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State Superintendent of Schools

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May 8, 2014

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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: #14-071

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 March 12, 2014,¹ the MSDE received a complaint from Ms. XXXXXXXXX, 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 allegations listed below:

1. The BCPS has not ensured that the student has received special education instruction and related services in the educational placement determined by the Individualized Education Program (IEP) team since the start of the 2013-2014 school year, in accordance with 34 CFR §§300.114, .323, and .327.

¹ On March 10, 2014, the MSDE received correspondence from the complainant containing allegations of violations of the Individuals with Disabilities Education Act (IDEA). On March 12, 2014, the complainant provided this office with the requested remedy, which is required to initiate the complaint investigation (Doc. a)

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2. The BCPS did not follow proper procedures to ensure the complainant's participation in the November 4, 2013 IEP team meeting, in accordance with 34 CFR §§300.321 and .322, and COMAR 13A.05.01.07.
3. The BCPS has not ensured that the student's IEP has addressed his social, emotional, and behavioral concerns since November 7, 2013, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 10, 2014, the MSDE sent a copy of the complaint's correspondence, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On March 11, 2014, Ms. Hartman conducted a telephone interview with the complainant to request that she provide a proposed remedy to the complaint, and to clarify the allegations to be investigated.
4. On March 12, 2014, the complainant provided the MSDE with a requested remedy, via electronic mail (email). On the same date, the MSDE sent a copy of the initial correspondence and the requested remedy, via facsimile, to Dr. Hoffmann and Ms. Ruley.
5. On March 25, 2014, 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 March 26, 2014 and April 23, 2014, the MSDE received information and documentation from the complainant.
7. On March 27, 2014, Ms. Hartman reviewed the student's educational record at the BCPS' Central Office. Mr. Darnell L. Henderson, Associate Counsel, BCPS was present at the record review.
8. On March 27, 2014, April 3, 5, 15, 22, 23, 24, 25, 28, 29, and 30, 2014, and May 2 and 5, 2014, the MSDE received information and documentation from the BCPS regarding the complaint.

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9. On April 7, 2014, Ms. Hartman and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review documents, and interviewed the following staff:

- a. Mr. XXXXXXXX, Specialized Educator;
- b. Ms. XXXXXXXX, Special Education Liaison, BCPS;
- c. Mr. XXXXXXXX, Specialized Educator;
- d. Ms. XXXXXXXX, Educational Parent Response Specialist, BCPS;
- e. Ms. XXXXXXXX, Educational Specialist, BCPS;
- f. Ms. XXXXXXXX, School Social Worker;
- g. Ms. XXXXXXXX, IEP Chairperson;
- h. Ms. XXXXXXXXXXXX, Specialized Educator; and
- i. Ms. XXXXXXXX, Principal.

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

10. On May 6, 2014, the Ms. Hartman conducted a telephone interview with the complainant regarding the allegations contained in the complaint.

11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. Correspondences and attachments from the complainant to the MSDE, received on March 10 and 12, 2014;
- b. IEP, dated November 12, 2012;
- c. Email correspondence among the BCPS staff, dated October 9, 2013 and April 3, 2014;
- d. IEP and Prior Written Notice document, dated November 4, 2013;
- e. Parent contact log entry for November 4, 2013;
- f. Email correspondences among the BCPS staff, dated September 20 and 24, 2014;
- g. Social Work Encounter Log entry, dated October 8, 2013;
- h. Behavioral Intervention Plan (BIP), dated October 28, 2013;
- i. Correspondence from the BCPS to the complainant, dated November 6, 2013;
- j. IEP and Prior Written Notice document, dated March 6, 2014;
- k. Student's disciplinary record for the 2013-2014 school year;
- l. Student's attendance record for the 2013-2014 school year;
- m. Notice of IEP Team Meeting, dated April 23, 2014;
- n. Referrals to the "Support Room," dated September 9, 12, 13, 16, and 24, 2013, and accompanying anecdotal records of the student's negative behaviors resulting in exclusion; and
- o. Data base entry logging the complaint filed by the complainant with the BCPS Special Education Parent Response Unit concerning the combining of the

student's special education class with another separate special class, dated September 20, 2013.

BACKGROUND:

The student is ten (10) years old and is identified as a student with an Emotional Disability under the IDEA and has an IEP that requires the provision of special education and related services.

At the start of the 2013-2014 school year, the student attended XXXXXXXXXXXXXXXXXXXX. Since November 7, 2013, the student has been attending XXXXXXXXXXXXXXXXXXXXXXXXXXXX as a result of the complainant's request for a transfer.

Following the student's suspension from school toward the end of March 2013, the student has had several unexcused absences from school. The complainant reports that she is keeping him home because she does not believe the current IEP addresses the student's behavioral needs and is concerned that disciplinary action will continue to be taken until the IEP is revised to do so. An IEP team is scheduled to be convened on May 16, 2014 to address the complainant's concerns.

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a-n).

ALLEGATION #1: SPECIAL EDUCATION INSTRUCTION IN THE EDUCATIONAL PLACEMENT DETERMINED BY THE IEP TEAM SINCE THE START OF THE 2013-2014 SCHOOL YEAR

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2013-2014 school year, when the student was attending XXXXXXXXXXXXXXXXXXXX, was developed on November 12, 2012. The IEP documents that the student's functional level of performance in terms of behavior was "below expectations," in that the student was "unable to modulate his emotional response" and had "aggressive behaviors" which had "increased in intensity and duration," requiring crisis intervention (Doc. b).
2. The IEP developed on November 12, 2012 included annual goals for the student to improve his ability to participate in class, demonstrate empathy and remorse, interact positively with peers and adults, comply with school rules, and eliminate disruptive behaviors. The IEP required the provision of special education instruction in a separate special education class with a small student-to-teacher ratio, social work services as a related service, and crisis intervention services (Doc. b).

3. The BCPS staff report that, due to the lack of sufficient staffing at the school, the student's separate, special education class was combined with another separate, special education class from the start of the 2013-2014 school year until September 25, 2013,² resulting in a larger class setting (Docs. c and j and interviews with the BCPS staff).
4. On November 7, 2013, as a result of the complainant's request for a transfer, the student enrolled in XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The parties agree that the classroom in which the student receives special education instruction at XXXXXXXXXXXXXXXXXXXXXXXXXXXX is a separate, special education class containing four (4) students and one (1) teacher (Doc. i and interviews with the BCPS staff and the complainant).

DISCUSSION/CONCLUSIONS:

The local school system is required to ensure that the student is provided with the special education and related services in the educational placement required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 - #3, the MSDE finds that there is documentation that the student was not provided with special education instruction in the educational placement required by the IEP from the start of the 2013-2014 school year until September 25, 2013. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

Based on the Finding of Fact #4, the MSDE finds that the student has been placed in a separate, special education class with a small student-to-teacher ratio, as required by the IEP, since September 25, 2013.

ALLEGATION #2: ENSURING THE COMPLAINANT'S PARTICIPATION IN THE NOVEMBER 4, 2013 IEP TEAM METING

FINDINGS OF FACTS:

5. On November 4, 2013, while the student was still enrolled at XXXXXXXXXXXXXXXXXXXX XXX, the IEP team was scheduled to convene at 8:50 AM in order to conduct an annual review of the IEP (Docs. d and e).
6. The documentation reflects that, on the morning of November 4, 2013, the complainant telephoned the IEP chairperson and arranged to reschedule the meeting for the afternoon of the same day because a scheduling conflict had arisen that would otherwise prevent her from attending (Doc. e).

² The complainant had filed a complaint directly with the BCPS about the combination of the classes. As a result of BCPS' internal investigation, XXXXXXXXXXXXXXXXXXXX was required to separate the classes. There is documentation that this was accomplished on September 25, 2013 (Docs. c, j, and o, and interviews with the BCPS staff and the complainant).

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7. Despite having agreed to the rescheduling of the IEP team meeting, the school-based members of the IEP team decided to conduct the IEP team meeting at the originally scheduled time. As a result, the complainant was unable to participate in the IEP team meeting (Docs. d and e).

DISCUSSION/CONCLUSIONS:

The local school system is required to take steps to ensure that a parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend and scheduling the meeting at a mutually convenient time and place (34 CFR §300.322).

Based on the Findings of Facts #5 - #7, the MSDE finds that, by changing the time of the IEP team meeting back to 8:50 AM on November 4, 2013, after having agreed to the later time, the school system failed to ensure that the complainant had the opportunity to participate in the IEP team meeting. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

ALLEGATION #3: IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL CONCERNS SINCE NOVEMBER 7, 2013

FINDINGS OF FACTS:

November 4, 2013 IEP Team Meeting

8. The IEP in effect on November 7, 2013 was developed on November 4, 2013. At the November 4, 2013 IEP team meeting, the student's teachers reported that the student continued to display distractibility, an inability to focus without redirection, low frustration threshold, aggressive behaviors, and an inability to interact positively with peers and adults, and that he was not making sufficient progress on all of the behavioral goals. The documentation reflects that the student's interfering behaviors escalated following the combination of the two separate special education classes (Docs. d, f, g, and n).
9. At the November 4, 2013 meeting, the IEP team decided that the student's behaviors would be addressed by teaching him "alternative ways to think about feelings" and talking to him about "ways to manage frustration" (Doc. d and h).
10. Due to her concern that the student had not received enough support during the time period that the student's class was combined with another special education class, the

complainant submitted a request to the BCPS Central Office for the student to be transferred to another school following the November 4, 2013 IEP team meeting (Doc. i).

March 6, 2014 IEP Team Meeting

11. On March 6, 2014, the IEP team convened to review the student's education program and to determine whether the violation found as a result of the BCPS' internal investigation concerning the student's educational placement while at XXXXXXXXXXXXXXXXXXXX² had resulted in a negative impact on the student's ability to benefit from his education program (Doc. j).
12. At the March 6, 2014 IEP team meeting, the team considered information from the complainant that the student had experienced an increase in interfering behaviors since the period of time his class was combined with another class when he was at XXXXXX XXXXXXXXXXXX. The team also considered information from the assistant principal of XXXXXXXXXXXXXXXXXXXX that the student had made academic progress at the school and that he did not receive any suspensions or office referrals during the period when his class was combined with another class (Doc. j).
13. Based on the information provided by the assistant principal, the IEP team determined that, while the student's educational placement at XXXXXXXXXXXXXXXXXXXX between the start of the 2013-2014 school year and September 25, 2013² was not consistent with the IEP, the change in placement did not have a negative impact on his ability to benefit from his education program. However, there is no documentation that the IEP team considered contradictory data in the educational record that the student's interfering behavior had escalated during the time period when his class was combined with another class at XXXXXXXXXXXXXXXXXXXX. In addition, there is no documentation that the IEP team considered that the student did, in fact, receive disciplinary referrals during that time period, several of which resulted in his removal from the classroom (Docs. f, g, j, and n).
14. At the March 6, 2014 IEP team meeting, the team also considered information from the school staff that, in the month prior to the IEP team meeting, the student had received thirteen (13) office referrals for his behavior at XXXXXXXXXXXXXXXXXXXX. In order to address the student's current behavior, the IEP team decided to conduct a re-evaluation and determined that, pending the re-evaluation, the student would receive support from a dedicated aide on a trial basis to assist him with controlling his behavior and staying focused on tasks (Docs. j and k).

DISCUSSION/CONCLUSIONS:

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student,

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

Based on the Findings of Facts #8 - #14, the MSDE finds that the IEP team has continuously reviewed the student's program and progress, has revised the IEP to address his continued behavioral problems, and is obtaining additional data to assist with identifying and addressing these needs. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

Additional Issue: Consideration of All Information when Reviewing the IEP

In reviewing a student's educational program and making determinations about a Free Appropriate Public Education (FAPE), the IEP team must consider all information concerning the academic, developmental, and functional needs of the student (34 CFR §300.324).

Based on the Findings of Facts #8 and #11 - #13, the MSDE finds that there is no documentation that the IEP team considered all of the data when determining on March 6, 2014 that the change in educational placement had no negative impact on the student's ability to benefit from the education program. Therefore, the MSDE finds that a violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation, by the end of the 2013-2014 school year, that an IEP team has convened and determined the following based on the evaluation data:

1. the student's current levels of academic and functional performance;
2. the levels of academic and functional performance that were expected to be achieved by that time;
3. the amount and nature of services needed to compensate the student for the violations identified, based upon any identified discrepancy between the student's expected and actual levels of performance; and
4. a plan for how and when the compensatory services are to be provided within a year of the date of this Letter of Findings.

The BCPS must ensure that the complainant is provided with proper written notice of the decisions made, including the options considered, the basis for the decisions, and the data upon which the decisions were based.

School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2014-2015 school year, of the steps taken at XXXXXXXXXXXXX Elementary School:

- to ensure that students receive special education services in the educational placement required by the IEP; and
- to ensure that parents are provided with the opportunity to participate in IEP team meetings.

The MSDE also requires the BCPS to provide documentation by the start of the 2014-2015 school year, of the steps it taken at XXXXXXXXXXXXXXXXXXXXXXXXXXXX to ensure that IEP teams consider all of the existing data when conducting a review of a student's IEP, and that decisions made are consistent with the data.

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.

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.

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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

c: Tisha S. Edwards
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