



Nancy S. Grasmick
State Superintendent of Schools

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

December 22, 2010

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

RE: XXXXX
Reference: #11-026

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 October 28, 2010, MSDE received correspondence from Ms. XXXXXXXXX, the student’s mother, 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 has not developed an Individualized Education Program (IEP) to address the student’s needs in the areas of academics, behavior, organization, fine motor and speech/language since October 28, 2009,¹ as required by 34 CFR §§300.320 and .324.

¹ While the complainant indicated that the violations occurred since the start of the 2009-2010 school year, she was informed in writing on November 12, 2010, that this office may not investigate allegations of violations that occurred more than one (1) year prior to the date that the complaint was received, in accordance with 34 CFR §300.153.

2. BCPS has not provided the student with the special education instruction and accommodations required by the IEP since October 28, 2009,¹ as required by 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 1, 2010, a copy of the complaint was provided by facsimile to: Dr. Kim Lewis, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
3. On November 8, 2010, Ms. Frazier spoke with the complainant, by telephone, to clarify the allegations to be investigated.
4. On November 12, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On that same date, MSDE notified Dr. Lewis of the allegations to be investigated, and requested that her office review the alleged violations.
5. On November 18, 2010, Ms. Frazier and Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation/Due Process Branch, MSDE, conducted a site visit at XXXXXXXXXXXXXXX (XXXXXXX) to review the student's education record, and interviewed Ms. XXXXXXXXXXXXXXX, Principal, XXXXXX. 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.
6. On November 29, 2010, MSDE picked up copies of documentation from the student's education record from BCPS staff.
7. On December 14, 2010, Ms. Frazier conducted two (2) telephone interviews with the complainant.
8. On December 14 and 20, 2010, MSDE received documentation from the student's education record from BCPS staff, via electronic mail.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence from the complainant to MSDE, dated October 20, 2010;
 - b. An independent report of a psychological assessment conducted on August 8 and 19, 2008;
 - c. Report of a BCPS psychological assessment, dated December 1, 2008;

- d. Report of a BCPS educational assessment, dated March 6, 2009;
- e. Report of an observation of the student conducted by BPCS staff, dated October 5, 2009;
- f. Report of the student's progress toward achieving the occupational therapy goals, dated October 5, 2009;
- g. Teacher's report of the student's classroom performance, dated October 9, 2009;
- h. Invitation to the October 12, 2009 IEP team meeting, dated September 30, 2010;
- i. IEP, dated October 12, 2009;
- j. A BCPS report on an observation of the student, dated December 2009;
- k. Teacher's report of the student's classroom performance, dated September 15, 2010;
- l. IEP, dated September 15, 2010;
- m. Report of a psychological assessment obtained privately by the complainant, which was conducted on September 23, 2010;
- n. Teacher's report of the student's classroom performance, dated October 5, 2010;
- o. Parental consent for assessments form, dated October 12, 2010;
- p. Report of a BCPS speech/language assessment, dated October 20, 2010;
- q. Report of a BCPS educational assessment, dated November 18, 2010;
- r. Report of a BCPS occupational therapy assessment, dated December 7, 2010;
- s. IEP, dated December 7, 2010;
- t. Logs documenting consultation between the student's general education teacher and special education teacher for the 2009-2010 and 2010-2011 school years;
- u. Logs documenting the provision of occupational therapy service for the 2009-2010 and 2010-2011 school years; and
- v. Reports on the student's progress toward achieving the IEP goals, for the 2009-2010 school year.

BACKGROUND:

The student is eight (8) years old and attends XXXXXX. He is identified as a student with a specific learning disability under IDEA and he receives special education instruction and related services. During the time period covered by this investigation, the complainant was provided with the opportunity to participate in the educational decision-making process and was provided with procedural safeguards, as required (Docs. h, i, l and s).

FINDINGS OF FACT:

1. On October 12, 2009, the IEP team convened to review the student's program. The data in the student's education record included the following:
 - a. The results of a psychological assessment, conducted in August 2008, that was independently obtained by the complainant. The report documents that the student's cognitive ability is "at the low end of the Borderline Range" and,

although the student is functioning below grade level academically, his academic achievement is “consistent with or better than what would be expected based on his cognitive ability.” The report also documents that the student has difficulty maintaining attention, poor motor impulsivity, low receptive language skills and difficulty understanding and remembering directions;

- b. The results of a psychological assessment conducted in December 2008 by BCPS.² The report documents that the student’s “cognitive functioning falls within the average range” and “is somewhat unevenly developed.” The report documents that the student has needs in the areas of organization, following directions, fine motor skills, hyperactivity, attention, phonemic skills and receptive language. This report also documents that the complainant has concerns about the student internalizing problems and she reported that the student experienced a mild head injury in 2006, when he ran into the corner of a table;
- c. The results of an education assessment conducted in March 2009 by BCPS. The report documents that the student has difficulty pronouncing words, has difficulty reading simple phrases, and is unable to spell simple two (2) and three (3) letter words. The report also documents that the student has difficulty with written expression in the areas punctuation, capitalization, and sentence structure. Additionally the report documents that the student is unable to sequence numbers and to add and subtract one (1) to two (2) digit numbers;
- d. The results of an occupational therapy (OT) assessment conducted in October 2009 by BCPS. The report documents that the student has shown improvement with cutting geometric shapes, cutting with smooth scissor strokes, and tying his shoes. Additionally, the report documents that the student has shown improvement with writing letters on a line and appropriately spacing between letters and words. The report recommends that the student’s OT services be decreased from thirty (30) minutes per week to thirty (30) minutes two (2) times per month;
- e. The results of a formal observation of the student conducted in October 2009 by BCPS staff. The report documents that the student has needs in the areas of listening comprehension, basic reading skills, reading comprehension, social interaction, attention, and motivation; and
- f. The classroom teacher’s report of the student’s classroom performance, dated October 9, 2009. The report documents that the student has difficulty in identifying initial, middle and final sounds in one (1) syllable words (Docs. b-g and i).

² This assessment utilized a different testing tool than the assessment conducted in August 2008.

2. Based upon a review of the assessment data, the team revised the student's program to include annual goals for the student to achieve the following:
 - a. Improve reading phonemic awareness by: (i) identifying initial, middle, and final sounds in one (1) syllable words; (ii) blending three (3) to four (4) phonemes into a word; and (iii) segmenting words into syllables;
 - b. Improve reading phonics by: (i) combining sounds to form letter combinations such as "pl-," "bl-," "tr-," and "-nt;" (ii) recognizing and applying short vowels, long vowels, and "y" as a vowel; (iii) decoding words with letter combinations, such as consonant digraphs, blends, and special vowel patterns; and (iv) reading one (1) syllable words fluently;
 - c. Improve reading comprehension by: (i) describing what a text is about; (ii) answering simple questions (who, what, where, when and how) in writing and/or orally; and (iii) retelling the main idea of texts;
 - d. Improve math calculation by: (i) reading, writing and representing whole numbers up to one hundred (100) using models, symbols and words; (ii) identifying the place value of digits in a whole number up to ninety-nine (99); and (iii) comparing and ordering whole numbers up to ninety-nine (99) using terms such as greater than, less than, and equal to;
 - e. Improve math calculation by: (i) solving word problems based on addition and subtraction situations; and (ii) identifying the concept of inverse operation to addition and subtraction;
 - f. Improve written language mechanics by: (i) consistently using end punctuation, such as periods, question marks and exclamations points; (ii) using commas in dates, salutations, and closings; (iii) using capital letters to begin sentences and identify proper nouns; (iv) correctly spelling non-phonetic high frequency words; (v) spelling phonetically regular high frequency words; (vi) distinguishing between complete and incomplete sentences; and (vii) composing simple sentences using correct word order; and
 - g. Improve fine motor skills by: (i) utilizing a functional tripod grasp using adaptive equipment as needed for written tasks; (ii) tying his shoes with minimal assistance; (iii) manipulating scissors with smooth strokes to cut out simple shapes; (iv) completing written tasks with proper baseline orientation, letter formation, sizing and spacing on primary paper; (v) drawing a picture of a person with five (5) or greater body parts; and (vi) completing visual motor tasks without assistance (Doc. i).

3. At the October 12, 2009 meeting, the team determined that the student required special education instruction in a general education classroom with the provision of supplementary aids and supports to address his academic, communication and behavioral needs. Those supplementary aids and services include:
 - a. Modifying school materials, as needed;
 - b. Adjusting the student's workload, as needed;
 - c. Having a person or audio tape read sections of tests or instructional work;
 - d. Using graphic organizers during testing and, as needed, during instruction;
 - e. Using visual organizers during testing and, as need, during instruction;
 - f. Allowing extended time to complete tests and instructional assignments;
 - g. Reducing distractions to the student;
 - h. Providing the student with multiple/frequent breaks;
 - i. Asking the student questions that will enable him to demonstrate success when answering them;
 - j. Allowing the student to be in charge of a task;
 - k. Allowing the student to take his tests separately from the rest of the class; and
 - l. Reviewing the student's homework with him individually prior to the teacher's review of the assignments with the whole class.

Additionally, to address the student's fine motor needs, the IEP team determined that the student would receive OT services two (2) times each month for thirty (30) minutes (Doc. i).

4. On September 15, 2010, the IEP team convened to address the complainant's concerns that the team had not identified all of the needs that arise from the student's disability. At the meeting, the team reviewed the existing data, including teacher reports that the student continued to be distracted in class and had difficulty attending to task. Based on their review of the data, the team made the following recommendations:
 - a. Psychological testing, to include both cognitive and emotional assessments, educational, speech/language, and OT assessments would be conducted to ensure that there all areas of need have been identified;
 - b. Pending completion of the assessments, the student would be placed in a separate special education classroom for math, language arts and reading, where he would receive additional supports to address the student's needs in the areas of attention and distractibility, that were identified as areas of concern by the teachers; and
 - c. The student would continue to work on the academic and fine motor goals from the previous IEP, which the team determined remained appropriate and would continue to address those identified needs (Docs. k and l).

5. On October 12, 2010, the complainant provided written consent for the assessments to be conducted (Doc. o).
6. On December 7, 2010, the IEP team convened to review the results of the assessments recommended at the September 15, 2010 IEP team meeting. At this meeting the team reviewed the following information:
 - a. The results of the psychological assessment conducted in September 2009 that was independently obtained by the complainant following the September 15, 2010 IEP team meeting. The report documents that the student's cognitive ability is in the "borderline impaired range" and that, "Although his level of academic achievement was demonstrated to be typical of what would be expected of him based on his cognitive abilities, he is performing significantly below grade level in the areas of reading, spelling and mathematics." The report also documents that the student has emotional needs that result in temper tantrums, poor frustration tolerance, and impairments in the development of reciprocal social interaction.

The report recommends that the student receive instruction in a "self-contained classroom, with a small student-teacher ratio and appropriate behavior management planning." The report also recommends additional accommodations that might be useful, including:

- i. Modification of work, including shortening of assignments;
 - ii. Extended time for classwork and tests;
 - iii. Reminders to stay on task;
 - iv. Assistance with organization; and
 - v. Positive reinforcement.
 - b. The results of the educational assessment conducted on November 18, 2010 by BCPS. The report documents that the student has needs in the areas of reading, written language, and math. The report also documents that the student becomes distracted and discouraged when it is time for written assignments or assignments requiring reading of text;
 - c. The results of the speech/language assessment conducted on October 19, 2010 by BCPS. The report documents that the student's "language abilities are within the average range;"
 - d. The results of the OT assessment conducted on December 7, 2010 by BCPS. The report documents that the student's writing is legible, but his "letter formation needs improvement for correct directionality." The report recommends that the

student continue to receive OT services for thirty (30) minutes two (2) times per month (Docs. m and p-s).

7. Based on the review of the assessment data, at the December 7, 2010 meeting, the team determined that the student continued to have academic, behavioral and fine motor needs. The team revised the student's goals based on student's levels of performance as indicated in the evaluative data. The team also determined that the student would receive special education instruction in both the separate special education classroom and in the general education classroom with the provision of supplementary aids and support. The following supplementary aids and services were added to the IEP:
 - a. Providing a scribe to write down the student's answers to question;
 - b. Using a word bank to reinforce vocabulary;
 - c. Providing the student with assistance with his organization;
 - d. Providing the student with frequent/immediate feedback;
 - e. Using pictures to support reading passages, whenever possible; and
 - f. Chunking of texts. (Doc. s).

8. The following document the provision of special education instruction and accommodations to the student since October 2009:
 - a. A review of the following documentation:
 - i. Samples of daily lesson plans from both the general education teacher and special education teacher which list the specific accommodations to be provided to the student, and which document the provision of special education instruction and accommodations during the lesson;
 - ii. Samples of daily sheets which are completed by both the student's general education and special education teachers documenting the specific accommodations used with the student on each school day;
 - iii. Samples of daily sign-in sheets completed by the student's general education teacher, verifying that the special education teacher was present in the classroom and working with the student from August 30, 2010 until September 17, 2010, when the IEP was amended to require that the student receive special education instruction outside of the general education classroom; and
 - iv. The special education teacher's class schedule listing those students assigned to the special education classroom since September 17, 2010, when the student's IEP was amended to require that he receive services in a separate special education classroom.

- b. Reports of the student's progress toward achieving the IEP goals, which contain specific information about:
 - i. the skills demonstrated by the student in each academic area as determined by teacher observation, informal assessments, student work samples, and curriculum based assessments;
 - ii. the student's progress toward achieving the IEP goals, indicating that he is making sufficient progress to meet the IEP goals;
 - iii. the accommodations and modifications being utilized by the student's teachers; and
 - iv. recommendations for supports that will assist the student in making additional progress toward the IEP goals.
- c. Contact notes completed by the special education teacher that document the consultation between the special education teacher and the general education teacher regarding the student's IEP goals and the strategies being used with the student in the classroom to help him make progress toward the goals.
- d. Service provider logs that document that the student has been provided with OT services, as required by the IEP (Docs. g – l, n, t - v and review of samples of daily lesson plans, samples of daily teacher sheets documenting accommodations used in the classroom, samples of daily sign-in sheets for the special education teacher, and the special education teacher's class schedule).

DISCUSSION/CONCLUSIONS:

Allegation #1: Development of an IEP to Address the Student's Identified Needs

The IEP must include a statement of the student's present levels of academic achievement and functional performance, and must include annual goals and services designed to address the student's identified needs (34 CFR §300.320). When determining the levels of academic achievement and functional performance, the team must consider the evaluative data, information from the student's teachers, and the parent's concerns (34 CFR §300.324). The team must also consider, in the case of a student whose behavior impedes his learning or that of others, strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

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Academic Needs:

Based on Finding of Fact #1-7, MSDE finds that the IEP team considered the evaluative data and information from the complainant and his teachers. Based on that information, the team developed goals and objectives to address the student's academic needs, and determined the special education instruction and related services needed to assist the student in making progress toward the academic goals, consistent with the assessment data. Therefore, MSDE does not find a violation with regard to this aspect of the allegation.

Fine Motor Needs:

Based on Findings of Fact #1-7, MSDE finds that the IEP team considered the assessment data and information provided by the complainant and the student's teachers, documenting the student's improving fine motor needs and determined the occupational therapy services necessary to address those needs, consistent with the data. Therefore, MSDE does not find a violation with regard to this aspect of the allegation.

Behavior and Organization Needs:

Based on Findings of Fact #1, 3, 4, 6 and 7, MSDE finds that the IEP team considered the student's behavior and organization needs, including his difficulty with attention and following directions, and recommended accommodations and supplementary supports to assist the student with these areas of need, consistent with the assessment data, the concerns of the complainant, and the concerns of the student's teachers. Therefore, MSDE does not find a violation with regard to this aspect of the allegation.

Communication Needs:

Based on Findings of Fact #1-3, 6 and 7, MSDE finds that the IEP team considered the assessment data documenting the student's receptive language and listening comprehension needs and developed goals and objectives to assist the student in learning basic components of language, consistent with the assessment data. Therefore, MDSE does not find a violation with regard to this aspect of the allegation.

Additional Discussion:

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency (SEA) must review the procedures used by a school system to reach determinations about the program. Additionally, the SEA must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data. The SEA may not, however, overturn an IEP team's decisions (OSEP

Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the school system has not followed proper procedures, the SEA can require the school system to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data; and determine a remedy to the student for loss of appropriate services (OSEP Letter #00-20).

If the SEA determines that proper procedures were followed by the school system, the SEA may not overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20).

In this case, MSDE understands that the complainant disagrees with the IEP team's decisions regarding the needs that arise out of the student's disability and with the services required to address those needs. MSDE has found that the IEP team followed proper procedures in reviewing the evaluative data and developing a program to address the needs identified in that data. Therefore, MSDE cannot overturn the decision of the IEP team and, if the complainant wishes to challenge the determinations made by the IEP team, she may file a due process complaint or request mediation.

Allegation #2: Provision of Special Education Instruction and Accommodations

The public agency is required to ensure that the student is provided with the special education instruction, related services and accommodations required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student has not been provided with the special education instruction and accommodations required by the IEP.

Based on Findings of Fact #2, 3, 4, 7, and 8, MSDE finds that there is documentation that the student has been provided with the special education instruction and accommodations required by the IEP since October 28, 2009. Therefore, MSDE finds no violation with regard to this allegation.

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 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.

Questions regarding the findings of fact and conclusions 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,

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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
Nancy Ruley
XXXXXXXXXXXXXXXX
Dori Wilson
Anita Mandis
Vickie Frazier