



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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September 30, 2011

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Dr. Kim Hoffman
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

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

RE: XXXXX
Reference: #12-009

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 August 3, 2011, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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 allegations as follows.

1. The BCPS did not ensure that the student was provided with the special education instruction and related services required by the Individualized Education Program (IEP) from April 6, 2011 until the end of the 2010-2011 school year, in accordance with 34 CFR §§300.101 and .323.

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2. The BCPS did not provide the complainant with copies of assessments at least five (5) business days prior to the IEP team meeting on April 6, 2011, in accordance with Md. Code Ann., Educ., §8-405(d) (2010) and COMAR 13A.05.01.07D(3).
3. The BCPS did not provide the complainant with a copy of the IEP document within five (5) business days after the IEP team meeting on April 6, 2011, in accordance with Md. Code Ann., Educ., §8-405(d) (2010) and COMAR 13A.05.01.07D(3).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 5, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, spoke with the complainant by telephone and clarified the allegations to be investigated.
3. On August 8, 2011, the complainant sent correspondence to MSDE which amended the requested remedy included in the State complaint.
4. On August 11, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE sent a copy of the complaint and the identified allegations, via facsimile, to Dr. Kim Hoffman, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
5. On September 1, 2011, Ms. Moyo reviewed the student's education record. Ms. Tiffany Puckett, Associate Counsel, BCPS, was present during the record review to provide information on BCPS policies and procedures, as needed.
6. On September 9, 2011, Ms. Moyo and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXX School and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXX, Math Teacher;
 - c. Ms. XXXXXXXXXXXXX, Special Education Teacher; and
 - d. Mr. XXXXXXXXXXX, Spanish Teacher.

Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed. Ms. Ruley also provided Ms. Moyo with additional documentation from the student's education record.

7. On September 9 and 21, 2011, Ms. Moyo conducted telephone interviews with the complainant.

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8. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings which includes:
 - a. IEP, dated March 12, 2010;
 - b. IEP team meeting notice, dated March 23, 2011;
 - c. IEP, dated April 6, 2011;
 - d. Counseling service logs from April 1, 2011 to June 30, 2011;
 - e. Reports of progress, dated April 20, 2011;
 - f. Reports of progress, dated June 22, 2011;
 - g. Correspondence and attachments from the complainant to the MSDE, received August 3, 2011;
 - h. Consultation logs for the 2010-2011 school year; and
 - i. Report card for the 2010-2011 school year.

BACKGROUND:

The student is eighteen (18) years old, is identified as a student with an emotional disability under the IDEA, and receives special education instruction and related services. During the 2010-2011 school year, the student attended XXXXXXXXXXXXXXXX. He began attending XX at the start of the 2011-2012 school year. The complainant participated in the educational decision-making process and has been provided with notice of the procedural safeguards (Docs. a, b, g, and i and interview with the complainant).

ALLEGATION #1:

**IMPLEMENTATION OF THE IEP FROM APRIL 6, 2011
UNTIL THE END OF THE 2010-2011 SCHOOL YEAR**

Findings of Facts:

1. On April 6, 2011, the IEP team met to conduct an annual review and considered assessment results, teacher reports, reports of progress towards achieving the IEP goals, and the complainant's concerns. Based on its review, the team revised the student's IEP to require the provision of five (5) hours per day of special education instruction in the general education classroom, with consultation between the general educator and the special educator once per month. The IEP also requires the provision of counseling, as a related service, by the school psychologist for thirty (30) minutes per week (Doc. c).
2. Reports of the student's progress towards achieving the annual IEP goals, that were made in April and June 2011, indicate that the student was making sufficient progress toward achieving the goals (Docs. e and f).
3. Consultation logs maintained by the special educator document that the special education teacher met with the general education teacher on April 11, 2011, May 12, 2011, and June 2, 2011 to discuss the provision of special education instruction to the student in the general education classroom, as required by the IEP (Doc. h).

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4. Counseling service logs maintained by the school psychologist indicate that the student was provided with counseling, as a related service, as required by the IEP, from April 6, 2011 to the end of the 2010-2011 school year (Doc. d).

Discussion/Conclusions:

The IDEA requires that the public agency ensure that each student with a disability be provided with the special education and related services determined by the IEP team (34 CFR §§300.101 and .323). In this case, the complainant alleges that the school staff did not provide the student with special education instruction and counseling, as required by his IEP, from April 6, 2011 to the end of the 2010-2011 school year (Doc. g and interview with the complainant).

Based on Findings of Facts #1-#4, the MSDE finds that there is documentation that the student was provided with special education instruction and counseling, as a related service, as required by the IEP from April 6, 2011 until the end of the 2010-2011 school year. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #2: PROVISION OF DOCUMENTS FIVE (5) DAYS PRIOR TO THE APRIL 6, 2011 IEP MEETING

Finding of Fact:

5. There is no documentation in the student's education record that the complainant was provided with copies of the documents that were considered by the team at the April 6, 2011 meeting five (5) days prior to the meeting (Review of the student's education record).

Discussion/Conclusions:

The public agency must ensure that the parent of a student with a disability is provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at that meeting, at least five (5) business days before the scheduled meeting (Md. Code Ann., Educ., §8-405(c) (2010) and COMAR 13A.05.01.07). Based on Finding of Fact #5, the MSDE finds that there is no documentation that the complainant was provided with the documents considered at the April 6, 2011 IEP team meeting. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #3: PROVISION OF THE IEP WITHIN FIVE (5) DAYS FOLLOWING THE APRIL 6, 2011 IEP MEETING

Finding of Fact:

6. There is no documentation in the student's education record that school staff provided the complainant with a completed copy of the IEP within five (5) days following the April 6, 2011 IEP team meeting (Review of the student's education record).

Discussion/Conclusions:

The public agency must also ensure that the parent is provided with a copy of the completed IEP no later than five (5) business days after the IEP team meeting (Md. Code Ann., Educ., §8-405(c) (2010) and COMAR 13A.05.01.07). Based on the Finding of Fact #6, the MSDE finds that there is no documentation that the complainant was provided with a copy of the IEP following the April 6, 2011 IEP team meeting. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the BCPS provide the complainant with a copy of the IEP developed on April 6, 2011 within ten (10) days of receiving this Letter of Findings. If, upon receipt of this document, the complainant requests that the IEP team convene to review the documents considered at the April 6, 2011 IEP team meeting, the MSDE requires the BCPS to ensure that an IEP team meeting is held.

If an IEP team meeting is convened, the BCPS must provide the complainant with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint to resolve the dispute consistent with the IDEA.

School-Based

The MSDE requires that the BCPS provide documentation by January 1, 2012 of the steps taken to determine if the procedural violations identified in this Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX School. If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that staff properly implement the requirements of the IDEA and COMAR. The documentation must also provide a description of how the BCPS will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violations do not recur.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring is being informed of the violations identified through this investigation for use in its future monitoring for continuous improvement activities.

Documentation of completion of the required actions is to be submitted to this office to the attention of Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

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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 that the complainant and the school system have the right to submit additional written documentation to this office which must be received within fifteen (15) days of the date of this letter if they disagree with the findings of facts 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 of facts, conclusions, and corrective actions contained in this Letter of Findings 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 the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

MEF/km

cc: Andrés Alonso
Nancy Ruley
Erin Leff
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX
Dori Wilson
Martha J. Arthur
Koliwe Moyo