



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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June 28, 2013

Mr. Ron Caplan  
Director of XXX  
XXX  
XXX  
XXX

Ms. Debra Brooks  
Executive Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
6901 Charles Street  
Towson, Maryland 21204

RE: XXXXX  
Reference: #13-088

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 May 9, 2013, the MSDE received a complaint from Mr. Ronald Caplan<sup>1</sup>, hereafter, “the complainant,” on behalf of the above-referenced student. 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 student.

The MSDE investigated the allegation that the BCPS has not ensured that the student has been provided with an appropriate educational placement since March 1, 2013<sup>2</sup>, in accordance with 34 CFR §§300.114 - .116, .324 and COMAR 13A.05.01.10).

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<sup>1</sup> The complainant is the Director of XXXXXXXX for the XXXXXXXX XXXXXX, the XXXXXXXXX in which the student is placed by the XXXX XXXX Department of Social Services.

<sup>2</sup> The allegation was initially identified as occurring during the 2012-2013 school year. However, during the course of the investigation, it was determined that the student was not identified as student with a disability under the IDEA until February 7, 2013 and that an IEP was developed on March 1, 2013 (Docs. a - u).

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On May 10, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, former Director of Special Education, BCPS; Mr. Stephen Cowles, Associate General Counsel, Special Education Compliance, BCPS; and Ms. Sharon Floyd, Supervisor of Compliance, BCPS.
3. On May 6, 14, 17, and 20, 2013, the complainant sent electronic mail correspondence (e-mail) to the MSDE staff with information to be considered during the investigation.
4. On May 20, 2013, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegation to be investigated.
5. On May 23, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the BCPS review the alleged violation.
6. On May 29, 2013, the MSDE requested documents from the BCPS, via e-mail.
7. On June 13, 2013, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXX) to conduct a review of the student's educational record, and interviewed Ms. XXXXXXXX, Assistant Principal, XXXXXXXX; and Ms. XXXXXXXX, Special Education Specialist, BCPS.

Ms. Maureen Hartlieb, Compliance Specialist, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence from the complainant to the BCPS staff, dated October 2, 2012;
  - b. BCPS registration form, dated October 3, 2012;
  - c. IEP team meeting notes, dated November 2, 2012;
  - d. IEP team meeting notice, dated December 2, 2012;
  - e. Teacher reports of progress in the class, dated December 12, 2012;
  - f. IEP team meeting notes and consent for assessment, dated December 14, 2012;
  - g. IEP team meeting notice, dated January 21, 2013;
  - h. Educational assessment report, dated January 28, 2013;
  - i. Psychological assessment report, dated January 30, 2013;
  - j. Classroom observation report, dated February 1, 2013;

- k. IEP team meeting notes and evaluation report, dated February 7, 2013;
- l. E-mail from school staff to the complainant, dated February 15, 2013;
- m. IEP and IEP meeting notes, dated March 1, 2013;
- n. E-mails between the complainant and the school staff, dated March 19-21, 2013;
- o. Reports of progress, dated April 25, 2013;
- p. Correspondence and attachments from the complainant to the MSDE, received on May 9, 2013;
- q. E-mails regarding "program review," dated May 14, 2013;
- r. Reports of progress, dated June 14, 2013;
- s. BCPS student enrollment history form for the 2012-2013 school year;
- t. BCPS student attendance record for the 2012-2013 school year; and
- u. Student's XXXXXX XXXXX MS class schedule for the 2012-2013 school year.

### **BACKGROUND:**

The student is fifteen (15) years old. On October 1, 2012, the XXXXXX XXXXX Department of Social Services (DSS) placed him at the XXXXXXXX, a XXXXXXXX in Baltimore County. At that time, the student began attending the XXXXXXXXX, a BCPS alternative school that is designed to provide academic, behavioral, and therapeutic support to students (XXXXXXXXXXXXXXXXXX).

On November 13, 2012, the BCPS transferred the student to XXXXXXXXX; the school he currently attends. On February 7, 2013, the student was identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder.

During the period of time addressed by this investigation, the student's parent participated in the education decision-making process and was provided with written notice of the IEP team decisions and notice of the procedural safeguards.(Docs. a - u).

### **FINDINGS OF FACTS:**

1. On March 1, 2013, an IEP was developed that requires the provision of special education instruction in the general education classroom. The IEP also includes supports to be provided to increase the student's on task behavior, such as organizational aids, teacher notes, prompts, extended time to complete assignments, preferential seating, and a "help card" (Doc. m).
2. There is documentation that beginning on March 18, 2013, school staff reported to the complainant that the student was coming to class without supplies, sleeping in class, "giving up trying to do anything in school," and not attending school on a regular basis (Docs. l, n, and interview with school staff).
3. The reports of the student's progress towards achieving the IEP goals issued at the end of the 2012-2013 school year indicate that the student did not make sufficient progress towards achieving the annual IEP goals (Doc. r).

4. There is no documentation that the IEP team has re-convened to consider strategies and interventions to address the student's social, emotional, or behavioral issues which are interfering with the student's participation in school and lack of expected progress (review of the educational record).

## **DISCUSSION/CONCLUSIONS:**

### **Determining an Appropriate Placement through the IEP Process**

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies to address that behavior (34 CFR §§300.324 and 503).

Once an IEP is developed, the IEP team must also ensure that the IEP is reviewed and revised, as appropriate, to address the lack of expected progress (34 CFR §300.322). If the IEP team determines that the required supports cannot be provided in the student's current educational placement, it must determine the educational placement in which the services can be provided (300 CFR §§300.114 - .116 and .324). The IDEA limits the school system's ability to transfer a student with a disability to an alternative school if it constitutes a change in the student's educational placement except when specific circumstances exist (such as during periods of disciplinary removal) unless the determination is made by the IEP team, in accordance with the regulations (300 CFR §§300.114 - .116 and .530).

### **The BCPS "Program Review" Process**

The BCPS utilizes a process termed a "Program Review" when it is necessary to determine whether a student should be transferred to another school to receive intensive behavioral supports in the general education program. The BCPS alternative schools are used as a setting for the provision of such intensive services in the general education program when the decision is made to transfer a student as the result of a "Program Review." These alternative schools are also used as a setting for the provision of instruction to students, both with and without disabilities, who have been disciplinarily removed from school (BCPS Manual for Disciplinary Procedures and [www.bcps.org](http://www.bcps.org)).

In this case, a "Program Review" was sought to consider whether the student requires a change in his educational placement to an alternative school in order to address the behaviors which were interfering with his progress and school attendance; the complainant reports that the request was made because the student had been successful when previously placed in such a setting. The complainant provided documentation that the school staff refused both this request and similar requests made on behalf of other students who reside at the XXXXXXXX XXXXXX because the students are identified as students with disabilities under the IDEA. The documentation also reflects that school staff rejected the multiple requests for a "Program Review" and, further, did not

consider convening an IEP team to address the interfering behaviors which were the basis for the requests to utilize the “Program Review” process (Docs. n, p, and q ).

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS did not ensure that the IEP team convened to consider interventions and supports that could be provided to address the student’s interfering behavior and lack of expected progress in the current educational placement. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

The MSDE further finds that, based upon the requirement that the student be educated in the least restrictive environment, the use of the “Program Review” process to transfer the student to an alternative school without convening an IEP team to review the student’s program, progress, and placement may not be consistent with the IDEA requirements. While the BCPS did not circumvent the IEP process by utilizing a “Program Review” to determine a placement change for the student, they also did not convene an IEP team meeting to address his social, emotional, or behavioral needs that were impacting his participation and progress. The documentation reviewed demonstrates the need for the BCPS to reinforce the requirements of the IDEA requiring the convening of an IEP team meeting to determine the interventions and supports necessary to address a student’s interfering behavior when they arise.

### **CORRECTIVE ACTION/TIMELINE:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by the start of the 2013-2014 school year that the IEP team has reviewed and revised the student’s IEP to address any interfering behaviors and lack of expected progress. The MSDE also requires the BCPS to determine the amount of *compensatory services*<sup>3</sup> or other remedy for the violation identified in this Letter of Findings.

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

#### **School-Based**

The MSDE requires the BCPS to provide documentation by the start of the 2013-2014 school year of the steps it has taken to determine if the procedural violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the XXXXXX XXX. If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that 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.

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<sup>3</sup> 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).

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 re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP). Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the BCPS.

### **System-Based**

The MSDE requires the BCPS to provide documentation by the start of the 2013-2014 school year that clarification has been provided to the schools within the school system of the need to convene the IEP team to consider interfering behaviors for students with disabilities regardless of the type of procedure that has been requested to address the behaviors.

Documentation of the corrective action taken is to be submitted to this office to the attention of Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

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

Please be advised that both the complainant and the BCPS 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 facts 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 the corrective action consistent with the timeline requirement as reported in this Letter of Findings.

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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 this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/km

cc: XXXXXXXXXXXXXXX  
S. Dallas Dance  
Stephen Cowles  
Sharon Floyd  
Pamela Weitz  
XXXXXXXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha Arthur  
Koliwe Moyo