



Nancy S. Grasmick  
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

November 8, 2010

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Mrs. Kim Lewis  
Executive Director, Special Education  
Baltimore City Public Schools  
200 East North Avenue, Room 407B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #11-016

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 13, 2010, MSDE received correspondence from Ms. XXXXXXXXX, the student's aunt<sup>1</sup>, 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. This office investigated the following allegations:

1. BCPS did not provide the student with the special education and counseling services required by the Individualized Education Program (IEP) during the 2009-2010 school year, as required by 34 CFR §300.101.
2. BCPS did not follow proper procedures when disciplinarily removing the student from school during the 2009-2010 school year, as required by 34 CFR §§300.530 and .536.

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<sup>1</sup> Under IDEA, the term "parent" includes a person acting in the place of a parent, such as a relative with whom the student lives (34 CFR §300.30). In this case, the student resides with her aunt, who meets the definition of a parent under IDEA (Doc. a).

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 14, 2010, a copy of the complaint was provided by facsimile to: Mrs. Kim Lewis, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
3. On September 20, 2010, Ms. Frazier contacted the complainant, by telephone, to clarify the allegations.
4. On September 23, 2010, Ms. Frazier conducted a telephone interview with Ms. Ruley regarding the allegations subject to investigation.
5. On September 24, 2010, MSDE received documentation from the student's education record, via electronic mail (e-mail).
6. On September 29, 2010, Ms. Frazier conducted telephone interviews with the complainant and Ms. Ruley, respectively.
7. On October 7, 15, and 26, 2010, Ms. Frazier left messages for the complainant after unsuccessfully attempting to contact her, via telephone, to obtain additional information.
8. On October 14 and 15, 2010, Ms. Frazier conducted telephone interviews with Ms. Pamela Rice-Montgomery, Coordinator, Special Education Parent Response Unit, BCPS.
9. On October 20, 2010, MSDE received additional documentation from the student's education record from BCPS staff, via e-mail.
10. On October 25, 2010, Ms. Frazier and Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation/Due Process Branch, MSDE, conducted a site visit at XXXXXXXXXXXX School (XXXXXXXX HS), received additional documentation from the student's education record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXXX, Assistant Principal;
  - b. Mr. XXXXXXX, School Administrator;
  - c. Mr. XXXXXXXXXXX, IEP Chairperson;
  - d. Ms. XXXXXXXXXXX, Special Education Teacher;
  - e. Ms. XXXXXXXXXXXXXXXXXXX, Special Education Teacher, and
  - f. Ms. XXXXXXXXXXX, Regular Education Teacher.

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

11. On October 28, 2010, Ms. Frazier received additional documentation from the student's education record from BCPS staff, via e-mail.
12. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. Correspondence and attachments from the complainant to MSDE alleging violations of IDEA, dated September 11, 2010;
  - b. IEP, dated November 21, 2008;
  - c. BCPS *IEP Initiation Verification Form*, dated September 2, 2009;
  - d. Correspondence to the complainant from BCPS staff, dated November 4, 2009;
  - e. Correspondence to the complainant from BCPS staff, dated November 18, 2009;
  - f. IEP, dated November 19, 2009;
  - g. BCPS *IEP Initiation Verification Form*, dated November 20, 2009;
  - h. Correspondence to the complainant from BCPS staff, dated December 10, 2009;
  - i. BCPS *Student Tracking Form: Diligent Efforts to Reinstate/Enroll Student Following Short Term Suspension, Extended Suspension, or Expulsion* form, completed on December 11, 2009;
  - j. IEP, dated February 5, 2010 and amended February 26, 2010;
  - k. IEP, dated April 13, 2010 and amended April 28, 2010;
  - l. Correspondence to the complainant from BCPS staff, dated April 27, 2010;
  - m. Reports on the student's progress completed by teachers on June 7 and 8, 2010;
  - n. Correspondence from BCPS personnel to the complainant, dated August 5, 2010;
  - o. IEP, dated June 14, 2010;
  - p. IEP, dated October 18, 2010;
  - q. BCPS logs documenting the provision of counseling services for the 2009-2010 school year;
  - r. BCPS report on the student's attendance for the 2009-2010 school year;
  - s. Progress reports and report cards for the 2009-2010 school year, and
  - t. Schedule of the student's classes for the 2009-2010 school year.

### **BACKGROUND:**

The student is fifteen (15) years old and is identified as a student with a specific learning disability under IDEA. During the 2009-2010 school year, she attended XXXXXXXXXXXX. Since the start of the 2010-2011 school year, when she was transferred at the complainant's request, the student has attended XXXXXXXXXXXX.

During the time period covered by this investigation, the complainant participated in the education decision-making process. She has been provided with procedural safeguards as required (Docs. b, f, j, k and o).

**ALLEGATION #1a:                    2009-2010 SCHOOL YEAR – PROVISION OF SPECIAL  
EDUCATION INSTRUCTION**

**Findings of Fact:**

1. BCPS staff acknowledge that there is no documentation that a special education teacher provided special education instruction to the student prior to November 19, 2009 (Docs. c and n and interview with school staff).
2. On November 19, 2009, the IEP team convened and revised the student's IEP. The IEP required that the student be provided with fifteen (15) hours a week of special education instruction in a separate special education classroom to address her needs in math, reading and written language (Docs. f, j, k and o).
3. The following documents the provision of special education instruction to the student in accordance with the IEP that was in effect from November 19, 2009 until the end of the 2009-2010 school year:
  - a. IEP Initiation Verification Form, signed by special educators on November 20, 2009, documenting initiation of special education services following the November 19, 2009 IEP team meeting;
  - b. The student's class schedule, progress reports, and report cards, documenting that the student's class schedule was changed in November 2009, when she was placed in separate special education classes for English and Algebra;
  - d. Progress reports completed by the student's special education teachers in June 2010, documenting the provision of special education services as well as the accommodations and modifications utilized in their classrooms; and
  - d. Written summaries of the IEP team meetings held on February 5, 2010, April 13, 2010 and June 14, 2010, which document teacher input about the student's progress in her classes, and discussion regarding the special education services and other accommodations that were provided to the student (Docs. g, j, k, m, o, s and t).
4. On October 18, 2010, following the start of the 2010-2011 school year, the IEP team convened to consider a remedy to address the loss of special education instruction prior to November 19, 2009. The team, including the complainant, agreed that the student would be provided with twenty-five (25) hours of special education instruction in reading comprehension, writing and math to make up for the services missed during that time period (Doc. p and interview with BCPS staff).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education services required by the IEP (34 CFR §300.101). Based on Finding of Fact #1, BCPS staff acknowledge, and MSDE finds, that there is no documentation that the student was provided with special education instruction prior to November 19, 2009. Based on Findings of Fact #2 and 3, MSDE finds that, from November 19, 2009 through the end of the 2009-2010 school year, there is documentation that the student was provided with the special education instruction required by her IEP. Therefore, MSDE finds a violation with regard to the provision of special education services prior to November 19, 2009.

Notwithstanding the violation, based on Finding of Fact #4, MSDE finds that the IEP team convened on October 18, 2010 and determined the services to be provided to the student to remedy the loss of services prior to November 19, 2009. Therefore, no further student-specific corrective action is required.

**ALLEGATION #1b:            2009-2010 SCHOOLYEAR – PROVISION OF COUNSELING SERVICES**

**Findings of Fact:**

5.        The IEP in effect from the start of the 2009-2010 school year until February 5, 2010 required that the student receive two (2) thirty (30) minute sessions of counseling each month, as a related service (Docs. c and f).
6.        The IEP in effect from February 5, 2010 through the end of the 2009-2010 school year required that the student receive one (1) hour of counseling one (1) time each month, as a related service (Docs. j, k and o).
7.        The counseling service provider's log documents that the student received the counseling services required by the IEP during the 2009-2010 school year (Doc. q).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on Findings of Fact #5-7, MSDE finds that there is documentation that the student was provided with counseling services as required by the IEP during the 2009-2010 school year. Therefore, MSDE does not find a violation with regard to this aspect of the allegation.

**ALLEGATION #2:                    DISCIPLINARY REMOVAL**

**Findings of Fact:**

8.        On November 5, 2009, the student was disciplinarily removed from school for three (3) days for fighting (Docs. d and r).
9.        On November 19, 2009, the student was disciplinarily removed from school for two (2) days for refusing to obey school policies (Docs. e and r).
10.      On December 10, 2009, the complainant was informed that the student was to be disciplinarily removed from school for four (4) days for refusing to obey school policies beginning the next day (Docs. h and r).
11.      On December 11, 2009, following a review of the matter, the school principal rescinded the four (4) day disciplinary removal, contacted the complainant, and informed her that the student could return to school that day (Docs. i and r).
12.      On April 28, 2010, the student was disciplinarily removed from school for two (2) days for refusing to obey school rules (Docs. l and r).
13.      On June 15, 2010, the complainant requested that BCPS personnel review the student's disciplinary removals and, on August 5, 2010, BCPS issued the results of an internal investigation in this matter. The report issued by BCPS staff did not reflect that the student's December 11, 2009 disciplinary removal had been rescinded and, as a result, BCPS determined that the student had been disciplinary removed from school on eleven (11) school days during the 2009-2010 school year (Doc. n).
14.      On October 18, 2010, the IEP team met to review the BCPS finding that the student was disciplinarily removed from school in excess of ten (10) school days and, at this meeting, the team offered a remedy to address the finding in the BCPS investigation (Doc. p).

**Discussion/Conclusions:**

IDEA provides protections to students with disabilities who are removed from school in excess of ten (10) school days in a given school year. Included among these protections is the requirement that the student receive special education services after the tenth (10<sup>th</sup>) day of disciplinary removal (34 CFR §§300.530-533 and .536).

Based on Findings of Fact #13 and 14, MSDE finds that BCPS personnel found that the student had been disciplinarily removed for eleven (11) school days during the 2009-2010 school year and offered services to the student to remedy this matter. However, based on Findings of Fact #8-12, MSDE finds that the documentation in the student's education record demonstrates that

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the student was not disciplinarily removed from school in excess of ten (10) school days. As a result, the protections provided under IDEA were not applicable and, therefore, MSDE does not find a violation with regard to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

MSDE requires BCPS to provide documentation of the steps taken to determine if the procedural violation related to provision of special education instruction is unique to this case or if it represents 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 requirement is not being implemented, the school system must identify the actions that will be taken to ensure that the violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date of 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.

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. Verification of the school system's compliance will also be conducted consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP) Memorandum #09-02.

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.

**TECHINCAL 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 the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact or conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional

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documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, 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 of fact, conclusions or corrective actions contained in this LOF 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 student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/vmf

c: Andrés Alonso  
Kim Lewis  
Nancy Ruley  
Erin Leff  
XXXXXX  
Linda Bluth  
Anita Mandis  
Vickie Frazier  
Martha Arthur