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Interim State Superintendent of Schools

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December 28, 2011

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Ms. Kalisha Miller
Director of Special Education
Baltimore County Public Schools
6901 North Charles Street
Towson, Maryland 21204

RE: XXXXX
Reference: #12-034

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 November 8 and 15¹, 2011, the MSDE received a complaint from Ms. XXXXXXXXXXXX-XXXXXX, hereafter, “the complainant,” filed on behalf of her son. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) 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 BCPS has not ensured that the student has been provided with the personal care services required by the Individualized Education Program (IEP) since November 2010², in accordance with 34 CFR §§ 300.101 and .323; and
2. The BCPS did not follow proper procedures when amending the IEP to remove the requirement that the student be provided with the services of two non-BCPS paraprofessionals, in accordance with 34 CFR § 300.324.

¹ On November 15, 2011, this office received an addendum to the original complaint which included an additional allegation of a violation of IDEA.

² The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, on November 18, 2011 that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On November 10 and 16, 2011, the MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS; Ms. Sharon Floyd, Supervisor of Compliance, BCPS; Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS; and Mr. Stephen Cowles, Legal Counsel BCPS.
 3. On November 10 and 15, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE conducted telephone interviews with the complainant in order to clarify the allegations to be investigated.
 4. On November 16, 2011, the complainant provided the MSDE staff with additional documentation, via facsimile, alleging an additional violation of the IDEA.
 5. On November 18, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Miller of the allegations, requested that her office review the alleged violations, and requested documentation from the student's education record from Ms. Weitz.
 6. On November 29, 2011, Ms. Moyo obtained documents from the student's education record from the BCPS staff.
 7. On December 12, 2011, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) and interviewed the following school staff:
 - a. Dr. XXXXXXXXXXX, Physical Therapist; and
 - b. Ms. XXXXXXXXXXX, IEP Chairperson.
- Ms. Floyd and Ms. Maureen Hartlieb, Compliance Resource Teacher, BCPS, attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed. On the same date, the BCPS staff provided the MSDE staff with documentation regarding the allegations being investigated.
8. On December 19, 2011, Ms. Moyo conducted a telephone interview regarding the allegations being investigated with the following XXXXXXXXXXXXXXXXXXXX staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Ms. XXXXXXXX, Assistant Principal; and
 - c. Ms. XXXXXXXX, IEP Chairperson.

On the same date, XXXXXXXXXXXXXXX staff provided the MSDE with additional documentation from the student's education record.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The BCPS school staff and non-BCPS health care agency staff toilet training signature sheet, dated March 10, 2010;
 - b. IEP, dated March 12, 2010;
 - c. The BCPS school staff and private agency staff toilet training signature sheet from August 31, 2010 to November 9, 2011;
 - d. Electronic mail (Email) correspondence from the BCPS central office staff to school staff, dated September 6, 2011;
 - e. IEP team meeting summary, dated December 2, 2010;
 - f. IEP team meeting summary, dated January 20, 2011;
 - g. IEP, dated February 24, 2011;
 - h. Student's class schedule for the 2011-2012 school year;
 - i. Daily attendance for BCPS contracted adult support staff from August 31, 2011 to October 28, 2011;
 - j. Staffing agency time sheets for adult support staff contracted by BCPS from August 31, 2011 to October 28, 2011;
 - k. Staffing agency time sheets for adult support staff contracted by BCPS from September 12, 2011 to October 28, 2011;
 - l. Correspondence from the complainant to MSDE, received on November 8 and 15, 2011;
 - m. Email correspondence from the complainant to school staff, dated November 9, 2011;
 - n. Email correspondence from the complainant to school staff, dated November 15, 2011;
 - o. Email correspondence from school staff and to the complainant, dated November 15, 2011;
 - p. Email correspondence from the complainant to school staff, dated November 16, 2011;
 - q. Email correspondence from the complainant to school staff, dated December 14, 2011;
 - r. Email correspondence from school staff and to the complainant, dated December 14, 2011;
 - s. Email correspondence from the complainant to school staff, dated December 17, 2011; and
 - t. Student's attendance from August 31, 2011 to December 15, 2011.

BACKGROUND:

The student is seventeen (17) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with other health impairment under the IDEA related to XXXXXXX and receives special education instruction and related services. During the period of time covered by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. b, e-g, l, and t).

FINDINGS OF FACTS:

1. The IEP in effect in November 2010 was developed on March 12, 2010. It requires that the student be provided with the personal care supports listed below.
 - a. Adult assistance for toileting which can be provided by the general education teacher, special education teacher, instructional assistant, or other adult assistant;
 - b. The use of a hand held urinal;
 - c. A mechanical lift to assist the student with transfers from his wheel chair to the commode;
 - d. An area large enough to accommodate the student, his wheel chair, a “high-low table” for removing the student’s clothing as needed, and a lift; and
 - e. Staff training provided by the physical therapist in the use of the mechanical lift for any adult required to assist the student with toileting (Doc. b).
2. On February 24, 2011, an IEP team meeting was convened to review the student’s program. The IEP was revised to add language that specifies that the student must be provided with “two (2) trained staff members for toileting (Doc. g).”
3. There is no documentation of a requirement in the student’s IEP that personal care services only be provided to the student by non-BCPS health care agency staff³ (Docs. b, e-g, and review of the student’s education record).
4. While the BCPS has contracted with private health care agencies to provide personal care services for the student, it is also in the process of training the BCPS staff to ensure that there are two (2) trained staff available to the student at all times (Docs. a, c, i, j, and interviews with school staff).
5. There is no documentation that non-BCPS health care agency staff contracted by the BCPS or the BCPS school staff have been trained on the use of the hand held urinal to assist the student with toileting since November 2010 (Review of the student’s education record).

³ The BCPS school system staff report that they have contracted with three (3) health care staffing companies to provide adult assistants to aid the student with personal care services while he is in school (Docs. d, j, k, and interviews with school staff).

6. A review of the IEP indicates that in order for the mechanical lift to be operated properly two (2) people must assist the student during its use. While there is documentation that

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both the health care agency staff contracted by the BCPS and the BCPS school staff have been trained in the use of the mechanical lift, there is no documentation that two (2) trained adult assistants have been available at the same time to assist the student with toileting on a consistent basis (Docs. g, u, and review of the student's education record).

DISCUSSION/CONCLUSIONS:

Allegation #1: Provision of Personal Care Services

The public agency is required to ensure that the student is provided with the special education instruction, related services and accommodations required by the IEP (34 CFR §300.101 and .323). In this case, the complainant alleges that the BCPS has not ensured that the student has been provided with properly trained staff to assist him with toileting on a daily basis as required by the IEP and, as a result, the student has come home with soiled clothing (Docs. l-s).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP requires that the student be provided staff trained in the use of this special equipment to assist him with toileting. Based on the Findings of Facts #4 - #6, the MSDE finds that there is no documentation that staff who have been trained to provide the student with assistance when toileting have been available to provide the student with this required assistance on a consistent basis during the period of time covered by this investigation. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

Allegation #2: Proper Procedures for Amending the IEP

After the annual IEP team meeting for a school year, the parent of a student with a disability and the public agency may agree not to convene an IEP team meeting for the purpose of amending or modifying the student's current IEP, and instead may develop a written document to amend or modify the child's current IEP (34 CFR §300.324). In this case, the complainant alleges that the student's IEP previously required that he be provided with personal care services by private agency non-BCPS staff and that it was amended outside of an IEP team meeting and without parent agreement to remove this requirement (Doc. l).

Based on the Finding of Fact #3, the MSDE finds that there is no documentation that since November 2010 the student's IEP required the provision of toileting services by the non-BCPS health care agency staff. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the BCPS take immediate steps to ensure that all staff who provide the student with the personal care assistance required by the IEP are properly trained. The MSDE also requires that the BCPS provide documentation to the MSDE by February 1, 2012 that
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sufficient staff is available to provide the student with the personal care services required by the IEP.

Further, the MSDE requires that the BCPS convene an IEP team meeting no later than March 1, 2012 to determine the amount and nature of *compensatory services*⁴ or other remedy necessary to redress the violation identified in this letter.

The BCPS must provide the complainant with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint to resolve the dispute consistent with the IDEA.

Systemic

The MSDE requires that the BCPS provide documentation by April 2, 2012 that there is a system in place to provide support within the school system to similarly situated students. The documentation must describe the actions taken to ensure that the staff properly implement the requirements of the IDEA and COMAR, and provide a description of how the BCPS will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violations do not recur.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring (QAM) is being informed of the violations identified through this investigation for consideration during present or future monitoring of the BCPS. Documentation of completion of the required actions is to be submitted to this office to the attention of Chief, Complaint Investigation/Due Process 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 both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

⁴ *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 §300.151).

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 the corrective action consistent with the timeline requirement as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective action 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/km

c: Joe A. Hairston
Sharon Floyd
Pam Weitz
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