



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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June 10, 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: #14-081

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 April 11, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXX, the student's grandmother¹, hereafter, "the complainant," on behalf of her granddaughter, 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 complainant, who is the student's grandmother, qualifies as a "parent" under the IDEA because the student lives with her and she is acting in place of her parent (34 CFR §300.30(4)).

From the Start of the 2013-2014 School Year until January 2014

1. The BCPS did not follow proper procedures when disciplinarily removing the student from school from the start of the 2013-2014 school year until January 17, 2014, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.
2. The BCPS did not ensure that the Individualized Education Program (IEP) team considered the Independent Educational Evaluations (IEE) the complainant provided at the start of 2013-2014 school year, in accordance with 34 CFR §§300.322 and .502.
3. The BCPS did not ensure that the student's IEP addressed her social, emotional, and behavioral needs from the start of the 2013-2014 school year until January 2014, in accordance with 34 CFR §§300.101, .320, and .324.
4. The BCPS did not ensure that proper procedures were followed when determining the student's educational placement from the start of the 2013-2014 school year until January 2014, in accordance with 34 CFR §§300.114 and .116 and COMAR 13A.05.01.10.

Since April 2014

5. The BCPS has not ensured that the student has been provided with the special education instruction, related services, and supports required by the IEP in effect upon her return to the school system from XXXX XXXX on April 1, 2014, in accordance with 34 CFR §§300.101 and .323.
6. The BCPS has not ensured that proper procedures have been followed when determining the student's educational placement since April 2014, in accordance with 34 CFR §§300.114 and .116 and COMAR 13A.05.01.10.
7. The BCPS has not ensured that the student's IEP addresses her social/emotional/behavioral needs since April 2014, in accordance with 34 CFR §§300.101, .320, and .324.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 14, 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, former Associate Counsel, BCPS.
3. On April 15, 2014, Ms. Moyo conducted a telephone interview with the complainant, to clarify the allegations to be investigated. On the same date, Ms. Moyo sent electronic mail (email) correspondence to the complainant regarding the State complaint investigation process.

4. On April 23 and 27, 2014, the complainant sent electronic mail (email) correspondence to the MSDE
5. On April 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.
6. On May 8, 2014, Ms. Moyo and Ms. Nicole Green, Education Staff Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXX) to conduct a review of the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Ms. XXXXXX, IEP Chair Person;
 - c. Mr. XXXXXXXX, Assistant Principal; and
 - d. Ms. XXXXXXXXXXX, Classroom Teacher.

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 May 21, 2014, the BCPS provided the MSDE with documentation from the student's education record.
8. On June 5, 2014, the BCPS provided the MSDE with additional documentation from the student's educational record.
9. On June 9, 2014, Ms. Moyo conducted a telephone interview with the complainant.
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 April 11, 2014;
 - b. BCPS IEP, dated June 11, 2013;
 - c. BCPS Prior Written Notice, dated June 11, 2013;
 - d. XXXXXXXXXXXXXXXXXXXX Assessment, dated July 2, 2013;
 - e. BCPS IEP amendment, dated August 28, 2013;
 - f. XXXXXXXXXXXXXXXX Speech/Language Assessment, dated September 11, 2013;
 - g. XXXXXXXXXXXXXXXX Psychological Assessment, dated August 6, 2013;
 - h. BCPS General Education Teacher progress reports, dated September 9, 2013, October 14, 2013, and November 1, 2013;
 - i. BCPS occupational therapy progress reports, dated September 12, 2013, October 15, 2013, and May 14, 2014;
 - j. BCPS speech/language therapy progress reports, dated September 15, 2013, October 3 and 15, 2013;

- k. BCPS IEP, dated September 17, 2013;
- l. Special Education Teacher progress reports, dated September 18, 2013, October 15, 2013 and May 2, 2014;
- m. Correspondence from the XXXXXXXXX staff on behalf of the student, dated October 31, 2013 and November 14, 2013;
- n. BCPS IEP, dated November 7, 2013;
- o. BCPS Prior Written Notice, dated November 7, 2013;
- p. BCPS behavior data tracking log maintained from November 11, 2013 through January 10, 2014;
- q. BCPS Parent contact log from August 26, 2013 through January 13, 2014
- r. BCPS IEP, dated January 16, 2014;
- s. BCPS Functional Behavioral Assessment, dated January 16, 2014;
- t. XXXXXXXXXXXXXXXX IEP, dated January 30, 2014;
- u. Correspondence from the BCPS to the complainant regarding re-entry into the school system, dated April 1, 2014;
- v. XXXXXXXXXXXX registration/enrollment documentation, completed on April 1, 2014;
- w. IEP amendment, dated April 2, 2014;
- x. BCPS receipt of IEP signed by the student's special education service providers from April 4 -9, 2014
- y. IEP, dated May 14, 2014;
- z. BCPS Pre and Post Meeting communication log from September 9, 2013 through May 6, 2014;
- aa. BCPS Counseling service progress report, dated May 14, 2014;
- bb. Student's BCPS attendance record and class schedule for the 2013-2014 school year ;
- cc. Excerpts from XXXXXXXXX Sign-in/Sign-out log book from September 3, 2014 through May 5, 2014; and
- dd. BCPS IEP amendment, dated June 3, 2014.

BACKGROUND:

The student is six (6) years old. She is identified as a student with a Developmental Delay under the IDEA and has an IEP that requires the provision of special education instruction and related services. During the period addressed by this investigation the complainant was provided with information regarding the procedural safeguards and parental rights, as required.

From the start of the 2013-2014 school year until January 16, 2014 the student attended the XXXXXXXXXXXXXXXX (XXXXXXXXXX).

From January 24, 2014 until March 30, 2014, the student attended the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX while she and her family were living in XXXXXX.

On April 1, 2014, the student was re-enrolled in the BCPS after the family returned to Maryland, and the student began attending the XXXXXXXXXXXXXXXX.

The student attended XXXXXXXX until May 15, 2014, when the complainant's application for Home and Hospital Teaching (HHT) services was approved (Docs. a – c, e, h, k – o, q, r, t – z, bb, dd, and interviews with the BCPS staff and the complainant).

ALLEGATION #1: DISCIPLINARY REMOVALS

Findings of Facts:

1. There is documentation that during an IEP team meeting held on September 17, 2013, the complainant and the school-based members of the team expressed disagreement with each other about whether the student had been disciplinarily removed from school (Doc. k).
2. A review of the school's early dismissal log documents that between September 3, 2013 and January 17, 2014 the student was retrieved from school on nineteen (19) occasions between 2:00 pm and 3:25 pm.² During this period of the school day, the students were in recess or the "snack/pack-up/dismissal" part of the day. On two (2) of those dates, the log book indicates that the student was picked-up for medical reasons and on the remaining seventeen (17) days the log book lists the reason for dismissal was "parent walk-in" or "other" (Docs. bb and cc).
3. The school staff acknowledge that the complainant frequently picked the student up from school prior to the end of the school day, but deny that the complainant was requested or required to pick the student up early from school (Docs. bb, cc, and interviews with school staff and the complainant).
4. The student's discipline record reflects no disciplinary removals from the start of the 2013–2014 school year until January 17, 2014 (Review of the education record).

Discussion/Conclusions:

The IDEA provides specific protections to students who are disciplinarily removed from school in excess of ten (10) school days during the school year (34 CFR § 300.530(d)(3)). In order to ensure that students are provided with services in accordance with the requirements of IDEA, such as the disciplinary procedural protections, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

In this case, the complainant alleges that the school staff requested that she retrieve the student from school on several occasions prior to dismissal due to the student's behavior at school and that these early dismissals should be treated as disciplinary removals from school. Based on the Findings of Facts #1 - #4, the MSDE finds that there is no documentation to support the allegations and as a result, this office is unable to find that a violation occurred.

² The school day begins at 8:15 am and ends by 3:25 pm (www.baltimorecityschools.org).

ALLEGATIONS #2, #3, AND #4: CONSIDERING THE IEES, ADDRESSING THE STUDENT'S NEEDS, AND DETERMINING THE EDUCATIONAL PLACEMENT

Findings of Facts:

5. An IEP team meeting was held on August 28, 2013 at the complainant's request. While the complainant reported that she had obtained private assessments that she wished to have considered by the IEP team, she did not make them available at the meeting. Therefore the meeting was rescheduled (Docs. e and q).
6. On September 17, 2013, the IEP team reconvened after the complainant provided the school staff with the reports of private psychological assessment that she obtained. The report of the psychological assessment states that the student demonstrates delayed intellectual disability was being made only on a provisional basis due to her young age. The complainant also provided a private occupational assessment that she obtained. However, there is no documentation that the IEP team has considered the results of the private occupational therapy assessment that the complainant shared with the school staff (Docs. d, g, k, and review of the education record).
7. At the September 17, 2013 IEP team meeting, the complainant also shared her concerns that the student was displaying behaviors that required her to have access to emergency psychological services. She indicated that the student exhibited aggressive and violent behaviors, such as pulling her hair, throwing items in the home, and banging her head. The complainant reported that she intended to place the student in a partial day hospital program, where she would receive services and medication to stabilize her behavior. The school-based members of the team reported that, while the student occasionally displayed lack of respect for authority and a need to improve her self-control, they were not observing the types of extreme behavior that were described by the complainant. Based on information from the school staff, the team determined that no revisions were needed to the IEP in order to address the student's behavioral needs (Doc. k).
8. On September 19, 2013, the complainant admitted the student into a preschool intensive half-day outpatient program at XXXXXXXXXXXXXXXXXXXXXXXXXXXX that the student attended on a daily basis prior to rejoining her kindergarten class at XXXXXXXX in the afternoon (Doc. m).
9. On October 21, 2013, the school staff were notified that the student was participating in the half-day outpatient program, and that she was expected to be discharged from the program, on October 31, 2013 (Doc. m).
10. On November 7, 2013, the IEP team convened to consider the student's progress since her discharge from the hospital. At that meeting, the school-based members of the team expressed concern that the student had not yet been attending school regularly. The

complainant and her advocate reported that this is due to the student's need to report for medical monitoring since her discharge from the outpatient program at XXXXXXXXXX
XXXXXXXXXXXXXXXX. The IEP team recommended that a Functional Behavior Assessment (FBA) be conducted in order to ensure that any behavioral needs were appropriately identified and addressed (Doc. n).

11. On January 16, 2014, the IEP team reconvened to consider the results of the FBA, which identifies behaviors, including difficulty settling down and following directions upon transitioning to class, which is disruptive to other students. The school staff reported that despite these behaviors and the student's absences from school, she was making sufficient progress to achieve the annual IEP goals. The IEP team decided that the IEP would be revised to include a goal for the student to improve her social interaction skills and counseling services to assist her with achieving the goal (Doc. r).
12. At the January 16, 2014 IEP team meeting, the team documented its decision that the least restrictive environment in which special education instruction can be provided in reading and math is the general education classroom and in the separate special education classroom for language arts. However, the IEP was not revised to reflect this decision, and instead reflects that all instruction is to be provided in the general education classroom (Doc. r).
13. There is no documentation that the complainant provided the school staff with the results of a private speech/language assessment in order for it to be considered by the IEP team (Docs. q, z, and Review of the education record).

Discussion/Conclusions:

Allegation #2: Considering the IEEs

The public agency is required to take steps to ensure the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings. If a parent of a student with a disability obtains an independent educational evaluation (IEE) at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education to the student (34 CFR §§ 300.322 and 502).

In this case, the complainant asserts that she provided the school staff with results of independent speech/language, psychological, and occupational therapy assessments, which have not been considered by the IEP team. Based on the Finding of Fact #13, the MSDE finds that there is no documentation that the complainant provided the school staff with the results of an independent speech/language assessment. Based on the Finding of Fact #6, there is documentation that the IEP team considered the results of a private psychological assessment. Therefore, the MSDE does not find that violations occurred with regard to these aspects of the allegation.

However, based on the Finding of Fact #7, the MSDE finds that there is no documentation that the team considered the results of the independent occupational therapy assessment provided by the complainant. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #3: Addressing the Student's Social, Emotional, and Behavioral Needs

The public agency must ensure that an IEP is developed that includes a statement of the student's present level of academic achievement and functional 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 education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

If the IEP team determines the need for additional data in order to determine present levels of performance, the public agency must obtain parental consent to obtain that data. The public agency must also ensure that the results of assessment procedures are used by the IEP team when it reviews, and as appropriate, revises the IEP; this must be completed within ninety (90) days of the recommendation to obtain the data (34 CFR §§300.101 and .320 and COMAR 13A.05.01.06).

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 parent 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).

In this case, the complainant alleges that school staff did not develop a program that can address the student's social, emotional, and behavioral needs. Based on the Findings of Facts #5 - #12, the MSDE finds that the IEP team met, at the complainant's request, on a monthly basis between the start of the 2013-2014 school year and January 16, 2014 to review the student's program and progress. Based on the Findings of Facts#5 - 12, the MSDE finds that the IEP team considered information from the complainant, reports from the student's teachers and related service providers, evaluation data. Based upon this information, the IEP team developed the annual goals, and determined the special education instruction, and the supports needed to address the student's identified social/emotional/behavioral needs consistent with the data.

Based on the Findings of Facts #10 - #12, the MSDE finds that when the team determined that additional data was necessary to identify the student's needs, the school staff obtained the data and the IEP team met, reviewed the data, and revised the student's IEP based on that data. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

Allegation #4: Determining the Educational Placement

To the maximum extent appropriate, students with disabilities are to be educated with students who are nondisabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment may occur 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 satisfactorily. In determining the least restrictive environment in which the IEP can be implemented, the IEP team must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §§300.114 and .116).

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p.12479, March 1999³ and 34 CFR §§300.101 and 323 and COMAR 13A.05.01.09D(5)).

Based on the Findings of Facts #7 - #12, the MSDE finds that the IEP team determined the least restrictive environments in which the IEP can be implemented with the provision of supplementary aids and services, when making the educational placement determination. However, Based on the Finding of Fact #12, the MSDE finds that the BCPS did not ensure that the team's decision were clearly documented in the IEP. Therefore, the MSDE finds that a violation occurred.

ALLEGATIONS #5 - #7: IMPLEMENTING THE IEP, DETERMINING THE EDUCATIONAL PLACEMENT, AND ADDRESSING THE STUDENT'S NEEDS

Findings of Facts:

14. On April 1, 2014, when re-enrolling the student in the BCPS, the complainant provided the school staff with a copy of an IEP that was developed for the student in XXXXXX (XXXX). The XXX IEP to included a study skills goal to assist the student maintaining focus in class and a social, emotional, and behavioral goal for the student to attend for a specific period of time while she is in class, neither of which were included in the previous IEP from Maryland. The XXX IEP also required that all special education instruction be provided in a separate special education classroom (Docs. t and v).
15. There is no documentation that an IEP team reviewed and revised the XXX IEP (review of the education).
16. There is documentation that the school staff implemented the last IEP in effect in Maryland, which was developed prior to the development of the XX IEP (Docs. w and x).

³ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

17. On May 14, 2014, the IEP team convened to consider the student's progress. At that meeting, the complainant reported that attending school was causing the student stress and that she had started becoming ill when she was required to attend school. The complainant also shared that she had obtained approval for the student to receive HHT services. Based on the information from the complainant, the IEP was revised to include additional supports to assist the student with focusing on and understanding the instruction provided in order to address concerns about the stress she was experiencing. The team also determined the HHT services that would be provided (Doc. y).
18. There is no documentation that the IEP team has developed a plan for the student to return to a school-based program. Further, the school system did not produce documentation of the HHT services to the student in response to the requests by the MSDE.

Discussion/Conclusions:

Allegation #5: Implementation of the IEP

Each public agency must ensure that each student with a disability receives the special education instruction and related services required by the IEP. If a child with a disability, who had an IEP that was in effect in a previous public agency in another State, transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide the child with a Free Appropriate Public Education. The public agency must provide services comparable to those described in the child's IEP from the previous public agency, until the new public agency conducts an evaluation, if determined to be necessary by the new public agency; and develops, adopts, and implements a new IEP, to address the student's identified needs (34 CFR §§300.101 and .323).

Based on the Findings of Facts #14 - #18, the MSDE finds that there the BCPS did not follow proper procedures to adopt the XXX IEP and there is no documentation that once the student returned to the BCPS on April 2, 2014, the BCPS reviewed and revised the XX IEP. Therefore, the MSDE finds that a violation occurred.

Allegation #6: Determining the Educational Placement

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Based on the Findings of Facts #14 - #16, the MSDE finds that the school staff unilaterally changed the educational placement without convening an IEP team meeting because it did not implement the XX IEP. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

Allegation # 7 Addressing the Student's Social/Emotional/Behavioral Needs

If a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must meet to determine the instructional services to be provided to the student as long as the medical restrictions apply; and develop a plan for returning the student to a school-based program. (COMAR 13A.01.05.10).

Based on the Findings of Facts #14 - #18, the MSDE finds that there is no documentation that IEP team developed a plan for returning the student to a school-based program. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the BCPS provide documentation by the start of the 2014-2015 school year that the IEP team has convened and considered all available data, developed a plan to transition the student back to a school-based program and reviewed and revised the IEP, as appropriate, to address the student's social, emotional, and behavioral needs. The BCPS must also provide documentation that the team has determined the compensatory services or other remedy needed for the violations identified during this investigation.

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 accordance with IDEA.

School-Based

The MSDE requires that BCPS to provide documentation by the October 1, 2014 of the steps taken to determine whether the violations identified in this investigation are specific to the student or whether they constitute pattern of noncompliance at XXXXXXXX.

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. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, for its consideration during present or future monitoring of the BCPS.

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Dr. Kim Hoffmann
June 10, 2014
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Documentation of all corrective actions 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 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	Dori Wilson
	Charles Brooks	Anita Mandis
	Darnell Henderson	Koliwe Moyo
	XXXXX	Martha J. Arthur