



June 21, 2013

XXX
XXX
XXX

Dr. Kim Hoffmann
Interim Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXX
Reference: #13-085

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 April 23, 2013, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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) with respect to the above-referenced student. The MSDE investigated the allegations listed below.

1. The BCPS did not follow proper procedures when conducting an evaluation in response to the complainant’s written referral for evaluation in September 2012, in accordance with 34 CFR §§300.305, .306, .309, .322 and .324, and COMAR 13A.05.01.06 - .08. Specifically, the complainant alleges that the BCPS did not ensure that the complainant was provided with the opportunity to participate in the Individualized Education Program (IEP) team meeting held in November 2012.
2. The BCPS did not ensure that the IEP includes the special education instruction and related services and supplementary aids and services to enable the student to achieve the annual IEP goals and make progress in the general education curriculum 34 CFR §§300.320 and .324.

3. The BCPS did not provide the complainant with a copy of the IEP document within five (5) business days after the IEP team meetings held during the 2012-2013 school year, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07D(3).
4. The BCPS did not make reasonable efforts to obtain parental consent for the initial provision of special education instruction and related services during the 2012-2013 school year, in accordance with 34 CFR §300.300.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 6, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On May 15, 2013, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On May 26, 2013, 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 Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On June 4, 2013, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to conduct a review of the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Principal,
 - b. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - c. Ms. XXXXXXXXXXXX, Special Education Case Manager;
 - d. Ms. XXXXXXXXXXXX, Assistant Principal;
 - e. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - f. Mr. XXXXXXXXXXXX, Technical Support Assistant; and
 - g. Ms. XXXXXXXXXXXX, Technical Support Assistant.

Mr. Darnell Henderson, legal counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On June 5 and 17, 2013, the BCPS provided the MSDE with additional documentation from the student's educational record via electronic mail (e-mail).
7. On June 17, 2013, Ms. Moyo conducted a telephone interview with the complainant.

XXX

Dr. Kim Hoffmann

June 21, 2013

Page 3

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Psychological assessment report, dated September 17, 2010;
 - b. 504 Accommodations Plan, dated September 27, 2011;
 - c. Referral for evaluation under the IDEA, dated September 14, 2012;
 - d. Teacher report of progress, dated September 20, 2012;
 - e. Child find referral document, dated October 4, 2012;
 - f. IEP team meeting notes, dated October 5, 2012;
 - g. Consent for assessment, dated October 5, 2012;
 - h. Educational assessment report, dated October 18, 2012;
 - i. Teacher reports of progress, dated November 1 and 7, 2012;
 - j. IEP and IEP meeting attendance sheet, dated November 8, 2012;
 - k. IEP receipt signed by the student's teachers on November 8, 2012;
 - l. Observation report, dated November 18, 2012;
 - m. Reports of progress, dated January 21, 2013;
 - n. E-mails from the complainant to school staff, dated February 4, 6, 11, and 25, 2013;
 - o. E-mail from school staff to the complainant, dated February 8, 2013;
 - p. Excerpt from the student's discipline record, dated April 17, 2013;
 - q. Correspondence and attachments from the complainant to MSDE, received on April 23, 2013;
 - r. Teacher reports of progress, dated May 3, 6, and 7, 2013;
 - s. Receipt of procedural safeguards, dated May 9, 2013;
 - t. IEP and IEP meeting attendance sheet, dated May 9, 2013;
 - u. Indirect services logs from November 26, 2012 until June 3, 2013;
 - v. Maryland Online IEP "parent contact log" from November 7, 2012 until May 1, 2013
 - w. Communication log from September 20, 2012 to May 22, 2013;
 - x. Consent for the initiation of services, dated June 5, 2013;
 - y. Reports of progress, dated June 12, 2013;
 - z. The student's report card for the 2012-2013 school year; and
 - aa. The student's class schedule and attendance record for the 2012-2013 school year.

BACKGROUND:

The student is fifteen (15) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX XXXX. Until November 8, 2013, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 based on Attention Deficit Hyperactivity Disorder (ADHD) and had a 504 Accommodations Plan (504 Plan).

On November 8, 2012, the student was identified as a student with an Other Health Impairment under the IDEA related to ADHD and has an IEP that requires the provision of special education instruction and related services. (Docs. b, c, e - g, j, q, t, x, z, and aa).

FINDING OF FACTS:

1. On September 14, 2012, the complainant made a written referral for an evaluation under the IDEA due to her concerns that the student did not make academic progress during the previous school year and because she believes that he was not prepared for the current school year (Docs. c and e).

October 5, 2012 IEP team meeting

2. On October 5, 2012, the IEP team, including the complainant and the student, convened and considered information that the student was being provided with accommodations through a 504 Plan developed to address his behaviors related to a medical diagnosis of ADHD. The accommodations included extended time, repetition of directions, reduced distractions, redirection, use of graphic organizers, allowing the student to re-write assignments, and receiving additional tutoring outside of class (Docs. b, e - g).
3. The IEP team also considered reports from the student's teachers indicating that the student "requires constant supervision" and needs assistance with working independently, completing tasks and assignments, organizing and maintaining written materials, and remaining focused. The teachers also expressed concern regarding the student's math and writing skills and indicated that he would benefit from additional support in both subject areas. The team considered information from the student that he has concerns about his skills in math and that he performs better when he can express himself orally and not in written form. He also explained that at times he feels "depressed and withdrawn." The complainant expressed concern that the student has not succeeded in school despite the provision of supports through the 504 Plan (Docs. a, e, and f).
4. Based on its review of the data, the IEP team suspected a disability under the IDEA and recommended that an educational assessment and classroom observation be conducted. On the same day, the complainant provided written consent for the additional data to be obtained (Docs. e - g).

November 8, 2012 IEP team meeting

5. A communication log maintained by school staff in the student's educational record indicates that written notice was sent to the complainant by mail on October 14, 2012 for an IEP team meeting held on November 8, 2012. This log also documents that school staff contacted the complainant about the meeting on October 28, 2012 and November 5 and 7, 2012 via telephone and that on November 7, 2012 she confirmed that she would participate in the meeting (Doc. w).
6. The "parent contact log" maintained on the Maryland Online IEP system also indicates that on November 7, 2012, school staff contacted the complainant by telephone and that she confirmed she would attend the meeting (Doc. v).

XXX

Dr. Kim Hoffmann

June 21, 2013

Page 5

7. On November 8, 2012, the IEP team, including the student, reconvened to complete the evaluation. The meeting notes indicate that the complainant participated in the meeting via teleconference (Doc. j).
8. At the meeting, the team considered the results of the educational assessment stating that the student performs in the “below average range” in math calculation and problem solving, and in written language. The team also considered the results of the classroom observation indicating that the student has difficulty with organization, arriving to class on time, and maintaining focus. The report noted that the student seems to be more interested in socializing than his classwork (Docs. h and j - l).
9. The team also considered reports from the student’s teachers that the student has completely “shut-down” since the October 5, 2012 IEP team meeting, has not been completing assignments, and has been arriving to class late. The student confirmed that he was not making an effort in school (Doc. i).
10. Based on its review of the data, the team determined that the student is a student with an Other Health Impairment under the IDEA related to ADHD. The team developed an IEP including goals for the student to improve math calculation, math problem solving, written language expression, and social/emotional/behavioral skills related to organization and executive functioning. The team determined that the student would be provided with special education instruction in the general education classroom for ten (10) hours per week. The team also determined that the student would be provided with counseling as a related service for one (1) hour per month (Doc. j).
11. The team also determined that the student would be provided with accommodations and supports to assist him with making progress toward achieving his IEP goals, including visual cues and monitoring to remain on task, use of a calculation device, visual and graphic organizers, extended time to complete math and writing assignments, reduced distractions, and monthly consultation between the special education and general education teacher (Doc. j).
12. On November 8, 2012, following the team meeting, the student’s teachers signed a receipt indicating that they had received a copy of the student’s IEP (Doc. k).
13. The consultation logs maintained by the special education teacher document that since November 26, 2012, the special education teacher and the general education teacher have met on a monthly basis to discuss the provision of special education services to the student (Doc. u).
14. On January 21, 2013, reports of the student’s progress toward achieving the annual IEP goals were completed indicating that the student was not making sufficient progress to achieve the IEP goals in the areas of writing and math because he was not participating in class or making an effort to complete assignments (Doc. m).

XXX

Dr. Kim Hoffmann

June 21, 2013

Page 6

15. On January 23, 2013, the complainant contacted school staff and requested a copy of the student's IEP. The parent contact log indicates that a copy of the IEP was sent by school staff to the complainant, via facsimile, on the same day. There is no documentation that the complainant was provided with a copy of the IEP prior to this date (Doc. v).
16. On February 4, 2013, the complainant sent an e-mail correspondence to school staff indicating that information in the documentation of the IEP team meeting about her being informed of the meeting and confirming her ability to attend, as well as information that she participated in the meeting, is inaccurate. She also indicated that she had concerns about the IEP that was developed for the student (Doc. n).
17. On February 8, 2013, the school staff responded to the complainant's e-mail indicating that she could contact school staff by telephone to discuss her concerns regarding the development of the IEP and her participation in the IEP team meeting (Doc. o).
18. On February 11 and 25, 2013, the complainant sent an e-mail correspondence to the school staff indicating that she continued to have concerns about the information in the IEP. Specifically, she indicated that she had not been provided with a copy of the IEP following the November IEP team meeting until she requested it in January 2013. The e-mail correspondence reflects that the complainant also reported that she was notified of the November 8, 2012 meeting, by telephone, the day before it was to take place. She further indicated that she had requested to participate in the meeting by teleconference, but school staff were unable to initiate a conference call between her and the rest of the team. Following the November 8, 2012 IEP team meeting, there is documentation that the complainant requested that another IEP team meeting be convened but, there is no documentation that school staff responded to this request (Doc. n).

May 9, 2013, IEP team meeting

19. On April 17, 2013, school staff contacted the complainant to inform her that the student had received an in-school suspension for not adhering to the school dress code. Both parties report that the complainant and school staff met to discuss this incident. At the meeting, the complainant indicated that she had requested an IEP team meeting in February 2013, but had not received a response to her request (Doc. p and interviews with school staff and the complainant).
20. The "parent contact log" documents that on April 30, 2013, written notice was sent to the complainant, by mail, for an IEP meeting scheduled for May 9, 2013. On May 1, 2013, the complainant confirmed, via e-mail that she could attend the meeting on this date (Docs. n and q).
21. On May 9, 2013, the IEP team convened, including the complainant, the student's father, and the student. At the meeting, the complainant expressed concern that the IEP included "inconsistencies", such as the name of another student. She further expressed concern that while the student was failing his classes, she had not been contacted by his teachers to discuss his lack of progress. She also indicated that she believes that the student

XXX

Dr. Kim Hoffmann

June 21, 2013

Page 7

requires a smaller class setting. The teachers reported that the student seemed to lack motivation, refused to complete writing assignments, and was not making progress on the IEP goals even though they believed that he was capable of accomplishing the goals. The team also reviewed informal assessment data indicating that the student has difficulty with retaining information while reading (Doc. t).

22. Based on its review of the data, the team revised the IEP to include a goal in the area of reading comprehension. The team determined that the student would receive nine (9) hours of special education instruction per week in a separate special education classroom and eleven (11) hours of special education instruction per week in the general education classroom. The team determined that the student would be provided with special education instruction in math, written language and reading in a separate special education classroom in order to provide him with more intensive supports in these areas (Doc. t).
23. The team also determined that the student required additional accommodations and supports, including a human reader for testing, a copy of class notes and outlines, spelling and grammar devices, breaks, use of a word bank, a daily monitoring sheet, increased home-school communication, peer tutoring or working in pairs, modified grading system, and checks for understanding. The team determined that the student would be provided with special education instruction in both the general education classroom and a separate special education classroom (Docs. t).
24. There is documentation that the complainant was provided with notice of the procedural safeguards at the meeting (Doc. s).
25. On June 5, 2013, the complainant provided written consent for the initiation of services. There is no documentation that the complainant provided written consent for the provision of special education services prior to this date (Doc. x).
26. The reports of the student's progress towards achieving the annual IEP goals, dated June 12, 2013 indicate that the student is making sufficient progress to meet all of the goals (Doc. y).

DISCUSSION/CONCLUSIONS:

Allegation #1: Parental Participation in the Initial Evaluation

Documentation in the Educational Record

The public agency must take steps to ensure that the student's parent is provided with the opportunity to participate in IEP team meetings. These steps include providing the parent with written notice of the meeting that includes the purpose, time and location of the meeting, and who will be in attendance, at least ten (10) days before the meeting. It also includes scheduling the meeting at a mutually convenient time and place. If the parent is unable to attend an IEP

team meeting in person, the public agency must offer alternative methods of participation, such as by teleconference (34 CFR §300.322).

In this case, the complainant alleges that she was not provided with written notice of the November 8, 2012 IEP meeting at least ten (10) days before the meeting. She also alleges that, while school staff notified her of the IEP meeting by telephone on the day before the meeting and were willing to arrange to have her participate by teleconference, the school did not have teleconferencing capability.

She asserts that she “declined to cancel the meeting” due to her concern that the student be provided with special education services as soon as possible. However, she alleges that school staff did not respond to her objection to the documentation of the meeting that indicates that she participated as a member of the team.

Based on the Findings of Facts #1 - #4, the MSDE finds the IEP team convened in response to the complainant’s written referral and determined that an evaluation under the IDEA would be conducted. Based on the Findings of Facts #5 - #11, the MSDE finds that there is documentation that the complainant was provided with written notice at least ten (10) days before the meeting, and that she participated in the meeting by teleconference. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Accuracy of the Educational Record

If a parent believes that information contained within the student’s educational record is inaccurate or misleading, they may request that the school system amend the information, as provided for in both the IDEA and the Family Educational Rights and Privacy Act (FERPA). If the school system refuses to amend the record, it must advise the parent of that decision and provide the parent with the opportunity to request a hearing to challenge the content of the student’s educational record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22).

Based upon the Findings of Facts #16 - #21, the MSDE finds that the BCPS did not ensure that proper procedures were followed in response to the complainant’s concerns about the accuracy of the documentation of her participation in the meeting, and as a result, a violation occurred with respect to this aspect of the allegation.

Allegation #2: IEP Development

Initial IEP

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that includes a statement of the student’s present level of academic achievement and functional performance, including how the disability affects the student’s progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student’s disability, and the special education instruction and related services required to assist the student in achieving the goals.

XXX

Dr. Kim Hoffmann

June 21, 2013

Page 9

Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to make progress in the general curriculum, the annual IEP goals must be aligned with the student's present level of academic achievement and functional performance (34 CFR §§300.101, .320 and .324 and Analysis of Comments and Changes to the IDEA Regulations Fed. Reg., Vol. 71, No. 156, August 14, 2006 p. 46662).

In this case, the complainant alleges that the IEP does not include the special education and related services that will assist the student in achieving the annual goals. Based on the Findings of Facts #7 - #11, the MSDE finds that the IEP includes a statement of the present level of academic achievement and functional performance that contains information about the specific areas of weakness that impact the student's progress in the general curriculum, consistent with the evaluation data.

Based on the Findings of Facts #10 and #11, the MSDE finds that the IEP includes annual goals for the student to improve the specific skills identified as areas of weakness in the present level of academic achievement and functional performance, and the special education instruction and related services to assist the student in achieving those goals. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Review and Revision to Address Complainant's Concerns and Student's Lack of Progress

Once a student is identified as a student with a disability and an IEP is developed, the public agency must ensure that the IEP team reviews and revises it, as appropriate, at least annually. The public agency must also ensure that the IEP is reviewed and revised, as appropriate, to address information provided by the student's parents and lack of expected progress (34 CFR §300.322).

Written notice must be provided to a parent within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education (FAPE) to a student. This notice must include a description of the action proposed or refused and the basis for the action being proposed or refused (34 CFR §300.503).

In this case, the complaint alleges that the school staff did not respond to her subsequent requests for another IEP team meeting to ensure that she had input into the IEP team's decisions and to address the student's lack of progress.

Based on the Findings of Facts #16 - #18, the MSDE finds that the BCPS did not ensure that proper procedures were followed to either convene another IEP team meeting at the complainant's request or to provide her with a written explanation of the rejection of her request. Further, based on the Findings of Facts #14 - #23, the MSDE finds that the IEP team did not convene to review and revise the IEP to address the lack of expected progress between January 2013 and May 2013. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #3: Provision of Documents Five Days After the November 8, 2012 IEP Meeting

Not later than five business days after a scheduled IEP team meeting, school personnel must provide a copy of the IEP to the parent (Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07). Based on the Finding of Fact #14, the MSDE finds that there is no documentation that the BCPS ensured that the complainant was provided with a copy of the completed IEP that was developed on November 8, 2012 within five business days of the IEP team meeting, as required. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #4: Parental Consent for the Initial Provision of Services

The public agency must obtain informed consent from the student's parent before the initial provision of special education and related services to the student (34 CFR §300.300). Based on the Findings of Facts #12 - #14 and #21 - #26, the MSDE finds that there is documentation that the IEP services were initiated before the complainant provided written consent for the provision of those services. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #25, the MSDE finds that the complainant has subsequently provided written consent for the provision of the services. Therefore, this office finds that the violation did not have a negative impact of the student's education and no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires that the BCPS provide documentation by the start of the 2013-2014 school year that the IEP team has convened and determined the nature and amount of *compensatory services*¹ necessary to redress the violation related to the development of the IEP from November 8, 2012 until May 9, 2013.

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

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 §300.151).

School-based

The MSDE requires that BCPS provide documentation by the start of the 2013-2014 school year, of the steps taken to determine if the violation related to the violation identified are unique to this case or if it represents a pattern of noncompliance at XXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, for its consideration during present or future monitoring of the BCPS.

Documentation of all corrective actions taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution 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 the BCPS and the complainants 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. 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.

XXX

Dr. Kim Hoffmann

June 21, 2013

Page 12

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 the 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

cc : Andrés Alonso
 Charles Brooks
 Nancy Ruley
 Darnell Henderson
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Koliwe Moyo
 Martha J. Arthur