



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

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

October 3, 2011

XXX
XXX
XXX

Dr. Kim Hoffman
Interim Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204B
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: #12-010

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 16, 2011, the 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 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 has not ensured that the Individualized Education Program (IEP) has addressed the student's identified academic and behavioral needs since the start of the 2010-2011 school year, in accordance with 34 CFR §300.324.
2. The BCPS did not ensure that proper procedures were followed when determining the student's educational placement for the 2011-2012 school year, in accordance with 34 CFR §§300.114 - .116.

XXX

Dr. Kim Hoffman

Dr. Kim Lewis

October 3, 2011

Page 2

INVESTIGATIVE PROCEDURES:

1. On August 10, 2011, the MSDE received correspondence from the complainant containing allegations of violations of IDEA.
2. On August 12, 2011, Ms. Dori Wilson, Branch Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated, and informed the complainant that she must provide a requested remedy in order for a State complaint investigation to be initiated.
3. On August 16, 2011, the complainant provided the MSDE with a requested remedy and a State complaint investigation was initiated.
4. On August 17, 2011, a copy of the complaint was provided by facsimile to Dr. Kim Hoffman, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
5. On August 25, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations to be investigated and the State complaint investigation procedures. On that date, the MSDE sent the complainant correspondence confirming the allegations to be investigated, notified Dr. Hoffman of the allegations, and requested that her office review the alleged violations.
6. On September 13, 2011, Ms. Mandis reviewed the student's education record at the BCPS Central Office.
7. On September 20, 2011, Ms. Mandis conducted a telephone interview with the complainant about the allegations being investigated.
8. On September 26, 2011, the BCPS provided the MSDE with copies of documents from the student's educational record.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Special Education Progress Report, dated May 3, 2010;
 - b. Report of a classroom-based assessment, dated May 5, 2010;
 - c. School Psychologist's Recording Form, dated May 5, 2010;
 - d. IEP, dated May 6, 2010, and written invitation to the meeting;
 - e. Report of a classroom-based assessment, dated February 20, 2011;
 - f. School Psychologist's Recording Form, dated February 17, 2011;
 - g. Special Education Progress Report, dated from February 20, 2011 to March 8, 2011;

XXX

Dr. Kim Hoffman

Dr. Kim Lewis

October 3, 2011

Page 3

- h. Special education teacher's contact notes, dated from February 22, 2011, to May 16, 2011;
- i. IEP, dated February 24, 2011 and written invitation to the meeting;
- j. Report of the student's private therapist, dated May 16, 2011;
- k. Report of the school psychologist, dated June 9, 2011;
- l. Special education teacher's report of the student's progress, dated June 14, 2011;
- m. IEP, dated June 14, 2011 and written invitation to the meeting;
- n. Report of a functional behavioral assessment and behavioral intervention plan, dated June 14, 2011; and
- o. Correspondence from the complainant alleging violations of IDEA, received by the MSDE on August 16, 2011.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with an other health impairment under IDEA related to a diagnosis of Attention Deficit Hyperactivity Disorder. The student attends XXXXXXXXXXXXXXXXXXXX School, where he receives special education instruction and related services.

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 was provided with notice of the procedural safeguards (Docs. d, i, n, o, and review of the student's educational record).

FINDINGS OF FACTS:

May 6, 2010 IEP Team Meeting

1. The IEP in effect at the start of the 2010-2011 school year was developed on May 6, 2010. At the meeting, the team considered a report from the school psychologist that the student is provided with counseling to improve social skills, self-awareness, and problem-solving skills. The school psychologist reported that the student demonstrates increased ability to control his behavior and make friends but that distraction and inattention continue to impact his academic progress (Docs. c, d, and review of the student's educational record).
2. The team also considered information from the student's teachers that a classroom-based assessment identified continuing needs in the areas of reading vocabulary and written language expression (Docs. a, b, and d).
3. The team further considered information from the complainant that the student struggles with reading and becomes frustrated because he cannot understand homework assignments (Doc. d).

XXX

Dr. Kim Hoffman

Dr. Kim Lewis

October 3, 2011

Page 4

4. The team revised the IEP to include goals for the student to improve reading vocabulary and written language expression, to demonstrate strategies to improve organization and increase focus, and to improve the ability to verbalize his feelings and manage emotions. The IEP requires that the student be provided with special education instruction in the areas of reading and written language in a separate special education classroom, and counseling as a related service. The IEP also requires the provision of accommodations and consultation between the special education teacher and the student's classroom teachers (Doc. d).

February 24, 2011 IEP Team Meeting

5. On February 24, 2011, the team met to review the student's program and progress. At the meeting, the team considered information from the school psychologist that the student is experiencing increased interpersonal problems, demonstrating frustration, leaving class without permission, and becoming resistant to receiving instruction in the separate special education classroom. The school psychologist also reported that the student is beginning to demonstrate signs of depression, including irritability and a "flat affect" (Docs. f, i, and review of the student's educational record).
6. The team considered information from the student's teachers about his classroom performance reflecting that the student's reading vocabulary and written language skills improved from the third (3rd) grade level to the fourth (4th) grade level but that the student is not making sufficient progress to achieve the annual IEP goals. Insufficient progress on annual IEP goals is a result of the student's refusal to complete work, his disruptive behaviors, and his choice to not remain in the classroom during instruction (Docs. e, g, h and i, and review of the student's educational record).
7. The team also considered information from the complainant that the student continues to have difficulty understanding homework assignments (Doc. i).
8. The team discussed that the student appeared to be "acting out" as a result of depression and revised the behavior goal for the student to identify triggers to his emotions and to learn to accept responsibility for his actions. The team revised the academic goals based on reports of the student's progress, and added a goal for the student to improve reading comprehension. The IEP was also revised to require that the student be provided with a "word bank" to reinforce vocabulary for extended writing exercises and to require that teachers break the student's assignments down into smaller units. The team also decided that consultation between the special education teacher and the student's classroom teachers will focus on developing strategies for reinforcing positive behavior through nonverbal and verbal communication and assisting the student with initiating and sustaining his attention to tasks (Doc. i).

June 14, 2011 IEP Team Meeting

9. On June 14, 2011, the IEP team convened at the complainant's request to consider information from the student's private therapist, who reported that the student has been diagnosed with post traumatic stress disorder and oppositional defiant disorder. The therapist also reported that the student has had a series of major losses resulting in his demonstrating "pathological grief reaction" (Docs. j and m).
11. The team considered the complainant's concern that the student might not be promoted to the next grade. The team discussed that the decision regarding promotion is made by a "promotional committee" and that the decision is based on academic progress as well as progress toward the achievement of annual IEP goals (Doc. m).
12. The complainant also expressed concern that disciplinary action had been taken with the student and indicated that the student requires additional services instead of punishment.¹ School-based members of the team indicated that disciplinary action is needed to ensure that the student learns to assume responsibility for his behavior. School-based members of the team also reported that the student had been offered additional services through the XXXXXXXXXXXX, but he did not accept those services (Doc. m).
13. The team considered information from the student's teachers and the school psychologist indicating that the student had a "much different" year than the previous year and identified the student's interfering behaviors as eloping from the classroom, refusing to comply with directions, and becoming aggressive with peers during transitions between classes. A behavioral intervention plan was developed that requires school staff to create a class attendance contract with the student that allows the student to earn rewards for appropriate behavior. The plan also requires that the student be provided with additional supports in the classroom to encourage appropriate behavior (Docs. h and k - n).
14. The team determined that the student requires special education instruction in all academic classes. The student's private therapist indicated that the general education classroom may be overwhelming for the student and recommended the student be provided with special education instruction in all courses in a separate special education classroom. The student's teachers expressed concern that the student may not respond well to being required to receive all instruction in a separate special education classroom (Doc. m).

¹ The student's disciplinary record reflects that he had been disciplinarily removed from school for three (3) days for refusing to obey school policies, three (3) days for taking another student's eyeglasses, and two (2) days for a physical attack on another student, for a total of eight (8) days during the 2010-2011 school year. The record reflects that the student was also required to attend numerous conferences with school administration for roaming the halls, disrupting class, leaving class without permission, and refusing to complete class work (Review of the student's disciplinary record for the 2010-2011 school year).

XXX

Dr. Kim Hoffman

Dr. Kim Lewis

October 3, 2011

Page 6

15. The team discussed whether the IEP can be implemented in the general education classroom with the provision of a one-to-one aide and decided that the provision of instruction in the general education classroom with a one-to-one aide would be a more restrictive environment than a separate special education class. Based upon the student's need for additional supports to address his behavioral and attention needs, the team determined that the least restrictive environment in which the IEP can be implemented is a separate special education classroom for all academic subjects. The team determined that it would reconvene after the first (1st) four (4) to six (6) weeks of the 2011-2012 school year to consider the student's progress (Doc. m).

DISCUSSION/CONCLUSIONS:

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S ACADEMIC AND BEHAVIORAL NEEDS SINCE THE START OF THE 2010-2011 SCHOOL YEAR

To appropriately identify and address the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.320 and .324).

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate. Additionally, the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address the lack of expected progress toward achievement of the annual goals, information from the parent, or the student's anticipated needs (34 CFR §300.324).

Based on Findings of Facts #1 - #13, the MSDE finds that the team considered assessment data and information from the complainant, the student's teachers, service providers, and private therapist, and determined the student's academic and functional performance based upon this data. Based on these Findings of Facts, the MSDE finds that the team developed a program to address the academic needs and interfering behaviors identified in the data.

Based on Findings of Facts #6, #8, and #13, the MSDE finds that, while the services provided to the student have not eradicated the interfering behaviors, the IEP team continues to review and revise the IEP based upon information about his response to the interventions being implemented. Therefore, the MSDE does not find that a violation has occurred with respect to this allegation.

**ALLEGATION #2 EDUCATIONAL PLACEMENT DECISION FOR THE
2011-2012 SCHOOL YEAR**

To the maximum extent appropriate, students with disabilities are to be educated with students who are nondisabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. In determining the least restrictive environment in which the IEP can be implemented, the IEP team must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §§300.114 and .116).

Based on Findings of Facts #14 and #15, the MSDE finds that there is documentation that the team considered less restrictive environments in which the IEP can be implemented with the provision of supplementary aids and services, as well as any potential harmful effect on the student or the services he needs when determining the educational placement. Therefore, this office does not find that a violation occurred with regard to this allegation.

ADDITIONAL DISCUSSION:

This office understands the complainant's continuing concerns about the student's interfering behaviors (Doc. o). The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the State educational agency must review the procedures used by a school system to reach determinations about the program. 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. However, the State educational agency may not overturn the IEP team's decisions (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).

Because this office did not find that procedural violations occurred, it may not overturn the team's decisions. However, the complainant maintains the right to resolve any continuing dispute regarding the student's program and placement by requesting mediation or by filing a due process complaint.

Please be advised that the complainant 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 of Findings 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 letter. 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.

XXX

Dr. Kim Hoffman

Dr. Kim Lewis

October 3, 2011

Page 8

Questions regarding the findings of fact or conclusions 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 IDEA. The MSDE recommends that this letter 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/am

c: Andrés Alonso
Jay Salkauskas
Nancy Ruley
Tiffany Puckett
XXXXXXXXXXXX
Dori Wilson