



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

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December 3, 2014

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Dr. Kim Hoffman
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #15-022

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 October 8, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXX and Mr. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants 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 Individualized Education Program (IEP) has been in place for the student since the start of the 2014-2015 school year, in accordance with 34 CFR §300.323.

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INVESTIGATIVE PROCEDURES:

1. On September 30, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Executive Director of Special Education, BCPS.
2. On October 15, 2014, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation.
3. On October 23, 2014, Ms. Sharon Floyd, Education Program Specialist, MSDE, discussed the allegation being investigated with the student's mother.
4. On October 16, 2014, Ms. Floyd spoke with Mr. Darnell L. Henderson, Esq., Associate Counsel, Office of Legal Counsel, BCPS about the allegation being investigated.
5. On October 28, 2014, the student's mother hand-delivered documents to Ms. Floyd at the MSDE for consideration during the investigation.
6. On November 5, 2014, Ms. Floyd and Ms. Memuna Bangura, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the BCPS Central Office to review documentation, and interviewed:
 - a. Mr. Selwyn Finch, Educational Associate, BCPS;
 - b. Ms. Jessica Henkin, Coordinator, Early Learning Programs, BCPS; and
 - c. Mr. Jeffrey Katz, Educational Associate, BCPS.

Mr. Henderson attended the site visit as a representative of the BCPS to provide information on the BCPS policies and procedures, as needed.

7. On November 6, 2014, the MSDE was provided with copies of documents from the student's educational record from the BCPS.
8. On November 7, and 18, 2014, Ms. Floyd spoke with the student's mother about the allegations and her intention to enroll the student.
9. On November 10, 2014, the BCPS provided the MSDE with information to be considered during the investigation.

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10. On November 24, 2014, Ms. Floyd spoke with the student's mother about the IEP team meeting determinations held on November 21, 2014, and her intention to enroll the student.
11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of the procedural safeguards, provided to the complainants on June 17, 2014;
 - b. Notice of Documents, dated June 17, 2014;
 - c. Notice of IEP team meeting to the complainants, dated June 17, 2014;
 - d. IEP, dated July 10, 2014;
 - e. Evaluation Report and Determination of Initial Eligibility, dated July 10, 2014;
 - f. IEP, dated July 14, 2014;
 - g. Correspondence from XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to the complainants, dated August 22, 2014;
 - h. Placement Notice from XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX to the complainants dated August 26, 2014;
 - i. Correspondence from XXXXXXXXXXXXXXXXXXXXXXXX to the complainants, dated September 17, 2014;
 - j. Correspondence containing an allegation of a violation of the IDEA, received by the MSDE on October 8, 2014;
 - k. Correspondence from the BCPS, to the complainants dated October 8, 2014;
 - l. Electronic mail correspondence from Mr. Henderson to Ms. Floyd dated November 6, 2014;
 - m. Notice of IEP team meeting to the complainants, dated November 21, 2014; and
 - n. The school system's log of contacts with the complainants.

BACKGROUND:

The student is four (4) years old and was identified as a student with Autism under Part B of the IDEA on April 17, 2013. He is currently not attending school.

Prior to his identification as a student with a disability under Part B of the IDEA, the student was identified as a child with a disability under Part C of the IDEA and received early intervention services through an Extended Individualized Family Service Plan (IFSP).

During the time period covered by this investigation, the complainants were provided with notice of the procedural safeguards (Doc. a).

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FINDINGS OF FACTS:

1. On July 10, 2014, the BCPS IEP team convened to develop the IEP to be implemented during the 2014-2015 school year, since the student had turned four (4) years old. At that meeting, the present levels of performance were determined, annual IEP goals developed, and the services needed to assist the student in achieving the goals were determined. The team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is a separate special education class with a small teacher student ratio and staff knowledgeable about best practices for working with students with Autism. The team also determined that the student requires transportation due to his level of cognitive functioning and because the IEP could not be implemented in the school he would attend if not disabled (Doc. d).
2. At the July 10, 2014, meeting, the complainants provided written consent for the initiation of special education services and related services and a copy of the IEP was provided to them (Docs. d and e).
3. On Friday, August 22, 2014,¹ the BCPS mailed the complainants written notice that the student had been assigned to attend the XXXXXXXXXXXXXXXXXXXXXXXX XXXXX. The correspondence included transportation arrangements, which reflected that the student would be required to spend two (2) hours on the bus each way to and from school (Doc. g).
4. On August 26, 2014, the student's mother notified the BCPS that the transportation arrangements, specifically the length of the bus ride, were not appropriate (Docs. j and n).
5. On August 27, 2014, the BCPS provided the complainants with information that the student had been re-assigned to the XXXXXXXXXXXXXXXXXXXXXXXX. The school system staff report that the original assignment of the student to XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX was an administrative error and that typically the student would have been assigned to XXXXXXXXXXXXXXXXXXXXXXXX because it is closer to the student's home. (Docs. h and i).
6. On September 17, 2014, the BCPS mailed the complainants information about transportation arrangements to XXXXXXXXXXXXXXXXXXXXXXXX which reflected that the student would be required to spend one (1) hour on the bus each way (Docs. i and k).

¹ The first (1st) day of school for BCPS students was Monday, August 25, 2014 (Review of the BCPS 2014-2015 School Year Calendar.)

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7. The BCPS staff made several attempts to convince the complainants to enroll the student in school, having held telephone conversations with the student's mother on September 18, 2014, and with the student's father on September 22, 2014. The BCPS staff also attempted to hold additional conversations with the complainants on September 30, 2014, and October 3, 2014 and provided information on the school registration procedures on October 8, 2014 (Docs. k and n).
8. There is documentation that the complainants have expressed concerns about information contained in the IEP, including inaccurate information about the student's address and date of birth and the fact that the IEP indicated that it was a draft and not a final IEP. The documentation reflects that the school system staff attempted to assure the complainants that the information would be corrected and an updated copy would be sent to them as soon as a problem with the computer system used to develop the IEP was corrected (Doc. n).
9. The BCPS held an IEP team meeting on November 21, 2014, to review the IEP and discuss the complainants' concerns about the IEP. The BCPS has not yet generated documentation of the meeting, but the parties report that the team is attempting to locate a placement closer to the student's home (Doc. m).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is in place for the student at the beginning of the school year. As soon as possible following development of the IEP, special education and related services must be made available to the student (34 CFR §300.323).

The IDEA permits a State to make a FAPE available to children at ages three (3) through either the Part C early intervention system or the Part B preschool system (34 CFR §300.323). The Maryland Extended IFSP Option allows children receiving services through an IFSP, who are determined eligible for Part B special education services, to continue to receive early intervention services beyond age three (3) until the beginning of the school year following the student's fourth (4th) birthday.

The local school system must convene an IEP team meeting for the purpose of IEP development before the beginning of the school year following the student's fourth (4th) birthday if the parent wishes to consider preschool special education services and ensure that the IEP is in effect at the beginning of the school year. The local school system that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent of the student

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before the initial provision of special education and related services to the student who is compulsory school age (COMAR 13A.13.01.09).

Based on all of the Findings of Facts, the MSDE finds that the BCPS did not make a FAPE available to the student. Therefore, this office finds that a violation occurred since the start of the 2014-2015 school year.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by January 5, 2015, that the school system has identified the location in which special education services will be made available to the student and has informed the complainants of the transportation arrangements.

The MSDE requires the BCPS to provide documentation by February 2, 2015, that the IEP team has determined the services to compensate the student for the delay in offering a FAPE, to be provided if the complainants enroll the student in the school system, and has developed a plan for the provision of those services within a year of the date of this Letter of Findings.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis of the Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the BCPS and the complainants 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 within the timelines 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 parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement,

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or provision of a FAPE 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: am

c: Gregory E. Thornton
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Kim Hoffman
Darnell L. Henderson
XXXXXXXXXXXXX
XXXXXXXXXX
Dori Wilson
Paul Dunford
Anita Mandis
Brian Morrison
Nancy Vorobey
Sharon Floyd
Bonnie Preis