



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: XXXXX  
Reference: #13-103

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.

**ALLEGATIONS:**

On June 12, 2013, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, XXXXXXXXXX. 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 should have conducted an evaluation and identified the student as a student with a disability under the IDEA since June 12, 2012<sup>1</sup>, as required by 34 CFR §§300.111, .301, .503, and COMAR 13.05.01.04.
2. The BCPS did not ensure that the eligibility determination made on April 22, 2013 was based on the evaluation data in accordance with 34 CFR §§300.08, .39, .305, and COMAR 13A.05.01.03 and .06.

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<sup>1</sup> The complainant alleged violations of the IDEA that dated back to November 2011. However, on July 9, 2013, the MSDE informed the complainant, in writing, that this office has authority to investigate allegations of violations of the IDEA that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, was assigned to investigate the allegations in the complaint.
2. On June 12, 2013, the MSDE received correspondence from the complainant that contained allegations of violations of the IDEA.
3. On June 13, 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 June 24, 2013 and July 8, 2013, Ms. Williams contacted the complainant, by telephone, to clarify the allegations to be investigated.
5. On July 9, 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.
6. On July 24 and 29, 2013, the BCPS sent electronic correspondence (email) to the MSDE with information to be considered for the investigation.
7. On July 25, 2013, Ms. Williams and Ms. Koliwe Moyo-Stephens, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the school staff listed below:
  - a. Mr. XXXXXXXXX, Director; and
  - b. Ms. XXXXXXXX, Special Education and Section 504 Coordinator.

Mr. Darnell Henderson, Associate Counsel, Office of Legal Counsel, BCPS, and Ms. Christa Mc Gonigal, Educational Specialist, BCPS attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On July 29, 2013, Ms. Williams and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a conference call with Mr. Andrew Masters, Coordinator, Student Support Team, and 504 Team, BCPS. Mr. Henderson, participated in the conference call as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
9. On August 2, 2013, the BCPS provided the MSDE with information to be considered for the investigation.

10. 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 June 12, 2013;
  - b. Section 504 Plan, dated March 29, 2012;
  - c. *Invitation to Section 504 Meeting*, dated July 31, 2012;
  - d. Student attendance data, from August 27, 2012 through June 12, 2013;
  - e. Student report card for the 2012 through 2013 school year;
  - f. *504 Meeting Attendance Sheet*, dated August 29, 2012;
  - g. Section 504 Plan, dated September 10, 2012;
  - h. Email from the school staff to the complainant, dated September 10, 2012;
  - i. Email from the complainant to the BCPS staff, dated September 11, 2012;
  - j. Email from the complainant to the BCPS staff, dated September 16, 2012;
  - k. Email from the complainant to the BCPS staff, dated September 19, 2012;
  - l. Email from the complainant to the BCPS staff, dated October 25, 2012;
  - m. Email from the BCPS staff to the complainant, dated October 25, 2012;
  - n. Email from the complainant to the BCPS staff, dated October 26, 2012;
  - o. Email between BCPS staff, dated November 15, 2012;
  - p. *Application for Home and Hospital Program*, approved by the BCPS on December 12, 2012;
  - q. Home and Hospital Teaching calendar, from December 14, 2012 through June 12, 2013;
  - r. Email from the complainant to the BCPS staff, dated January 29, 2013;
  - s. IEP team meeting notice, dated February 19, 2013;
  - t. Private psychiatrist report, dated February 19, 2013;
  - u. *Application for Home and Hospital Program*, approved by the BCPS on February 21, 2013;
  - v. Private *Psychosocial Assessment*, dated March 11, 2013;
  - w. Receipt of parental rights and procedural safeguards under the IDEA, signed by the complainant on March 12, 2013;
  - x. *IEP Team Meeting Attendance Sheet*, dated March 12, 2013;
  - y. IEP team meeting notes, dated March 13, 2013;
  - z. Consent for assessments, signed by the complainant on April 5, 2013;
  - aa. IEP team meeting notice, dated April 5, 2013;
  - bb. *Educational Assessment Report*, dated April 15, 2013;
  - cc. *Psychological Report*, dated April 16, 2013;
  - dd. *Application for Home and Hospital Program*, approved by the BCPS on April 18, 2013;
  - ee. *Evaluation Report and Determination of Initial Eligibility*, dated April 22, 2013;
  - ff. Receipt of parental rights and procedural safeguards under the IDEA, signed by the complainant on April 22, 2013;
  - gg. *IEP Team Meeting Attendance Sheet*, dated April 22, 2013; and
  - hh. IEP team meeting notes, dated April 24, 2013.

## **BACKGROUND:**

The student is fifteen (15) years old. She is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, based on Attention Deficit Disorder, Major Depression, and Anxiety Disorder, and has a Section 504 Accommodations Plan (Section 504 Plan).

The student attended the XXXXXXXXXXXXXXXXXXXX (XXXX)<sup>2</sup> from the beginning of the 2012-2013 school year until December 4, 2012. Since that time, she has received Home and Hospital Teaching Services due to her inability to attend school due to a documented emotional condition.

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. w, x, ff, and gg).

## **FINDINGS OF FACTS:**

1. On August 29, 2012, the Section 504 Team met to consider the complainant's concerns that the accommodations to be provided to the student under a Section 504 Plan be clarified to ensure the appropriate provision of those services. At the meeting, the Section 504 Plan was revised to indicate that the student is to be provided with access to counseling services during the school day upon her request. Following the meeting, the complainant requested an IDEA evaluation and the school system staff provided her with information on how to make a written referral (Docs. a, c, f, g, and interview with the BCPS staff).
2. There is no documentation regarding the date the complainant made the written referral for an IDEA evaluation. However, on September 10, 2012, the school staff contacted the complainant to schedule an IDEA evaluation (Doc. h and review of the educational record).
3. On September 11, 2012, the complainant notified school staff that the student had been hospitalized that day for the purposes of obtaining a psychiatric evaluation, and requested that the IDEA evaluation be delayed until the completion of this process. In response to the complainant's request, no further steps were taken to initiate an IDEA evaluation (Doc. i).
4. On September 20, 2012, the student returned to school upon her discharge from the hospital (Docs. j and k).

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<sup>2</sup> XXXXXXXXXXXXXXXXXXXXXXX is a Baltimore City public high school that provides "pre-professional training in the XXXXX combined with a rigorous college preparatory curriculum." Students are selected for admission based solely on an audition or portfolio (<http://www.XXXX.org>).

5. On October 25, 2012, the complainant expressed concerns to school staff that the student was informed that she would fail one of her classes if she did not complete missing assignments, and that she “shut down” after receiving this information. The complainant also expressed concern that the supports being provided through the 504 Plan were not proving effective, and requested that an IEP team convene following the next meeting of the 504 Team (Docs. l, m, and n).
6. On November 15, 2012, staff from the BCPS Special Education Parent Response Unit contacted school staff and requested that an IDEA evaluation be scheduled in response to a request received from the complainant by that office. However, there is no documentation that an IDEA evaluation was conducted (Doc. o and review of the educational record).
7. The student has not attended a school-based program since December 5, 2012 (Docs. d, p, q, u, and dd).
8. The student has been receiving Home and Hospital Teaching Services since December 14, 2012 after her private psychiatrist provided verification that she has an emotional condition that prevents her from attending school (Docs. p and q).
9. On January 29, 2013, the complainant made another written referral for an IDEA evaluation, expressing her concerns that the student had remained on Home and Hospital Teaching Services without receiving access to the general curriculum (Doc. r).
10. On March 12, 2013, the IEP team convened and considered the existing data below:
  - Information that the student was failing several classes before receiving Home and Hospital Teaching Services, but that she was earning passing grades since the initiation of home and hospital teaching services.
  - A report of the student’s private psychiatrist that the student is diagnosed with “Major Depression, severe, recurrent and Generalized Anxiety Disorder,” and that “her mental health problems [have] caused [the student] significant depression that affects her motivation and energy.” The report further states that “[d]ue to this depression, she has missed a lot of school days.”
  - A report from the student’s private psychotherapist, indicating that the student was hospitalized “for suicidal ideation and self-injurious behaviors,” and that she has “difficulty maintaining her stability with her symptoms during times of stress.” The report also indicates that the student has been experiencing stress due to difficulty focusing and concentrating, which is impacting her learning.

The team decided that the student was suspected of being a student with an Emotional Disability under the IDEA and recommended that psychological and educational assessments be conducted (Docs. e, t, v, s, w, x and y).

11. On April 5, 2013, the complainant provided written consent for the assessments to be conducted (Doc. z).
12. On April 22, 2013, the IEP team, including the complainant, convened and considered the assessment results, including a report of the psychological assessment, stating that "Current teacher reports indicated that [the student] has a difficult time working independently, often seems sad and distracted and appears to have difficulty initiating and completing homework." It also states that the teacher "views [the student] as displaying an unusually high number of health-related concerns and is frequently alone, has difficulty making friends, and/or is unwilling to join group activities." The report further states that "Depression and Anxiety are the causes of [the student's] difficulty focusing and maintaining attention in school, not the condition of [attention deficit hyperactivity disorder]." The evaluator found that the student "demonstrates a general, pervasive mood of unhappiness or depression and a tendency to develop physical symptoms or fears associated with school problems," and that "these conditions appear to have existed for a long period of time and to a marked degree" (Docs. aa, bb, cc, ee, gg, and ff).
13. At the April 22, 2013 IEP team meeting, the team also considered the supports being provided through the 504 Plan, as well as the data considered at the March 12, 2013 meeting. The team documented the determination that, while the student has an Emotional Disability that impacts her academic achievement and functional performance, there was no information that "the disability impacts her learning in a way that she would require modified delivery, modified content or modified methodology" (Docs. hh and ee).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1      Child Find Responsibilities**

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services, or are suspected of having disabilities and being in need of special education and related services (34 CFR § 300.111).

It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. To meet this expectation, school staff may consider academic and behavior management techniques that will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR § 300.111).

If school staff suspect that the student has a disability under the IDEA or receive a written referral for evaluation, the public agency must promptly request consent to assess the student and ensure that assessments are conducted, if needed (COMAR 13A.05.01.04). Upon receipt of a written referral for evaluation from a parent, if the school system does not suspect the student of being a student with a disability, it must provide the parent with proper written notice of the decision not to conduct an IDEA evaluation (34 CFR §300.503).

Based on the Findings of Facts #1 - #3 and #9 - #13, the MSDE finds that the BCPS followed proper procedures when responding to the referrals for evaluation made by the complainant at the start of the 2012-2013 school year and on January 29, 2013. However, based on the Findings of Facts #4 - #6, the MSDE finds that the BCPS did not respond to the referral for evaluation made by the complainant following the student's discharge from the hospital. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

## **Allegation #2                      April 22, 2013 Eligibility Determination**

### The IDEA Criteria for Identification as a Student with a Disability

The IDEA requires that the student meet specific eligibility criteria in order to be determined eligible for special education instruction and related services. A student with a disability under the IDEA is defined as a student with one of a list of specific disabilities, including an Emotional Disability, and who, by reason thereof, needs special education and related services (34 CFR §300.8).

An Emotional Disability is defined as a condition exhibiting one or more of a list of characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance. These characteristics include the inability to build or maintain satisfactory personal relationships, a general pervasive mood of unhappiness or depression, and the tendency to develop physical symptoms or fears associated with personal or school problems (34 CFR §300.8).

Special education instruction means specially-designed instruction to address the unique needs of a student that is required to ensure access to the general curriculum so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students (34 CFR §300.39).

### Educational Standards

In Maryland, students who are of compulsory school attendance age are required to attend a public school in the county where the student is domiciled with the parent, guardian, or relative providing informal kinship care (Md. Code Ann., Educ. §7-101). Each public school must be open for pupil attendance for at least 180 actual school days for a minimum of 3 hours each school day, and a minimum of 1,080 school hours during a 10-month period (Md. Code Ann., Educ. §7-103). The public school staff are required to meet specific licensure requirements in order to ensure that they possess minimum essential knowledge and skills needed to achieve outcomes for public education (COMAR 13A.12.01).

However, these requirements do not apply to students receiving Home and Hospital Teaching Services. For students who are unable to participate in a school-based program due to a physical or emotional condition, but previously participated in a full day school-based program, the public agency must make instructional services available for a minimum of six (6) hours per week. Individuals providing instructional services for these students are required to possess a bachelor's degree from an institution of higher education (COMAR 13A.03.05.03).

The regulations do not mandate that specific courses be offered to students receiving home and hospital teaching services. At times, the teacher providing home and hospital teaching services may not be able to teach specific courses that were available to the student in the school-based program because of the complexity of the course content (COMAR 13A.03.05.03 and .04).

#### Evaluation Procedures

As part of an initial evaluation, the public agency must review existing evaluation data, including assessment data and information from the student's teachers and parents. Based on that data, the public agency must identify what additional data, if any, is needed to determine whether the student is a student with a disability and the educational needs of the student (34 CFR §300.305 and COMAR 13A.05.01.04).

#### State Complaint Investigation Procedures

The United States Department of Education, Office of Special Education Programs (OSEP) has explained that, during the investigation of a State complaint, the State Educational Agency must determine whether proper procedures were followed and whether there is data to support those decisions (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46601, August 14, 2006). In this case, the complainant alleges that the eligibility determination was not consistent with the evaluation data (Doc. a and interviews with the complainant).

Based on the Findings of Facts #9 - #13, the MSDE finds that in response to the complainant's January 29, 2013 referral for evaluation, the BCPS considered the existing evaluation data and identified additional data needed to conduct the evaluation. Based on the Findings of Facts #10 - #13, the MSDE finds that the BCPS ensured that the additional data determined necessary was obtained and considered by the IEP team in making the eligibility determination.

Based on the Findings of Facts #10 - #13, the MSDE finds that the team's determination that the student meets the criteria for a student with an Emotional Disability is consistent with the data. However, based on the Findings of Facts #7 and #8, and #10 - #13, the MSDE finds that the decision that there is no information that the student requires specialized instruction to access the general curriculum and to meet the educational standards that apply to all students is not consistent with the data that the student has been unable to access school-based instruction, even with the provision of supports within the general education program. Therefore, the MSDE finds that a violation occurred with respect to this allegation.



## **CORRECTIVE ACTIONS/TIMELINE:**

### **Student-Specific**

The MSDE requires the BCPS to provide documentation by October 1, 2013 that the IEP team has again considered the student's eligibility and has documented how the eligibility determination it makes is consistent with the evaluation data. If the IEP team finds that the student meets the criteria for identification as a student with a disability under the IDEA, the BCPS must also ensure that an IEP is developed for the student and that the team has determined *compensatory services*<sup>3</sup> or other remedy for the delay in the identification of the student and the provision of special education and related services.

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, in accordance with (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 (34 CFR §300.504).

### **School-Based**

The MSDE further requires the BCPS to provide documentation by October 1, 2013 of the steps taken to ensure that the XXXX staff have received appropriate training to ensure that proper IDEA identification and evaluation procedures are followed.

Documentation of all corrective action 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 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 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

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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).

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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  
Darnell Henderson  
XXXXXX  
Martha J. Arthur  
Dori Wilson  
Anita Mandis  
Tyra Williams