



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

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July 18, 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: #14-100

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 May 27, 2014, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of 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 allegation that the BCPS has not ensured that the student was consistently provided with the accommodations and supplementary aids and services required by the Individualized Education Program (IEP) during the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On May 28, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, BCPS; and Mr. Darnell Henderson, Associate Counsel, BCPS.
3. On May 29, 2014, Ms. Williams conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On June 10, 2014, 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 Dr. Hoffmann of the allegation and requested that her office review the alleged violation.
5. On June 11, 2014, the MSDE contacted the BCPS via electronic mail (email) correspondence to request documentation and information regarding the allegation being investigated.
6. On June 30, 2014, Ms. Williams and Ms. Memuna Bangura, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed the school staff listed below:
  - a. Ms. XXXXXXXXXXX, IEP Chairperson;
  - b. Ms. SXXXXXXXXXXXXXXXX, Principal; and
  - c. Ms. XXXXXXX, Assistant Principal.

Ms. Charlene Harris, Coordinator, Special Education Parent Response Unit, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
7. 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 May 27, 2014;
  - b. IEP and IEP team meeting documents, dated May 28, 2013;
  - c. Special education teacher service logs from August 26, 2013 to June 16, 2014;
  - d. Instructional Accommodations/Modifications Matrix, documenting the provision of accommodations and modifications, dated November 11, 2013, November 12, 2013, February 28, 2014, March 3, 2014, and March 5, 2014;
  - e. General Education Progress Reports, dated November 4, 2013, November 12, 2013, and February 4, 2013;
  - f. Teacher progress reports, dated November 4, 2013, November 6, 2013, November 12, 2013, and February 4, 2014;
  - g. IEP and IEP team meeting documents, dated November 12, 2013;
  - h. IEP and IEP team meeting documents, dated February 4, 2014;

- i. Written correspondence from the complaint to the school staff, dated May 12, 2014; and
- j. IEP and IEP team meeting documents, dated May 15, 2014.

### **BACKGROUND:**

The student is fourteen (14) years old and is identified as a student with an Other Health Impairment related to Attention Deficit Hyperactivity Disorder under the IDEA. He has an IEP that requires the provision of special education instruction 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. b, g, h, and j).

### **FINDINGS OF FACTS:**

1. The IEP requires monthly classroom consultation for thirty (30) minutes between the general education teachers and the special education teacher to discuss student's needs and progress. There is documentation that the monthly consultation between the general education teachers and the special education teacher occurred on a monthly basis (Docs. b, c, g, h, and j).
2. The IEP requires classroom and testing accommodations to be provided on a "daily" basis. The IEP also requires supplementary aids that are to be provided "daily" and "as needed," but it does not specify how the decision is to be made regarding whether they are needed and when they are to be utilized (Docs. b, c, h, and j).
3. The school staff report that the student's teachers were to determine on a daily basis whether and which classroom and testing accommodations and supplementary aids and services are to be provided (Doc. c, e, f and interview with school staff).
4. The documentation of the provision of classroom and testing accommodations and supplementary aids and services reflects that they were not provided in all of the student's classes each day (Docs. e and f).

### **DISCUSSION/CONCLUSION:**

The public agency must ensure that the special education instruction, related services, accommodations, and supplementary aids and services are provided as required by the IEP (34 CFR §§300.101 and .323). 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 1999).<sup>1</sup>

In this case, the complainant reports that it is her understanding that with the exception of monthly teacher consultation services, all of the supports listed in the IEP are to be provided in all of the student's classes each day (Doc. a and i and interview with the complainant). Based on the Finding of Fact #1, the MSDE finds that the consultation between the general education teacher and the special education teacher occurred on a monthly basis for thirty (30) minutes per month as required by the IEP. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #2-#5, the MSDE finds that the BCPS has not ensured that the IEP is written in a manner that is clear to all who are involved in its development and implementation with respect to the manner and frequency with which accommodations and supplementary aids are to be provided. Therefore, this office finds that the BCPS did not ensure that classroom and testing accommodations and supplementary aids and services were provided in accordance with the IEP team's decisions and that a violation occurred.

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

The MSDE requires the BCPS to provide documentation by the beginning of the 2014-2015 school year that the IEP team has reviewed and revised the IEP to clarify the manner and the frequency with which the classroom and testing accommodations and supplementary aids and services will be provided. The MSDE also requires the BCPS to provide documentation that the IEP team has determined the compensatory services or other remedy needed for the violation 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, the complainant maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

#### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through the Family Support Dispute Resolution Branch, MSDE, 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

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<sup>1</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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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 conclusion 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 this 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 :tw

c : Gregory Thorton  
Charles Brooks  
Darnell Henderson  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Tyra Williams