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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: #11-037

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 2, 2010, MSDE received correspondence from Ms. XXXXXXXXXXXX, 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 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.
2. BCPS did not follow proper procedures when responding to the complainant's November 19, 2010 request for an IEP team meeting, as required by 34 CFR §300.503.
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.

INVESTIGATIVE PROCEDURES:

1. On December 3, 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 3, 2010, Ms. Anita Mandis, Chief, Complaint Investigation Section, 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, BCPS staff provided MSDE with documentation from the student's education record.
5. On January 13, 2011, Ms. Mandis and Ms. Vickie Frazier, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXX) to review the student's education record, and interviewed Ms. XXXXXXX, Principal; and Ms. XXXXXXX, Academic Dean of Student Support/Special Education. 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 January 20, 2011, Ms. Mandis conducted a telephone interview with the complainant about the results of an IEP team meeting held on that date.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. IEP, dated June 14, 2010;
 - b. Route Detail Report XXXXXXXXXXXXXXXXXXXX for the start of the 2010-2011 school year;
 - c. Excerpts from the XXXXXXXXXXX communication log for the 2010-2011 school year;
 - d. Notes of a conference with the complainant on October 21, 2010, taken by school police;
 - e. Notes of a conference with the student on November 19, 2010, taken by a special education teacher;
 - f. Written request from the complainant for an IEP team meeting, dated November 19, 2010;
 - g. Correspondence from the complainant alleging violations of IDEA, received by MSDE on December 2, 2010;

- h. Written invitation to the complainant for a January 20, 2011 IEP team meeting and Procedural Safeguards Notice form, dated January 3, 2011;
- i. Transportation forms for the student for the 2010-2011 school year; and
- j. Student's discipline log for the 2010-2011 school year.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an emotional disturbance under IDEA. She attends XXXXXXXXXX and receives special education instruction and related services. On January 20, 2011, the IEP team determined that the student will be administratively transferred to XXXXXXXXXXXXXXXXXXXXXXXXXXXX in order to address her behavioral needs. During the time period covered by this investigation, the complainant has been provided with procedural safeguards as required (Docs. a, h, and interview with the complainant).

**ALLEGATIONS #1 AND #2 PROVISION OF TRANSPORTATION SERVICES
AND RESPONSE TO REQUEST FOR AN
IEP TEAM MEETING**

FINDINGS OF FACT:

1. The IEP requires that the student be provided with transportation to and from school (Doc. a).
2. A Route Detail Report maintained by school staff indicates that the student has been assigned to a bus since the start of the school year. This report documents that at the start of the year, arrangements were made for the bus to transport the student to and from school and the home address the school had for the student at that time (Doc. b).
3. The school communication log indicates that on September 28, 2010, the complainant contacted school staff and requested that the bus service be discontinued because she wanted the student to walk to school with the student's sister (Doc. c).
4. The school communication log indicates that on October 12, 2010, the complainant contacted school staff to express concerns about the student's throwing rocks at cars while walking to school. The log reflects that school staff explained that in order to provide the student with supervision on her way to and from school, the student must ride the bus. The log further reflects that the complainant indicated that she wanted the student to continue to walk to school with the student's sister (Doc. c).
5. On October 21, 2010, a conference was held between the complainant and school police. Documentation of the conference indicates that school police attempted unsuccessfully to convince the complainant that the student should take the bus in order to ensure that she has proper supervision on the way to and from school (Doc. d).

6. On November 12, 2010, the complainant provided school staff with a new address at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, and arrangements were made for the bus to begin picking the student up at that address effective November 18, 2010 (Docs. c and i).
7. On November 19, 2010, school staff met with the student to attempt to convince her to begin taking the bus to and from school. On the same date, the complainant sent a written request for an IEP team meeting to discuss the matter (Docs. e and f).
8. The school communication log documents that school staff made unsuccessful attempts to reach the complainant by telephone on November 22, 23, and 24, 2010 in order to schedule an IEP team meeting. The log documents that on November 29, 2010, school staff was able to reach the complainant by telephone. On that date, the complainant informed school staff that she had filed a State complaint with MSDE and requested that school staff contact her advocate to set up the meeting (Doc. e).
9. On January 3, 2011, school staff scheduled an IEP team meeting for January 20, 2011. At the January 20, 2011 IEP team meeting, in order to address the student's behavioral needs and ensure her safety, the team proposed transferring the student to school further away from home so that she would have to take the bus to get to and from school. The complainant and her advocate participated in the meeting, and the complainant expressed disagreement with the decision made at the meeting (Doc. h and interview with the complainant).

DISCUSSION/CONCLUSIONS:

Allegation #1 Provision of Transportation Services

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). Based on Findings of Fact #1 - 7, 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.

Allegation #2 Response to Request for an IEP Team Meeting

The public agency must ensure that the IEP team reviews the IEP not less than annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the team reviews and revises the IEP, as appropriate, to address information provided by the parents (34 CFR §300.324). Written notice must be provided to parents before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) to a student

(34 CFR §300.503). Therefore, if a parent requests an IEP team meeting, the public agency must either ensure that the team is convened or provide the parent with proper written notice of the refusal to do so.

Based on Findings of Fact #7 and 8, MSDE finds that BCPS ensured that an IEP team meeting was held in response to the complainant's request. Therefore, MSDE does not find that a violation occurred with respect to the allegation.

ALLEGATION #3: DISCIPLINARY REMOVAL PROCEDURES

FINDINGS OF FACT:

10. The student was disciplinarily removed from school for two (2) days during the 2010-2011 school year on September 27 and 28, 2010 (Doc. j).
11. On November 18, 2010, the student was arrested by school police on school grounds as a result of an incident that occurred in the community the previous day, which was witnessed by school police (Docs. e, g, and interview with school staff).
12. On November 19, 2010, the student returned to school (Doc. e).

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 Findings of Fact #10-12, MSDE finds that the student has not been disciplinarily removed from school in excess of ten (10) school days during the 2010-2011 school year. Therefore, MSDE does not find that a violation occurred regarding the allegation.

Please be advised that the parties have the right to submit additional written documentation to this office if they disagree with the findings of fact or conclusions. This documentation must be received in this office within fifteen (15) days of the date of this LOF. 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 FAPE for the student, including issues

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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
Kim Lewis
Nancy Ruley
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Erin Leff
Glenn Johnson
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