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State Superintendent of Schools

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February 11, 2011

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Ms. Kalisha Miller
Director of Special Education
Baltimore County Public Schools
6901 North Charles Street
Towson, Maryland 21204

RE: XXXXX
Reference: #11-039

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 December 13, 2010, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that the Baltimore County 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. MSDE investigated the allegation that BCPS should have begun the evaluation process prior to March 2010, in accordance with 34 CFR §§300.111, and .301-.311 and COMAR 13A.05.02.13(A).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 16, 2010, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegation. On the same date, MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS, and Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS.
3. On January 6, 2011, 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 Ms. Miller of the allegation and requested that her office review the alleged violation.
4. On January 14, 2011, Ms. Moyo and Ms. Mandis met with Ms. Weitz and reviewed the student's education record with her at MSDE.
5. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. Correspondence from the complainant to MSDE, dated December 16, 2010;
 - b. Student support team (SST) meeting invitation, dated March 8, 2010;
 - c. SST referral form, dated March 8, 2010;
 - d. Individualized Education Program (IEP) team meeting invitation, dated March 10, 2010;
 - e. SST meeting summary, dated March 19, 2010;
 - f. Initial IEP team meeting summary, dated March 22, 2010;
 - g. Parental consent for assessment, dated March 22, 2010;
 - h. Parental receipt of procedural safeguards and parental rights document, dated March 22, 2010;
 - i. IEP team meeting invitation, dated April 14, 2010;
 - j. BCPS educational assessment report, dated May 14, 2010;
 - k. BCPS psychological assessment report, dated May 17, 2010;
 - l. BCPS classroom observation, dated May 17, 2010;
 - m. Determination of specific learning disability report, dated May 19, 2010;
 - n. IEP team meeting invitation, dated May 19, 2010;
 - o. IEP, dated May 19, 2010;
 - p. Parental consent for assessment, dated May 19, 2010;
 - q. IEP, dated June 16, 2010;
 - r. Parental receipt of procedural safeguards and parental rights document, dated June 16, 2010;

- s. BCPS speech/language assessment, dated June 18, 2010;
- t. Student's report card for the 2009-2010 school year; and
- u. Teacher receipt of IEP, dated August 30, 2010.

BACKGROUND:

The student is eight (8) years old and he attends XXXXXXXXXXXXXXXXXXXX School. On May 19, 2010 the student was identified as a student with a specific learning disability under IDEA, and he receives special education instruction. During the period addressed by this investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parental rights, as required (Docs. a-i and m-u).

FINDINGS OF FACT:

1. In December 2009¹, the student was being provided with supports in the general education program to assist him with improving his written language and reading skills. The student was provided instruction using the Systemic Instruction in Phoneme Awareness, Phonics, and Sight words (SIPPS) reading intervention program, to improve reading fluency and comprehension. The student was also provided with reading instruction in a small group setting and with practice reading materials to use at home (Docs. a, c, e and f).
2. A review of the student's second quarter report card for the 2009-2010 school year indicates that while the student was making progress in some areas of reading, such as reading comprehension and written language, he continued to "need development" in other areas, such as, reading orally, understanding and using new vocabulary, spelling, and identifying and describing elements of a text (Doc. t).
3. In January 2010, in addition to the supports already in place, school teaching staff began providing the student with tutoring after school as an additional intervention to assist the student with improving his reading and writing skills (Docs. c and f).
4. A review of the student's third quarter report card for the 2009-2010 school year indicates that while the student exhibited satisfactory effort, he continued to "need development" in the same areas of reading and written language, as previously reported (Doc. t).
5. On March 8, 2010, the student was referred by his classroom teacher to the student support team (SST) to consider the student's progress with the interventions being

¹ The complainant was informed in writing on January 6, 2011, that this office may investigate allegations of violations that occurred no more than one year from the filing of the complaint (34 CFR§300.153). Therefore, this investigation covers the period of time beginning December 2009.

provided and to determine whether additional supports in the general education program were warranted (Doc. c).

6. On March 19, 2010, the SST convened to review data. The team considered information such as the following:
 - a. Teacher reports which indicated that the student was making slow improvement, but that he continued to need a great deal of teacher support in order to complete his reading and written language class work; and
 - b. Dynamic Indicators of Basic Early Literacy Skills (DIBELS) scores, which provided information about the student's reading fluency such as the number of words per minute the student can read (Docs. e).
7. At the March 19, 2010 meeting, based on this information, the SST suspected that the student was a student with a disability under IDEA and referred him to the IEP team (Docs. c, e, and f).
8. On March 22, 2010, the IEP team met to conduct an evaluation, which was completed on May 19, 2010. At the May 19, 2010 IEP team meeting, the student was identified as a student with a specific learning disability under IDEA (Docs. f-o).

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. 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 (34 CFR §300.111 and COMAR 13A.05.02.13(A)).

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).

To ensure that students are not misidentified as being disabled, IDEA requires that a student meet specific eligibility criteria in order for a student to be determined eligible for special education instruction and related services. A student with a disability under IDEA is defined as a

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student with one of a list of specific disabilities such as, among other things, a specific learning disability, and who, as a result, needs special education and related services (34 CFR §300.8).

A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do math calculations. The IEP team may determine that a student is a student with a specific learning disability if the student:

- does not achieve adequately for the student's age to meet grade level standards when provided with learning experiences and instruction appropriate for the student's age;
- the student does not make sufficient progress based on the student's response to scientific, research-based interventions; or
- the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, related to age, grade level standards, or intellectual development (34 CFR §§300.308 and 309).

In this case, the complainant alleges that BCPS should have begun the evaluation process to determine if the student was a student with a disability under IDEA, when the student began demonstrating difficulty with reading and written language. Based on Findings of Fact #1-4, MSDE finds that the student was provided with interventions in the general education program in order to assist him with his reading and written language deficits.

Based on Findings of Fact #2-8, MSDE finds that because the student was making progress with the provision of interventions in the general education program and an evaluation was conducted as soon as a disability was suspected, BCPS followed proper procedures when providing these supports prior to conducting an evaluation. Therefore, MSDE does not find that a violation occurred with respect to the allegation.

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,

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placement, or provision of 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

c: Joe A. Hairston
J. Stephen Cowles
Sharon Floyd
Pam Weitz
XXXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo