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State Superintendent of Schools

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January 28, 2011

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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: #11-034

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 December 1, 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 had reason to suspect that the student was disabled and should have begun the identification and evaluation process prior to May 2010,¹ as required by 34 CFR §§300.111 and .301, and COMAR 13A.05.01.04 and .06.
2. BCPS has not developed an IEP that addresses the student's behavior needs since the start of the 2010-2011 school year, as required by 34 CFR §300.324.
3. BCPS has not followed proper procedures when disciplinarily removing the student from school during the 2010-2011 school year, as required by 34 CFR §§300.530-.536.

¹ The complainant alleges that BCPS should have initially suspected that the student was a student with a disability during the 2008-2009 school year. On December 9, 2010, MSDE informed the complainant, in writing, that this office may only investigate an allegation of a violation that occurred not more than one (1) year prior to the date a complaint is received, in accordance with 34 CFR §300.153.

4. BCPS has not provided the student with the transportation services required by the Individualized Education Program (IEP) since the start of the 2010-2011 school year, as required by 34 CFR §§300.101.

INVESTIGATIVE PROCEDURES:

1. On December 2, 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.
2. On December 8, 2010, Ms. Vickie Frazier, Education Program Specialist, MSDE, contacted the complainant, via telephone, to clarify the allegations to be investigated.
3. On December 9, 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.
4. On December 21, 2010 and January 4, 2011, Ms. Frazier received documentation from the student's education record from BCPS staff.
5. On January 12, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation, MSDE, and Ms. Koliwe Moyo-Stevens, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's education record, and interviewed Mr. XXXXXXX, Principal. 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. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Student Support Team Intervention Plan, dated November 5, 2009;
 - b. Invitation to the Student Support Team Meeting, dated November 5, 2009;
 - c. Child Find Referral form, dated February 17, 2010;
 - d. Notice and Consent for Assessment form, dated February 17, 2010;
 - e. Procedural Safeguards Notice form, dated February 17, 2010;
 - f. Correspondence from the school principal to the Office of Student Support Services, dated April 28, 2010;
 - g. Student's disciplinary record for the 2009-2010 school year;
 - h. Student Attendance Roster, dated August 30, 2010 to November 30, 2010;
 - i. Report of a BCPS educational assessment, dated April 29, 2010;
 - j. Report of a BCPS psychological assessment conducted on May 3, 2010;
 - k. Functional behavioral assessment, dated May 12, 2010;
 - l. Report of evaluation results, dated May 12, 2010;
 - m. IEP, dated May 18, 2010;

- n. Behavioral intervention plan, dated May 18, 2010;
- o. Functional behavioral assessment, dated May 28, 2010;
- p. Behavioral intervention plan, dated May 28, 2010;
- q. IEP, dated May 28, 2010 and revised August 19, 2010;
- r. Manifestation Determination Worksheet, dated May 28, 2010;
- s. Procedural Safeguards Notice form, dated May 28, 2010;
- t. Correspondence from the complainant containing allegations of violations of IDEA, received by MSDE on December 1, 2010;
- u. Written invitation to the complainant to attend a January 31, 2011 IEP team meeting and Procedural Safeguards Notice, dated December 7, 2010; and
- v. Student's discipline record for the 2010-2011 school year.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with an emotional disability under IDEA, and receives special education instruction and related services. During the time period covered by this investigation, the complainant has been provided with procedural safeguards as required.

During the 2009-2010 school year, the student attended XXXXXXXXXXXXXXXXXXXX. Since the start of the 2010-2011 school year, the student has attended XXXXXXXXXXXXXXXXXXXX, in order to participate in a program that is specifically designed to address social/emotional/behavioral needs of students (Docs. e, m, q, s, t, and u).

ALLEGATION #1 IDENTIFICATION/EVALUATION PROCESS

FINDINGS OF FACT:

1. On November 5, 2009, the principal referred the student to a Student Support Team (SST) to determine whether the student required additional supports in the regular education program. This referral was made because the student was "cutting class," causing disruptions in class, and fighting. Supports provided through the SST included meetings between the student and the school psychologist and the use of a daily conduct sheet to assist in monitoring the student's behavior. Additionally, a trained facilitator was used to conduct community conferencing in an attempt to resolve disputes between the student and others in the community (Docs. a, b, c, and f).
2. On February 17, 2010, the principal referred the student for an evaluation under IDEA because the supports being provided in the regular education program were not successful (Docs. c and f).
3. On May 12, 2010, an evaluation was completed and the student was identified as a student with an emotional disability under IDEA (Docs. d and l).

4. On May 18, 2010, an IEP was developed. At that meeting, the complainant indicated that she wanted the team to consider the report of a private service provider of the student's before she would provide consent to the provision of special education services. The complainant indicated that she would provide school staff with the report, but there is no information or documentation that she has done so (Doc. m).
5. On May 25, 2010, the complainant provided written consent to the provision of special education services (Doc. q).

DISCUSSION/CONCLUSIONS:

The "child find" requirements of IDEA impose an affirmative obligation on the school system to identify, locate and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services, or are suspected of having disabilities and being in need of special education 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 behavioral 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 IDEA (34 CFR §300.111).

Once a student who is suspected of having a disability under IDEA is referred to an IEP team to determine whether an evaluation is required, the public agency must complete the evaluation within sixty (60) days of parental consent for evaluation and within ninety (90) days of the date of referral (34 CFR §300.301 and COMAR 13A.05.01.06A). The public agency must ensure that an IEP is developed within thirty (30) days of the date that the student is identified as a student with a disability (34 CFR §300.323).

In order to ensure that students are not misidentified as being disabled, IDEA requires that in order for a student to be determined eligible for special education instruction and related services, the student must meet specific eligibility criteria. A student with a disability under 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 and related services. An emotional disability is defined as a condition exhibiting one or more of a list of characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance (34 CFR §300.8).

In this case, the complainant alleges that BCPS should have begun the evaluation and identified the student as a student with a disability prior to May 12, 2010 (Doc. t). Based on Finding of Fact #1, MSDE finds that BCPS followed proper procedures when attempting to provide

supports in the regular education program to address the student's interfering behaviors. Based on Findings of Fact #1 and 2, MSDE further finds that school system staff followed proper procedures to refer the student for an evaluation when the supports provided in the regular education program were not successful.

Based on Findings of Fact #2 - 5, MSDE finds that the school system ensured that the evaluation was completed and that an IEP was developed within the required timelines. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #2 IEP THAT ADDRESSES THE STUDENT'S
SOCIAL/EMOTIONAL/BEHAVIORAL NEEDS**

FINDINGS OF FACT:

6. When developing the IEP on May 18, 2010, the team considered the following:
 - a. A report of a BCPS psychological assessment conducted on May 3, 2010, which states that the student's cognitive ability is in the "low average range." The report also states that the student has "oppositional defiant disorder," "conduct disorder," and attention deficit hyperactivity disorder, and that she has "a very poor perception of school and teachers," resulting in verbal and physical assaults on peers and teachers;
 - b. A report of a BCPS educational assessment, dated April 29, 2010, which states that the student's academic skills are in the "high average range;"
 - c. Teacher reports that the student "seldom attends class," which impacts her ability to learn;
 - d. Input from the complainant that the student does not demonstrate behavioral problems at home;
 - e. A report of a functional behavioral assessment, dated May 12, 2010, which indicates that the student exhibits interfering behaviors in an attempt to gain control and get the attention of others. The report also indicates that behaviors are the result of lack of impulse control and poor decision-making skills (Docs. i, j, k, and m).
7. On May 18, 2010, the team developed an IEP that includes goals for the student to improve her reading, written language, math, school attendance, and her ability to utilize coping and self management skills to facilitate learning. It requires that the student be provided with special education instruction in a separate special education classroom in a program designed with supports for students with behavioral needs, as well as weekly psychological and crisis intervention services. The team also developed a behavioral

intervention plan that requires the student to be provided with redirection, nonverbal cues, and praise for positive behaviors including class attendance and work completion (Docs. m and n).

8. On May 28, 2010, the IEP team reconvened in order to make a manifestation determination and review the behavioral intervention plan because the student had been disciplinarily removed from school on May 24, 2010 for "an assault on a staff member." The team revised the behavioral intervention plan to ensure that the student is provided with consistency in behavior expectations. It was also revised to require that the student be removed from the area when exhibiting inappropriate behavior, and that she not be rewarded for inappropriate behavior by being allowed to become the center of attention. The plan was further revised to require immediate discussion of replacement behavior with the student when she assaults peers or school staff, and instruction on decision-making skills, conflict-resolution skills, social skills, and positive self-talk skills (Docs. g, o, p, q, and r).
9. A review of the student's report card indicates that the student has not been consistently attending some of her classes, which is affecting her performance in those classes. An IEP team meeting is scheduled for January 31, 2011 in order to review the student's program and progress (Review of the student's 2010-2011 report card).

DISCUSSION/CONCLUSIONS:

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).

The public agency must ensure that the IEP team reviews the program at least annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the team reviews and revises, as appropriate, the IEP to address lack of expected progress toward achievement of the annual goals (34 CFR §300.324).

Based on Findings of Fact #6 and 7, MSDE finds that the team considered the assessment data, as well as information from the complainant and the student's teachers, and developed a program to address her social/emotional/behavioral needs consistent with the data. Additionally, based on Findings of Fact #8 and 9, MSDE finds that the school system has ensured that the team continues to review and revise, as appropriate, the student's IEP to address her needs. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3: DISCIPLINARY REMOVAL PROCEDURES FOR THE 2010-2011 SCHOOL YEAR

FINDING OF FACT:

10. As of the MSDE site visit on January 12, 2011, the student had been disciplinarily removed from school as follows:
 - a. November 10, 2010 – removed for two (2) days; and
 - b. December 7, 2010 – removed for five (5) days (Doc. v).

DISCUSSION/CONCLUSIONS:

The IDEA provides specific protections to students who are disciplinarily removed from school in excess of ten (10) days during the school year (34 CFR §300.530). Based on Finding of Fact #10, MSDE finds that the student has not been disciplinarily removed from school in excess of ten (10) days during the 2010-2011 school year. Therefore, the protections do not apply and this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #4: PROVISION OF TRANSPORTATION SERVICES FOR THE 2010-2011 SCHOOL YEAR

FINDINGS OF FACT:

11. The IEP requires that the student be provided with transportation services to and from school (Doc. q).
12. A review of a Route Detail Report maintained by school staff indicates that the student has been assigned to a bus route since the start of the school year. This report documents that at the start of the year, arrangements were made for the bus to pick the student up at the address school staff had for the student at that time. It also indicates that this address was changed to a new address after school staff visited the first (1st) address and were informed that the student had a new address (Review of a Route Detail Report).
13. A Student Attendance Roster maintained by transportation staff, indicates that from August 27, 2010 until November 30, 2010, transportation staff attempted to pick the student up at her home address and take her home from school each day, but that the student was never present when the bus arrived at home or school. Because attempts to transport the student were unsuccessful, the bus service was discontinued (Doc. h and interviews with school system staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction, related services and accommodations, including transportation services, required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student “is not receiving the yellow bus transportation that is included in her IEP (Doc. t).”

Based on Findings of Fact #11 - 13, MSDE finds that transportation services have been offered, but that the student has not been available for the services. Therefore, MSDE does not find that a violation occurred with respect to the allegation. This office recommends that if the complainant wishes to reinstate transportation services, she should submit her request to Mr. Francis Aning, Routing Manager, BCPS. Mr. Aning may be reached at (410) 977-1656. Additionally, if the complainant believes that the student requires assistance in accessing transportation services, she maintains the right to request an IEP team meeting to consider the student’s needs.

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, conclusions or corrective actions contained in this LOF should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of a free appropriate public education for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/am

c:	Andrés Alonso	XXXXXXXXXX	Erin Leff
	Kim Lewis	XXXXXXXXXX	Glenn Johnson
	Nancy Ruley	Linda Bluth	XXXXXXX