



June 20, 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: #14-084

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 21, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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. 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 student was consistently provided with additional adult support, as required by the Individualized Education Program (IEP) from April 21, 2013¹ until January 1, 2014, in accordance with 34 CFR §§300.101 and .323.

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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2. The BCPS did not follow proper procedures to determine whether the excessive use of exclusion, from April 21, 2013¹ until the end of the 2012-2013 school year, resulted in a change in the student's placement in accordance with 34 CFR §300.530 and COMAR 13A.08.03 and COMAR 13A.08.04.02 and .04.
3. The BCPS did not ensure that the IEP addressed the student's transportation needs during the 2013-2014 school year, in accordance with 34 CFR §300.324.
4. The BCPS did not ensure that the student was provided with consistent transportation services during the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 21, 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 notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations. On the same date, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation.
3. On April 23, 2014, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On May 7, 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.
5. On May 21, 2014, Ms. Moyo and Ms. Sandy Marx, MSDE Consultant, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to conduct a review of the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXX, IEP Chairperson;
 - c. Mr. XXXXXXXXXXX, Assistant Principal; and
 - d. Ms. XXXXXXX, Classroom Teacher.

Ms. Ruley and Ms. Angela Parker, Education Specialist, Office of Special Education Monitoring and Compliance, BCPS attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.

6. On May 28 and 30, 2014, the BCPS provided the MSDE with documentation from the student's educational record.
7. On June 12, 2014, Ms. Moyo and Ms. Janet Jacobs, Monitoring and Accountability Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXX XXXXXXXX) to conduct a review of the student's educational record, and interviewed Dr. XXXXXXX, Principal and Mr. XXXXXXX, Assistant Principal. Mr. Darnell Henderson, Legal Counsel, BCPS participated in the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On June 18, 2014, Ms. Moyo conducted a telephone interview with the complainant and provided clarification regarding the State complaint investigation process.
9. 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 21, 2014;
 - b. Functional Behavioral Assessment (FBA), dated June 4, 2012;
 - c. Behavioral Interventions Plan (BIP), dated October 23, 2012;
 - d. IEP, dated November 7, 2012;
 - e. IEP and prior written notice, dated May 7, 2013;
 - f. XXXXXXXXXXXXX student referral report for the 2012-2013 school year;
 - g. BIP, dated June 4, 2013;
 - h. IEP, dated July 22, 2013;
 - i. Excerpts from the BCPS office of Special Education Monitoring Compliance complaint log from August 26, 2013 through November 5, 2013;
 - j. Electronic mail correspondence between the complainant's representative and the BCPS staff from August 28, 2013 through March 21, 2014;
 - k. Bus driver and aide sign-in sheet for buses #1604 and #1750 maintained by the XXXX XXXX ES from August 2013 through May 2014;
 - l. Correspondence from the BCPS Office of Transportation staff to the complainant, dated August 29, 2013 and October 23, 2013;
 - m. Amended IEP, dated September 23, 2014
 - n. Student bus attendance log from November 11, 2013 through April 4, 2014;
 - o. Prior written notice and IEP team meeting notes from the November 19, 2013 IEP team meeting, dated November 22, 2013;
 - p. Psychological service progress report, dated February 19, 2014;
 - q. IEP team meeting notice, dated March 20, 2014;
 - r. Special education teacher progress report, dated March 26, 2014;
 - s. IEP and prior written notice, dated March 27 and 28, 2014;
 - t. Daily behavior log maintained from January 23, 2014 through May 2, 2014;
 - u. Excerpt from parent contact log, dated June 2, 2014; and
 - v. BCPS Special Education Compliance Manual 2013-2014 School Year.

BACKGROUND:

The student is eight (8) years old. She is identified as a student with an Intellectual Disability 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, complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards and parental rights, as required.

From April 2013 until the end of the 2012-2013 school year, the student attended XXXXX XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX), a separate public special education school. Since the start of the 2013-2014 school year, the student participated in a program designed to improve life skills² at the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX), as a result of a change in educational placement which was determined by the IEP team (Docs. a – e, g, h, m, and o - s).

ALLEGATION #1: PROVISION OF ADULT SUPPORT FROM APRIL 21, 2013 THROUGH JANUARY 1, 2014

FINDINGS OF FACTS:

XXXXXXXXXXXXXXXXXX: April 21, 2013 until June 6, 2013

1. The IEP requires that the student be provided with additional adult support by a “technical support assistant” (aide), throughout the school day. This aide is to provide supports, such as redirection and maintain daily logs of the student’s behavior (Docs. g, h, and review of the aide’s timesheets).
2. There is documentation that the aide assigned to work with the student from April 2013 until the end of the 2012-2013 school year was present at school, with the student on a daily basis, provided the student with the support required by the IEP (Docs. g, h, and review of aide time sheets).

XXXXXXXXXXXXXXXXXX: August 26, 2013 until January 1, 2014

3. There is documentation that there was an individual assigned to provide the student with adult support and of the provision of the support. However, there is no documentation of the consistent provision of the support, such as the monitoring of the student’s behavior, on a daily basis prior to January 23, 2014 (Docs. a, j, q - t, and review of educational record).

² The BCPS Life Skills Program is designed to provide instructional support to students with an Intellectual Disability who have concurrent deficits or impairments in adaptive functioning in at least two (2) of the following areas: self-care, home living, social/interpersonal skills, self-direction, work, leisure, health, safety, and use of community resources. The instructional emphasis is on the academic content areas with an integration of activities of daily living that are needed to support functioning in the home, school, community, and at work (Doc. v).

Discussion/Conclusions:

The public agency is required to ensure that each student is provided with the special education and related services in the placement required by the IEP (34 CFR §§300.101 and .323). In this case, the complainant alleges that the student has not been provided with consistent adult support as required by the IEP.

Based on the Findings of Facts #1 and #2, the MSDE finds that there is documentation that the student was consistently provided with adult support as required by the IEP from April 2013 until the end of the 2012-2013 school year. Therefore, the MSDE does not find a violation with regard to this aspect of the allegation.

However, based on the Finding of Fact #3, the MSDE finds that there is no documentation of the consistent provision of adult support, in accordance with the IEP from the start of the 2013-2014 school year until January 1, 2014. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

ALLEGATION #2: USE OF EXCLUSION WITH THE STUDENT

Findings of Facts:

4. On May 7, 2013, the IEP team documented that it considered the complainant's concern that the student was receiving too many "time outs," which she believed could have been impacting the student's ability to make greater academic progress. The documentation reflects that at the meeting, the teacher explained that during "time outs" the student remained in the classroom and that these periods of time were no longer than five (5) minutes. During these periods of time, the student was expected to maintain her focus and answer questions about the instruction being provided during this time period (Doc. d).
5. A review of the log which the school staff maintained to track the use of behavior interventions, including the use of the "support room,"³ is maintained in an electronic database. This log does not reflect that the student was removed from the classroom to the support room between April 2013 and the end of the 2012-2013 school year (Doc. f and review of the school's electronic database).

Discussion/Conclusions:

Exclusion means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction, including special education, related services, or support (COMAR 13A.08.04.02).

The school personnel must ensure that each period of exclusion is appropriate to the developmental level of the student and the severity of the behavior exhibited and, in no case,

³ The "support room" is a designated therapeutic environment where a student can go by choice or staff referral for a time-out, therapeutic problem solving, mediation, and de-escalation (interview with school staff).

should the use of exclusion exceed thirty (30) minutes. The school personnel must also monitor a student placed in exclusion and provide the student with an explanation of the behavior that resulted in the removal and instructions on the behavior required to return to the learning environment (COMAR 13A.08.04. 04).

If a student with a disability has experienced excessive periods of exclusion which may have resulted in a change of placement, then the school personnel determine if a change in placement has occurred. If so, it must ensure that the student is provided with the disciplinary protections, including the special education and related services that will allow the student to progress in the general curriculum and advance towards achieving the annual goals in the IEP. Following the determination that a change in placement has occurred, the IEP team must also meet to review the student's behavioral intervention plan and IEP to address the behavior that resulted in the removal (34 CFR §300.530, COMAR 13A.08.04.04(B), 13A.08.04.04(C), and 13A.08.04.04(D)).

In this case, the complainant alleges that the student frequently removed from the classroom to the "support room," which resulted in the student missing instructional time. Based on the Findings of Facts #4 and #5, the MSDE finds that the documentation indicates that during the "time outs" the student remained in the class and received instruction and thus, the "time outs" did not constitute exclusion. As a result of this finding, the MSDE determines that the regulations related to the use of exclusion do not apply. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #3: ADDRESSING THE STUDENT'S TRANSPORTATION NEEDS

Findings of Facts:

6. The IEP requires that the student be provided with transportation, as a related service, to and from school, on a daily basis (Docs. d, e, h, and s).
7. There is documentation that during the 2013-2014 school year, the BCPS Transportation staff addressed the concerns expressed by the complainant regarding the location and time that the student is dropped off by the bus at the end of the school day (Docs. a, i, j, and l).
8. On March 27, 2014, the IEP team convened at the complainant's request to address her concerns that the student was experiencing discomfort due to the bus driver playing music that was inappropriate in both content and volume. The complainant also indicated that the bus did not consistently arrive to pick the student up for school within the scheduled time-period (Docs. a, j, q, and s).
9. The documentation of the March 27, 2014 IEP team meeting reflects that the team decided to report the complainant's concerns to the BCPS Transportation staff for their input and response. However, there is no documentation that since the meeting, the IEP team has reconvened to follow-up on the complainant's concerns about the appropriateness of the transportation services (Doc. e and review of the educational record).

Discussion/Conclusions:

The public agency must ensure that each student is provided with an IEP that addresses all of the needs that arise from the student's disability. In order to identify those needs, the team must consider information from evaluations conducted, concerns of the parents, and information from the student's teachers (34 CFR §300.324). In this case, the complainant alleges that the BCPS has not considered her concerns about the student's transportation needs.

Based on the Findings of Facts #6 - #9, the MSDE finds that the BCPS did not ensure that the IEP team addressed the complainant's concerns regarding the student's transportation issues. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #4: CONSISTENT PROVISION OF TRANSPORTATION SERVICES

Findings of Facts:

10. There is no documentation that the student was consistently provided with bus transportation during the 2013-2014 school year (Docs. n and review of the educational record and transportation).
11. There is documentation indicating that when transportation services were provided the bus did not consistently arrive at the school in a timely manner (Doc. k).

Discussion/Conclusions:

As stated above, the public agency must ensure that special education and related services are available to each student in accordance with the IEP (34 CFR §§300.101 and .323). In this case, the complainant alleges that the environment on the bus and the inconsistent provision of transportation services has caused the student "distress" and that she had to provide transport the student to and from school in order to ensure the student's access to special education instruction.

Based on the Findings of Facts #10 and #11, the MSDE finds that there is no documentation that transportation was provided to the student on a consistent basis, as required by the IEP. Therefore, the MSDE finds that a violation occurred with regard 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:

- Steps have been taken to ensure that the student will be provided with both the consistent provision of adult support throughout the school day and bus transportation;

- The IEP team has determined the compensatory services or other remedy for the lack of consistent adult support during the 2013-2014 school year;
- The IEP team has considered the complainant's concerns and reviewed and revised the IEP, if appropriate, to ensure that it addresses the student's transportation needs;
- The IEP team has determined whether the lack of consistent bus transportation resulted in the loss of special education and related services, and if so, the compensatory services required to remediate the violation related to the lack of the consistent provision of transportation services; and
- The steps that have been taken to ensure that the complainant is reimbursed for mileage expenses incurred in the transportation of the student to and from school during the 2013-2014 school year.

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, 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 the BCPS to provide documentation by October 1, 2014, of the steps taken to determine if the violations identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXX XXXXXX ES. 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 initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-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, Accounting and Monitoring Section, 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: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS from the Division of Special Education/Early Intervention Services, Family Support and Dispute Resolution Branch, MSDE. This office may be contacted at (410) 767-7770.

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 Free Appropriate Public Education 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 S. Edwards
Charles Brooks
Darnell Henderson
XXXXXXXX
XXXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo