



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

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June 26, 2012

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

RE: XXXXX
Reference: # 12-083

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (DSE/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 our investigation.

ALLEGATION:

On April 30, 2012, the Maryland State Department of Education (MSDE) received correspondence from Ms. XXXXXXXX, hereafter “the complainant,” filed on behalf of her son, 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) and related State requirements with respect to the above-referenced student. This office investigated the allegation that the BCPS has not followed proper procedures to conduct an evaluation and identify the student with a disability under the IDEA from April 30, 2011¹ until April 11, 2012, when the evaluation was completed, as required by 34 CFR §§300.111, .301, .304 - .306, and COMAR 13A.05.01.06.

¹ Although the complaint contained allegations of violations dating back to the beginning of the 2010 – 2011 school year, on May 11, 2012, the complainant was informed, in writing, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint was received, in accordance with 34 CFR §300.153.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.
 2. On May 2, 2012, a copy of the complaint was provided by facsimile to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
 3. On May 11 and 15, 2012, Ms. Williams conducted a telephone interview with the complainant and clarified the allegation to be investigated.
 4. On May 17, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, the MSDE also notified the BCPS of the allegation to be investigated and requested that the BCPS review the alleged violation.
 5. On June 7, 2012, Ms. Williams and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXXX, Individualized Education Program Chairperson;
 - b. Ms. XXXXXXXXX, School Social Worker; and
 - c. Mr. XXXXXXXXXXXXX, Section 504 Accommodations Plan Chairperson.
- Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On June 11 and 13, 2012, the MSDE sent electronic correspondence to the BCPS, requesting documentation.
 7. On June 11, 13, and 15, 2012, the BCPS sent electronic correspondence to the MSDE with documentation to be considered during the investigation.
 8. On June 12, 2012, Ms. Williams and Ms. Stump conducted a telephone interview with the following school staff at XXXXXXXXXXXXXXXXXXXXXXXXXXXX:
 - a. Dr. XXXXXXXXXXXXX, Individualized Education Program Chairperson;
 - b. Ms. XXXXXXXXXXXXX, Student Support Team Chairperson;
 - c. Ms. XXXXXXXXXXXXX, Principal;
 - d. Ms. XXXXXXXXX, Assistant Principal; and
 - e. Ms. XXXXXXXXX, General Education Teacher.

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- Ms. Marion Masseaux, Education Assistant, Office of Legal Counsel, BCPS, participated on the telephone interview as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
9. On June 12 and 13, 2012, the BCPS sent correspondence, via facsimile, to the MSDE with documentation to be considered during the investigation.
 10. On June 13, 2012, Ms. Williams and Ms. Stump conducted a telephone interview with Ms. Janet Lippman, Home and Hospital Teaching Coordinator, BCPS, and Ms. Gail Fulton-Downs, Home and Hospital Teacher, BCPS.
 11. On June 15, 2012, Ms. Williams conducted a telephone interview with the complainant regarding the allegation and the documents that had been obtained during the investigation.
 12. On June 18 and 19, 2012, the complainant sent correspondence, via facsimile, to the MSDE with documentation to be considered during the investigation.
 13. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Correspondence from the complainant to the MSDE, received on April 30, 2012;
 - b. Section 504 Accommodations Plan, dated February 14, 2011;
 - c. Student Support Team Meeting Notes, dated April 7, 2011;
 - d. IEP Meeting Notice, dated April 11, 2011;
 - e. Section 504 Accommodations Plan, dated April 12, 2011;
 - f. Correspondence from the student's private psychiatrist to the BCPS, dated April 12, 2011;
 - g. BCPS Consent for Release of Information, dated April 13, 2011;
 - h. IEP Meeting Attendance Sheet, dated April 13, 2011;
 - i. BCPS Receipt of Parental Rights Document, dated April 13, 2011;
 - j. Home and Hospital Treatment Plan, dated May 10, 2011;
 - k. BCPS Home and Hospital Application, dated May 11, 2011;
 - l. BCPS Home and Hospital Enrollment Notice, dated May 13, 2011;
 - m. BCPS Home and Hospital Attendance Sheet, dated May 13, 2011;
 - n. Maryland Student Withdrawal/Transfer Record, dated May 13, 2011;
 - o. BCPS Home and Hospital Program Service Record, dated May 26, 2011 through June 17, 2011;
 - p. BCPS Home and Hospital Program Progress Report, dated June 21, 2011;
 - q. BCPS Home and Hospital Program Teacher Progress Notes, dated June 21, 2011;
 - r. BCPS School Assignment Notice, dated July 11, 2011;
 - s. Maryland Student Withdrawal/Transfer Record, dated July 13, 2011;
 - t. Hospital Discharge Summary, dated September 26, 2011;

- u. BCPS School Social Worker Notes, dated October 10, 2011 through January 13, 2012;
- v. BCPS Child Find Referral, dated October 12, 2011;
- w. BCPS Notice and Consent for Assessment, dated October 24, 2011;
- x. BCPS Psychological Evaluation, dated November 4, 2011;
- y. IEP Meeting Notice, dated December 15, 2011; and
- z. BCPS Evaluation Report, dated December 22, 2011.

BACKGROUND:

The student is ten (10) years old. He was identified as a student with an emotional disability, under the IDEA on April 11, 2012, and receives special education instruction and related services.

Prior to being identified as a student with a disability under IDEA, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1974 based on Attention Deficit/Hyperactivity Disorder (ADHD) and had a Section 504 Accommodations Plan (504 Plan).

The student has received instruction as follows during the time period covered by this investigation:

- The student attended XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXX XXX) from the beginning of the 2010-2011 school year until May 13, 2011.
- The student received Home and Hospital Teaching services following the provision of verification by his private psychiatrist on May 10, 2011, that he was unable to attend school due to an emotional condition.
- Since the start of the 2011 – 2012 school year, the student has attended XXXXX XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXX), as a result of a transfer requested by the complainant.

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards. (Docs. a, i, k, l, m, n, r, and s).

FINDINGS OF FACTS:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

1. On April 7 and 12, 2011, the Student Support Team (SST) convened and reviewed the student's 504 Plan, which had been developed on February 14, 2011. At those meetings,

the SST considered information from school staff that the student continued to experience anxiety, be disruptive in class, leave the school building without permission, refuse to comply with direction, and engage in disputes with peers and staff. The SST considered the interventions provided through the 504 Plan, and determined additional supports to be provided (Docs. b, c, and e).

2. On April 13, 2011, the IEP team convened to consider a request for evaluation of the student under the IDEA.² The team decided that additional data was needed and the complainant provided consent for school staff to obtain the student's private health and counseling records (Docs. d, g, h, i, and review of the educational record).
3. There is no documentation that the IEP team reviewed the data determined necessary at the April 13, 2011 meeting nor is there any documentation the team made a determination regarding the student's eligibility under the IDEA following this meeting (Review of the educational record and interview with school staff).
4. On May 11, 2011, the BCPS received verification from the student's private psychiatrist that the student was unable to attend school due to an emotional condition. The documentation indicates that the student has Attention Deficit Hyperactivity Disorder, XXXXX, XXXXX, and XXXXX, which prevents him from attending school due to his "deep fear of school, associated with anger and oppositional behavior towards adults at school." The documentation further states that the student:

"is being treated for issues of attention, mood, and anxiety with pervasive feelings of sadness and dissatisfaction. He has unresolved childhood separation issues, acting out behaviors in school and with peers as manifested by excessive clinging to [the complainant] and shattering of attachment to other adult figures. Hence there have been numerous psychosocial breakdowns beyond the client's capacity to cope in the school setting" (Docs. f, j, and k).
5. The Home and Hospital Teaching (HHT) documentation indicates that the HHT teacher provided the student with supports and strategies contained in the student's 504 Plan, but that those interventions were not successful in addressing the student's behaviors which were interfering with his learning (Docs. p and q).

² There is no documentation of the written referral or when the referral was made for the student.

6. There is no documentation that school staff considered whether additional supports could be provided in the general education program or whether the student was a student with a disability who requires special education instruction under the IDEA following the HHT teacher's progress report (Review of the educational record and interview with school staff).

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7. The student began attending XXXXXXXXXXXX at the start of the 2011 - 2012 school year. On October 12, 2011, the school staff referred the student for an evaluation under the IDEA based on upon the same types of behaviors exhibited the previous school year at XXXXXXXXXXXXXXXX (Docs. r, s, and v).
8. On October 24, 2011, the IEP team convened and reviewed the data in the student's educational record obtained from his previous school and information from the complainant that the student required psychiatric hospitalization on September 21, 2011. Based on the data, the team recommended educational and psychological assessments be conducted and the complainant provided written consent (Docs. t, u, v, and w).
9. On December 22, 2011, the IEP team convened and determined that the student was not eligible as a student with a disability under IDEA. The team documented that the basis for the determination was that the student's excessive school absences were impacting his access to instruction. There is no documentation that the team determined whether the student had one of the specific disabilities listed in the IDEA and whether, as a result of that disability, required special education instruction. There is no documentation that the IEP team considered information regarding the student's difficulties with his social-emotional functioning. The November 4, 2011 report of the psychological assessment states that "[the student's] Anxiety Disorder NOS and Mood Disorder NOS in combination with Attention Deficit Hyperactivity Disorder are all collectively impacting his educational success." (Docs. x, y, and z).

DISCUSSION/CONCLUSIONS:

Implementation of Interventions and Strategies Prior to Special Education Referral

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is, however, the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavior performance and determine teaching strategies, modifications to instruction, and behavior management techniques that will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR § 300.111). Therefore, if school staff suspect that the student has a disability under the IDEA or receive a written referral for evaluation, the public agency must promptly request consent to assess the student and ensure that assessments are conducted, if needed (COMAR 13A.05.01.04).

The IDEA requires that the student must meet specific eligibility criteria for a student to be determined eligible for special education instruction and related services, which prevents against the misidentification of students. A student with a disability under the IDEA is defined as a student with one of a list of specific disabilities, including emotional disability, and who, by reason thereof, needs special education instruction and related services. An emotional disability is defined as a condition exhibiting specific characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance. These characteristics include an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems (34 CFR §300.8).

Evaluation Procedures

As part of an initial evaluation, the public agency must review existing evaluative data, including assessment data and information from the student's teachers and parents. Based on that data, the public agency must identify what additional data, if any, is needed to determine, among other things, whether the student is a student with a disability and the educational needs of the student (34 CFR §300.305 and COMAR 13A.05.01.04).

When conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student and must not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability or for determining an appropriate educational program for the student. The public agency must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities (34 CFR § 300.304).

The evaluation of a student must be completed within sixty (60) days of parental consent for assessments and ninety (90) days of the receipt of a written referral (34 CFR § 300.301 and COMAR 13A.05.01.06(A)).

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Based on the Findings of Facts # 1 - # 7, the MSDE finds that when interventions in the general education program did not address the student's behaviors, an evaluation was begun on April 11, 2011. However, based on the Findings of Facts #3 - # 4, the MSDE finds that the BCPS did not ensure that the evaluation was completed within the required timelines. Therefore, the MSDE finds that a violation occurred.

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Based on the Finding of Fact #4, the MSDE finds school staff did not ensure that the evaluation initiated the previous school year was completed. Further, based on the Findings of Facts #8 - # 9, the MSDE finds that, while an evaluation was begun on October 24, 2011, the BCPS did not ensure that the evaluation was designed to identify a disability in the area of the student's emotional functioning consistent with concerns raised by the student's teachers and the complainant.

Based on the Finding of Fact #10, the MSDE finds that the team did not determine whether the student has a disability under the IDEA and whether as a result, he required special education instruction. Based on the Finding of Fact #10, the MSDE finds that the team's documented basis for the eligibility decision was not consistent with the data. Therefore, the MSDE finds that the BCPS did not ensure that a comprehensive evaluation was conducted and that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by beginning of the 2012 – 2013 school year, that the IEP team has convened and determined the nature and amount of *compensatory services*³ necessary to redress the delay in the identification of the student as a student with a disability under the IDEA.

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.

³ Compensatory services, for the purposes of this letter, means the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR § 300.151).

School-Based

The MSDE further requires the BCPS to provide documentation by the beginning of the 2012 - 2013 school year of the steps taken to determine if the procedural violations found in this investigation are unique to this case or if they represent a pattern of noncompliance at both XXXXXXXXXXXXXXXX and XXXXXXXXXXXX. 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 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 of the school system's initial determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance.

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 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 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 consistent with the timeline requirements as reported in this Letter of Findings.

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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 Free Appropriate Public Education for the student, including issues subject to a State complaint investigation, consistent with IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF:tw

cc: Andrés Alonso
Nancy Ruley
XXXXXXXXXX
XXXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Tyra Williams