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State Superintendent of Schools

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August 29, 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: XXX
Reference: #14-003

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 daughter, XXXXXXXXX. 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 Individualized Education Program (IEP) team has considered positive behavioral interventions and supports, as well as whether a change in the educational placement is required, to address the student’s behaviors that interfere with her learning since November 8, 2012, in accordance with 34 CFR §§ 300.114-.116 and .324.

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INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 8, 2013, the MSDE received correspondence from the complainant that contained allegations of violations of the IDEA.
3. 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, Office of Legal Counsel, BCPS.
4. On July 22, 2013, Ms. Williams contacted the complainant, by telephone, to clarify the allegation to be investigated.
5. On August 2, 2013, Ms. Williams reviewed the student's educational record at the BCPS Central Office and Mr. Darnell Henderson, Associate Counsel, Office of Legal Counsel, BCPS, was present at the record review.
6. On August 6, 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 office review the alleged violation.
7. On August 8, 2013, Ms. Williams and Ms. Koliwe Moyo, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with Ms. XXXXXXXXX, IEP Chairperson. Mr. Henderson participated in the telephone interview as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On August 13, 2013, the BCPS sent the MSDE information to be considered during the investigation.
9. On August 16, 2013, Ms. Williams and Ms. Kathy Stump, Education Program Specialist, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with Mr. Charles Altman, Education Program Specialist, BCPS, and Mr. James Pierce, Special Education Parent Response Unit, BCPS. Mr. Henderson participated in the telephone interview as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, listed below.

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- a. Correspondence and attachments from the complainant to the MSDE, received on July 8, 2013;
- b. IEP, dated February 28, 2012;
- c. Student attendance data, dated August 27, 2012 through June 11, 2013;
- d. IEP team meeting invitation, dated November 1, 2012;
- e. Receipt of IEP documents prior to IEP Team meeting, dated November 8, 2012;
- f. IEP team meeting waiver for ten (10) day notice requirement, dated November 8, 2012;
- g. Receipt of Parental Rights, dated November 8, 2012;
- h. *2012-13 IEP Team Meeting Attendance Sheet*, dated November 8, 2012;
- i. Written notice of the IEP team's decisions, dated November 8, 2012;
- j. IEP, dated November 8, 2012;
- k. Student behavior incident data, dated November 15, 2012 through June 6, 2013;
- l. IEP team meeting invitation, dated November 30, 2012;
- m. Receipt of Parental Rights, dated December 13, 2012;
- n. *2012-13 IEP Team Meeting Attendance Sheet*, dated December 13, 2012;
- o. *Notice and Consent for Assessment*, dated December 13, 2012;
- p. IEP, dated December 13, 2012;
- q. Psychological Assessment, dated January 11, 2013;
- r. *Functional Behavioral Assessment*, dated January 15, 2013;
- s. *Educational Assessment Report*, dated January 15, 2013;
- t. IEP team meeting invitation, dated January 15, 2013;
- u. *Social Work Progress Report*, dated January 24, 2013;
- v. *Speech/Language Assessment Report*, dated January 29, 2013;
- w. *2012-13 IEP Team Meeting Attendance Sheet*, dated January 29, 2013;
- x. Receipt of IEP documents prior to IEP Team meeting, dated January 29, 2013;
- y. Receipt of Parental Rights, dated January 29, 2013;
- z. IEP, dated January 29, 2013;
- aa. IEP team meeting invitation, dated May 8, 2013;
- bb. *2012-13 IEP Team Meeting Attendance Sheet*, dated May 28, 2013;
- cc. Receipt of IEP documents prior to IEP Team meeting, dated May 28, 2013;
- dd. Receipt of Parental Rights, dated May 28, 2013;
- ee. IEP, dated May 28, 2013;
- ff. *Social Work Progress Report*, dated May 28, 2013;
- gg. IEP team meeting invitation, dated June 3, 2013;
- hh. *2012-13 IEP Team Meeting Attendance Sheet*, dated June 11, 2013;
- ii. Receipt of IEP documents prior to IEP Team meeting, dated June 11, 2013;
- jj. IEP, dated June 11, 2013;
- kk. Student report card, dated June 12, 2013; and
- ll. Receipt of Parental Rights, dated June 17, 2013.

BACKGROUND:

The student is eight (8) years old and is identified as a student with a Specific Learning Disability, under the IDEA. The student attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXX), where she receives special education and related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. b, g, j, m, p, y, z, dd, ee, jj, and ll).

FINDINGS OF FACTS:

1. At the start of the 2012-2013 school year, the student's IEP required that she be provided with special education instruction in reading and math in both the general education and separate special education classroom. During the school year, the complainant expressed concerns to the IEP team that, despite the provision of special education instruction and related services, the student was not making progress (Docs. a, j, p, z, and jj).
2. The IEP team convened on November 8, 2012, December 13, 2012, January 29, 2013, May 28, 2013, and June 11, 2013. At each meeting, the team considered information from the student's teachers that the student had been inattentive, had not been motivated to learn, and had refused to follow the process involved in completing math word problems (Docs. d, e, f, h, i, j, l, n, p, t, w, x, z, aa, bb, cc, ee, gg, hh, ii, and jj).
3. At the November 8, 2012 IEP team meeting, the IEP team also considered information from the complainant that the student's behavior may be related to stress caused by changes at home. In response to those concerns, the behavioral supports and interventions were added to the IEP at the meeting in order to address the behaviors (Docs. b, d, e, f, g, h, i, and j).
4. At the December 13, 2012 IEP team meeting, the complainant expressed concerns that the behavioral supports put in place were not effective. The IEP team also considered information from the student's teachers that the student continued to lack motivation to complete work, despite the interventions being provided. The IEP team recommended that updated assessments be conducted, which included a Functional Behavioral Assessment (FBA) and a psychological assessment in response to information that the student began demonstrating additional aggressive behaviors (Docs. c, k, l, m, n, o, and p).
5. At that IEP team meeting, the IEP team also revised the student's IEP to increase the amount of special education instruction to be provided in the separate special education classroom. The IEP team also added counseling as a related service along with identifying the need for teacher reinforcement and encouragement of appropriate behavior in both academic and nonacademic settings (Docs. c, k, l, m, n, o, and p).
6. At the January 29, 2013 IEP team meeting, the IEP team considered the assessment results, including a FBA that states that aggressive behavior results when the student is

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- frustrated with work or has a peer conflict. The FBA includes a recommendation to have the student work with a preferred peer to address the behavior related to frustration with the work. At the meeting, the IEP team developed a Behavioral Intervention Plan (BIP) that includes the strategy of allowing the student to work with a preferred peer to address this behavior (Docs. q, r, s, t, u, v, and z).
7. At the January 29, 2013, May 28, 2013, and June 11, 2013 IEP team meetings, the IEP team documented that the student continued to lack motivation and did not engage in her work (Docs. z, ee, and jj).
 8. On March 22, 2013 and May 28, 2013, the student's IEP progress reports indicated that she was continuing to demonstrate a lack of motivation to learn and refusal to follow direction regarding the completion of math word problems (Doc. z).
 9. At the May 28, 2013 IEP team meeting, the IEP team revised the IEP to increase the amount of special education instruction to be provided, but there is no documentation that the team considered additional behavioral supports to address the student's continuing interfering behavior or that the team determined that the supports remained appropriate and the basis for such a decision (Doc. ee and ff).
 10. At the June 11, 2013 IEP team meeting, although the IEP team documented that the student's behavior had improved, they also documented that the student continued to refuse to engage in her work. Further, the June 11, 2013 progress report for math problem solving states that the student continues to demonstrate a lack of motivation to learn and refusal to follow directions (Docs. ee and jj).
 11. At each IEP team meeting, the team considered the complainant's request that the student be provided with behavioral supports in a more structured setting. The team also determined that the Least Restrictive Environment (LRE) in which the IEP could be implemented, with the provision of those supports, is a combination of the general and separate special education classrooms (Docs. i, j, p, z, ee, and jj).
 12. The student's 2012-2013 report card reflects that she received "unsatisfactory" marks in both math and Language Arts throughout the school year (Doc. kk).

DISCUSSION/CONCLUSIONS:

In order to ensure that a Free Appropriate Public Education (FAPE) is provided, the public agency must provide an IEP that is designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum (34 CFR §§300.101 and .320).

The student's needs are identified from information about current levels of academic and functional performance. When determining the levels of academic achievement and functional performance, the team must consider the strengths of the student, the concerns of the parents for

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enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. The IEP team must also consider, in the case of a student whose behavior impedes the student's learning or that of others, the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §300.324).

The educational placement of a student with a disability must be in the least restrictive environment in which the IEP can be implemented. To the maximum extent appropriate, students with disabilities must be educated with students who are not disabled. The IDEA requires that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

In this case, the complainant alleges that the school system has not ensured that the student has been provided with the supports needed in the educational placement where her behavioral needs can be addressed (Doc. a).

Based on the Findings of Facts #1-#6, the MSDE finds that since November 8, 2012, the IEP team considered information about the student's classroom performance and the most recent evaluation data, as well as the complainant's concerns and determined the behavioral supports needed to address the student's interfering behaviors. Also, based on the Finding of Fact # 11, the MSDE finds that, at each IEP team meeting during the 2012-2013 school year, the IEP team reviewed the student's LRE and determined that placement in both the general education classroom and separate special education classroom continued to be appropriate.

However, based on the Findings of Facts #7-#10 and #12, the MSDE finds that the IEP team has not considered the need for the provision of any additional behavioral supports or interventions since March 22, 2013, despite the student's continued work refusal and lack of motivation. Therefore, the MSDE finds that a violation occurred, since March 22, 2013.

CORRECTIVE ACTIONS/TIMELINE:

Student Specific

The MSDE requires the BCPS to provide documentation by October 1, 2013 that the IEP team has convened and considered whether the student requires additional behavioral supports or strategies to address her work refusal and lack of motivation consistent with the data. If the student requires additional behavioral supports or strategies, the team must also determine the amount and nature of compensatory services¹ to remediate the violation.

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

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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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 determine if the violation identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX.

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, it 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 of the determination of 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. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

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 the complainant and the school system 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

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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.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:tw

cc : Tisha S. Edwards
Charles Brooks
Darnell Henderson
XXXXXXXXXX
Martha J. Arthur
Dori Wilson
Anita Mandis
Tyra Williams