



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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June 15, 2012

K. Sabrina Austin, Esq.
Maryland Coalition for Inclusive Education
7484 Candlewood Road, Suite R
Hanover, Maryland 21076

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

RE: XXXXX
Reference: #12-082

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 April 23, 2012, the MSDE received a complaint from K. Sabrina Austin, Esq., hereafter, “the complainant,” on behalf of her clients, the above-referenced student and the student’s mother. 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 Individualized Education Program (IEP) team convened to review the student’s IEP before April 2012 in order to ensure that the IEP was reviewed at least annually, in accordance with 34 CFR §300.324;
2. The BCPS did not provide prior written notice of the IEP team’s decisions made at the IEP team meetings on November 9, 2011, February 24, 2012, and March 21, 2012, in accordance with 34 CFR §300.503;
3. The BCPS did not provide the student’s mother with a copy of each assessment, report, data chart, draft IEP, or other documentation the IEP team planned to discuss at least five (5) business days before the IEP team meetings held on November 9, 2011, February 24, 2012, and March 21, 2012, in accordance with Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07; and

4. The BCPS did not follow proper procedures when responding to a March 29, 2012 request to amend the student's educational record, in accordance with 34 CFR §§300.618 - .621.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 25, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On April 26, 2012, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 30, 2012, 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 and requested that her office review the alleged violation.
5. On June 1, 2012, Ms. Stump and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX, a BCPS public charter school, to review the student's educational record, and interviewed Ms. XXXXXXXXXXXX, IEP Team Chairperson. Ms. Tiffany Puckett, Associate Counsel, BCPS, participated in the site visit, via telephone conference, as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. 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 MSDE, received on April 23, 2012;
 - b. Notice of Documents Provided to Parents for Review at an IEP Meeting form, dated October 31, 2011;
 - c. IEP, dated November 9, 2011;
 - d. Notice and Consent for Assessment form, dated November 9, 2011;
 - e. Prior Written Notice form, dated November 9, 2011;
 - f. Notice of Documents Provided to Parents for Review at an IEP Meeting form, dated January 23, 2012;
 - g. IEP, dated February 24, 2012;
 - h. Notice and Consent for Assessment form, dated February 24, 2012;
 - i. Prior Written Notice form, dated February 24, 2012;
 - j. Notice of Documents Provided to Parents for Review at an IEP Meeting form, dated March 20, 2012;
 - k. IEP, dated March 21, 2012;

- l. Prior Written Notice form, dated March 21, 2012;
- m. Electronic mail (e-mail) correspondence from the complainant to BCPS personnel, dated March 29, 2012;
- n. E-mail correspondence from BCPS personnel to the complainant, dated March 30, 2012;
- o. Invitation to an April 20, 2012 IEP team meeting;
- p. IEP, dated May 24, 2012;
- q. Communication log for the 2011-2012 school year; and
- r. Speech-language pathologist's service provider log for the 2011-2012 school year.

BACKGROUND:

The student is fifteen (15) years old and is identified as a student with autism under the IDEA. She attends XXXXXXXXXXXXXXXXXXXX, a BCPS public charter school, where she receives special education instruction and related services. During the period of time addressed by this investigation, the student's mother was provided with written notice of the procedural safeguards (Docs. a, c, g, k, and p).

ALLEGATION #1: REVIEWING THE IEP AT LEAST ANNUALLY BEFORE APRIL 2012

Findings of Facts:

April 6, 2011 IEP Team Meeting

1. The parties agree that the student's "annual review" during the 2010-2011 school year occurred on April 6, 2011 (Doc. a and interviews with the complainant and school staff).

November 9, 2011 IEP Team Meeting

2. At the November 9, 2011 meeting, the team considered the input of the student's mother, who shared her concerns that the student needs more opportunities to interact with nondisabled peers and participate in extracurricular activities. In response to these concerns, school staff explained the opportunities that the student has during the school day to interact with her nondisabled peers and explained that information is given to the student about extracurricular activities (Docs. c and e).
3. The student's mother also shared her concern for her daughter's safety because of her belief that the student "does not know how to interact with strangers." In response, school staff explained the student is able to interact with others and ask for help when needed while at school (Docs. c and e).
4. The student's mother also requested a reevaluation of the student. The team recommended that a psychological assessment be conducted, with an adaptive skills rating scale, if determined necessary by the examiner. The team also recommended that

an educational assessment, a speech-language assessment and a classroom observation be conducted (Docs. c-e).

February 24, 2012 IEP Team Meeting

5. At the February 24, 2012 meeting, the team considered the results of the speech-language assessment and, based on that review, determined that the student did not qualify for speech-language services. The student's mother disagreed with this determination and, in response, the team agreed to her request for an additional observation of the student in a nonacademic setting (Docs. g-i).
6. The team also considered the results of the psychological assessment, which included an adaptive rating scale from one (1) of the student's teachers. Based on that review and input from the student's mother, the team determined that an additional adaptive rating scale would be completed by the student's mother (Docs. g-i).
7. The team considered the reports of the classroom observation, the results of the educational assessment, and information from the student's teachers regarding her progress with the use of supports. The team also considered the request of the student's mother for the student to have the opportunity to participate in the general education classroom with her nondisabled peers (Docs. g and i).
8. The team agreed to reconvene once the additional data were collected in order to complete the review and revision of the student's program and to address the requests of the student's mother (Docs. g and i).

March 21, 2012 IEP Team Meeting

9. At the March 21, 2012 meeting, the team reviewed the results of the speech-language assessment again together with the additional observation of the student, which had been conducted during lunch when she was in the cafeteria. The team also considered the input of the student's parents regarding how the student engages in conversations outside of school (Docs. k and l).
10. Based on the review of this information, the team determined that the student is eligible to receive speech-language services (Docs. k and l).
11. The team also considered the results of the adaptive rating scale completed by the student's mother. Based on the review of all of this information, the team determined that the student continues to qualify as a student with a disability in need of special education instruction and related services. The team agreed to reconvene to complete its revision of the student's program (Docs. k and l).
12. An IEP team meeting was scheduled for April 20, 2012, to complete the process, but it was rescheduled because one (1) of the members of the IEP team would not be able to attend on that date (Doc. o and interview with school staff).

May 24, 2012 IEP Team Meeting

13. On May 24, 2012, the IEP team convened and, based on the assessment data collected in February and March 2012, and input from the student's mother, the team revised the student's IEP (Doc. p).

Discussion/Conclusions:

Each public agency must ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP, as appropriate, to address any lack of expected progress toward the annual goals, the results of any reevaluation, information about the student provided by the parent, the student's anticipated needs or special factors, if applicable (34 CFR §300.324(b)(1)).

The IEP must include the student's present levels of academic achievement and functional performance and annual goals designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance (34 CFR §300.320). When determining the levels of academic achievement and functional performance, the team must consider the evaluative data. This includes, among other things, assessment results, information from the student's teachers, and the parent's concerns (34 CFR §300.324).

Based on the Findings of Facts #1-#13, the MSDE finds that the IEP team convened on four (4) occasions during the 2011-2012 school year to consider the student's progress, the concerns of the student's parents, and information from the student's teachers. Based upon those same Findings, the MSDE further finds that based upon the data considered, the team determined that assessments were necessary to identify the student's needs.

Based on those same Findings, the MSDE finds that the IEP team revised the student's annual IEP goals and services based on the data considered. Therefore, the MSDE finds that the IEP team met periodically and at least annually since April 2011 to ensure that the student's program remained appropriate. As a result, the MSDE finds no violation regarding this allegation.

ALLEGATION #2: PRIOR WRITTEN NOTICE OF IEP TEAM MEETINGS HELD ON NOVEMBER 9, 2011, FEBRUARY 24, 2012, AND MARCH 21, 2012

Findings of Facts:

November 9, 2011 IEP Team Meeting

14. On November 16, 2011, school staff informed the student's mother, by telephone, that a copy of the completed IEP and a prior written notice form, generated following the November 9, 2011 meeting, had been placed in the student's book bag (Doc. q).
15. The prior written notice form indicates that the team agreed to conduct several assessments, the first of which was conducted on November 23, 2011 (Docs. e and q).

16. The meeting summary contained in the IEP indicates that, at the meeting, the student's mother expressed her concerns regarding inclusion opportunities, the student's safety, and her desire to have the student evaluated (Doc. c).
17. The prior written notice form indicates that a basis for the team's determination to conduct additional assessments was the concerns of the student's mother that the student may require the provision of a one-to-one aide and the mother's belief that the student requires speech-language therapy services (Doc. e).

February 24, 2012 IEP Team Meeting

18. On March 14, 2012, school staff spoke with the student's mother, by telephone, to confirm that she had received a copy of the completed IEP and the prior written notice form, generated following the February 24, 2012 meeting (Doc. q).

March 21, 2012 IEP Team Meeting

19. At the March 21, 2012 meeting, the team determined that the student requires speech-language therapy services two (2) times weekly for thirty (30) minutes per session. There is documentation that speech-language therapy services began to be provided to the student on March 22, 2012 (Docs. k, l, and r).
20. The communication log documents that on April 10, 2012, school staff sent the completed IEP and a prior written notice form generated following the March 21, 2012 meeting to the student's mother via the United States mail (Doc. q).

Discussion/Conclusions:

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student. This notice must include, among other things, a description of the action proposed or refused, an explanation of the action, a description of each evaluation procedure, assessment, record, or report used as a basis for the decision, a description of other options that the IEP team considered and the reasons why those options were rejected, and a description of other factors that are relevant to the agency's proposal or refusal (34 CFR §300.503).

There is no requirement to provide the parent of a student with a disability with a verbatim transcript of discussions that occur at the IEP team meeting. Further, there is nothing that would prohibit the public agency from using the IEP document as part of the prior written notice so long as it has all of the required content (*Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46691*).

November 9, 2011 IEP Team Meeting

In this case, the complainant alleges that the prior written notice was not provided in a timely manner because the student's mother did not receive it until February 2012. Further, the complainant alleges that the prior written notice "omitted" some of the concerns of the complainant. Specifically, the complainant states that the prior written notice does not state that the student's mother requested speech-language therapy, that someone other than the classroom teacher perform the educational assessment, a "trial pull-out for additional inclusion opportunities," expedited evaluations, and adult support for the student to participate with her non-disabled peers (Doc. a).

Based on the Findings of Facts #14 and #15, the MSDE finds that there is documentation that prior written notice was provided to the student's mother on November 16, 2011 and that the decisions made by the IEP team at the meeting were implemented after November 16, 2011. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

Based on the Findings of Facts #14-#17, the MSDE finds that the IEP dated November 9, 2011 and the prior written notice form include the concerns of the complainant regarding the request of the student's mother for speech-language services, for inclusion opportunities, and for adult assistance. The MSDE reminds the complainant that the prior written notice is not required to be a verbatim transcript of the IEP team meeting.

Based on the Findings of Facts #14-#17, the MSDE finds that there is no documentation that the student's mother requested that someone other than the classroom teacher perform the educational assessment, a "trial pull-out for additional inclusion opportunities," or for expedited evaluations. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

The MSDE understands that the complainant believes that the prior written notice form, dated November 9, 2011 is inaccurate. If the student's mother believes that information contained within the student's education record is inaccurate or misleading, she may request that the school system amend the information pursuant to the IDEA and the Family Educational Rights and Privacy Act (FERPA). If the school system refuses to amend the record, it must advise the student's mother of that decision and provide her with the opportunity to request a hearing before school system personnel to challenge the content of the student's educational record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22).

February 24, 2012 IEP Team Meeting

In this case, the complainant specifically alleges that school staff did not provide the student's mother with prior written notice from this meeting (Doc. a). Based on the Finding of Fact #18, the MSDE finds that there is documentation that prior written notice was provided to the student's mother. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

March 21, 2012 IEP Team Meeting

In this case, the complainant specifically alleges that the prior written notice was not provided in a timely manner and that the notice is inaccurate (Doc. a). Based on the Finding of Fact #20, the MSDE finds that there is documentation that prior written notice was provided to the student's mother on April 10, 2012. However, based on the Finding of Fact #19, the MSDE finds that the decisions made at the meeting were implemented before the prior written notice was sent to the student's mother. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

The MSDE understands that the complainant believes that the prior written notice form, dated March 21, 2012 is inaccurate. As stated above, if the student's mother believes that information contained within the student's education record is inaccurate or misleading, she may request that the school system amend the information pursuant to the IDEA.

ALLEGATION #3: **PROVISION OF DOCUMENTS PRIOR TO IEP TEAM MEETINGS HELD ON NOVEMBER 9, 2011, FEBRUARY 24, 2012, AND MARCH 21, 2012**

Findings of Facts:

November 9, 2011 IEP Team Meeting

21. On October 31, 2011, school staff sent correspondence to the student's mother, enclosing a draft IEP in preparation for the November 9, 2011 meeting (Doc. b).

February 24, 2012 IEP Team Meeting

22. On January 23, 2012, school staff sent correspondence to the student's mother, enclosing a draft IEP and "formal tests." The documentation of the meeting indicates that the draft IEP provided to the student's mother did not include all of the content which was presented by school staff for consideration by the team at the February 24, 2012 meeting (Doc. f).
23. The communication log indicates that the results of the speech-language assessment report were hand-delivered to the student's mother on January 25, 2012. The communication log also indicates that on February 6, 2012, school staff mailed the student's mother the results of the classroom observation and the psychological assessment (Doc. q).

March 21, 2012 IEP Team Meeting

24. On March 20, 2012, school staff sent the student's mother, via the student's book bag, the documents to be considered at the March 21, 2012 meeting, including: the adaptive behavior rating scale, the results of the assessment to determine whether the student demonstrates behaviors related to autism, and a draft IEP. There is documentation that

school staff informed the student's mother, via telephone, that the documents were in the student's book bag (Doc. j).

Discussion/Conclusions:

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (Md. Code Ann., Educ., §8-405 [2010] and COMAR 13A.05.01.07).

November 9, 2011 IEP Team Meeting

In this case, the complainant specifically alleges that school staff did not provide the student's mother with the draft IEP until November 4, 2012 (Doc. a).

Based on the Finding of Fact #21, the MSDE finds that the draft IEP was sent to the student's mother on October 31, 2011. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

February 24, 2012 IEP Team Meeting

In this case, the complainant specifically alleges that school staff sent the student's mother a draft IEP that was not the draft reviewed at the meeting and that the results of the assessments were not provided in a timely manner (Doc. a).

Based on the Findings of Facts #22 and #23, the MSDE finds that there is documentation that the results of the assessments were sent to the student's mother at least five (5) business days prior to the meeting. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

However, based on the Finding of Fact #22, the MSDE finds that school staff did not provide the student's mother with the draft IEP that was reviewed at the meeting prior to the meeting. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

March 21, 2012 IEP Team Meeting

In this case, the complainant specifically alleges that school staff provided the documents to be considered at the meeting less than five (5) business days prior to the IEP team meeting (Doc. a).

Based on the Finding of Fact #24, the MSDE finds that school staff did not provide the documents to be considered at the meeting to the student's mother five (5) business days before the meeting. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

ALLEGATION #4: **RESPONDING TO REQUESTS TO AMEND THE
EDUCATIONAL RECORD**

Findings of Facts:

25. On March 29, 2012, the complainant sent correspondence, via e-mail, to the BCPS on behalf of the student's mother requesting that the "draft" IEP, dated March 21, 2012, be amended to reflect a list of changes that she and her client believe need to be made to the IEP (Doc. m).
26. On March 30, 2012, the BCPS personnel responded to the complainant's request, indicating that it had been forwarded to the school for consideration and that "the changes and revisions that are warranted and required will be made today and a copy will be emailed to you" (Doc. n)
27. The BCPS has acknowledged that no changes were made to the March 21, 2012 IEP as a result of the request and that school staff did not inform the student's mother of her right to request a hearing in front of school system personnel to challenge the content of the student's educational record (Interview with BCPS personnel).

Discussion/Conclusions:

As stated above, in Allegation #3, a parent who believes that information in the student's educational record is inaccurate or misleading may request that the public agency amend the information. Upon receipt of such a request, the public agency must decide, within a reasonable period time, whether to amend the information. If the public agency refuses to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing before school system personnel to challenge the information (34 CFR §§300.618 and .619).

After the hearing, if the public agency decides that the information is inaccurate or misleading, it must amend the information and inform the parent in writing. If the public agency decides that the information is not inaccurate or misleading, it must inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency in the education record (34 CFR §300.620).

If the student's mother believes that the school system's actions constitute a violation of FERPA, she may file a complaint with:

The Family Policy Compliance Office
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5901

Based on the Findings of Facts #25-#27, the MSDE finds that the student's mother, through the complainant, requested that the student's educational record be amended and that the BCPS did not amend the record nor did they inform the student's mother of her right to request a hearing in

front of school system personnel to challenge the content of the student's educational record. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the BCPS to provide documentation no later than July 31, 2012 that it has informed the student's mother of her right to request a hearing before school system personnel to challenge the contents of the student's educational record.

In addition, the MSDE requires the BCPS to provide documentation by the start of the 2012-2013 school year 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 XXXXXXXXXXXXXXXXXXXX.

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 at XXXXXXXXXXXXXXXXXXXX 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 at XXXXXXXXXXXXXXXXXXXX, 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 at XXXXXXXXXXXXXXXXXXXX.

Upon receipt of this report, the 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 Program. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

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, which must be received 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

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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 student's mother 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:ks

cc : Andrés Alonso
Tiffany Puckett
XXXXXXXX
Martha J. Arthur
Kathy Stump