



Nancy S. Grasmick  
State Superintendent of Schools

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

January 31, 2011

XXX  
XXX  
XXX

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

RE: XXXXX  
Reference: #11-040

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 correspondence from Ms. XXXXXXXXXXXXX, the student's mother, hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County 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 allegation that BCPS did not follow proper procedures in the identification and evaluation of the student to determine if he requires special education services under IDEA, in accordance with 34 CFR §§300.111 and .301 - .311, and COMAR 13A.05.01.06.

**INVESTIGATIVE PROCEDURES:**

1. On December 16, 2010, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, contacted the complainant and clarified the allegation to be investigated. On the same date, a copy of the complaint was provided by facsimile to Ms. Kalisha Miller, Director of Special Education, BCPS; Ms. Sharon Floyd, Supervisor of Compliance, BCPS; and Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS.
2. On December 28, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this

investigation. On that same date, MSDE notified Ms. Miller of the allegation to be investigated, and requested that her office review the alleged violation.

3. On January 7, 2011, Ms. Vickie Frazier, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegations in the complaint.
4. On January 18, 2011, Ms. Mandis and Ms. Koliwe Moyo, Education Program Specialist, MSDE, reviewed the student's education record with Ms. Weitz at MSDE.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. Written summary of the October 6, 2010 IEP team meeting;
  - b. Attention Deficit Hyperactivity Disorder Rating Scale Summary, dated October 18, 2010;
  - c. Student Support Team Summary Form, dated October 27, 2010;
  - d. Written summary of the October 27, 2010 IEP team meeting;
  - e. Consent to conduct assessments, dated October 27, 2010;
  - f. Receipt of Procedural Safeguards Parental Rights Document, dated October 27, 2010;
  - g. Report of a BCPS educational assessment completed on November 11, 2010;
  - h. Report of a BCPS psychological assessment completed on November 12, 2010;
  - i. Report of a classroom observation conducted by BCPS on November 29, 2010;
  - j. Written summary of the December 1, 2010 IEP team meeting;
  - k. Correspondence from the complainant alleging violations of IDEA, received by MSDE on December 13, 2010;
  - l. Receipt of Procedural Safeguards Parental Rights Document, dated December 1, 2010; and
  - m. Section 504 Accommodations Plan, dated January 5, 2011.

**BACKGROUND:**

The student is seven (7) years old and he attends XXXXXXXXXXXX. The student has an Accommodations Plan under Section 504 of the Rehabilitation Act of 1974 (504 Plan) based on Attention Deficit Hyperactivity Disorder (ADHD).

After an evaluation that began on October 27, 2010 and was completed on December 1, 2010, an IEP team determined that the student does not meet the criteria for identification as a student with a disability under IDEA.

There is documentation that during the time period covered by this investigation, the complainant participated in the education decision-making process. There is also documentation that the complainant has been provided with procedural safeguards, as required (Docs. a, c – f, j, l, and m).

**FINDINGS OF FACT:**

1. On September 16, 2010, the complainant requested an evaluation under IDEA based on her concerns that the student was not understanding class work and her concerns about his handwriting skills (Docs. a and k).
2. On October 6, 2010, an IEP team convened in response to the complainant's request and considered the following information:
  - a. The student began the 2009-2010 school year performing at grade level. He started to show difficulty with oral reading fluency during that school year, but he continued to read at grade level;
  - b. The student participated in the Systematic Instruction in Phoneme Awareness, Phonics, and Sight Words (SIPPS) program, which is a reading intervention program, during the 2009-2010 school year;
  - c. The student's scores on unit tests from the 2009-2010 school year varied from "very below average" to "exceptionally high average;"
  - d. A Qualitative Reading Inventory (QRI) that was conducted during the 2010-2011 school year indicated that the student's reading comprehension is at grade level but that he "struggles on a pre-primer level with decoding;"
  - e. During the 2010-2011 school year, the student has been participating in the next level of the SIPPS program (Extension Level). The data collected during the provision of this intervention indicated that the student was continuing to make progress, and did not reflect a "significant below average deficit;" and
  - f. The student recently began wearing eyeglasses (Doc. a).
3. At the October 6, 2010 meeting, the team decided that the student's previous lack of eyeglasses might have impacted his learning. Based on this information and information that the student was making progress with the interventions being provided in the regular education program, the team decided that the student was not suspected of being a student with a disability under IDEA and therefore, an evaluation was not required (Doc. a).

4. At the October 6, 2010 meeting, the team also decided that a referral would be made to the Student Support Team (SST) to monitor the student's progress. The team further decided that school staff would complete ADHD Rating Scales, and that the results would be considered by the SST. Documentation of the meeting reflects that the complainant expressed agreement with the decisions made at the meeting (Doc. a).
5. On October 27, 2010, the SST met to review the student's progress. At the meeting, the team considered the results of ADHD Rating Scales completed by school staff, which indicated no significant difficulty with inattention. The team also considered the complainant's continued concerns about the student's reading and math skills. At the meeting, the complainant again requested that an evaluation be conducted under IDEA. In response to that request, an IEP team convened and recommended that psychological and educational assessments be conducted, as well as a classroom observation of the student, in order to determine whether the student has a specific learning disability (Docs. b - e).
6. On December 1, 2010, the IEP team reconvened and considered the following:
  - a. Report of a BCPS educational assessment completed on November 11, 2010, which states that the student demonstrates "solid average achievement in his written language, reading, and math skills;"
  - b. Report of a BCPS psychological assessment completed on November 12, 2010, which states that the student has a full scale intelligence quotient in the "average" range; and
  - c. Report of a BCPS classroom observation of the student conducted in his math class on November 29, 2010, which indicates that the student was observed to demonstrate "significant difficulty" maintaining attention; and
  - d. Information from the complainant that the student does not complete homework unless someone works with him on a one-to-one basis (Docs. g - j).
7. At the December 1, 2010 meeting, the team decided that the student does not meet the criteria for identification as a student with a specific learning disability because he demonstrates no discrepancy between his cognitive ability and educational performance and because he has responded to interventions being provided in the regular education program. The team also decided that despite the fact that the student was observed to be inattentive during the classroom observation, based on reports from the student's teachers that the student does not demonstrate significant attention problems, he does not require special education instruction to address attention needs (Doc. j).

## **LEGAL REQUIREMENTS:**

### **Child Find Requirements**

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).

### **Evaluation Procedures**

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.05.01.06).

As part of the evaluation, the IEP team must review existing data, including existing assessment results, information provided by the parents, classroom-based assessments, and information from the student’s teachers. Based on that data, the team must identify what additional data, if any, are needed to determine whether the student is a student with a disability and whether the student requires special education instruction and related services as a result of the disability (34 CFR §300.305).

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 other health impairment and specific learning disability, and who, by reason thereof, needs special education and related services (34 CFR §300.8).

Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, which is due to chronic or acute health problems such as ADHD. 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 (34 CFR §300.8).

The IEP team may determine that a student is a student with a specific learning disability if the student: (a) 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; (b) the student does not make sufficient progress based on the student's response to scientific, research-based interventions; or (c) 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 §300.309).

### **State Complaint Investigation Procedures**

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the State complaint investigation process, the State educational agency must review the procedures used by a school system to reach determinations. Additionally, the State educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (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 local public agency has not followed proper procedures, the State educational agency can require the local public agency to ensure that the IEP team follows proper procedures to conduct an evaluation and determine a remedy to the student for loss of appropriate services (OSEP Letter #00-20).

### **DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that BCPS should have conducted an evaluation prior to December 1, 2010. Additionally, the complainant alleges that when conducting the evaluation, the IEP team did not follow proper procedures (Doc. k). Based on Findings of Fact #1 - 3, MSDE finds that BCPS followed proper procedures when providing supports to the student in the regular education program prior to conducting an evaluation under IDEA.

Based on Findings of Fact #4 - 7, MSDE finds that when making the eligibility determination, the team followed proper procedures by considering the data from the complainant and the student's teachers, as well as information regarding the student's response to the interventions that have been provided in the regular education program. Further, based on those Findings of Fact, MSDE finds that the team's decision was consistent with the data, and that the evaluation was completed within required timelines. Therefore, this office does not find that a violation occurred with respect to the allegation.

XXX

Ms. Kalisha Miller

January 21, 2011

Page 7

MSDE understands that the complainant does not agree with the eligibility determination. However, in this case, MSDE does not find that a procedural violation occurred. If the complainant wishes to challenge the IEP team's decisions, she may do so by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20).

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, 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: Joe A. Hairston  
Sharon Floyd  
Pam Weitz  
XXXXXX