



May 6, 2014

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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: #14-072

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 10, 2014 the MSDE received a complaint from Ms. XXXXXXXXXXXXXXX, 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 above-referenced student. The MSDE investigated the allegations listed below.

1. The BCPS did not ensure that the complainant was provided with written notice of the Individualized Education Program (IEP) team’s decision to discontinue the student’s testing accommodations in July 2013, in accordance with 34 CFR §§300.503.
2. The BCPS has not ensured that the IEP team has reviewed and revised the student’s IEP to address lack of expected progress toward achieving the annual goals, since January 2014, in accordance with 34 CFR §300.324.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 18, 2014, 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 March 28, 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 Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
4. On April 3, 2014, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE conducted a site visit at the XXXXXXXXXXXXXXXX (XXXXXXX), and interviewed Ms. XXXX XXXX, IEP Chairperson. Ms. Nancy Ruley, Legal Counsel, BCPS, was present at the review as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed. On the same date, the BCPS provided the MSDE with documentation from the student's educational record.
5. 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 March 10, 2014 and April 11, 2014;
  - b. IEP, dated April 30, 2013;
  - c. Maryland Online IEP database parent contact log from May 3, 2013 to March 21, 2014;
  - d. IEP team meeting notice, dated June 4, 2013;
  - e. IEP and *Prior Written Notice*, dated July 11, 2013;
  - f. Excerpt from the BCPS communication logs, dated July 12, 2013 and August 26, 2013;
  - g. Special Education services log from August 26, 2013 to March 31, 2014;
  - h. Reports of progress, dated October 31, 2013 and January 17, 2014;
  - i. IEP team meeting notice, dated March 12, 2014;
  - j. IEP and *Prior Written Notice*, dated April 10, 2014;
  - k. IEP team meeting notice, dated April 29, 2014 and
  - l. The student's report card for the 2013-2014 school year.

### **BACKGROUND:**

The student is fourteen (14) years old and attends XXXXXXXXXXXX. He is identified as a student with an Other Health Impairment under the IDEA, related to a diagnosis of Attention

Deficit/Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education instruction (Docs. a – e and g - l).

**ALLEGATION #1: PRIOR WRITTEN NOTICE OF THE DECISIONS MADE AT THE JULY 11, 2013 IEP TEAM MEETING**

**FINDINGS OF FACTS:**

1. On July 11, 2013, the IEP team convened to complete a reevaluation. The complainant participated in the meeting, via teleconference. During the meeting, the school-based members of the team recommended the discontinuation of testing and instructional accommodations and the complainant expressed her disagreement. However, based on the information from the school staff, the IEP team decided that the student no longer requires the support, and the IEP was revised to discontinue the accommodations beginning at the start of the 2013-2014 school year (Docs. b and e).
2. The communication logs maintained in the student's educational record indicate that the IEP and a *Prior Written Notice* document from the July 11, 2013 IEP team meeting were mailed to the complainant on July 12, 2013. The documentation that was provided to the complainant reflects the options the IEP team considered when making the decision about the need for accommodations, the team's decision, the basis for the decisions, and information regarding who the complainant can contact within the school system if she requires assistance with understanding the information provided (Docs. e and f).
3. There is documentation that on August 26, 2013, the first day of the 2013-2014 school year, the school staff reviewed and began implementing the IEP developed on July 11, 2013 (Docs. f and g).

**DISCUSSION/CONCLUSIONS:**

Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a Free Appropriate Public Education (FAPE) to the student. The written notice must include a statement of the action proposed or refused, an explanation of the basis for the decision, a description of the data used in making the decision, a description of other options considered, and information on where the parents can obtain assistance in understanding the information provided (34 CFR §300.503).

In this case, the complainant alleges that she was unaware that the team had accepted the school-based recommendations by the team members and revised the IEP despite her objections. Based on the Findings of Facts #1 - #3, the MSDE finds that written notice of the decisions made regarding the discontinuation of accommodations on the IEP were sent to the complainant prior to implementation of those decisions at the start of the 2013-2014 school year. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

**ALLEGATION #2: ADDRESSING LACK OF EXPECTED PROGRESS SINCE  
JANUARY 2014**

**FINDINGS OF FACTS:**

4. The annual goal for the student to improve his written language expression skills was developed on July 11, 2013 and states that the goal will be achieved by July 2014 (Doc. e).
5. On October 31, 2013, a report was made that the student was making sufficient progress toward achieving the annual IEP goal (Doc. h).
6. On January 17, 2014, a report of the student's progress toward achieving the IEP goal was generated which indicated that the student was not making sufficient progress on the goal (Doc. h).
7. On April 10, 2014, the IEP team convened to review the student's progress and to consider the complainant's concern that the team had not previously convened to address the lack of expected progress reported on January 17, 2014. At the meeting, the student's teacher reported that the student has made continuous progress towards achievement of the goal. The teacher indicated that the January 17, 2014 report should have reflected that he was making sufficient progress at that time, but contained a typographical error reflecting that sufficient progress had not been made. The team documented that it reviewed data from the student's teacher demonstrating that the student was, in fact, making progress. However, the complainant indicated that she still had concerns that the student is not making sufficient advancement in his written language skills. In order to address her concerns, the team agreed to reconvene in May to review the progress again (Docs. j and k).

**DISCUSSION/CONCLUSIONS:**

The IEP must include, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parents (34 CFR §300.320). The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address the lack of expected progress toward achievement of the annual goals (34 CFR §300.324).

In this case, the complainant alleges that following a report that the student was not making progress toward achieving the annual goal, the IEP team did not convene, as required, to address the student's lack of expected progress. Based on the Findings of Facts #4 - #7, the MSDE finds that the IEP team met and determined that the student has been making sufficient progress toward achieving the annual IEP goal and that the January progress report was made in error. Therefore, the MSDE finds that no violation occurred with regard to this allegation.

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However, based on the Finding of Fact #7, the MSDE finds that the BCPS did not ensure that the complainant was provided with an accurate report of the student's progress in January, as required, and that a violation occurred. Notwithstanding the violation, the MSDE finds that subsequent to the provision of the January 17, 2014 report of progress, the IEP team, including the complainant, met and clarified the error in the report. Therefore, no further corrective action is required to remediate the violation.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office 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 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 the 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/km

cc : Tisha Edwards  
Charles Brooks  
Nancy Ruley  
XXXXXXXXXXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Koliwe Moyo