



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

November 18, 2011

Pamela S. Foresman, Esq.
Maryland Disability Law Center
1800 North Charles Street
Suite 400
Baltimore, Maryland 21201

Dr. Kim Lewis
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue
Baltimore, Maryland 21202

Dr. Kim Hoffman
Director, Data Monitoring & Compliance
Baltimore City Public Schools
200 East North Avenue
Baltimore, Maryland 21202

RE: XXXXX
Reference: #12-021

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 September 20, 2011, the MSDE received correspondence from Pamela S. Foresman, Esq., of the Maryland Disability Law Center, hereafter “the complainant,” filed 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) and related State requirements with respect to the student. This office investigated the allegation that the BCPS has not ensured that the student has been provided with the transportation services required by the IEP since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.101 and .323.¹

¹ The complaint filed with this office also alleged that the student’s IEP did not properly address his transportation needs. However, on November 9, 2011, the complainant withdrew this allegation from the complaint via electronic mail.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 27, 2011, MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Interim Executive Director, Special Education, BCPS, Dr. Kim Lewis, Interim Executive Director, Human Capital, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On October 4, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone and clarified the allegations¹ to be investigated.
4. On October 6, 13, 17, 20, and 21, 2011, the MSDE staff requested documentation from the BCPS staff.
5. On October 7, 2011, the MSDE sent correspondence to the complainant, with a copy to the student's mother, acknowledging receipt of the complaint and identifying the allegations¹ subject to this investigation. On the same date, the MSDE sent a copy of the complaint and the identified allegations,¹ via facsimile, to Dr. Hoffman, Dr. Lewis, and Ms. Ruley.
6. On October 20, 2011, Ms. Hartman conducted a telephone interview with the student's mother. On that same date, Ms. Hartman, Ms. Mandis, Ms. Koliwe Moyo, Education Program Specialist, MSDE, and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at the BCPS Central Office and interviewed the following staff from the XXXXXXXXXXXXXXXXXXXX School:
 - a. Ms. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXXXXXX, Assistant Principal and School Transportation Coordinator; and
 - c. Ms. XXXXXXXX, IEP Chairperson.

Ms. Tiffany Puckett, Associate Legal Counsel, BCPS, Dr. Hoffman, and Ms. Nancy Feely, State Superintendent's Designee, MSDE, attended the site visit. Ms. Puckett and Dr. Hoffman were available to provide information regarding the BCPS policies and procedures, as required. On the same date, Ms. Hartman reviewed the student's education record and the BCPS staff provided MSDE staff with documentation regarding the allegations being investigated.

7. On October 21, 2011, Ms. Hartman, Ms. Moyo, Ms. Williams, and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the BCPS Central Office and interviewed the following BCPS staff:
 - a. Mr. J. Keith Scroggins, Chief Operations Officer;
 - b. Mr. John Land, Deputy Chief Operations Officer;
 - c. Mr. Francis Aning, Manager of Routing and Scheduling; and
 - d. Mr. XXXXXXXX, Graduate Intern.

Ms. Puckett, Dr. Hoffman, and Ms. Nancy Feely, State Superintendent's Designee, MSDE, attended the site visit. Ms. Puckett and Dr. Hoffman were available to provide information regarding the BCPS policies and procedures, as required.
8. On October 28, 2011, the BCPS staff provided the MSDE staff with additional documentation requested at the site visits on October 20 and 21, 2011.
9. On November 3, 2011, Ms. Hartman and Ms. Mandis conducted a telephone interview with Ms. XXXXXX and Ms. XXXXXXXX, Special Education Teacher, XXXXXXXX XXXXXXXXXXXX School. Ms. Puckett participated in the telephone interview as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
10. On November 9, 2011, Ms. Hartman received correspondence from the complainant, via electronic mail, that withdrew one of the allegations in the complaint.
11. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings which includes:
 - a. IEP, dated May 12, 2011;
 - b. The BCPS Transportation Services *Handbook for Parents and Guardians*, dated August 2011;
 - c. Electronic mailings from the BCPS school staff to the BCPS Transportation Office staff, dated July 18, 2011;
 - d. Parent Contact Log entry, dated September 1, 2011;
 - e. Transportation database information sheet;
 - f. Electronic mailings between staff members and the complainant's office and the BCPS Central Office staff and the BCPS Transportation Office staff;
 - g. Attendance Details for the student, dated between August 22, 2011 and October 11, 2011; and
 - h. The BCPS Department of Pupil Transportation Student Attendance Roster, dated between November 5 and 9, 2011.

BACKGROUND:

The student is seven (7) years old. He is identified as a student with autism under the IDEA, and receives special education instruction and related services at the XXXXXXXXXXXXXXXXXXXX School. The student's mother has participated in IEP team meetings and has been provided notice of the procedural safeguards during the time period covered by this investigation (Doc. a).

FINDINGS OF FACTS:

1. The IEP in effect since the start of the 2011-2012 school year indicates that the student requires the provision of special education instruction and transportation as a related service (Doc. a).
2. The BCPS Central Office maintains a computer database with information about the specific transportation needs of each student who requires transportation as a related service on their IEP. Information about a student's transportation needs is inserted into the computer database by different school system staff depending on several factors. The BCPS policy states that, when transportation has already been approved by the BCPS Central Office staff and a change in the information needs to be entered into the database, the school staff are to enter the revised information (Doc. b, and interviews with BCPS staff).
3. On July 18, 2011, school staff contacted the BCPS Transportation Office to inform them that they had discovered the student's name was not on the list of students scheduled to receive transportation services at the start of the 2011-2012 school year, despite the fact that he had already been approved and was on the list the previous year. School staff report that they expected the Transportation Office staff to enter this information into the database system to correct the error as the error was discovered during the summer (Docs. c and d, and interviews with BCPS staff).
4. The student's information was not entered into the database system until after his parent contacted the school staff on August 31, 2011, the first day of classes, to express concern that the student was not provided with bus transportation that day. On that date, school staff entered the information after determining that the BCPS Transportation Office staff had not entered the data. The parties agree that the student's parent transported him to school on that date (Docs. e and f, and interviews with the complainant, the student's parent, and BCPS staff).
5. There is documentation that the student was ill and did not attend school the next two (2) school days, September 1, 2011 and September 2, 2011 (Doc. g, and interviews with the complainant, the student's parent, and BCPS staff).

6. There is documentation that the school staff had advised the student's parent that, if the bus did not arrive on September 6, 2011,² she should contact the school and a school staff member would pick up the student in a taxicab (Doc. c).
7. On September 6, 2011,² when the bus did not arrive to pick up the student, the parent telephoned the school, and a school staff member transported the student to school in a taxicab, arriving after the start of the school day (Doc. h, and interviews with the complainant, the student's parent, and BCPS staff).
8. On September 7, 2011, a school bus arrived to transport the student. However, the student's parent reports that she had not been informed of the pick-up time and that, as a result, the student was not ready, and the bus left without him. Again, the student's parent telephoned the school and a school staff member transported the student to school in a taxicab, arriving after the start of the school day (Doc. h, and interviews with the complainant, the student's parent, and BCPS staff).
9. Prior to the start of a school year, the BCPS Transportation Office provides parents with written notice of the bus routing information for their child. The school system staff report that, when a student is added to a bus route after the start of the school year, the BCPS Transportation Office informs parents by telephone, instead of by written correspondence, of the information so that the parents receive the information as soon as possible (Doc. d, and interviews with BCPS staff).
10. There is no documentation that the student's parent had been informed, in writing or by telephone, of the student's bus schedule once it had been determined (Review of the record).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP. One such related service is transportation (34 CFR §§300.34, .101 and .323).

In this case, based on the Findings of Facts #1-#4, the MSDE finds that there is documentation that there was a delay in the initiation of transportation services because the student's information was not entered into the transportation database by school staff in a timely manner. Based on the Findings of Facts #8-#10, the MSDE finds that there is no documentation that the student's parent was informed of the student's bus schedule once the student was placed on a bus route.

Further, based on the Findings of Facts #6-#8, the MSDE finds that, while the BCPS transported the student to school by taxicab prior to the initiation of bus services, the student arrived at school after the start of the school day. Therefore, the MSDE finds that violations occurred with respect to this allegation.

² Because Monday, September 5, 2011, was a holiday, September 6, 2011 was the next school day.

CORRECTIVE ACTION/TIMELINE:

Student-Specific

The MSDE requires that, at the next IEP team meeting to review the student's program, but in no event later than the annual review date of May 12, 2012, the IEP team determines whether the violation resulted in a negative impact on the student's ability to benefit from his education program, and, if so, the amount and nature of *compensatory services*³ needed to redress the violation identified in this investigation. The BCPS must provide the MSDE with documentation of the completion of this corrective action within fifteen (15) days of its being completed.

The BCPS must provide the student's parent with proper written notice of the IEP team's determinations, including a written explanation of the basis for the determinations, in accordance with 34 CFR §300.503. If the student's parent disagrees with the IEP team's determinations, the parent maintains the right to request mediation or to file a due process complaint, in accordance with IDEA.

School-Based/Systemic

The MSDE requires the BCPS to provide documentation by February 15, 2012 that steps have been taken to determine whether the violation identified constitutes a pattern within the school or school system. If a pattern is found, the BCPS must document the steps taken to ensure that the school staff comply with the requirements that students receive transportation services in accordance with each student's IEP, and that parents are notified of the transportation services to be provided.

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 that 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.

³ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

Pamela S. Foresman, Esq.
Dr. Kim Lewis
Dr. Kim Hoffman
November 18, 2011
Page 7

Documentation of all corrective action taken is to be submitted to this office to the attention of the Chief of the Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, 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 that the complainant and the BCPS 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 facts 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 of Findings. 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 facts, conclusions or corrective actions contained in this Letter of Findings should be addressed to this office in writing. The school system and the student's mother 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/ch

cc: XXXXXXXXX
 Andrés Alonso
 Erin Leff
 Glenn Johnson
 XXXXXXXXX
 XXXXXXXXX
 Jay Salkauskas
 XXXXXXXXXXXXX
 Tiffany Puckett

 William Fields
 Dori Wilson
 Martha J. Arthur
 Christine R. Hartman