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State Superintendent of Schools

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November 5, 2010

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

RE: XXXXX
Reference: #11-013

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 September 8, 2010, MSDE received a complaint from Mr. XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of the above-referenced student and the student's father. 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. MSDE investigated the following allegations:

1. BCPS has not followed proper procedures when responding to a request made by the student's father for a psychological assessment to be conducted since September 2009,¹ in accordance with 34 CFR §300.305 and COMAR 13A.05.01.06; and

¹ The complaint included allegations of violations dating back to August 2009. However, the complainant was informed, in writing, on September 13, 2010, that this office only has authority to investigate allegations of violations of IDEA that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

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2. BCPS has not ensured that the student's Individualized Education Program (IEP) has addressed his social, emotional, and behavioral needs since, September 2009,¹ in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 9, 2010, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant and clarified the allegations to be investigated.
3. On September 10, 2010, MSDE sent a copy of the complaint, via facsimile, to Mrs. Kim Lewis, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
4. On September 13, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Mrs. Lewis of the allegations and requested that her office review the alleged violations.
5. On September 29, 2010, Ms. Stump reviewed the student's education record at the BCPS Central Office. Ms. Ruley was present at the record review.
6. On October 7, 2010, BCPS provided MSDE with documentation from the student's education record via electronic mail (e-mail).
7. On October 18, 2010, Ms. Stump and Ms. Mandis conducted a site visit at XXXXXXXXXXXX School (XXXXXXXX) and interviewed the following BCPS staff:
 - a. Ms. XXXXXXXXXXXX, IEP Team Chairperson; and
 - b. Mr. XXXXXXXXXXXX, School Psychologist.

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

8. On October 20, 2010, BCPS provided MSDE with additional documentation from the student's education record, via e-mail.

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9. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Order of Custody from the Circuit Court for Baltimore City, dated January 19, 2007;
 - b. IEP team meeting summary and consent for assessments, dated May 18, 2009;
 - c. IEP team meeting summary and consent for assessments, dated June 22, 2009;
 - d. Correspondence from school staff to the student's father, dated August 28, 2009;
 - e. IEP team meeting invitation for a September 2, 2009 meeting;
 - f. IEP team meeting summary, dated November 19, 2009;
 - g. E-mail correspondence from the student's father and the complainant to school staff, dated January 12 and 13, 2010;
 - h. IEP team meeting summary, dated February 19, 2010;
 - i. Correspondence from school staff to the student's mother, dated April 28, 2010;
 - j. IEP team meeting invitation for a May 10, 2010 IEP team meeting;
 - k. IEP and team meeting summary, dated June 14, 2010;
 - l. Communication log from the student's education record for the 2009-2010 school year; and
 - m. IEP progress reports for the 2009-2010 school year.
 - n. Order of Custody from the Circuit Court for Baltimore City, dated July 26, 2010; and
 - o. Correspondence from the complainant alleging violations of IDEA, received by MSDE on September 8, 2010.

BACKGROUND:

The student is nine (9) years old, is identified as a student with a specific learning disability under IDEA, and receives special education instruction. During the 2009-2010 school year, the student attended XXXXXX. Following a move from his mother's home to his father's home in another neighborhood, the student was transferred to XXXXXXXXXXXXXXXX School at the start of the 2010-2011 school year.

By Order of the Circuit Court for Baltimore City, the student's parents have been awarded joint legal custody of the student, and therefore both serve as the student's parent for education decision-making purposes. During the period of time addressed by this investigation, the student's parents participated in the education decision-making process, and were provided with written notice of IEP team decisions and notice of the procedural safeguards, as required (Docs. a – c, k, m, and n).

FINDINGS OF FACT:

1. In September 2009, the IEP team was in the process of completing a reevaluation that began on May 18, 2009 at the request of the student's father, who had expressed concerns about the student's academic progress. The May 18, 2009 meeting was continued on June 22, 2009, but the team was unable to complete the reevaluation due to time constraints that resulted from continuing questions and discussion about present levels of performance, annual goals, and services from the complainant and the student's father. At these meetings, the student's father indicated that he believes that the student requires additional supports to address his attention needs. School staff and the student's mother disagreed with the student's father. School staff proposed dates for the meeting to continue on or September 2, 2009 and October 20, 2009 to review the results of assessments recommended at the May and June 2009 meetings, but because these dates were not convenient for the student's mother, the meeting was scheduled for November 19, 2009 (Docs. b – e and l).
2. At the May and June 2009 meetings, the team recommended that educational and speech/language assessments be conducted. The consents signed by the parents state that a purpose of the reevaluation was to determine the student's continuing eligibility as well as to determine the student's educational needs (Docs. b and c).
3. At the November 19, 2009 meeting, the team considered the results of assessments that had been conducted and began a review of the IEP based on the assessment data. The student's father continued to express concern that the student requires additional supports to address his attention issues. School staff reported that the student is able to do the work, but that he "refused to do complete any work this past quarter." School staff further reported that when the student is offered a reward or incentive for working, he completes his work with "without problem." Due to time constraints that resulted from continuing questions and discussion about present levels of performance, annual goals, and services from the complainant and the student's father, the team was unable to complete a review of the IEP at the November 19, 2009 meeting (Doc. f).
4. On January 12, 2010, the student's father requested that the meeting be continued after March 2010 due to his unavailability, and indicated through the complainant that he was willing to waive timelines for completing the IEP review. The meeting was scheduled for February 19, 2010 with the agreement of the student's father. At the February 19, 2010 meeting, the team decided that the program will include consultation between the student's teachers and the school psychologist regarding implementation and monitoring of a point system for the student to earn rewards with appropriate behavior. The team was unable to complete the review of the IEP due to time constraints that resulted from continuing questions and discussion about present levels of performance, and annual goals, and services from the complainant and the student's father (Docs. g and h).

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5. School staff scheduled the team meeting for April 19, 2010, May 10, 2010, and May 20, 2010 to complete the IEP review, but because the student's mother was unavailable on these dates, the meeting was rescheduled to June 14, 2010. At the June 14, 2010 meeting, the complainant, on behalf of the student's father, requested that a psychological assessment be conducted in order to determine whether anxiety or lack of motivation negatively impacts the student's educational performance. The complainant also requested that the student be provided with counseling as a related service. The team rejected the requests based on reports of the school staff and the student's mother that the student is making sufficient academic progress without the need for added behavioral supports, but agreed to continue to require consultation between the school psychologist and the student's teachers. At the June 14, 2010 meeting, the team completed its review and revision of the IEP (Docs. i – 1).

LEGAL REQUIREMENTS:

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 parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

A reevaluation must be conducted at least once every three (3) years in order to determine whether a student continues to meet the criteria for identification as a student with a disability and the educational needs of the student, unless the parent and the public agency agree that a reevaluation is unnecessary. Additionally, a reevaluation must be conducted if the public agency determines that the educational or related services needs of the student warrant a reevaluation or if the parent or teacher requests a reevaluation. However, if the reevaluation is requested in order to determine the student's educational needs when continued eligibility is not in question, the public agency must either conduct the reevaluation or provide notice to the parents as to why the public agency believes a reevaluation is unnecessary (34 CFR §§300.301 - .306 and *Analysis of Comments and Changes to IDEA, Federal Register*, Vol. 71, No. 156, p. 46644, August 14, 2006).

If the public agency decides to conduct a reevaluation, the team must review the existing data and determine whether additional data is needed in order to determine the student's continuing eligibility and the student's educational needs. Assessments are not required to be conducted as part of a reevaluation unless additional data is needed to determine the student's continuing eligibility and the student's educational needs, *or unless the parents request that assessments be conducted* [emphasis added] (34 CFR §300.305 and COMAR 13A.05.01.06).

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A reevaluation must be completed within ninety (90) days. There are no exceptions to this requirement, even when parents agree to an extension, unless the student enrolls in a school in another public agency during the pendency of the reevaluation (34 CFR §§300.301 - .304 and COMAR 13A.05.01.06).

DISCUSSION/CONCLUSIONS:

In this case, the complainant, who represented the student's father, alleges that the team's rejection of the father's request for a psychological assessment was not consistent with the requirement that assessments be conducted upon the request of parents. The complainant asserts that because the team has not conducted a psychological assessment, BCPS has not ensured that the student's social, emotional, and behavioral needs have been properly identified, and therefore, addressed (Docs. k and o).

Allegation #1: Response to Request for Psychological Assessment

Based on Findings of Fact #1 – 5, MSDE finds that as a result of the school system's efforts to ensure that the team addressed all of the concerns raised by the complainant and the student's father and efforts to ensure that both parents were able to attend each IEP team meeting, BCPS did not ensure that the reevaluation was completed within (ninety) 90 days.

Based on Findings of Fact #1 - 5, MSDE finds that the reevaluation was conducted because the team decided that additional data was needed to determine the student's continuing eligibility and identify the needs that arise from the student's disability. Because the school system agreed to conduct the reevaluation, it was required to ensure that assessments were conducted if requested by the parents.

Based on Finding of Fact #5, MSDE finds that BCPS did not ensure that a psychological assessment was conducted as requested by the student's father during the reevaluation process. Therefore, MSDE finds that violations occurred with respect to the allegation.

Allegation #2: IEP that Addresses the Student's Social, Emotional, and Behavioral Needs

Based on Findings of Fact #1 – 5, MSDE finds that the team considered information from the student's parents and teachers and revised the IEP consistent with the data. However, as stated above, the team did not ensure that assessment data was obtained in response to the complainant's request, as required. Therefore, MSDE finds that a violation occurred with respect to the allegation because BCPS has not ensured that the student's social, emotional, and behavioral needs have been identified since September 2009.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

MSDE requires BCPS to provide documentation by February 1, 2010 that a psychological assessment has been conducted in order to identify the student's social, emotional, and behavioral needs and that the IEP has been revised, as appropriate, consistent with the data. If the IEP requires revision, BCPS is also required to provide documentation by February 1, 2010 that the team has determined the amount and nature of *compensatory services*² or other remedy to redress the violation.

BCPS must provide the student's parent with proper written notice of the team's decisions. If the student's parent disagrees with the team's decisions, the parent maintains the right to request mediation or to file a due process hearing to resolve the dispute.

School-Based/Systemic

MSDE requires BCPS to provide documentation of the steps taken to determine if the procedural violations identified are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXX. This documentation is due no later than February 1, 2011.

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 MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch 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 the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), and Memorandum #09-02. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring.

² Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties 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 LOF. 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 LOF. If additional information is provided, it will be reviewed and 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 LOF.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parent 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 IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH:ks

c: Andrés Alonso
Nancy Ruley
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Martha Arthur
Kathy Stump