



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

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December 22, 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: #15-025

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 October 23, 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 following allegations:

1. The BCPS has not ensured that the student has been provided with the special education and related services required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101, .156, and .323.
2. The BCPS has not ensured that the student has been provided with the opportunity to satisfy one of the assessment options in order to earn a Maryland High School Diploma provided in COMAR 13A.03.02.07 and 13A.03.02.09.

3. The BCPS did not ensure that the student's educational record was accurately maintained and transferred in accordance with 34 CFR §300.624, COMAR 13A.08.02 and *The Maryland Student Records System Manual*.

INVESTIGATIVE PROCEDURES:

1. On October 27, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Executive Director of Special Education, BCPS; and Mr. Darnell Henderson, Associate General Counsel, BCPS.
2. On October 27, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant and clarified the allegations to be investigated.
3. On November 3, 2014, Ms. Sharon Floyd, Educational Program Specialist, MSDE, conducted an interview with the complainant regarding the allegations to be investigated.
4. On November 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. Hoffman of the allegations and requested that her office review the alleged violations.
5. On November 17, 2014, Ms. Floyd and Ms. Memuna Bangura, Monitoring and Accountability Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Mr. XXXXXXX, IEP Team Chairperson, BCPS;
 - b. Ms. XXXXXXX, IEP Chairperson, BCPS;
 - c. Ms. XXXXXXXXXXX, School Psychologist, BCPS;
 - d. Ms. XXXXXXXXXXX, Guidance Counselor, BCPS; and
 - e. Mr. XXXXXXX, Educational Associate, BCPS.

Mr. Henderson attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On November 18, 2014, Ms. Floyd reviewed the student's educational record with Mr. Henderson, at the BCPS Legal Office.
7. On November 21, 2014, the MSDE requested additional information and documentation from the BCPS.

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8. On November 24, 2014, the BCPS provided the MSDE with additional documentation from the student's educational record, via a courier service.
9. On December 2, 2014, the MSDE requested additional information and documentation from the BCPS.
10. On December 3, 2014, the BCPS provided the MSDE with additional documentation from the student's educational record, via electronic mail.
11. On December 11, 2014, Ms. Floyd, MSDE, conducted a consultation with the complainant regarding the investigation.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of the Procedural Safeguards, dated April 8, 2014;
 - b. Prior Written Notice, dated April 29, 2014;
 - c. IEP, dated April 29, 2014;
 - d. IEP Progress Report, dated November 13, 2014;
 - e. Evaluation Reports, dated February 9, 2009 and September 9 and 27, 2013;
 - f. Behavior Intervention Plan, dated September 5, 2013;
 - g. Daily Attendance Summary, dated December 3, 2014;
 - h. The Student's Schedule for the 2014-2015 school year;
 - i. Communication Log, dated August 21, 2014 to October 29, 2014;
 - j. Student Graduation Status Report, dated December 3, 2014;
 - k. The Student's Transcript, dated December 3, 2014;
 - l. Electronic mail correspondence from Mr. Henderson to Ms. Floyd, dated December 3, 2014;
 - m. IEPs in effect prior to April 29, 2014; and
 - n. Documentation of the student's HSA scores from XXXXXXXXXXXXXXX.

BACKGROUND:

The student is twenty-one (21) years old, is identified as a student with an Other Health Impairment related to a diagnosis of Attention Deficit/Hyperactivity Disorder under the IDEA, and has an IEP that requires the provision of special education and related services.

The student has been enrolled at XXXXXXXXXXXXXXX (XXXXXXXXXXXX) since November 15, 2013. Prior to enrollment at XXXXXXXXXXXXXXX, the student attended

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solving skills are at a sixth (6th) grade level. While the IEP states the student's written language skills are at a seventh (7th) grade level it has included a goal for the student to develop written language skills to the sixth (6th) grade level (Docs. c and m).

5. The reports of the student's progress towards achievement of the annual goals in reading comprehension, written language, math calculation and problem solving, and social, emotional, and behavioral functioning that were made since October 2013, indicate that the student has made sufficient progress to achieve the goals. However, none of the goals have been achieved and the IEP states the student has not made progress on the behavior goals (Docs. k and m).
6. There is no documentation that the IEP team has considered positive behavioral interventions to address the student's behavior or considered how to address the lack of progress being made (Docs. c and d).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the IEP team must review and revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals, the results of any reevaluation that is conducted, information about the student provided by the parents, or the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #1 - 4, the MSDE finds that, while progress reports reflect that the student has been making sufficient progress, this information is inconsistent with the data that have been available to the IEP team.

Based on the Findings of Facts #3 - #6, the MSDE finds that, the BCPS did not ensure that the IEP team considered positive behavioral interventions to address the student's interfering behaviors and did not address the student's lack of progress. Therefore, the MSDE finds that the IEP has not addressed the student's needs since October 2013 and that a violation occurred.

**ALLEGATIONS #2 AND #3 OPPORTUNITY TO SATISFY THE GRADUATION
REQUIREMENTS AND RECORDS MAINTENANCE**

FINDINGS OF FACT:

7. The IEP in effect since October 2011 has required that the student work towards the achievement of a Maryland High School Diploma. By the start of the 2013-2014 school year, the student had taken all of the required High School Assessments (HSAs), but was unable to pass them (Docs. c, k, j, and n).
8. At the April 29, 2014 IEP team meeting, the complainant expressed concern that the student had worked on Bridge Projects while at previous schools because he couldn't pass the HSAs, but that the student's work on the projects was not transferred to XXXXXXXXXXXX. Although there were staff members from both XXXXXXXXXXXX and XXXXXXXXXXXXXXXX on the team, there is no documentation that the complainant's concerns were addressed (Docs. c and n).
9. The student's current Official Graduation Status Report and Transcript document that the student completed course work required for graduation by April 2014. This documentation also reflects that the student is being required to pass all four (4) HSAs or complete four (4) Bridge Projects by the end of the 2014-2015 school year in order to meet eligibility status to graduate with a Maryland State Diploma. There is no documentation that the IEP team considered how to assist the student with completing the Bridge Projects considering the limited amount of time available to do so and the student's lack of regular school attendance (Docs. c, j, and k).
10. There is no documentation that the IEP team has considered whether the student should be working towards obtaining a Maryland High School Certificate of Completion (Docs. c, j, k and m).

DISCUSSION/CONCLUSIONS:

Allegation #2 Opportunity to Satisfy the Graduation Requirements

To be awarded a Maryland High School Diploma, the student must complete credit and service requirements and pass Maryland High School Assessments (HSAs) for algebra/data analysis, biology, and English, or achieve a specific combined score on these assessments, since entering

grade nine (9) in the 2006-2007 school year.¹ If the student is unable to pass the HSAs, the student may complete the requirements of the Bridge Plan for Academic Validation if the student meets specific criteria. These criteria include:

- a. Failing one (1) or more HSA(s) at least twice;
- b. Earning credit in the courses related to the HSAs;
- c. Demonstrating overall satisfactory attendance in the most recent school year completed;
- d. Demonstrating satisfactory progress toward achieving the Maryland High School Diploma requirements; and
- e. Participating successfully in appropriate assistance after having failed one (1) or more of the HSAs (COMAR 13A.03.02.09).

Students with disabilities who cannot meet the requirements for a Maryland High School Diploma, but who meet specific standards, can earn a Maryland High School Certificate of Completion. The required standards include:

- a. Having enrolled in an education program for at least four (4) years beyond grade eight (8) or its age equivalent and having reached age twenty-one (21) by the end of the current school year; and
- b. Having developed appropriate skills to enter the world of work, act responsibly as a citizen, and enjoy a fulfilling life, as determined by the IEP team (COMAR 13A.03.02.09).

Based on the Findings of Facts #7 - #10, the MSDE finds that the school system has had the student working to complete the Bridge Plan for Academic Validation without having met all of the required criteria, and has not ensured that the IEP team has considered whether he should pursue a Maryland High School Certificate of Completion. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #3 Maintenance and Transfer of Educational Records

In order to ensure that transferring students are provided with the special education and related services needed to make progress on the IEP goals and progress through the general curriculum, the public agency must take reasonable steps to promptly obtain the student's educational record,

¹ Students entering ninth (9th) grade in the 2012-2013 school year or in a prior year do not need to pass the government HSA for graduation but may use it for a combined score to meet the graduation requirement (COMAR 13A.03.02).

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including the IEP and supporting documents (34 CFR §300.323). Student records provide information about a student's academic performance, including the completion of activities needed for graduation. Therefore, the proper maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education.

All student educational records are to be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (34 CFR §§300.610 - .627). In order to ensure proper student records management, the local public agencies in Maryland are required to maintain educational records consistent with the (Maryland Student Records System Manual) (COMAR 13A.08.02.01 and .02).

The Records Manual indicates that, when transferring a student's educational record, the sending school is required to provide the receiving school with information, including the results of HSAs that have been taken and whether a Bridge Plan was utilized, and all supporting documentation (Maryland Student Records Manual).

Based on the Findings of Facts #7 - #10, the MSDE finds that the BCPS did not ensure that, when the student transferred to XXXXXXXXXXXX, supporting documentation related to the utilization of the Bridge Plan was transferred to the XXXXXXXXXXXX. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES

Student-Specific

The MSDE requires the BCPS to provide documentation by February 1, 2015, that the IEP team has reviewed and revised the IEP, as appropriate, to ensure that it addresses the student's needs, and that the IEP is being implemented. The BCPS must also provide documentation by February 1, 2015 that the IEP team has determined the nature and amount of compensatory services or other remedy necessary to redress the violations identified in this investigation.

In this case, the compensatory services must be designed to assist the student in preparing for post secondary school activities. These services may be provided to the student beyond the end of the 2014-2015 school year, but must be provided within one (1) year of the date of the 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 file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the BCPS to provide documentation by May 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 XXXXXXXXXX and XXXXXXXXXX. 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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Ms. Bonnie Preis of the Family Support and Dispute Resolution Branch; MSDE may be contacted at (410) 767-0255.

Please be advised that the complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the Findings of Facts 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.

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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 a 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:sf

c:

Gregory Thornton
Kim Hoffman
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XXXXXXXXXX
Darnell Henderson
Dori Wilson
Anita Mandis
Sharon Floyd
Bonnie Preis