



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

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July 11, 2013

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

RE: XXXXX
Reference: #13-093

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 our investigation.

ALLEGATION:

On May 14, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, XXXXXXXX. 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 allegation that the BCPS has not ensured that the student has been provided with the progress sheets (check in/out procedures) required by the Individualized Education Program (IEP) since January 28, 2013, in accordance with 34 CFR §§ 300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, was assigned to investigate the allegation in the complaint.

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2. On May 14, 2013, the MSDE received correspondence from the complainant that contained an allegation of a violation of the IDEA.
3. On May 15, 2013, a copy of the complaint was provided by facsimile to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
4. On May 28, 2013, Ms. Williams, MSDE, contacted the complainant, by telephone, to clarify the allegation to be investigated.
5. On May 28, 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 June 11, 2013, Ms. Williams and Ms. Kathy Stump, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Special Education Teacher;
 - b. Ms. XXXXXXXXXXX, Language Arts Teacher;
 - c. Mr. XXXXXXXXXXX, Social Studies Teacher; and
 - d. Ms. XXXXXXXXXXX, Principal.

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

7. On June 17, 2013, Ms. Williams and Ms. Stump conducted a conference call with Ms. XXXXXXXX and Mr. XXXXXXXX, Math Teacher, XXXXXXXXXXX. Ms. Ruley participated in the conference call as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On June 17, 2013, the MSDE requested additional documentation from the BCPS regarding the allegations being investigated.
9. On June 17, 18, and 21, 2013, the BCPS sent email to the MSDE with information to be considered for the investigation.
10. On July 8 and 9, 2013, Ms. Williams conducted telephone interviews with the complainant.

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11. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this Letter of Findings are listed below.
 - a. Correspondence and attachments from the complainant to the MSDE, received on May 14, 2013;
 - b. Functional Behavioral Assessment, dated February 6, 2012;
 - c. IEP, dated January 28, 2013;
 - d. Behavior and work monitoring sheets, dated February 1, 2013 through June 6, 2013;
 - e. Electronic correspondence from the complainant to the BCPS staff, dated May 1, 2013; and
 - f. IEP, dated June 26, 2013.

BACKGROUND:

The student is fourteen (14) years old and he attends XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX). He is identified as a student with an Other Health Impairment, related to Attention Deficit Hyperactivity Disorder under the IDEA. He has an IEP that requires the provision of special education instruction.

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. c and f, and interview with the complainant).

FINDINGS OF FACTS:

1. The IEP in effect on January 28, 2013, identified needs in the area of self-management related to the student's lack of preparation for class, work avoidance, and engagement in off-task behaviors. In order to address these needs, the IEP requires that each teacher have "check in/out" procedures to ensure the student is prepared for his next class. The "check in/out" procedures specifically require each teacher to use a "check out" system to ensure the student is prepared with everything he needs for the next class so that he will be ready to properly engage. Additionally, the IEP requires a "check in" procedure as the student "goes into each class to see that he is ready to learn and has the materials needed for classwork" (Docs. b and c and interview with school staff).
2. On January 28, 2013, the IEP team met and acknowledged that there had been a lack of consistent implementation of the requirement that the student's teachers have a "check in/check out" procedure. The team decided that the violation resulted in a loss of a Free Appropriate Public Education (FAPE) to the student and determined the compensatory services needed to remediate the loss (Docs. a and c).

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3. On May 1, 2013, the complainant expressed concern to school staff that the student's teachers were not following the "check in/check out" procedures. Further, there is no documentation of the consistent implementation of a "check in/check out" procedure since January 28, 2013 (Docs. d and e).
4. On June 26, 2013, the IEP team revised the student's IEP to remove the requirement that each of the student's teachers implements the "check in/check out" procedures. However, there is no documentation of the basis for the IEP team's decision to discontinue the requirement and no documentation that the IEP team addressed the complainant's concerns about the continuing lack of the provision of this support since January 28, 2013 (Doc. f).
5. The written summary of the June 26, 2013 IEP meeting states that the complainant initially requested that the IEP meeting be rescheduled because the team did not include a general education teacher of the student, but subsequently agreed to permit the meeting to proceed without a general education teacher. However, there is no documentation that the team's discussion would not involve the general education teacher's area of the curriculum or that a general education teacher provided written input to the team prior to the meeting (Doc. f).

DISCUSSION/CONCLUSIONS:

Implementation of the "Check in/Check out" Procedures

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 .103). Based on the Findings of Facts #1, #2, and #3, the MSDE finds that there is no documentation that the student was consistently provided with assistance preparing for each class since January 28, 2013. Therefore, this office finds that a violation has occurred with respect to this allegation.

The Following Additional Violations Were Identified During the Course of the Investigation

IEP Team Participants

In order to ensure that the IEP team has the data that is required to review and revise the IEP, the public agency must ensure that the IEP team includes the required participants, including a general education teacher of the student. A required member of the IEP team may be excused from participating in a team meeting if the parents and the public agency agree in writing, that attendance is not needed because the team member's area of the curriculum or related services is not being considered. If the team member's area of the curriculum or related services is being considered, the team member may be excused if the parents and public agency consent to the member's excusal in writing, and the team member has submitted written input into the development of the IEP prior to the meeting (34 CFR §300.321).

Based on the Finding of Fact #5, the MSDE finds when the IEP team convened on June 26, 2013, it did not include the required participants. Therefore, the MSDE finds that a violation occurred with respect to this matter.

Review and Revision of the IEP and Proper Written Notice of the IEP Team's Decisions

When reviewing and revising the IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents, results of the most recent evaluation, and the academic, developmental, and functional needs of the student. Based on this information, the IEP must include annual goals to address the needs identified in the data and services to assist the student in achieving the annual goals (34 CFR §§300.320 and .324).

The public agency must also provide the parent with written notice before it proposes or refuses to initiate or change the identification, evaluation, educational placement of the student, or provision of free appropriate public education (FAPE). This notice includes a description of the action proposed or refused, the basis for the decision, other options considered and the reason the options were rejected, and the data used in making the decision (34 CFR §300.503).

Based on the Findings of Facts #3 and #4, the MSDE finds that the BCPS did not ensure that the IEP team convened and considered information from the complainant that problems with implementation of the IEP were continuing. Based on the Finding of Fact #4, the MSDE further finds that there is no documentation of the IEP team's decision that the "check in/check out" was no longer required. Therefore, the MSDE finds that a violation occurred with respect to this matter.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific:

The MSDE requires the BCPS to provide documentation by the start of the 2013-2014 school year that an IEP team with the required participants has completed the actions listed below.

1. Considered the complainant's concerns about the provision of assistance to ensure that the student is prepared for each class.
2. Reviewed and revised the IEP, as appropriate, consistent with the data to ensure that it addresses any identified need for assistance with preparing for class.

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3. Determined the *compensatory services*¹ or other remedy for the violations related to the IEP development and the provision of the supplementary aids and services since January 28, 2013.

The BCPS must provide the complainant with proper written notice of the determinations made by the IEP team, 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 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 violations identified in this State complaint investigation are unique to this case or if they represent a pattern at XXXXXXXXXXXX.

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 the report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements. Additionally, this 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.

Documentation of all corrective action taken must be submitted to this office no later than the beginning of the 2012-2013 school year, to the attention of the 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 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 fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise

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).

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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.

Questions regarding the findings, conclusions and corrective actions 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 FAPE 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 due process complaint. Sincerely,

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

MEF:tw

cc: Tisha Edwards
Charles Brooks
Nancy Ruley
XXXXXXXXXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Tyra Williams