



August 9, 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: XXXX
Reference: #13-102

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 June 12, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 student. The MSDE investigated the allegations listed below:

1. The BCPS did not ensure that the student’s Individualized Education Program (IEP) addressed her transportation needs from February 2013 to May 1, 2013, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.10.
2. The BCPS did not ensure that the student was provided with the transportation services required by the IEP from May 1, 2013 through the end of the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS did not ensure that the complainant was provided with the proper written notice of the IEP team meeting that occurred on May 1, 2013, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 12, 2013, 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 June 26, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On July 1, 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 the BCPS of the allegations and requested that the BCPS review the alleged violations.
5. On July 2 and 8, 2013 and August 5 and 7, 2013, the BCPS provided the MSDE with additional information regarding the allegations contained in the complaint.
6. On July 8, 10, and 12, 2013, and August 1 and 6, 2013, the student's mother provided the MSDE with additional information and documentation concerning the allegations contained in the complaint.
7. On May 14, 2013, Ms. Hartman conducted an additional telephone interview with the student's mother concerning the allegations contained in the complaint.
8. On July 22 and 23, 2013, and August 1, 2013, the MSDE requested documents from the BCPS, via electronic mail (email).
9. On July 30, 2013, Ms. Hartman and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXX (XXXXXXX), a nonpublic, separate, special education school, to review the student's educational record, and interviewed the following people:
 - a. Mr. XXXXXXXXX, Nonpublic School Liaison, BCPS (via telephone);
 - b. Mr. XXXXXXXXX, Special Education Classroom Teacher, XXXXXX; and
 - c. Mr. XXXXXXXXX Principal, XXXXXXXXX.

Mr. Darnell L. Henderson, Associate Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
10. On August 5, 2013, the BCPS provided the MSDE with documents related to the allegations being investigated.

11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on June 12, 2013;
 - b. IEP, dated November 8, 2012 and amended February 12, 2013;
 - c. IEP, dated May 1, 2013;
 - d. Email correspondences between the complainant and school staff, dated February 12, 22 and 23, 2013;
 - e. Bus incident report, dated February 19, 2013;
 - f. Email correspondence from the complainant to school staff, dated February 27, 2013;
 - g. Request for Transportation Reimbursement, dated July 2, 2013;
 - h. Transportation database information sheet;
 - i. Email correspondences between the complainant and the BCPS staff, dated July 1, 2013; and
 - j. Email correspondence from school staff to the complainant, dated July 15, 2013.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with Autism under the IDEA. On February 4, 2013, the BCPS placed the student in XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX), a twelve-month nonpublic, separate, special education school. The student was previously placed by the BCPS at XXXXXXXXXXXXXXXX, another nonpublic, separate, special education school, but was placed at XXXXX due to her need for additional behavioral support. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-c).

FINDINGS OF FACTS:

1. The IEP in effect on February 4, 2013 required that the student be provided with transportation by a school bus as a related service (Doc. b).
2. The BCPS contracts with private companies to provide school bus transportation to and from school to students it places in nonpublic separate special education schools (Interviews with the BCPS staff).
3. There is documentation that, on February 12, 2013, the student began displaying “unsafe” behaviors on the school bus, including banging the window with her hands. In order to address these behaviors, school staff began working with the school bus driver and assistants to ensure the student’s safety, including placing padding on the school bus window (Doc. d, and interviews with the complainant, the BCPS staff, and the school staff).
4. There is documentation that, on February 19, 2013, the student began attacking the bus driver and the assistants while the school bus was in motion (Doc. e).

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5. On February 27, 2013, the complainant reported to school staff that the transportation staff had reported to her that the student could not be safely transported to and from school by school bus. On the same date, the complainant asked the school staff if an alternative means of transportation could be provided, such as taxi cab services. However, there is no documentation that the school staff responded to the complainant (Doc. f and review of the student's educational record).
6. On March 1, 2013, the complainant began transporting the student to and from school (Doc. g).
7. On May 1, 2013, an IEP team meeting was held to consider the supports needed to safely transport the student to and from school by school bus. While the complainant was notified of the meeting by telephone, there is no documentation that she was provided with written notice of the meeting (Doc. c, interviews with the complainant, the BCPS staff, and the school staff, and review of the student's educational record).
8. At the May 1, 2013 IEP team meeting, the team, including the complainant and the BCPS Nonpublic Liaison, decided that the student requires preferential seating with a staff member, music using a portable music device, a mat placed in front of her window, activity books, use of a token board and schedule for the bus ride, and a bus harness. The team decided that the student would begin riding the bus again starting with the morning ride, and that the staff from the BCPS Transportation Office would be informed of the team's decisions in order to ensure that the equipment and services were obtained (Doc. c).
9. On June 3, 2013, information about the IEP team's decisions regarding the student's transportation needs were entered into a database maintained by the BCPS Transportation Office (Doc. h).
10. On July 1, 2013, the supports determined necessary by the IEP team were put into place, and the student began riding the bus to school in the morning, while the complaint continued to provide transportation from the school to her home in the afternoon. On July 15, 2013, the student began riding the bus home from school in the afternoon, as well (Docs. g, i and j, and interviews with the complainant, the BCPS staff, and the school staff).
11. There is documentation that, on July 2, 2013, the complainant requested reimbursement for her costs associated with transporting the student, but there is no documentation that reimbursement has been provided (Doc. g, interview with the complainant, and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that Addresses the Student's Transportation Needs from February 2013 to May 1, 2013

A Free Appropriate Public Education (FAPE) means special education instruction and related services that are provided at public expense without charge to the parent in conformity with an IEP that addresses the student's identified needs (34 CFR §300.17). In order to ensure that the IEP addresses the student's needs, the public agency must ensure that the IEP team reviews, and revises the IEP, as appropriate, to address information about the student provided to or by the student's parent and to address the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #1 - #8, the MSDE finds that the BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the IEP to address information from the complainant and about the student's anticipated transportation needs in a timely manner from February 27, 2013 to May 1, 2013. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

Allegation #2: Provision of the Transportation Services Required by the May 1, 2013 IEP

As stated above, the public agency must ensure that the student is provided with special education instruction and related services in conformity with the IEP (34 CFR §300.17). Based on the Findings of Facts #7 - #11, the MSDE finds that the BCPS did not ensure that the student was provided with the transportation services required by the IEP from May 1, 2013 to July 15, 2013. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

Based on the Findings of Facts #6, #10, and #11, the MSDE finds that, while the complainant provided the student with transportation from March 1, 2013 until July 15, 2013, the transportation services needed in order for the student to access special education instruction were not provided at public expense. Therefore, this office finds that the student was not provided with a FAPE during this time period.

Allegation #3: Provision of Written Notice of the May 1, 2013 IEP Team Meeting

The public agency is required to take steps to ensure a parent of a student with a disability is afforded the opportunity to participate in IEP team meetings (34 CFR §300.322). To ensure parent participation, the school system must provide the parent with written notice at least ten (10) days in advance of the meeting. The notice must state the purpose, time, date, and location of the meeting, and who will be in attendance (COMAR 13A.05.01.07).

Based on the Finding of Fact #7, the MSDE finds that the complainant was not provided with written notice of the May 1, 2013 IEP team meeting. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

Notwithstanding the violation, based on the Finding of Fact #8, the MSDE finds that the complainant participated in the IEP team meeting. Therefore, no student-specific corrective action is required.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The BCPS must provide the MSDE with documentation by the start of the 2013-2014 school year that the complainant has been reimbursed for the expenses she has incurred transporting the student to and from school for every mile transported since March 1, 2013, at the rate of reimbursement established for the BCPS employees.

System-based

The BCPS must provide the MSDE with documentation by November 1, 2013 of the steps taken to ensure that students placed by the school system at XXXX have an IEP that addresses each of the students' transportation needs, that those students receive the transportation services required by the IEP, and that parents are provided with proper written notice of IEP team meetings.

School-based

Since the BCPS is ultimately responsible for ensuring a FAPE to students placed by the school system in nonpublic separate special education schools, this office does not have authority under the IDEA to require XXXX staff to comply with the federal requirements. However, by copy of this Letter of Findings, we are informing the MSDE's Nonpublic Schools Approval Branch in the Division of Certification and Accreditation of these findings and asking that office to take the steps necessary to ensure compliance by XXXXX staff with State requirements related to nonpublic schools.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the 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.

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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 of facts, 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 a due process complaint.

Sincerely,

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

MEF/ch

cc: Tisha S. Edwards
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