



November 5, 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: #14-020

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 September 12, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXX, 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 ensured that the student’s Individualized Education Program (IEP) has been appropriate to address his social, emotional, and behavioral needs since September 12, 2012,<sup>1</sup> in accordance with 34 CFR §300.324.

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<sup>1</sup> The complainant alleged that the violation has been ongoing for the past two (2) school years. However, the complainant was informed, in writing, on September 27, 2013, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 13, 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 September 25, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On September 27, 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 October 4, 2013, Ms. Hartman reviewed the student's educational record at the BCPS Central Office. Ms. Ruley was present at the record review.
6. On October 21, 2013, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXX, Interim Principal;
  - b. Ms. XXXXXXXXX, Special Education Teacher;
  - c. Ms. XXXXXXXXX, Special Education Teacher;
  - d. Ms. XXXXXXX, IEP Chairperson; and
  - e. Ms. XXXXXXX School Psychologist.

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

7. On October 30, 2013 and November 4, 2013, Ms. Hartman conducted telephone interviews with the complainant regarding the allegation contained in the complaint.
8. On October 30 and 31, 2013, and November 4, 2013, the MSDE requested additional information and documentation from the BCPS, via email.
9. On October 31, 2013 and November 4, 2013, the MSDE received additional information from the BCPS regarding the allegations contained in the complaint, via email.

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10. 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 September 12, 2013;
  - b. IEP, dated February 15, 2012;
  - c. IEP, dated January 28, 2013;
  - d. IEP, dated May 6, 2013;
  - e. IEP, dated September 10, 2013;
  - f. Behavior Intervention Plan, dated May 6, 2013;
  - g. Student Performance Review Request, dated May 27, 2013;
  - h. Electronic log of the BCPS' staff communication with the complainant, dated May 20, 2013;
  - i. Notice and Consent for Assessments, dated September 10, 2013;
  - j. Notice of IEP Team Meeting, dated October 8, 2013; and
  - k. Email correspondence from the BCPS to the MSDE, dated November 4, 2013.

**BACKGROUND:**

The student is eleven (11) years old. He has difficulty with attention, asthma, and allergies, and is identified as a student with an Other Health Impairment under the IDEA. He attends XXXXXXXXXXXXXXXXXXXXXXXX, where he 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. a-e).

**FINDINGS OF FACTS:**

1. The IEP in effect on September 12, 2012, which was developed on February 15, 2012, identifies a need for the student to improve social skills consistent with data from the complainant and the student's teachers that he needs to "develop and enhance appropriate social skills," including maintaining eye contact, initiating conversations, participating in discussions, self-regulation, and dealing with frustrations and distress (Doc. b).
2. The September 12, 2012 IEP included an annual goal for the student to improve his social skills, and required special education instruction and related counseling services in a separate, special education classroom to assist him in achieving the goal. The separate, special education classroom included students in several different grades (Doc. b and interviews with the BCPS staff).
3. On January 28, 2013, the IEP team revised the annual IEP goal for the student to improve social skills consistent with information provided by the complainant and the student's

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teachers that, while the student has made improvement in his social interaction skills, he continues to struggle with handling conflict (Doc. c).

4. On May 6, 2013, the IEP team convened to consider the complainant's concerns that the student was arriving home upset because of teasing by his peers because he was the oldest student in the class. While the teachers reported not having been aware of the teasing, the team decided that the student would be seated away from students who had been teasing him, and that he would be provided with rewards for ignoring any teasing that the teachers observe (Docs. d, f, and g).
5. The complainant requested that the student's educational placement be changed from a separate, special education classroom to the general education classroom with same age peers, and that he be provided with the services of an adult to work exclusively with him throughout the school day in order to provide him with support. In response, the IEP team decided to consult with staff from the BCPS' Central Office and to reconvene to consider the complainant's request. The team also decided that, in the meantime, the student would receive special education instruction in the general education classroom for nonacademic classes on a trial basis (Doc. d).
6. On May 20, 2013, the BCPS' Central Office staff informed the school staff that additional data was needed in order to consult with the IEP team about the complainant's request for a change in educational placement with the provision of additional supports (Doc. h and interviews with the BCPS staff).
7. The electronic log of communication with the complainant states that, on May 20, 2013, the complainant agreed that the IEP team would reconvene the following school year since they were nearing the end of the 2012-2013 school year (Doc. h).
8. On September 10, 2013, the IEP team reconvened and considered information from the complainant that she had observed an increase in the student's anxiety since the May 6, 2013 IEP team meeting. The IEP team recommended that psychological, educational, communication, fine motor, and social and emotional assessments be conducted, and the complainant provided consent for these assessments (Docs. e and i).
9. On November 4, 2013, the IEP team reviewed the assessment results, but made no revisions to the IEP. At that meeting, the IEP team discussed that the assessment results would be shared with the BCPS' Central Office staff, and that they would reconvene on December 16, 2013 to consider information from the BCPS' Central Office staff and address the complainant's request for a change in placement with additional supports (Docs. j and k, and interviews with the complainant).

### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that, at the beginning of each school year, the student has an IEP that is based on the student's present levels of academic and functional performance (34 CFR §§300.101, .320, and .323). Information about the student's present levels of performance is obtained through the evaluation data, which includes assessment results, information from the student's teachers, and the parent's concerns (34 CFR §300.324).

The public agency must also ensure that the educational placement is made by the IEP team and is based on the IEP. The educational placement may not be based solely on factors such as the configuration of the service delivery system, availability of staff, or administrative convenience. Further, the public agency must ensure that a student is not removed from age-appropriate regular classrooms solely because of needed modifications in the general education curriculum (34 CFR §300.116, COMAR 13A.05.01.10, and *Letter to Clay*, United States Department of Education, Office of Special Education Programs, 23 IDELR 341, May 17, 1995).

In this case, the complainant alleges that a change in educational placement and the provision of additional supports are required in order to enable the student to receive instruction with same-aged peers, which is needed to address his social, emotional, and behavioral needs (Docs. a and g, and interviews with the complainant). Based on the Findings of Facts #1 - #5, the MSDE finds that, from September 12, 2012 until May 6, 2013, the IEP has been based on the student's present levels of performance that were determined by the IEP team consistent with the evaluation data.

However, based on the Findings of Facts #4 - #9, the MSDE finds that the BCPS has not ensured that additional data needed to address the complainant's request has been obtained within sufficient time to make sure that the IEP required the provision of special education and related services in an appropriate educational placement by the start of the 2013-2014 school year.

Based on the Findings of Facts #6 and #7, the MSDE finds that the delay in obtaining the data and decision to continue the student's current educational placement was based on administrative convenience and not on the student's needs. Therefore, the MSDE finds that the BCPS has not followed proper procedures to ensure that the student's IEP is designed to provide the student with a FAPE since the start of the 2013-2014 school year, and that a violation has occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student specific**

The MSDE requires the BCPS to provide documentation by January 2, 2014, that the IEP team has addressed the complainant's request for a change in educational placement and additional supports and reviewed and revised, as appropriate, the student's IEP consistent with the data. If the IEP team determines that revisions to the IEP are required, it must also determine the amount

and nature of *compensatory services*<sup>2</sup> necessary to remedy the delay in obtaining the data necessary to identify and address the student's 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 file a due process complaint in order to resolve the dispute, in accordance with the IDEA.

### **School-based**

The MSDE requires the BCPS to provide documentation by March 1, 2013, of the steps it has 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 XXXXXXXXXXXX. 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, 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 date of its determination.

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 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 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.

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<sup>2</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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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 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  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
Christine Hartman  
Martha J. Arthur