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Interim State Superintendent of Schools

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January 17, 2012

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Dr. Kim Hoffman  
Interim Executive Director, Special Education  
Baltimore City Public Schools  
200 East North Avenue  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #12-037

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.

**ALLEGATION:**

On November 18, 2011, the MSDE received correspondence from Ms. XXXXXXXXX, hereafter “the complainant,”<sup>1</sup> filed on behalf of her grandson, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the student. This office investigated the allegation that the BCPS did not offer the student a Free Appropriate Public Education (FAPE) from September 30, 2011 through November 2011,<sup>2</sup> in accordance with 34 CFR §§300.101 and .324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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<sup>1</sup> The complainant, who is the student’s grandmother, qualifies as a “parent” under the IDEA because the student lives with her and she is acting in place of his parent (34 CFR §300.30(4)).

<sup>2</sup> On December 6, 2011, the complainant informed the MSDE staff that the alleged violation continued until the end of November 2011.

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2. On November 22, 2011, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On December 6, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone and clarified the allegation to be investigated.
4. On December 9, 2011, the MSDE sent correspondence to the complainant acknowledging receipt of the complaint and identifying the allegation subject to this investigation. On the same date, the MSDE sent a copy of the complaint and the identified allegation to Dr. Hoffman and Ms. Ruley.
5. On December 19, 2011, the complainant provided the MSDE with documentation related to the allegation, via facsimile.
6. On December 22, 2011, Ms. Hartman and Ms. Mandis conducted a review of the education record at XXXXXXXXXXXXXXXXXXXXXXXX at XXXXXXXXXXXX (XXXXXXXXXX) and conducted interviews with the following BCPS staff:
  - a. Ms. XXXXXXXXXXXX, Principal, XXXXXXXXXXXX;
  - b. Mr. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXX;
  - c. Ms. XXXXXXXXXXXXXXXX, IEP Chairperson, XXXXXXXXXXXX; and
  - d. Mr. John Robinson, Educational Associate, Office of Special Education, BCPS.

Ms. Tiffany Puckett, Associate Legal Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information regarding the BCPS policies and procedures, as required.
7. On January 5, 2012, the BCPS provided the MSDE with additional documentation related to the allegation, via electronic mail (email).
8. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings which includes:
  - a. Individualized Education Program (IEP), dated May 5, 2011;
  - b. IEP, dated November 17, 2011;
  - c. Amended IEP, dated November 29, 2011;
  - d. Elementary Student Registration Form, dated November 23, 2011;
  - e. Bullying, Harassment or Intimidation Reporting Form, dated October 3, 2011;
  - f. Letter from the complainant to the BCPS staff, dated October 3, 2011;
  - g. The BCPS Ombudsman Tracking Form, dated October 12, 2011 through November 16, 2011;
  - h. Memorandum from the principal of XXXXXXXXXXXXX to school staff, dated October 13, 2011;
  - i. Letter from the complainant to the BCPS staff, dated October 19, 2011;

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- j. Letter from the complainant to "To Whom It May Concern," dated November 14, 2011;
- k. Letter from the BCPS to the complainant, dated November 28, 2011;
- l. Two (2) letters from the complainant to the BCPS, dated December 15, 2011;
- m. Letter from the BCPS to the complainant, dated October 6, 2011; and
- n. Special Education State Complaint, received by the MSDE on November 18, 2011.

### **BACKGROUND:**

The student is nine (9) years old. He is identified as a student with an Other Health Impairment related to a diagnosis of Attention Deficit/Hyperactivity Disorder under the IDEA and receives special education instruction (Docs. a-c).

At the start of the 2011-2012 school year, the student was enrolled in XXXXXXXXXX. On November 23, 2011, the student was transferred to XXXXXXXXXXXXXXXXXXXX (XXXXXXX), another BCPS school, following his family's move to the neighborhood where that school is located (Docs. a-d, and interviews with the complainant and BCPS staff).

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. b and c).

### **FINDINGS OF FACTS:**

- 1. On September 30, 2011, while the student was in the cafeteria, he was struck by a classmate enrolled in the same separate special education classroom. There is documentation that there have been previous altercations between these two students during unstructured periods of time, such as lunch and recess (Docs. a, b, and e-l, and interviews with the complainant and BCPS staff).
- 2. On October 3, 2011, the complainant notified school staff that the student was afraid to return to school because of the September 30, 2011 incident (Doc. f).
- 3. On October 12, 2011, a meeting was held at the BCPS Central Office with the complainant, the BCPS Ombudsman, the principal of XXXXXXXXXX, the other student's parent, and a representative from the BCPS Office of Special Education to discuss the complainant's concerns about the September 30, 2011 incident and the ongoing relationship between the two students. At this meeting, the school system indicated that school staff will work with these two students to help improve their relationship and would ensure that the two students are separated during unstructured periods, such as lunch. However, despite the plan offered by the BCPS to address the complainant's concerns, the student did not return to school (Docs. b and g-m).

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4. On November 17, 2011,<sup>3</sup> an IEP team meeting was held because the student still had not returned to school following the September 30, 2011 incident. At this meeting, the IEP team considered information that the student's IEP required that he be provided with special education instruction in both the general and separate special education classrooms, and had made progress toward achieving goals being addressed in the general education classroom. As a result, the IEP team recommended that the student begin receiving all instruction in a general education classroom on a trial basis. The complainant disagreed with this option because she did not feel that the student was ready to receive all instruction in a general education classroom (Doc. b, and interviews with the complainant and BCPS staff).
5. At the November 17, 2011 meeting, the IEP team developed a goal to address the student's lack of school attendance. The complainant had requested that the student be provided with the services of a one-to-one aide throughout the day. The IEP team decided that current supports in the IEP<sup>4</sup> were appropriate to address the student's needs, but that the team would reconvene with the BCPS Central Office staff participation to further consider the request (Doc. b, and interview with BCPS staff).
6. On November 23, 2011, the complainant enrolled the student at XXXXXXXXX after his family moved to a different neighborhood (Docs. c and d, and interviews with the complainant and BCPS staff).

#### **DISCUSSION/CONCLUSIONS:**

It is the responsibility of the local school system to offer a FAPE to all students within its jurisdiction. In order to offer a FAPE, the public agency is required to develop an IEP that includes special education instruction and related services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance. In the case of a student whose behavior impedes his or her learning or that of others, the IEP must include strategies to address that behavior (34 CFR §§300.34, .101, .320, .323 and .324).

To appropriately identify the needs that arise from the disability, the IEP team must consider the strengths of the student, concerns of the parents, and the results of the most recent evaluations. The IEP team must also consider information about the student's academic and functional performance in the classroom (34 CFR §300.324). Bullying or harassment of a student with disabilities that negatively impacts the student's ability to benefit from his or her educational program may be considered a denial of a FAPE if not addressed by the IEP team (Dear Colleague Letter from the United States Department of Education, Office of Special Education Programs, July 25, 2000).

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<sup>3</sup> There is documentation that, on October 6, 2011, school staff contacted the complainant and began working with her to schedule the meeting on a mutually convenient date (Doc. m).

<sup>4</sup> These supports included the use of positive and concrete reinforcers, adult support, frequent changes in activities or opportunities for movement, communication between the home and school, encouraging and reinforcing appropriate behavior in academic and non-academic settings, and preferential seating (Doc. b).

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In this case, the complainant alleges that the school system did not address the student's social, emotional, and behavioral needs which arose from his conflict with another student and resulted in his lack of school attendance (Doc. n). Based on the Findings of Facts #1-#6, the MSDE finds that the BCPS staff took steps to address the student's needs through meetings with the BCPS Central Office staff to develop strategies to decrease the student's anxiety about peer conflict and through the IEP team's review and revision of the student's IEP. Therefore, the MSDE does not find a violation with regard to this allegation.

Please be advised that the complainant and the BCPS have the right to submit additional written documentation to this office within fifteen (15) days of the date of this Letter of Findings if they disagree with the findings of facts or 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 Letter of Findings. 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 facts or conclusions contained in this Letter of Findings should be addressed to this office in writing. The school system and the complainant 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, in accordance with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

MEF/ch

cc: Andrés Alonso  
Tiffany Puckett  
Jay Salkauskas  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
Christine Hartman