



September 6, 2013

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

RE: XXXXX
Reference: #14-002

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 July 8, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 student.

The MSDE investigated the allegation that the BCPS has not provided the student with the “speech-to-text” assistive technology device required by the Individualized Education Program (IEP) since September 25, 2012, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.

XXX

Dr. Kim Hoffmann

September 6, 2013

Page 2

2. On July 9, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On July 22, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On July 24, 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.
5. On August 1, 2013, the MSDE received information and documentation from the BCPS regarding the allegation contained in the complaint, via email.
6. On August 7, 2013, Ms. Hartman conducted a telephone interview with the complainant regarding the allegation contained in the complaint.
7. On August 22, 2013, the MSDE received the BCPS' written response to the complaint, via email.
8. 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 July 8, 2013;
 - b. IEP, dated September 25, 2012;
 - c. IEP, dated January 28, 2013;
 - d. IEP, dated May 2, 2013;
 - e. IEP, dated June 26, 2013;
 - f. IEP, dated August 6, 2013; and
 - g. The BCPS' written response to the State complaint, dated and received by the MSDE on August 22, 2013.

BACKGROUND:

The student is fifteen (15) years old. He is identified as a student with an Other Health Impairment under the IDEA related to a diagnosis of Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education instruction and related services.

During the 2012-2013 school year, the student attended XXXXXXXXXXXXXXXXXXXXXXXX. Since the start of the 2013-2014 school year, the student has attended XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX, a BCPS public charter school.

The complainant participated in the education decision-making process during the time period covered by this investigation, and was provided with written notice of the procedural safeguards (Docs. a-g).

FINDINGS OF FACTS:

1. On September 25, 2012, the IEP team developed an annual goal for the student to improve his written language skills with the use of a speech-to-text assistive technology device. During the 2012-2013 school year, the IEP team reviewed the IEP on three (3) other occasions, and continued to require the provision of a speech-to-text device (Docs. b-e).
2. The BCPS acknowledges that the student was not provided with the speech-to-text device during the 2012-2013 school year. The BCPS also reports that the IEP team is unable to determine whether the lack of the provision of the device has negatively impacted the student's ability to benefit from his educational program (Docs. f and g).
3. On August 6, 2013, the IEP team convened to review the student's IEP. The documentation reflects that the team continued the annual goal for the student to improve his written language skills, but determined that he does not require a speech-to-text device to do so (Doc. f.)
4. However, at the August 6, 2013 IEP team meeting, the team did not revise the present levels of performance, which states that a speech-to-text device is to be used to assist the student in achieving the annual goal related to improving his written language skills (Doc. f).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education services required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 and #2, the MSDE finds that the BCPS did not ensure that the student was provided with the use of the speech-to-text device required to address the annual goal to improve his written language skills during the 2012-2013 school year. Therefore, this office finds that a violation has occurred.

ADDITIONAL VIOLATION:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of 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

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Dr. Kim Hoffmann

September 6, 2013

Page 4

education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46602, August 14, 2006).

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 levels of performance, as reflected in the evaluation data (34 CFR §§300.101 and .320, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46602, August 14, 2006).

Based on the Findings of Facts #3 and #4, the MSDE finds that, since August 6, 2013, the BCPS has not ensured that the annual IEP goal to improve the student's written language skills is aligned with his present level of performance in that area. Therefore, the MSDE finds that the IEP does not address the student's identified written language needs, and that a violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

IEP Review and Revision

The MSDE requires the BCPS to provide documentation by October 15, 2013, that an IEP team has reviewed and revised the IEP, as appropriate, to ensure that it addresses the student's identified written language skills needs.

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 to file a due process complaint, in accordance with the IDEA.

Compensatory Services¹ or Other Remedy

The MSDE requires the BCPS to provide documentation by October 15, 2013, that it has offered compensatory services¹ or other remedy to redress the violations identified in this investigation.

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 the BCPS to provide documentation by December 1, 2013 of the steps it has taken to determine if the violations related to the IEP development and implementation are unique to this case or if they represent a pattern of noncompliance at the
XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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. Documentation of the results of this review must be provided 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 United States Department of Education, Office of Special Education Programs. 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.

Documentation of the 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.

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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Dr. Kim Hoffmann

September 6, 2013

Page 6

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 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
Charles Brooks
Nancy Ruley
Darnell L. Henderson
XXXXXXXXXXXXXX
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Dori Wilson
Anita Mandis
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Christine Hartman