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Interim State Superintendent of Schools

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February 9, 2012

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

RE: XXXXX
Reference: #12-041

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 December 13, 2011, the MSDE received correspondence from Mr. XXXXXXXXX and Ms. XXXXXXXXX, hereafter “the complainants,” filed on behalf of their son, the above-referenced student. In that correspondence, the complainants 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 allegations listed below.

1. The BCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s need for consultative psychological services between December 2010¹ and July 15, 2011,² in accordance with 34 CFR §§300.320 and .324.

¹ The complainants alleged violations dating from April 26, 2010. However, the complainants were informed, in writing, on January 5, 2012, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

² While June 15, 2011 was the date initially identified, upon investigation it was discovered that the review of the student’s program, which resulted in the addition of consultative psychological services to the IEP, was not completed until July 15, 2011.

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2. The BCPS did not ensure that the student was provided with the special education instruction and related services required by the IEP to assist him in achieving behavioral goals from December 2010¹ until the end of the 2010-2011 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that a copy of the IEP was provided within five (5) business days of each meeting, or provided prior written notice of the IEP team's decisions following each meeting, held since December 2010,¹ in accordance with 34 CFR §300.503, Md. Code. Ann. Educ. §8-405 (2010), and COMAR 13A.05.01.07D(3).
4. The BCPS did not ensure that changes made to the IEP on June 15, 2011 were made either at an IEP team meeting, or as an amendment outside of an IEP team meeting with parental agreement, in accordance with 34 CFR §300.324.
5. The BCPS has not ensured that reports of the student's progress toward achievement of the annual goals were provided since January 2011, in accordance with 34 CFR §§300.101 and .320.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 13, 2011, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On December 28, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainants by telephone and clarified the allegations to be investigated.
4. On January 5, 2012, the MSDE sent correspondence to the complainants acknowledging receipt of the complaint and identifying the allegations subject to this investigation. On the same date, the MSDE sent a copy of the complaint and the identified allegations to Dr. Hoffmann and Ms. Ruley.
5. On January 13, 2012, Ms. Hartman conducted a telephone interview with the student's mother.
6. On January 17, 2012, Ms. Hartman and Ms. Mandis conducted a review of the student's educational record at the BCPS Central Office and conducted an interview with Ms. Rebecca Milburn, Coordinator, Psychological Services, Related Services Unit, BCPS. Ms. Ruley attended the site visit as a representative of the BCPS and to provide information regarding the BCPS policies and procedures, as required.

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7. On January 17, 2012, the student's mother provided the MSDE with documentation to be considered in the investigation of the complaint.
8. On January 18, 2012, the MSDE sent correspondence to the complainants to provide clarification of the time period to be addressed by the investigation. On that same date, the MSDE sent a copy of the correspondence to Dr. Hoffmann and Ms. Ruley.
9. On January 23, 2012, the BCPS provided the MSDE with documentation to be considered in the investigation of the complaint.
10. On January 24, 2012, Ms. Hartman and Ms. Mandis conducted a site visit at XXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) and conducted interviews with
Ms. XXXXXXXXXXXX, the Director of XXXXXXXXXXX, and Ms. XXXXXXXXXXX, a general
education teacher at XXXXXXXXXXX. Ms. Ruley attended the site visit as a representative of
the BCPS and to provide information regarding the BCPS policies and procedures, as
required.
11. On February 1 and 2, 2012, the BCPS provided the MSDE with additional documentation to
be considered in the investigation of the complaint.
12. The MSDE reviewed documentation relevant to the findings and conclusions referenced in
this Letter of Findings which includes:
 - a. IEP, dated April 26, 2010;
 - b. Draft IEP from the April 28, 2011 and May 23, 2011 IEP team meetings;
 - c. IEP, dated June 15, 2011;
 - d. IEP, dated July 15, 2011;
 - e. Electronic mailings (emails) between school staff, the complainants, and private
service providers, dated September 14, 15, 19 and 23, 2010, and October 3, 4, 10
and 19-29, 2010;
 - f. Special Education State Complaint, received by the MSDE on December 13, 2011;
 - g. Encounter Log Report of Psychological Services, dated between August 30, 2010
and May 18, 2011;
 - h. Classroom progress updates, dated April 10 and 15, 2011, May 14, 2011,
October 5, 2011, December 6 and 9, 2011, and January 5, 2012;
 - i. Emails among school staff, the complainants, and private service providers, dated
August 31, 2010, September 7-14, 2010, September 21 and 29, 2010,
October 20, 2010, November 11 and 22, 2010, December 1, 2010,
February 24, 2011, March 13-14, 2011, and May 4, 2011;
 - j. Notice and Consent for Assessment, dated April 28, 2011;
 - k. Email from school staff to the complainants, dated May 13, 2011;
 - l. Emails between school staff and the complainants, dated May 4-6 and 23, 2011, and
June 6 and 10, 2011;
 - m. Email from the student's mother to the BCPS staff, dated May 18, 2011;
 - n. Emails among the BCPS staff, dated June 1, 11 and 13, 2011;
 - o. Emails from school staff to the complainants, dated May 23, 2011 and June 3, 2011;

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- p. Emails between school staff and the complainants, dated June 15-20 and 29, 2011;
- q. Email from the complainants to the BCPS staff, dated January 12, 2012;
- r. Notices of IEP Team Meetings, dated June 9 and 29, 2011;
- s. Emails between school staff and the complainants, dated June 7, 24, 26 and 29, 2011, and July 12, 2011;
- t. Email from school staff to the complainants, dated July 18, 2011;
- u. Emails between school staff and the complainants, dated August 1, 2011;
- v. Progress Reports on IEP Goals for the second, third and fourth quarters of the 2010-2011 school year; and
- w. Progress Reports on IEP Goals for the first and second quarters of the 2011-2012 school year.

BACKGROUND:

The student is seven (7) years old. He is identified as a student with autism under the IDEA and receives special education instruction and related services at XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX (XXXXXXXXX), a BCPS XXXX school. During the period of time addressed by this investigation, the complainants participated in IEP team meetings and were provided with notice of the procedural safeguards (Docs. a-d).

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S NEED FOR CONSULTATIVE PSYCHOLOGICAL SERVICES FROM DECEMBER 2010 TO JULY 15, 2011

Findings of Facts:

1. The IEP in effect from December 2010 until July 15, 2011 was developed on April 26, 2010. Documentation of that meeting indicates that the team considered reports of a private psychological assessment and a BCPS psychological assessment. The team also considered information about the student's present levels of performance from the student's teachers and school psychologist, who participated in the meeting (Doc. a).
2. The data identified needs for the student to improve his social skills, including engaging in play and working with peers, identifying and reacting to different emotions, and expressing his needs to adults. The data also identified needs for the student to improve his self-management skills by transitioning smoothly from one activity to another, following directions and completing tasks. The IEP documents that the team considered recommendations for addressing the student's needs, which were provided by the complainants' educational consultant, who participated in the meeting (Doc. a).
3. The IEP developed on April 26, 2010 includes a goal for the student to improve his coping and problem solving skills, including identifying his emotions, utilizing designated coping strategies, and seeking assistance from an adult. The IEP also includes a goal for the student to improve the ability to transition from one activity to another, follow directions from adults, and complete his classroom work. The IEP team decided that the student requires special education instruction and weekly psychological services in order to achieve the

goals. The IEP indicates that the school psychologist would provide psychological services in the general and special education classrooms, and would determine when the services would be provided in each setting. Documentation of the meeting does not reflect that there was data that identified the need for the school psychologist to consult with the teachers in order for the behavior goals to be addressed (Doc. a).

4. There is documentation that, in September and October 2010, the complainants requested clarification of how the IEP was being implemented by the school psychologist and expressed their belief that the school psychologist should be consulting with them, the student's teachers, and the student's private therapy providers. The documentation indicates that school staff encouraged the complainants to seek clarification from the school psychologist, and there is documentation that the complainants met with school staff and the student's private therapy providers to discuss the provision of services. However, there is no documentation that the complainants requested an IEP team meeting to address concerns about the program (Doc. e and review of record).

Discussion/Conclusions:

In order to ensure the provision of a Free Appropriate Public Education (FAPE) to a student with a disability under the IDEA, the public agency must provide services that address the student's identified special education instruction and related services needs. To appropriately identify and address the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.320 and .324).

The public agency must review a student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, and to revise the IEP, as appropriate, to address any lack of expected progress toward the goals on in the general education curriculum, the results of any reevaluation, information about the child provided to or by the parents, or the student's anticipated needs (34 CFR §300.324).

In this case, the complainants allege that the IEP should have required school psychological services be delivered in a specific manner to provide for consultation between the school psychologist and the student's other service providers. They assert that, as a result of an annual IEP review held on April 28, 2011, and continued on May 23, 2011, June 15, 2011, and July 15, 2011, the IEP was revised, with the support of school staff, to specify the consultation to occur among service providers. The complainants allege that, because the IEP now includes this service, it should have included the service as a result of the annual review conducted the previous year (Docs. a-d and f, and interviews with the complainants).

Based on the Findings of Facts #1 – #3, the MSDE finds that, when developing the IEP in effect between December 2010 and July 15, 2011, the IEP team considered assessment results and the information from the student's teachers and the complainants and developed an IEP addressing the social, emotional and behavioral needs identified through data analysis. Based on the Finding of

Fact #4, the MSDE finds that there is no documentation that the complainants provided information about the student that would have triggered the school system's responsibility to convene the IEP team. Accordingly, the MSDE finds that there is no documentation that the IEP team was required to convene to review and revise the program to include consultative psychological services prior to the annual review that was completed on July 15, 2011. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES TO ADDRESS THE BEHAVIORAL GOALS FROM DECEMBER 2010 TO THE END OF THE 2010-2011 SCHOOL YEAR

Findings of Facts:

5. School psychologist encounter logs document that weekly psychological services were provided by a school psychologist to assist the student with his social skills, including socializing with other students, sharing, identifying emotions, utilizing coping skills, managing his behavior, and expressing his needs to an adult (Doc. g).
6. Classroom progress updates and email correspondences between school staff and the complainants document that the teachers and the classroom aide provided the student with special education instruction to assist the student with socializing with other students, sharing, identifying his emotions, managing his behavior, expressing his needs to an adult, transitioning from one activity to another, following directions and completing classroom work (Docs. h and i).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). Based on the Findings of Facts #3, #5 and #6, the MSDE finds that there is documentation that the student was provided with special education instruction and related psychological services to assist him in achieving the behavioral goals. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATIONS #3 & #4: PROVISION OF A COPY OF THE IEP WITHIN FIVE (5) BUSINESS DAYS OF EACH MEETING AND PRIOR WRITTEN NOTICE OF THE IEP TEAM'S DECISIONS FOLLOWING MEETINGS SINCE DECEMBER 2010, AND REVISIONS TO THE JUNE 15, 2011 IEP

Findings of Facts:

7. On April 28, 2011, the IEP team began its annual review of the student's IEP. The IEP team reconvened on May 23, 2011, June 15, 2011 and July 15, 2011 to complete the annual review process (Docs. b-d).

8. At the April 28, 2011 IEP team meeting, the IEP team determined that a Functional Behavioral Assessment (FBA) would be conducted and that the team would reconvene to review the Behavioral Intervention Plan (BIP) based upon information gained through the FBA. There is documentation that, on May 13, 2011, the complainants were provided with a copy of a draft IEP following this IEP team meeting (Docs. b, j and k).
9. Emails between the complainants and the school staff document that the student's mother, teacher and school psychologist met on May 11, 2011 and developed drafts of the FBA and BIP. Emails between the complainants and school staff document that, following the revisions made by the student's mother, teacher and school psychologist, the school system staff also made proposed revisions to the draft FBA and BIP (Docs. l-n).
10. During the May 23, 2011 IEP team meeting, the team continued, but did not complete, its review of the student's program. The team also discussed that the IEP review would not be completed within a year of the previous review, and determined the amount and nature of services to be provided to the student to compensate for the delay in services. There is documentation that, on June 3, 2011, the complainants were provided a copy of a draft IEP following this IEP team meeting (Docs. b and o).
11. During the June 15, 2011 IEP team meeting, the IEP team continued its review of the student's program. At this meeting, the IEP team reviewed the draft FBA and BIP and the proposed revisions made by school system staff, and made additional revisions to the documents. The team also revised the annual IEP goals and determined that the student required Extended School Year (ESY) services.³ There is documentation that, on June 29, 2011, the complainants were provided with a copy of the draft IEP, FBA and BIP following this IEP team meeting (Docs. c, p and q).
12. At the July 15, 2011 IEP team meeting, the team completed its review of the IEP. At that meeting, the complainants expressed concerns that the draft IEP they received following the previous IEP team meeting did not accurately reflect the team's decisions, and, in response, the team made revisions to the IEP in order to address those concerns. The team also approved the FBA and BIP reviewed at the June 15, 2011 meeting. There is documentation that the complainants were provided with a copy of the completed IEP on July 18, 2011 (Docs. d and t).
13. On August 1, 2011, the complainants requested that school staff add information to the IEP about discussions held by the team on July 15, 2011. On that same date, school staff added the requested information to the IEP and provided the complainants with a copy of the IEP (Doc. u).

³ There is documentation that the IEP team had not yet completed its review of the student's program and intended to meet again in July 2011 to complete the process. However, a "closed" IEP document was generated in the Maryland On-Line IEP System in order to create the document necessary for the student to begin receiving ESY services (Docs. r and s, and interview with BCPS staff).

Discussion/Conclusions:

Allegation #3: Provision of a Copy of the IEP Within Five (5) Days of Each Meeting and Prior Written Notice of the IEP Team's Decisions Following Meetings since December 2010

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a FAPE to a student. That notice must include, among other things, a description of the action proposed or refused by the public agency, as well as an explanation of the reason for the proposal or refusal (34 CFR §300.503).

Additionally, parents must be provided a copy of the student's IEP within five (5) business days of the IEP team meeting at which the program was reviewed. If the IEP is not completed, the parents must be provided with the draft copy of the IEP (Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07D(3)).

Based on the Findings of Facts #7 – #12, the MSDE finds that the BCPS did not consistently provide the complainants with prior written notice of the IEP team's decisions. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Based on the Findings of Facts #8, #10 and #11, the MSDE finds that the BCPS did not provide the complaints with a copy of the draft IEP within five (5) business days after the April 28, 2011, May 23, 2011 and June 15, 2011 IEP team meetings. Therefore, the MSDE finds that violations occurred with regard to this aspect of the allegation.

However, based on the Finding of Fact #12, the MSDE finds that the BCPS provided the complainants with a copy of the completed IEP within five (5) business days after the July 15, 2011 IEP team meeting. Accordingly, notwithstanding the violations, no student-specific corrective action is required to remediate the violations.

Allegation #4: Revisions to the June 15, 2011 IEP

An IEP may be revised in one of two ways. The first way is by decision of the IEP team following the review of the student's program at an IEP team meeting. The second way is when, following an IEP team meeting at which the IEP has been reviewed, and with the agreement of the parents and the public agency, the IEP is amended or modified to reflect changes without reconvening the team (34 CFR §300.324(a)(4) and .324(a)(6)).

In this case, the complainants allege that, because the draft IEP provided to them following the June 15, 2011 IEP team meeting did not accurately reflect decisions made by the team at that meeting, the school system staff revised the IEP without convening an IEP team meeting without their consent. Additionally, the complainants allege that, because school system staff made proposed revisions to the draft FBA and BIP they developed, those documents were also revised without convening an IEP team meeting without their agreement (Doc. f and interviews with the complainants).

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Based on the Findings of Facts #7 – #12, the MSDE finds that the complainants were not provided with accurate documentation of the decisions made by the team on June 15, 2011 and that a violation occurred, as stated above. However, based on those Findings of Facts, the MSDE finds that the IEP review process was ongoing at that time, and was not completed until a month later at the July 15, 2011 IEP team meeting. Accordingly, because the review of the student's program had not yet been completed, the MSDE finds that revision of the June 15, 2011 draft IEP did not constitute a revision of the program. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Findings of Facts #9 – #12, the MSDE finds that the FBA and BIP drafted by the complainants had not yet been reviewed by the IEP team when the school system staff made revisions to the documents. Accordingly, the MSDE finds that the revisions made by school system staff did not constitute a revision of the program following the completion of the annual review without convening the IEP team or obtaining the complainants' agreement. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Additional Issue: IEP Reviewed within Required Timelines

As stated above, the IEP team must review the IEP periodically, but not less than annually, to review and revise, if necessary, the student's program (34 CFR §300.324). Based on the Findings of Facts #1, #7, #8, and #10 – #12, the MSDE finds that the IEP team did not begin meeting to review the student's IEP until April 28, 2011, more than a year from the date the IEP was last reviewed, which was April 26, 2010. Therefore, the MSDE finds that a violation occurred.

However, based on the Finding of Fact #7, the MSDE finds that the IEP team, including the complainants, has already determined the amount and nature of services required to remediate this violation and, as a result, no further student-specific corrective action will be required.

ALLEGATION #5: PROVISION OF PROGRESS REPORTS SINCE JANUARY 2011

Findings of Facts:

14. The IEP requires that reports of the student's progress toward achieving the annual goals be provided to the complainants "quarterly." There is documentation that, while progress has been reported for every quarter of the 2010-2011 and 2011-2012 school years, the student's progress on the behavioral goals of the IEP was not consistently provided within the timeframe required by the IEP (Docs. v and w).

Discussion/Conclusions:

The public agency must ensure that each student's IEP includes a description of when periodic reports on the progress the student is making toward meeting the annual goals will be provided (34 CFR §300.320). As stated above, the public agency also has responsibility for ensuring the implementation of the IEP (34 CFR §§300.101 and .103).

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Based on the Finding of Fact #14, the MSDE finds that the BCPS has not ensured that the complainants have been provided with reports of the student's progress toward achieving all of the annual IEP goals within the timeframe required by the IEP. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation, no later than May 1, 2012, that the IEP team has met and determined whether the delay in providing the complainants with reports of the student's progress on the behavioral goals resulted in a negative impact on the student's ability to benefit from his education program. If so, the IEP team must determine the amount and nature of *compensatory services*⁴ needed to redress the negative impact.

The BCPS must provide the complainants with proper written notice of the IEP team's determinations, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the complainants disagree with the IEP team's determinations, they maintain the right to request mediation or to file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the BCPS to provide documentation, no later than May 1, 2012, of the steps it has taken to ensure that XXXXXXXXXXXX staff properly implements the requirements related to the violations found in this Letter of Findings. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainants and the BCPS through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office, which must be received 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).

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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 any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants 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 FAPE 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/ch

cc: Andrés Alonso
Kim Lewis
Nancy Ruley
Jay Salkauskas
James Padden
XXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Christine Hartman