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Interim State Superintendent of Schools

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September 23, 2011

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Baltimore City Public Schools
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Baltimore, Maryland 21202

Dr. Kim Lewis
Interim Executive Director, Human Capital
Baltimore City Public Schools
200 East North Avenue
Baltimore, Maryland 21202

RE: XXXXX
Reference: #12-006

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 July 25, 2011, MSDE received correspondence from Mr. XXXXXXXXX and Mrs. XXXXXXXXX, the student's parents, hereafter "the complainants," filed on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related requirements with respect to the above referenced student. MSDE investigated the allegations listed below.

1. The BCPS did not provide the complainants with a copy of the Service Plan¹ within five (5) business days prior to or after the September 8, 2010 and March 29, 2011 Individualized Education Program (IEP) team meetings, in accordance with Md. Code. Ann. Educ. § 8-405 (2010) and COMAR 13A.05.01.07D(3);

¹ In MSDE's correspondence, dated August 5, 2011, this office identified allegations related to the development and implementation of an Individualized Education Program. However, during the course of the investigation, it was discovered the student is a parentally-placed private school student who has a Service Plan.

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2. The BCPS did not follow proper procedures when responding to the complainants' request on February 16, 2011 for an IEP team meeting, in accordance with 34 CFR §§ 300.324 and .503;
3. The BCPS did not provide the complainants with an invitation, in writing, at least ten (10) days prior to the IEP meetings held on September 8, 2010 and March 29, 2011, in accordance with 34 CFR § 300.322 and COMAR 13A.05.01.07D(2);
4. The BCPS did not ensure the student was provided with the speech/language services required by the Service Plan¹ between December 2010 and February 2011, in accordance with 34 CFR §§ 300.101 and .323; and
5. The BCPS did not ensure that a re-evaluation that began on March 29, 2011, was completed within the required timelines, in accordance with 34 CFR § 300.301 and COMAR 13A.05.01.06.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to conduct the investigation of the allegations in the complaint.
2. On July 27, 2011, a copy of the complaint was provided by facsimile to Dr. Kim Hoffman, Interim Executive Director of Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
3. On July 29, 2011, Ms. Williams spoke with the student's mother, via telephone, to clarify the allegations to be investigated.
4. On July 29, 2011, the student's mother forwarded the MSDE a copy of electronic mail sent to the BCPS on February 16, 2011.
5. On August 5, 2011, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation.
6. On August 5, 2011, the MSDE also notified Dr. Hoffman and Dr. Kim Lewis, Interim Executive Director, Human Capital, BCPS, of the allegations to be investigated and requested that the BCPS review the alleged violations.
7. On August 26, 2011, Ms. Williams and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit at the BCPS Office of Legal Counsel to review the student's educational record.

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8. On August 31, 2011, Ms. Williams and Ms. Mandis conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and conducted interviews with the following BCPS personnel:

- a. Dr. XXXXXXXXX, Principal, XXXXXXXXXXXXXXXX;
- b. Ms. XXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXX;
- c. Ms. XXXXXXXX, Speech Pathologist; and
- d. Dr. XXXXXXXXXXXX, School Psychologist.

Ms. Tiffany Puckett, Associate Counsel, Office of Legal Counsel, BCPS, and Ms. Marion Masseaux, Education Assistant, Office of Legal Counsel, BCPS, attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.

9. On September 9 and 13, 2011, Ms. Williams conducted telephone interviews with the student's mother regarding the allegations and the documents that had been obtained during the investigation.

10. The MSDE reviewed the documentation provided by the parties. The documents referenced in this Letter of Findings include:

- a. IEP, dated September 2, 2009;
- b. Electronic mail from Baltimore City Infants and Toddlers Program Staff, dated September 2, 2009;
- c. BCPS Placement Notice, dated September 9, 2009;
- d. Service Plan, dated August 7, 2010;
- e. BCPS IEP team Meeting Notice, dated August 20, 2010;
- f. BCPS IEP team Meeting Notice, dated September 1, 2010;
- g. IEP team Meeting Attendance Sheet, dated September 8, 2010;
- h. Electronic mail from the student's mother to school personnel, dated February 16, 2011;
- i. BCPS IEP team Meeting Notice, dated March 9, 2011;
- j. Speech/Language Encounter Tracking Logs, dated August 30, 2010 through June 15, 2011;
- k. Notice and Consent for Assessments, dated March 29, 2011;
- l. IEP team Meeting Attendance Sheet, dated March 29, 2011;
- m. BCPS Student Observation, dated April 29, 2011;
- n. Psychological Report, dated May 10, 2011;
- o. Educational Assessment Report, dated June 2, 2011; and
- p. BCPS IEP team Meeting Notice, dated September 2, 2011.

BACKGROUND:

The student is five (5) years old and is identified as a student with a speech/language impairment under the IDEA. The student participated in the Baltimore City Infants and Toddlers Program, and an IEP was developed on September 2, 2009, to be implemented when the student turned three (3) years old. However, the complainants chose to place the student in XXXXXXXXXXXX, a private school. On September 8, 2010, a Service Plan was developed for the student to be provided with speech/language services as a parentally-placed private school student (Docs. a - d).

FINDINGS OF FACTS:

Initial IEP Developed September 2, 2009

1. On September 2, 2009, the IEP team developed an IEP that required the provision of speech/language services to assist the student with achieving the annual goal to improve speech articulation. The complainants did not enroll the student with the BCPS and placed the student in a private school (Docs. a, b, and c).

Service Plan Developed September 8, 2010

2. One year later, on September 8, 2010, the IEP team convened and reviewed a draft Service Plan. The Service Plan was developed because the BCPS identified the student with needs that could be addressed through the services that the BCPS provided to parentally-placed private school students. There is no documentation that the BCPS provided the complainants with a copy of the draft Service Plan, prior to the September 8, 2010 meeting. The Service Plan requires the provision of speech/language services to assist the student with achieving the annual goal to improve speech articulation. The goal indicates that the student will improve articulation of different sounds than those addressed through the IEP that was developed during the previous year (Docs. d - g, and interviews with the student's mother and the BCPS staff).
3. The student's educational record does not include a copy of a written invitation to the complainants to an IEP team meeting for September 8, 2010. There is documentation that the meeting was scheduled for September 8, 2010 at the request of the complainants, but no documentation of when the complainants made that request. Both of the complainants participated in the meeting (Docs. e, f, and g).

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4. There is no documentation that the complainants were provided with a copy of the final Service Plan within five (5) days of the September 8, 2010 meeting (Review of the student's educational record and interview with the student's mother).
5. "Speech/Language Encounter Logs" from the 2010-2011 school year indicate the student received speech/language therapy during the school year. However, the log documentation reflects the provision of speech/language therapy to address the goal in the September 9, 2009 IEP and not the goal in the September 8, 2010 Service Plan (Doc. j).

March 29, 2011 IEP Team Meeting

6. On February 16, 2011, the complainants requested an IEP team meeting to review recommendations from a recent private evaluation the complainants had obtained (Doc. h).
7. On March 29, 2011, the IEP team convened in response to the complainants' request for a meeting. While there is a meeting invitation in the educational record, dated March 9, 2011, there is no indication that the meeting notice was sent to complainants. The student's mother reports that the complainants were verbally notified of the meeting and were not provided with a written invitation to the meeting. There is documentation that both of the complainants participated in the meeting (Docs. i, k, and l, and interview with the student's mother).
8. At the March 29, 2011 meeting, the IEP team reviewed "written progress reports" from the student's teachers and other sources of information. However, there is no documentation that the BCPS provided the complainants with copies of those documents prior to the meeting. At the meeting, the team recommended psychological, educational, and sensory motor assessments and a classroom observation (Doc. k).
9. There is no documentation that the IEP team reviewed or revised the Service Plan at the March 29, 2011 meeting (Review of the student's educational record and interview with the student's mother).
10. There is documentation that assessments recommended by the team on March 29, 2011 have been conducted and that an IEP team meeting was scheduled for September 20, 2011, but there is no documentation that the re-evaluation process has been completed (Docs. m - p, and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Preliminary Discussion Parentally-Placed Private School Students

Each Local School System (LSS) must spend a proportionate share of its IDEA Part B funding on parentally-placed private school students with disabilities. Through consultation between the LSS and representatives of parentally-placed private school students, a decision must be made by the LSS regarding the types of services that will be provided for parentally-placed students (34 CFR §§ 300.132(a) and .137(b)(1); COMAR 13A.05.01.16B).

Parentally-placed private school students have the right to be identified, located, and evaluated in all areas of suspected disability, and offered a Free Appropriate Public Education (FAPE) if eligible. If a parent chooses not to have the student receive FAPE in the public school system and the student is identified to receive services as a parentally-placed private school student through the proportionate share of IDEA Part B funding, a Service Plan must be developed for the student and implemented consistent with procedures for development and implementation of an IEP (34 CFR §§ 300.131 and .138; COMAR 13A.05.01.16B).

Allegation #1 Provision of Documents Five (5) Days Prior to and After the September 8, 2010 and March 29, 2011 IEP Team Meetings

As stated above, a Service Plan has to be developed, to the extent appropriate, consistent with the development of an IEP (34 CFR § 300.138; COMAR 13A.05.01.16B). Parents must be provided with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at an IEP team meeting at least five (5) business days before the meeting. Additionally, the public agency must provide parents with a completed IEP not later than five (5) business days after an IEP team meeting (Md. Code Ann., Educ., § 8-405(c) (2010); COMAR 13A.05.01.07D).

Based on Findings of Facts #2 and #4, the MSDE finds that there is no documentation that the BCPS provided the complainants with a copy of the draft Service Plan five (5) business days before the September 8, 2010 meeting nor is there documentation that the BCPS provided the complainants with a copy of the completed Service Plan within five (5) business days after the meeting. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #8, the MSDE finds that there is no documentation that the BCPS provided the complainants with a copy of the written progress considered at the March 29, 2011 meeting at least five (5) days before the meeting. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Based on Findings of Facts #8 and #9, the MSDE finds that there is no documentation that the BCPS reviewed or revised the Service Plan at the March 29, 2011 meeting. Thus, the MSDE

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finds that the BCPS was not required to provide the complainants with a copy of a completed Service Plan following the meeting. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Allegation #2 Response to Request for an IEP Team Meeting

The public agency must ensure that the IEP team reviews each student's IEP at least 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; COMAR 13A.05.01.07).

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 FAPE to a student (34 CFR § 300.503; COMAR 13A.05.01.12). 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 Facts #6, #7, and #8, the MSDE finds that an IEP team meeting was held in response to the complainants' request for a meeting. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

Allegation #3 Written Invitations to the September 8, 2010 and March 29, 2011 IEP Team Meetings

The school system is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded an opportunity to participate in IEP team meetings, parents must be provided with written notice of the meetings. In Maryland, a written invitation must be sent to the parents at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent needs of the student to ensure the provision of FAPE (34 CFR § 300.322; COMAR 13A.05.01.07D).

Based on Findings of Facts #3 and #7, the MSDE finds that the complainants were not provided with written invitations to the September 8, 2010 and the March 29, 2011 IEP team meetings, as required by the regulations. Therefore, the MDSE finds that a violation occurred with respect to the allegation.

Allegation #4 Provision of Speech/Language Services

As stated above, a Service Plan has to be implemented, to the extent appropriate, consistent with the implementation of an IEP (34 CFR § 300.138; COMAR 13A.05.01.16B). The public agency must ensure that each student is provided with the special education services required by the IEP (34 CFR §§ 300.101 and .323).

Based on Findings of Facts #1, #2, and #5, the MSDE finds there is no documentation that the student was provided with speech/language services required by the Service Plan during the 2010-2011 school year, despite the fact the student was provided speech/language therapy. Therefore, the MSDE finds that a violation occurred with respect to the allegation.

Allegation #5 Re-evaluation Process

Assessment results must be used by the IEP team in reviewing, and as appropriate, revising the student's IEP or Service Plan within ninety (90) days of the IEP team meeting in which the team determines that assessment data is required (34 CFR § 300.301; COMAR 13A.05.01.06).

Based on Findings of Facts #8 and #10, the MSDE finds that there is no documentation, to date, that the re-evaluation begun on March 29, 2011 has been completed. Therefore, MSDE finds that the process was not completed within the required timelines, and that a violation has occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by November 1, 2011 that the IEP team has reviewed and revised the student's Service Plan, as appropriate and consistent with the evaluative data, including the results of assessments recommended by the team on March 29, 2011.

School-Based

The MSDE requires the BCPS to provide documentation by January 1, 2012 of the steps taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern at XXXXXXXXXXXXXXXXXXXX. Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements. Additionally, the findings in the Letter of Findings will be shared with the MSDE Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration for future monitoring activities.

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Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, and the MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised the complainants and the school system 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 Letter of Findings. 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 Letter of Findings.

If additional information is provided, it will be reviewed and the 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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings. Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/tw

cc: Andrés Alonso
Tiffany Puckett
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Erin Leff
Martha J. Arthur
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Tyra Williams