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State Superintendent of Schools

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November 23, 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: XXXX
Reference: #11-024

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.

ALLEGATION:

On October 13, 2010, MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, "the complainant," on behalf of her son. 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 allegation that BCPS did not follow proper procedures when developing the student's Individualized Education Program (IEP) for the 2010-2011 school year, in accordance with 34 CFR §§300.320 and .324. Specifically, the complainant alleged that the student's IEP does not contain a statement of measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum.

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On October 14, 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.
 3. On October 20, 2010, Ms. Moyo spoke with the complainant by telephone and clarified the allegation to be investigated.
 4. On October 27, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Mrs. Lewis of the allegation and requested that her office review the alleged violation.
 5. On November 5, 2010, Ms. Moyo, Ms. Kathy Stump, Education Program Specialist, MSDE and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's education record, and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXX, Principal;
 - b. Mr. XXXXXXX, Special Education Teacher;
 - c. Ms. XXXXXXXXXXX, Assistant Principal;
 - d. Mr. XXXXXXX, IEP Team Chairperson;
 - e. Ms. XXXXXXX, Classroom Teacher; and
 - f. Ms. XXXXXXXXXXX, IEP Team Chairperson.
- Ms. Ruley attended the site visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.
6. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Correspondence and attachments from the complainant to MSDE, received October 13, 2010;
 - b. Psychological Assessment report, dated June 30, 2010;
 - c. Occupational therapy report, dated August 9, 2010;
 - d. IEP, dated August 16, 2010;
 - e. BCPS *Notice and Consent for Assessment* form, dated August 16, 2010;
 - f. IEP progress report, dated November 5, 2010; and
 - g. IEP, dated November 11, 2010.

BACKGROUND:

The student is six (6) years old, is identified as a student with multiple disabilities under IDEA related to speech/language and visual impairments and he receives special education instruction and related services. During the 2009-2010 school year, the student attended the XXX School, a separate special education day school that has a *Together at 5* program, which is a full-day specialized kindergarten program designed for students with disabilities in which both students with disabilities and nondisabled students participate. The student participated in this program for his kindergarten year.

Since the start of the 2010-2011 school year, the student has attended XXXXXXXXXXXXXXXX XXXX, where he is in the first grade and where he receives instruction in both a separate special education classroom and a general education classroom, as required by his IEP. He also receives audiological services, speech/language therapy, and occupational therapy as related services. During the period of time addressed by this investigation, the complainant participated in the education decision-making process, and was provided with written notice of IEP team decisions and notice of the procedural safeguards (Docs. a, and d-g).

FINDINGS OF FACT:

1. On August 16, 2010, the IEP team convened to review the results of a psychological assessment that had been independently obtained by the complainant. The assessment data indicates that the student has needs in the following areas:
 - a. Written language, specifically in the areas of spelling, understanding concepts, following directions, word structure, and recalling and formulating sentences;
 - b. Visual motor functioning, specifically in the area of handwriting;
 - c. Early Literacy, specifically in the area of phonemic awareness;
 - d. Mathematics, specifically in the areas of identifying shapes and making complex comparisons;
 - e. Executive functioning, specifically in the areas of problem solving strategies, working memory, self monitoring, planning, concentrating and maintaining attention to stay on task; and
 - f. Speech/language, specifically in the areas of expressive and receptive language skills, auditory attention, and listening skills.

Additionally, the assessment indicates that the student requires that “tasks be paced according to the student’s level of mastery to guarantee a high rate of success” (Docs. b and c).

2. The documentation of the August 16, 2010 meeting indicates that during its review of the psychological assessment, the team determined that only the complainant completed the rating scales and that the examiner did not obtain information from the student's teachers. As a result, the team determined that a psychological assessment for the purposes of obtaining the input of the student's teachers was necessary to determine how the student is functioning in school and to determine the student's educational needs. The team agreed that a psychological assessment would be conducted and agreed to reconvene to review the results (Docs. d and e).
3. On November 11, 2010, the team reconvened. The documentation of the meeting indicates that the team reviewed the psychological assessment determined necessary at the August 16, 2010, meeting and reports of progress from the student's teachers and related service providers and identified the student's language and visual impairments. Reports from the student's teachers and a review of the assessment data identify needs in the following areas:
 - a. Visual motor functioning in the area of handwriting, specifically with copying letters, shapes and numbers;
 - b. Executive functioning, specifically with retaining information over time and communication with respect to sequencing, expressing sequential information, and following multi step directions; and
 - c. Speech/language in the areas of expressive and receptive language skills, specifically with beginning consonant sounds (Doc. g).
4. In order to address the identified needs, the team revised the IEP to include the following goals, as well as services to assist the student in achieving the goals:
 - a. Speech/Language Articulation Goal: "When presented with a model the student will improve his articulation skills to age appropriate level." The short-term objectives state that the student will:
 - i. Produce the sounds /dr and gl/initially,
 - ii. Produce the sound "th" medially; and /
 - iii. Produce the sounds to include /f and l/, at the sentence level, when provided with model, visual or tactile cues.
 - b. Speech/Language Receptive Language Goal: "The student will improve his receptive language skills to improve his ability to access the grade level curriculum." The short-term objectives state that the student will:

- i. Identify vocabulary in various categories using visual support or repetition;
 - ii. Demonstrate understanding of spatial and temporal relationships, when provided with visual support or repetitions using visual support or repetition;
 - iii. Follow two (2) step directions with increasing linguistic complexity, after a modeling of the directions; and
 - iv. Place three (3) or four (4) pictures depicting an activity related to a short story in sequential order, using verbal cues.
- c. Speech/Language Expressive Language Goal: “The student will improve his expressive language skills to an age appropriate level.” The short-term objectives state that the student will:
 - i. Answer “wh” questions, with verbal cues;
 - ii. Describe an object using the two (2) attributes;
 - iii. Explain or retell events by sequential events or actions through rhymes, stories, or songs;
 - iv. Demonstrate the correct use of pronouns using sentences or phrases;
 - v. Demonstrate the use of plural forms; and
 - vi. Demonstrate the use of possessive forms.
- d. Early Literacy Goal: “The student will increase his early literacy skills when given verbal and visual prompts in the area of phonetic awareness.” The short-term objectives state that the student will:
 - i. Identify initial, medial and final sounds in one syllable words;
 - ii. Decode words in grade level texts by recognizing and applying short vowels, long vowels, and “y” as a vowel;
 - iii. Decode words in grade level texts by decoding words with letter combination such as consonant digraphs, blends and special vowel sounds;
 - iv. Decode words in grade level texts by using known words or word parts to decode unknown words.
- e. Early Literacy Goal: “The student will use prompts to increase his early literacy skills in the area of comprehension of a literary text.” The short-term objectives state that the student will:
 - i. Use elements of narrative texts to identify elements of a story such as characters, setting and problem and solution; and

- ii. Use elements of narrative texts to sequence the important events of the story.
- f. Early Math Literacy Goal: “the student will increase his early math literacy skills using verbal and visual cues, by describing, representing, computing and applying number.” The short-term objectives state that the student will:
 - i. Use concrete materials to compose and decompose quantities of twenty (20);
 - ii. Count to one hundred (100); and
 - iii. Count forward and backward starting with the numbers other than one (1) and not greater than twenty (20).
- g. Pre-Writing Goal: “The student will increase his pre-writing skills by producing writing that is legible to the audience.” The short-term objectives state that the student will:
 - i. Produce writing that is legible to the audience by using highlighted, dotted line letters and numbers one (1) through ten (10) to trace;
 - ii. Produce writing that is legible to the audience by controlling size and spacing of manuscript letters on appropriately lined paper;
 - iii. Compose written presentations by writing simple high frequency sight words that express or describe personal ideas; and
 - iv. Compose written presentation by writing simple sentences that express or describe personal or information.
- h. Hearing Goal: “The student will use his residual hearing optimally to support his educational program.” The short-term objectives state that the student will:
 - i. Wear an amplification device (hearing aid or Sound Field Amplification system (FM system)¹ on a full-time basis in school;
 - ii. Alert an adult when his amplification device is not working properly;
 - iii. Demonstrate proper care of his amplification device by cleaning the ear molds, testing the hearing aid batteries and properly inserting and removing the ear molds; and
 - iv. Cooperate for pure tone, speech eudiometry and tympanometry.
- i. Fine Motor Goal: The student will improve fine motor skills to improve performance in the classroom environment. The short-term objectives state that the student will:

¹ A FM system is a device used to assist teachers with communicating with hearing impaired students. To use the FM system the teacher must talk into a hand-held microphone, which then transmits the sound of the teacher's voice directly to the student's hearing aid (<http://deafness.about.com>).

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- i. Form all uppercase and lowercase letters using correct form, size and tripod grasp;
 - ii. Demonstrate appropriate finger and wrist placement to cut out a circle while smoothly progressing along the paper; and
 - iii. Complete visual perceptual-motor tasks including mazes, dot-to-dots, and lacing boards (Doc. g).
5. IEP progress reports, dated November 5, 2010, indicate that the student is making sufficient progress toward achieving the annual IEP goals (Doc. f).

DISCUSSION/CONCLUSIONS:

A student's IEP must contain a statement of measurable academic and functional annual goals, including benchmarks and short-term objectives, designed to meet the student's needs as identified in the evaluative data. The goals must be designed to enable the student to be involved in and make progress in the general education curriculum (34 CFR §§300.320, .324 and COMAR 13A.05.01.09A).

In this case, the complainant alleges that IEP team developed annual goals that do not enable the student to be involved in and make progress in the general education curriculum. The complainant further alleges that because the short-term objectives included in each goal are not grade-level objectives, the goals themselves do not provide access to grade-level content. Specifically, the complainant states that she "wanted objectives scaffolded to move toward and through grade-level goals," but that the team did "not include any objectives on grade level." The complainant also asserts that special education instruction that is provided in a separate special education classroom does not provide students with access to instruction in the general curriculum (Doc. a).

Based on Finding of Fact #4 and a review of the BCPS first (1st) grade curriculum, MSDE finds that the goals developed by the IEP team are designed to assist the student in progressing through the general education curriculum. Based on that same Finding, MSDE finds that each goal contains short-term objectives, which if accomplished, will demonstrate the student's level of mastery of the goals. Further, based on Findings of Fact #1-3, MSDE finds that the development of these short-term objectives was based upon the evaluative data used to identify the student's strengths and needs. Therefore, MSDE finds that the goals are designed to enable the student to be involved in and make progress in the general education curriculum, as required by IDEA.

Based on Finding of Fact #5, MSDE finds that there is documentation that the student is making sufficient progress toward achieving the annual IEP goals. Since the goals are designed for the student to make progress in the general curriculum, and because the student is making progress toward achievement of those goals with the provision of special education instruction, as required by IDEA, MSDE does not find that a violation occurred.

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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.

Questions regarding the findings and conclusions 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. 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/km

cc: Andrés Alonso
Nancy Ruley
Erin Leff
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Martha Arthur
Koliwe Moyo