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State Superintendent of Schools

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September 16, 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: #15-004

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 July 18, 2014, the MSDE received a complaint from Ms. XXXXX, 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 the opportunity to participate in the Individualized Education Program (IEP) meetings held during the 2013-2014 school year, in accordance with 34 CFR §300.322.
2. The BCPS did not ensure that the student’s IEP addresses his reading needs during the 2013-2014 school year, in accordance with 34 CFR §300.324.
3. The BCPS did not ensure that the student was provided with special education instruction in the placement required by the IEP, during the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.

XXX

Dr. Kim Hoffmann

September 16, 2014

Page 2

4. The BCPS has not ensured that the IEP team has considered the Independent Educational Evaluation you provided from the XXXXXXXXXXXXXXXXXXXX, in accordance with 34 CFR §§300.324 and .502.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 18, 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 July 23, 2014, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On August 5, 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 August 28, 2014, Ms. Moyo and Ms. Memuna Bangura, Monitoring Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to conduct a review of the student's educational record and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Special Education Teacher/Case Manager;
 - b. Ms. XXXXXXXX, English Teacher;
 - c. Mr. XXXXXXXX, Social Studies Teacher; and
 - d. Ms. XXXXXXXX, IEP Chairperson.

Ms. Pamela Montgomery, Educational Specialist, BCPS, and Mr. Donnae B. Bushrod, Education Specialist, BCPS, attended the site visit as representatives 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.
6. On September 9, 2014, Ms. Moyo contacted the complainant, by telephone, to discuss the complaint investigation.
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 July 18, 2014;
 - b. IEP and prior written notice, dated February 27, 2013;
 - c. Student's class schedule and school staff receipt of IEP, dated August 23, 2013;

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Dr. Kim Hoffmann
September 16, 2014
Page 3

- d. IEP team meeting notice, dated December 16, 2013;
- e. Special education teacher's report of progress, dated January 6, 2014;
- f. General education teacher's report of progress, dated January 6 and 7, 2014;
- g. IEP team meeting notice, dated January 16, 2014;
- h. IEP team meeting notice, dated January 31, 2014;
- i. IEP, dated February 12, 2014;
- j. Prior written notice, dated February 14, 2014;
- k. Student's class schedule and school staff receipt of IEP, re-signed on February 12, 2014;
- l. Student's report card for the 2013-2014 school year;
- m. Student attendance record for the 2013-2014 school year;
- n. IEP team meeting notice, dated August 18, 2014;
- o. BCPS parent contact log from January 10, 2014 to September 3, 2014;
- p. IEP, dated September 3, 2014; and
- q. Prior written notice, dated September 4, 2014.

BACKGROUND:

The student is sixteen (16) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction (Docs. a, b, d, g, h, l, j, n, p, and q).

ALLEGATION #1: PARENT PARTICIPATION IN THE IEP TEAM MEETINGS

Findings of Facts:

1. On December 16, 2013, the school staff sent a meeting notice to the complainant for a meeting scheduled on January 10, 2014 to review the student's IEP program (Docs. d and o).
2. On January 10, 2014, the date of the meeting, the complainant called and indicated that she would be unable to come to the meeting and requested that it be rescheduled for another date (Doc. o).
3. In response to the complainant's request, the meeting was rescheduled to February 4, 2014 and on January 16, 2014, a meeting notice, including a copy of a draft IEP was sent to the complainant (Docs. g and o).
4. On January 31, 2014, the complainant contacted the school staff and requested that the February 4, 2014 meeting be rescheduled again to February 12, 2014. The school staff agreed and sent an updated meeting invitation to the complainant with her requested date (Docs. h and o).
5. On February 12, 2014, the IEP team convened and the student was present. However, the notes indicate that the complainant was unable to attend the IEP team meeting despite

XXX

Dr. Kim Hoffmann

September 16, 2014

Page 4

school staffs numerous efforts “to assure her attendance” at the meeting, including contacting her through correspondence and by telephone (Docs. i and o).

6. The school staff report that they offered the complainant the opportunity to participate in the IEP meeting by teleconference; however there is no documentation that the complainant was provided with this alternative means of participation (Interview with school staff and review of the educational record).
7. On September 3, 2014, an IEP team meeting was convened and the complainant participated, via teleconference (Docs. n - q).

Discussion/Conclusions:

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, including notifying the parent of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322 and COMAR 13A.05.01.07). If a parent cannot attend the IEP meeting, then the public agency is required to use other methods to ensure parent participation, including conference telephone calls or other alternative means (34 CFR §300.322 and .328).

Based on the Findings of Facts #1 - #6, the MSDE finds that the school staff documented numerous efforts to ensure that the complainant was able to attend the IEP meeting, by rescheduling the meeting to a mutually agreed upon time and place. However, based on the Finding of Fact #6, the MSDE finds that there is no documentation of the other methods used by school staff to provide the complainant with an alternative means to participate in the IEP team meeting. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #7, the MSDE finds that at the start of the 2014-2015 school year, the IEP team reconvened, including the complainant, and that the complainant was provided with an alternative means of participation in the meeting. Therefore, no further corrective action is required to remediate the violation.

ALLEGATION #2: ADDRESSING THE STUDENT’S READING NEEDS

Findings of Facts:

February 27, 2013 IEP

8. The IEP in effect at the start of the 2013-2014 school year includes information that the student has difficulties with reading in the areas of phonics, letter word identification, reading fluency, and comprehension which impacts his ability to quickly read simple sentences, pronounce words correctly, and put words into print. The student’s nonverbal reasoning is in the “extremely low range.” The scores do not, however, indicate that the he has a processing deficit. The documentation also indicates that the student’s reading

deficiencies may have impacted his verbal comprehension score causing him to receive a decreased score in this area (Doc. b).

9. The IEP required that the student receive special education instruction in English/language arts in the both the general education classroom from the general education teacher and in a separate special education classroom from the special education teacher (Doc. b).
10. The IEP included an annual reading goal to assist the student with improving his reading fluency skills, specifically with regard to his “pacing, intonation and expression” while reading a text. The goal includes objectives to assist the student with improving his reading skills by utilizing decoding strategies, reading aloud, and demonstrating appropriate use of phrasing and intonation of an instructional text. The IEP also includes testing and instructional accommodations, including the provision of a human reader or audio recordings during testing, such as a scribe and an “Augmentative Communication System” to assist him with writing out his answers during testing (Doc. b).
11. The IEP included supports to assist the student with achieving the annual reading goal, including the provision of small group instruction when the student is in the general education classroom, repetition of directions, and consultation between the special education and general education teacher (Doc. b).
12. The reports of the student’s progress towards achieving the annual IEP goal in reading, dated October 31, 2013, indicates that the student was making sufficient progress towards achieving the reading goal. The teacher noted in the report that the student had received an “A” for the first quarter in the English/language arts course (Doc. b).
13. The report of the student’s progress towards achieving the annual IEP goal dated January 17, 2014 indicates that the student achieved the reading fluency goal (Doc. b).

February 12, 2014 IEP

14. On February 12, 2014, the IEP team, without the complainant, convened to conduct the student’s annual IEP review. At the meeting, the team considered information from the student’s report card, reports of progress, and informal assessments which indicated that the student’s reading skills had improved. The team also considered a report from the special education teacher indicating that the student is reading at a fourth grade level and he can read and answer basic comprehension questions from texts at that level. The report also documents that the student continues to struggle with reading multi-syllable words, comprehension, and retention of material that he reads. He displays weakness when independently reading texts above the fifth grade level. However, because of his strong auditory learning skills, the student participates in class discussion and can answer questions about grade level texts (Docs. i and j).

15. The teacher's progress report that was reviewed included suggestions that the student might benefit from additional supports like the use of notes and outlines when completing assignments, chunking of assignments into smaller units, modified assignments, checks for understanding, extended time, and preferential seating (Doc. i).
16. At the meeting, the team also considered information from school staff that the student was making progress in the general education classroom with the provision of supports and that his teachers had observed an improvement with his reading comprehension skills. The teachers also reported that the student is a hard worker, had excellent attendance, and is a "high-level thinker" (Docs. f and i).
17. Based on its review, the team determined that the student would no longer receive special education instruction in a separate special education classroom. The team also revised the IEP to include a new reading comprehension goal to improve his ability with understanding story themes, indentifying characters, and plot development. The team also revised the IEP to require that the student be provided with notes, outlines, graphic and visual organizers, and instructions during independent activities in class and at home to provide him with a "reference guide." The IEP also required that the student be in an area with reduced distractions, that his teachers monitor him while he works to "ensure he is on the right track," and modified assignments (Doc. f).
18. The reports of the student's progress towards achieving the annual goal during the third and fourth quarters of the 2013-2014 school year indicate that the student was making progress toward achieving the reading goal. The progress report indicates that the student is able to identify and understand themes and characters in grade level texts (Doc. i).

September 3, 2014 IEP

19. On September 3, 2014, the IEP team, including the complainant by teleconference, convened to discuss the complainant's concerns and review the student's IEP. At the meeting, the team considered information that the student's reading grade level increased by one (1) year since December 2013 when an informal assessment was given. The teacher reported, that with the provision of accommodations and supports required by the IEP, such as graphic organizers, audio recordings, notes, and outlines, modified assignments and checks for understanding the student is able to comprehend texts in class. He also leads classroom discussions and facilitates group work with his peers. The team also noted that while the student made great progress with improving his reading comprehension his scores remain "significantly below grade level" (Docs. p and q).
20. The team also considered the complainant's concern that the student "cannot read a children's book and his writing is terrible" making it difficult to determine what he has written. She indicated that she did not believe the student is receiving the interventions that he requires and that she believes he should receive instruction in a separate special education classroom to work on his reading skills. The school staff indicated that the student is an auditory learner and that when listening to material from at or above grade

level texts; he is able to comprehend the information, summarize material, and answer questions (Docs. p and q).

21. Based on its review, the IEP team revised the IEP to reflect that the student would receive special education instruction in a “co-teaching” classroom to ensure that he receives the required supports to continue to improve his reading skills (Docs. p and q).

Discussion/Conclusions:

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).

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 (34 CFR §300.324).

In this case, the complainant alleges that school staff did not develop a program that addresses the student’s reading needs. Based on the Findings of Facts #8 - #18, the MSDE finds that the IEP team met and considered reports from the student’s teachers, reports of the student’s progress towards achieving the annual goal, and classroom information, and revised the IEP consistent with the available data.

However, based on the Findings of Facts #14, the MSDE finds that there is no documentation that the team considered input from the complainant when developing the IEP during the 2013-2014 school year. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation during the 2013-2014 school year.

Notwithstanding this violation, based on the Findings of Facts #19 - #21, the MSDE further finds that the IEP team reconvened and considered the complainant’s input, reports from the student’s teacher, and available data and revised the IEP based on that information. Based on the same Findings of Facts, the MSDE finds that the BCPS has followed proper procedures to develop the IEP and does not find a violation with respect to this allegation since September 3, 2014.

ALLEGATION #3: PROVISION OF SPECIAL EDUCATION INSTRUCTION IN THE PLACEMENT REQUIRED BY THE IEP

Findings of Facts:

22. The IEP in effect at the start of the 2013-2014 school day required that the student be provided with special education instruction in both the general and special education classrooms (Doc. b).

XXX

Dr. Kim Hoffmann

September 16, 2014

Page 8

23. There is no documentation that the student was enrolled in a general education class for English/Language Arts, as required by the IEP (Docs. c, k, and review of the educational record).
24. On February 12, 2014, the IEP team convened and revised the IEP to require that the student receive all special education instruction in the general education classroom with supports (Docs. i and j).
25. While the student's teachers report and his report card documents that the student was provided with special education instruction in the general education classroom, the student's schedule and the receipts of IEP reflect that the student continued to receive special education instruction in both the special and general education classroom (Docs. k, l, and interviews with school staff).

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). Based on the Findings of Facts #22 - #25, the MSDE finds that the student was not provided with the special education instruction in the required placement during the 2013–2014 school year. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #4: CONSIDERING THE INDEPENDENT EDUCATIONAL EVALUATION

Findings of Facts:

26. There is no documentation indicating that the complainant provided the school staff with a copy of an Independent Educational Evaluation (IEE) for consideration when developing the student's IEP (Interview with school staff, and review of the student's education record).

Discussion/Conclusions:

If a parent of a student with a disability obtains an IEE that meets the public agency criteria and shares it with the public agency, the results of the evaluation must be considered by the public agency, in any decision made with respect to the provision of a Free Appropriate Public Education (FAPE) to the student (34 CFR §§ 300.322 and 502).

In this case, the complainant asserts that she provided the school staff with results of an IEE which were not considered by the IEP team. Based on the Finding of Fact #26, the MSDE finds that there is no documentation that the complainant provided the school staff with the IEE to consider when developing the student's IEP. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific:

The MSDE requires that the BCPS provide documentation by December 1, 2014, that the IEP team has convened to determine if there was a negative impact to the student's ability to benefit from his program as a result of the violations identified in this Letter of Findings. If the team determines that there has been a negative impact, then the team must determine the appropriate manner to remediate the violation. The BCPS must also provide the MSDE with documentation that the above actions have been taken and that the IEP team has determined the services to be provided to the student to remediate the violation that occurred during the 2013-2014 school year within one (1) year of the date of this Letter of Findings.

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 to file a due process complaint, in accordance with the IDEA.

School-based:

The MSDE requires the BCPS to provide documentation by January 1, 2015, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXX. 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 date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the US Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch 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 the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS by the 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 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 : Gregory Thornton
Charles Brooks
Darnell Henderson
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Dori Wilson
Anita Mandis
Koliwe Moyo