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State Superintendent of Schools

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August 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: #14-111

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 June 19, 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. The MSDE investigated the allegations listed below.

1. The BCPS did not ensure that proper procedures were followed in response to the complainant’s request for an Individualized Education Program (IEP) team meeting, during the 2013-2014 school year, in accordance with 34 CFR §300.503.
2. The BCPS should have suspected that the student is a student with a disability under the IDEA and conducted an evaluation, during the 2013-2014 school year, in accordance with 34 CFR §300.111.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 20, 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 June 27, 2014, Ms. Moyo conducted a telephone interview with the complainant, to clarify the allegations to be investigated.
4. On July 8, 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 being investigated and requested that her office review the alleged violations.
5. On July 20, 2014, Ms. Moyo and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX. XXXXXXXXXXXX to conduct a review of the student's educational record, and interviewed Ms. XXXXXXXXXXXX, Principal and Ms. XXXXXXXXXXXX, IEP Chairperson. Ms. XXXXXXXXXXXX, Supervisory Educational Specialist, and Ms. Pamela Montgomery, Education Specialist attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On the same date, the BCPS provided the MSDE with documentation from the student's education record.
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 June 19, 2014;
 - b. Report card for the 2012-2013 school year;
 - c. Maryland School Assessment results from 2012- 2013 school year;
 - d. Written referral for an evaluation, dated November 25, 2013;
 - e. IEP team meeting notice, dated December 3, 2013;
 - f. Teacher progress reports, dated December 16, 2013;
 - g. Prior written notice, dated December 17, 2013;
 - h. Notice of no assessment needed, dated December 17, 2013;
 - i. Student Support Team (SST) meeting request and invitation, dated December 19, 2013;
 - j. SST meeting invitation dated January 24, 2014;
 - k. SST meeting documents, dated February 14, 2014;
 - l. SST meeting invitation, dated March 5, 2014;
 - m. SST meeting plan and notes, dated March 20, 2014;

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- n. SST meeting invitation dated April 28, 2014;
- o. SST meeting notes, dated May 2, 2014;
- p. IEP team meeting notice, dated June 19, 2014;
- q. Report card for the 2013-2014 school year;
- r. Work samples for the 2013-2014 school year;
- s. Attendance record for the 2013-2014 school year;
- t. Annual school performance data summary for the 2013-2014;
- u. Benchmark assessment results for the 2013-2014 school year;
- v. Prior written notice, dated July 1, 2014;
- w. Consent for assessment, dated July 1, 2014;
- x. IEP team meeting notice, dated July 16, 2014;
- y. Prior written notice, dated August 1, 2014;
- z. Excerpts from the Maryland Online IEP parent contact log from July 22, 2014 to August 8, 2014.

BACKGROUND:

The student is ten (10) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. She has been evaluated and has not been found to be a student with a disability under the IDEA. There is documentation that during the period of time addressed by this investigation, the complainant was provided with information regarding the procedural safeguards and parental rights, as required (Docs. a, d, e, g – p, and v- y).

FINDINGS OF FACTS:

1. In October 2013, during a parent-teacher conference with the student's math and reading teachers, the complainant expressed her concerns about the student's academic performance and lack of progress in class. The complainant indicated that she believed that the student, who started attending this school at the beginning of the 2013-2014 school year, had always struggled in school and she wanted school staff to address it before the school year moved forward. Following this discussion, the school staff provided the complainant with information about how to make a written referral for an evaluation under the IDEA (Doc. a and interviews with school staff and the complainant).
2. On November 25, 2013, the complainant submitted a request for the student to be evaluated to determine if she has a disability that requires the provision of special education services. There is no documentation that the complainant made a written request for an evaluation prior to November 25, 2013 (Doc. d and review of the educational record).
3. On December 3, 2013, the school staff sent an IEP team meeting notice to the complainant for an IEP team meeting on December 17, 2013 to review the data and determine if the team suspected the student has a disability under the IDEA (Doc.e).

4. On December 17, 2013, the IEP team convened and included a teacher from the student's previous school. The team considered information from the student's reading teacher that the student sometimes required prompts to encourage her to participate in class and to focus. Her teacher further stated that the student attempts to do her work, but she sometimes struggles with writing and her reading scores are low. The reading teacher also reported that the student always completes her homework and gets along well with her classmates and that she has receives assistance in class from peer partners (Docs. f - h).
5. The team also considered the student's Maryland School Assessment scores (MSA) which indicated that the student scored "Basic" in reading and "Proficient" in math. At the meeting, the team considered work samples, unit test scores, information from the student's previous teacher, and her report cards. The team also considered that the student's transition into a new school could impact her school performance (Docs. c, f - h, and r).
6. Based on its review, the team determined that no additional data was required and the team did not suspect that she had a disability under the IDEA. The team also determined that while the student has displayed some deficits, she has consistently performed satisfactorily or above in her classes. The team agreed that the student's progress would be monitored with the use of in-class interventions and that she would be referred to the Student Support Team (SST)¹ to review the effectiveness of the interventions already in place and to determine if additional interventions were necessary (Docs. f - h).
7. On December 19, 2013 following the IEP team meeting, a referral was made to the SST and a SST meeting was scheduled for January 21, 2014 (Doc. i).
8. In response to the referral, SST meetings were scheduled for January 21, 2014 and February 14, 2014, but were cancelled due to inclement weather. Another SST meeting was scheduled for March 5, 2014; however, this meeting was rescheduled to March 20, 2014 at the complainant's request (Docs. i - l).
9. At the March 20, 2014, SST meeting, the team decided that the interventions being provided in the general education program were appropriate and also included the use of a graphic organizer, flash cards, and flow charts. The team agreed to meet again in May 2014 to review the student's progress following the provision of the additional supports (Doc. m).
10. On May 2, 2014, the SST reconvened and considered information from the student's teachers that while the student had made some progress, she continued to struggle in her classes and was not progressing as much as expected by this time in the school year. At this meeting, the math teacher recommended that the student be retained in the fourth

¹ The SST is a general education process that brings together school resources to support general education students and teachers and assist with developing intervention plans for individual students, who need support in academics, attendance, behavior, and health (Docs. and www.baltimorecityschools.org).

grade; however, the student was promoted to the fifth grade because she received passing grades and school staff were aware that the complainant did not wish for her to be retained. The school staff noted that it seemed that the student has the capability to complete the work, but has not yet developed the all of the necessary skills (Docs. n and o).

11. In response to the student's continuing difficulties, the school staff decided to refer the student for another evaluation under the IDEA and an IEP team meeting was held on July 1, 2014 (Docs. p. and v).
12. On August 1, 2014, the IEP team reconvened to review the assessment results. The team determined that the student is not a student with a disability under the IDEA and recommended that a 504 Accommodations Plan be developed. The complainant disagreed with this outcome and, in response, has made a request for an Independent Educational Evaluation to be conducted (Doc. y).

DISCUSSION/CONCLUSIONS:

Allegation # 1: Response to the Complainant's Requests for Evaluation

When a student is referred, in writing, for evaluation to determine eligibility under the IDEA and in accordance with State regulations, the IEP team must meet to review existing data, information from the parent, instructional interventions and strategies, current classroom-based assessments, and observations by teachers and related service providers (34 CFR §300.304 and COMAR 13A.05.01.06).

Based on the review, the IEP team must determine whether additional data are needed to determine if the student is suspected of being a student with a disability. The IEP team must complete the evaluation process within sixty (60) days of parental consent for assessments and no more than ninety (90) days from receipt of a written referral (34 CFR § 300.301 and COMAR 13A.05.01.06).

In this case, the complainant alleges that school staff did not respond to the verbal request she made for an evaluation under the IDEA in January 2014 (Doc. a). Based on the Findings of Facts #1 - #6, the MSDE finds that the complainant made a written referral for evaluation on November 25, 2013 and the IEP team met in response to that request on December 17, 2013. Based on the Findings of Facts #4 - #6, the MSDE finds that the IEP team considered the existing data and determined that no additional data was needed.

Further, based on the Findings of Facts #1 - #6, the MSDE finds that there is no documentation that the complainant made another written referral for evaluation after November 25, 2014. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

Allegation #2: Child Find

The “Child Find” requirements of IDEA impose an affirmative obligation on the school system to identify, locate and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services, or are suspected of having disabilities and being in need of special education and related services. It is, however, the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services (34 CFR §300.111 and COMAR 13A.05.02.13(A)).

To meet this expectation, school staff may review a student’s academic and behavioral performance and determine teaching strategies, modifications to instruction and behavior management techniques that will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student’s access to special education services under IDEA (34 CFR §300.111).

In this case, the complainant alleges that BCPS should have begun the evaluation process to determine if the student was a student with a disability under IDEA earlier during the 2013-2014 school year when the student demonstrated difficulty with reading and math. Based on the Findings of Facts #4 - #10, the MSDE finds that the student was provided with interventions in the general education program in order to assist her with her academic deficits and that the SST met and monitored her progress with the use of the interventions.

Based on the Findings of Facts #10 - #12, the MSDE finds that because the student did not make progress with the provision of interventions in the general education program, the team suspected that she had a disability and in response, conducted a second evaluation under the IDEA. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

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

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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 : Gregory Thornton
Charles Brooks
Darnell Henderson
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Dori Wilson
Anita Mandis
Koliwe Moyo