS and HS. The summary documents that the group discussed the student's needs and how they were addressed at the middle school in preparation for his entering high school at the start of the 2006-2007 school year. It states that the student was provided, among other things, with the following:
 - i. support of inclusion helpers;
 - ii. modification of assignments, including reduction of work load; and
 - iii. large print materials, magnifiers, and reading and writing stands.

The summary also states that the group discussed that materials were read aloud to the student and that buddy reading and books on tape were utilized. It further states that the group discussed that the student wears his physical education uniform shorts underneath his pants and uses an alternate dressing area to change his shirt. Additionally, the summary states that the group discussed that the student self advocates for a break or more quiet setting to work (Docs. e, g, j, k, l, and m).

XXX

Ms. Ann-Marie Spakowski

September 18, 2006

Page 6

6. School staff report that the student is permitted to take tests in a separate room outside of the classroom if he chooses but that the student has elected to take most tests in the classroom, including a statewide assessment administered during the school year. School staff further report that the student's mother expressed concern to them following the administration of the statewide assessment that the student was distracted by noise in the classroom (Interviews with school staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to provide each student with a disability with the special education and related services required by the IEP in order to ensure that the student receives a free appropriate public education (FAPE) (20 U.S.C. §1412 and 34 CFR §300.350).

Adult Assistance

In this case, the complainants express concern that the student had to adjust to working with many different individuals who were assigned on a temporary basis until a permanent inclusion helper was obtained. They also express concern that the student was not provided with an inclusion helper who could serve as a "mature adult aide" to provide assistance to the student in dressing for physical education class. As a result, the student had to wear his physical education uniform underneath his pants instead of changing for physical education class as he did in previous years (Doc. n and interview with student's mother). Based on Findings of Fact #1, 2 and 4, MSDE finds that, with the exception of traveling from the bus into the school on the first (1st) day of school, there is no documentation that the student was not provided with adult assistance, including assistance in preparing for physical education class, as required by the IEP. Therefore, MSDE does not find that a violation of 20 U.S.C. §1412 and 34 CFR §300.350 occurred with respect to this aspect of the allegation.

Large Print Materials

In this case, the complainants express concern that school staff were given discretion to choose which accommodations on the IEP would be used with each assignment and did not use every accommodation listed on the IEP with each activity. They also allege that reading aloud to the student and permitting the student to use magnifiers does not provide sufficient assistance to ensure that he can read independently, and that all materials used by the student needed to be enlarged (Doc. n and interview with the student's mother).

Based on Findings of Fact #1, 3, and 5, MSDE finds that, while teachers were given discretion to use a variety of accommodations listed in the IEP, the IEP does not state that each accommodation listed must be provided with each assignment given to the student. Based on Finding of Fact #3,

XXX

Ms. Ann-Marie Spakowski

September 18, 2006

Page 7

MSDE finds that, on April 11, 2006, the IEP team clarified this for the complainants. Because the documentation does not support an allegation that large print materials were not used, MSDE does not find that a violation of 20 U.S.C. §1412 and 34 CFR §300.350 occurred with respect to this aspect of the allegation.

Testing Modifications and Accommodations

In this case, the complainants allege that the IEP does not require the student to determine when testing accommodations, such as removal from the classroom to reduce distractions, are to be provided, but school staff have required the student to request them (Interviews with the student's mother). To ensure implementation of the IEP, the IEP must indicate the commitment of resources and services in a manner that is clear to all persons involved in its development and implementation. An IEP may state that the services (accommodations, instruction, related services, etc...) are to be provided under specific circumstances to meet the student's needs (34 CFR §300, Appendix A, Question 35).

Based on Findings of Fact #1, 5, and 6, MSDE finds that, while there is documentation of the provision of testing accommodations, the IEP does not clarify who determines when the accommodations are needed. Therefore, MSDE finds that the HCPS has not ensured that the IEP is written in a manner that is clear regarding how the testing accommodations are to be provided, in accordance with 34 CFR §300, Appendix A, Question 35.

Furthermore, based on Finding of Fact #3, MSDE finds that, while the IEP team agreed on April 11, 2006 to require all testing materials to be enlarged, the IEP was not revised to provide this clarification. In addition, based on Finding of Fact #1, MSDE finds that, while the IEP states that adult assistance is to be provided "as needed," it does not clarify that adult assistance is required to be provided to the student throughout the school day. Therefore, MSDE finds that the HCPS has not ensured that the IEP is written in a manner that is clear regarding the adult assistance required and the how the accommodations are to be implemented, in accordance with 34 CFR §300, Appendix A, Question 35.

ADDITIONAL DISCUSSION:

The MSDE understands that the complainants disagree with the manner in which the accommodations were provided at XXXXXX MS and raise concerns about HCPS staff that appear to be personnel-related issues. This office does not have the authority to address those issues concerning Harford County employees. However, by copy of this LOF, we are advising HCPS officials of the complainants' concerns.

XXX

Ms. Ann-Marie Spakowski

September 18, 2006

Page 8

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific Corrective Action

The MSDE requires HCPS to ensure that an IEP team that includes the required participants, including the student, is convened within thirty (30) days of the date of this LOF, unless the complainants agree to a later date. At the meeting, the team shall clarify the adult assistance required and how the accommodations are to be provided, and shall ensure that the IEP is written in a manner that is clear to all persons involved in its development and implementation. If the complainants disagree with the team's decisions, they maintain the right to request mediation or a due process hearing in order to resolve the dispute.

School-Based Corrective Action

As a result of violations found in previous complaint investigations regarding other students in HCPS and through monitoring activities, MSDE has required the school system to take system-based corrective action to address the violation identified in this investigation and is working with the school system to ensure that the corrective action is taken. Therefore, no further school-based action is required.

All Corrective Actions

Within fifteen (15) days of completing each corrective action, HCPS 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. Roulette. She may be contacted at (410) 767-0255.

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.

XXX

Ms. Ann-Marie Spakowski

September 18, 2006

Page 9

Questions regarding the findings of fact, conclusions, and corrective actions contained in this LOF should be addressed to this office in writing. The complainants 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 a 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: Jacqueline C. Haas
Edward L. Wulkan
Martha Roulette
Linda Bluth