



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

September 23, 2011

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

RE: XXXXX
Reference: #12-005

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, the MSDE received a complaint from Ms. XXXXXX XXXXXXXX, hereafter, "the complainant," filed on behalf of her son. 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. The MSDE investigated the following allegations:

1. The BCPS did not follow proper procedures when conducting a re-evaluation on November 11, 2010, in accordance with 34 CFR §§ 300.303 and .305 and COMAR 13A.05.01.06E;
2. The BCPS did not ensure that proper procedures were followed when responding to the complainant's request for an independent educational evaluation on December 7, 2010, in accordance with 34 CFR §300.502; and
3. The BCPS did not ensure that the student was provided with the special education instruction to address his written language needs required by the Individualized Education Program (IEP) during the 2010-2011 school year, in accordance with 34 CFR §§300.101 and .323.

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INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 27, 2011, the MSDE sent a copy of the complaint, via 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.
3. On August 3, 2011, Ms. Moyo conducted a telephone interview with the complainant in order to clarify the allegations to be investigated.
4. On August 8, 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 notified Ms. Miller of the allegations, requested that her office review the alleged violations, and requested documentation from the student's education record from Ms. Weitz.
5. On August 22, 2011, Ms. Moyo reviewed the student's education record at the BCPS Central Office and obtained documents from the student's education record. Ms. Floyd and Ms. Weitz were present at the review to provide information on the BCPS policies and procedures, as needed.
6. On September 9, 2011, the BCPS provided the MSDE with additional documentation from the student's education record.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Maryland School Assessment results from 2009-2010 school year;
 - b. Report card from the 2009-2010 school year;
 - c. IEP, dated June 17, 2010;
 - d. Receipt of IEP form, dated August 26, 2010;
 - e. Special education service logs from August 30, 2010 to November 12, 2010;
 - f. IEP team meeting summary, dated September 2, 2010;
 - g. IEP team meeting summary, dated September 30, 2010;
 - h. Consent for assessment form, dated September 30, 2010;
 - i. Classroom-based assessment results from September and October 2010;
 - j. BCPS classroom observation report, dated October 11, 2010;
 - k. BCPS educational assessment report, dated October 26, 2010;
 - l. BCPS psychological assessment report, dated October 26, 2010;
 - m. Reading class performance summary, dated November 11, 2010;
 - n. IEP team meeting summary, dated November 11, 2010;
 - o. Consent for assessment, dated November 30, 2010;

- p. E-mail correspondence (E-mail) from school staff to the complainant, dated December 6, 2010;
- q. E-mail correspondence between the complainant and school staff, dated December 7, 2010;
- r. BCPS occupational therapy assessment report, dated January 4, 2011;
- s. Correspondence from BCPS staff to the complainant, dated January 7, 2011;
- t. Correspondence from BCPS staff to the complainant, dated January 20, 2011;
- u. IEP team meeting summary, dated January 25, 2011;
- v. Correspondence from BCPS staff to the complainant, dated February 3, 2011;
- w. Special education service logs from February 16, 2011 to April 29, 2011;
- x. Correspondence from the complainant to BCPS staff, dated March 3, 2011;
- y. E-mail from BCPS staff to the complainant, dated March 7, 2011;
- z. Due process complaint, dated March 8, 2011;
- aa. Consent for assessment, dated March 10, 2011;
- bb. E-mail between school staff, dated April 28, 2011;
- cc. Independent neuropsychological assessment report, dated June 2, 2011;
- dd. BCPS educational assessment report, dated June 10, 2011;
- ee. E-mail from BCPS staff to school staff, dated June 9, 2011;
- ff. Samples of the student's work from the 2010-2011 school year;
- gg. Report card from the 2010-2011 school year;
- hh. Correspondence from the complainant to MSDE, dated July 25, 2011; and
- ii. IEP team meeting summary, dated July 25, 2011.

BACKGROUND:

The student is ten (10) years old and attends XXXXXXXXXXXXXXXX School (XXXXXXXXXX XX). On November 11, 2010 a re-evaluation was conducted and the IEP team determined that the student no longer meets the criteria for identification as a student with a disability under the IDEA. Prior to this date, the student was identified as a student with a specific learning disability under the IDEA and received special education instruction at XXXXXXXXXXXXXXXX. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parental rights¹, as required (Docs. c-h, n-p, u, w, aa, bb, ee, gg, and ii).

ALLEGATION #1:

PROPER PROCEDURES WHEN CONDUCTING A RE-EVALUATION

Findings of Facts:

1. On September 2, 2010, the IEP team began a re-evaluation of the student to determine whether he continues to meet the criteria for identification as a student with a specific learning disability under the IDEA. At the meeting, the IEP team considered information from the complainant, the student's grades from the 2009-2010 school year, teacher

¹ The complainant exercised her parental rights by filing due process complaints on February 16, 2011 and March 8, 2011 in order to resolve her disagreement with the IEP team's eligibility determination. However, subsequent to each filing, the complainant withdrew her requests (Docs. z and hh).

reports of the student's classroom performance, the student's Maryland School Assessment results, reports of progress towards achieving the IEP goals from the 2009-2010 school year, and information from the student's private psychiatrist (Docs. a, b, c, and f).

2. Based upon the team's review, the need for additional information was determined; the team recommended an educational and a psychological assessment and a classroom observation. The complainant indicated that she believed that the information that the team reviewed at the meeting provided sufficient data to determine that the student continued to require special education instruction. However, on September 30, 2010, the complainant provided consent for the BCPS to conduct an educational and a psychological assessment and a classroom observation (Docs. f and h).
3. On November 11, 2010, the IEP team re-convened and reviewed the results of the assessments. The psychological assessment report indicates that the student has general "cognitive functioning in the high average range" and that the student shows weakness related to his verbal and visual short-term memory which is "likely impacted by difficulties with sustained attention." The results of the educational assessment indicate that most of the student's "skills are developed on or above his current grade level" (Docs. k, l, and n).
4. The team reviewed the results from the classroom observation which indicate that the student has problems in the areas of "attention, organization, activity level, social interaction, and work habits," but that he "has no problem in the area of written expression." The results of an audiological assessment, obtained and provided to the team by the complainant, indicate that the student does not have "any significant auditory processing deficits" (Docs. j and n).
5. At the meeting, the IEP team also reviewed classroom-based assessment data demonstrating the student performing "above grade level" in math, reading, and written language, and information from the student's teachers revealing that the student has "achieved mastery of his written expression and organization goal." His teachers further indicate that while he has problems with inattention and focus related to his attention deficit hyperactivity disorder (ADHD), he was performing well in school (Docs. i, m, and n).
6. The complainant expressed her concern, at the meeting, that the team had not determined whether inattention or difficulty with processing information is the "true issue" and indicated that she believes that the student "has a processing problem" impacting his handwriting skills (Doc. n).
7. At the November 11, 2010 IEP team meeting, although the team determined that the student has ADHD, they also determined that the impairment does not have a negative impact on his education. As a result, the team determined that the student no longer requires special education instruction (Doc. n).

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8. There is no documentation that the team determined whether the student continued to meet the criteria as a student with a specific learning disability, the student's previously determined disability (Doc. n and review of education record).
9. Although the team determined that the student is no longer a student with a disability under the IDEA, the team recommended an occupational therapy assessment, and on November 30, 2010, the complainant provided her consent for the BCPS to conduct this assessment (Docs. n and o).
10. On January 25, 2011, the IEP team reviewed the results from the occupational therapy assessment indicating that the student does not have fine motor concerns. The report indicates that his difficulty with remaining focused may be impacting his handwriting skills. Based on this data, the IEP team again determined that the student does not have a disability that impacts his handwriting and does not require special education instruction. Documentation of the meeting indicates that the team considered this an initial evaluation and not a part of the re-evaluation that began on September 2, 2010 (Docs. p, r and u).
11. On February 15, 2011, in response to the complainant's continuing disagreement regarding the team's determination that the student no longer requires special education services, the BCPS staff offered to conduct another educational assessment. On March 10, 2011 the complainant provided consent for the BCPS to conduct the assessment (Doc. hh).
12. On July 25, 2011, the IEP team convened to review the results of the educational assessment and an assessment obtained by the complainant. These assessments indicate that the student has processing difficulties that negatively impact his ability to focus in order to complete his assignments. However, while the team did not determine whether the student has a disability under the IDEA, they did determine that the student does not require special education instruction and that his difficulty with planning and focus can be addressed with supports in the classroom (Docs. cc, dd, ff, gg, and ii).

Discussion/Conclusions:

Determining the Existence of a Disability

In order to be identified as a student with a disability under the IDEA, the IEP team must determine that the student has one of a list of specific disabilities and as a result of the disability, the student requires special education instruction. Examples of disabilities included in the IDEA are specific learning disability and other health impairment, which included ADHD. Federal regulations specifically outline the requirements to be utilized when determining whether a student meets the criteria required to be identified with a defined disability (34 CFR §300.8).

A specific learning disability is defined as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical

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calculations (34 CFR §300.8). The IEP team may find such a disability if it is determined that the student is not making sufficient progress to meet age or State approved grade-level standards when using a process based on the child's response to scientific, research-based intervention; or if the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development (34 CFR §300.309).

Based on Findings of Facts #3-#12, the MSDE finds that the IEP team determined that the student had ADHD, but that this disability did not require the provision of special education instruction. However, based on these same Findings of Facts, there is no documentation that, to date, the IEP team has determined whether the student continues to meet the criteria for identification as a student with a specific learning disability under the IDEA. Therefore, the MSDE finds that there-evaluation process has not been completed as required by the regulations and, as a result, a violation occurred.

General Procedures for Conducting an Re-evaluation

The public agency must ensure that each re-evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category with which the student is identified. In order to do so, 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, is 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. When conducting a re-evaluation, the public agency must ensure that assessments are conducted, and the results considered by the IEP team within ninety (90) days of the date the team determines that assessments are required (34 CFR §§ 300.8, 304, and .305 and COMAR 13A.05.01.04 - .06).

In this case, based on Findings of Facts #1-#12, the MSDE finds that the re-evaluation process that began on September 2, 2010 has not been properly completed. Based on these same Findings of Facts, the MSDE finds that the team continued to obtain additional data to address the complainant's concerns regarding the impact of processing difficulties until July 25, 2011. Further, the MSDE finds that the decisions made by the IEP team on January 25, 2011 were part of the re-evaluation process and not an initial evaluation as the school system asserted. As a result, this office finds that the BCPS has not ensured that the re-evaluation was completed within required timelines, and that a violation has occurred.

ALLEGATION #2: **REQUEST FOR AN INDEPENDENT EDUCATIONAL
EVALUATION**

Findings of Facts:

13. On December 7, 2010, the complainant requested an independent psychological assessment at the expense of the BCPS, since she and the student's father felt that they "were not a part of the decision-making process in the re-evaluation of the student's IEP and do not agree with the team's decision to eliminate IEP services" (Doc. q).
14. On January 20, 2011, the BCPS staff informed the complainant that if she utilized an evaluator with whom the BCPS had a contractual relationship, the BCPS would pay for the assessment (Doc. s).
15. On February 3, 2011, the BCPS filed a due process complaint to defend the psychological assessment that had been conducted by the BCPS and that was considered by the IEP team on November 11, 2010. On February 16, 2011, the BCPS withdrew the due process complaint (Doc. v).
16. On March 7, 2011, the BCPS staff provided the complainant with a list of psychologists with whom they contract so that she could choose one of them to conduct the psychological assessment that they had offered to pay in January 2011. However, there is no documentation that the BCPS provided the complainant with the school system's criteria applicable for independent educational evaluations, including the choice to utilize a different evaluator to conduct the assessment (Doc. y).
17. The independent psychological assessment was completed on June 2, 2011 and at the IEP team meeting on July 25, 2011, the IEP team reviewed the results of this assessment to determine, whether the student no longer required special education services (Docs. cc and ii).

Discussion/Conclusions:

If a parent requests an independent educational evaluation (IEE), the public agency must, without unnecessary delay, either ensure that an IEE is provided at public expense or file a due process complaint to request a hearing to demonstrate that its evaluation is appropriate (34 CFR § 300.502).

The public agency must provide to parents, upon request for an IEE, information about where an IEE may be obtained, and the agency criteria applicable for independent educational evaluations including information that the qualifications of the examiner must be the same as those of the evaluators that the public agency uses when it initiates an evaluation. With the exception of the criteria above, the public agency may not impose conditions or timelines related to obtaining an IEE at public expense (34 CFR §300.502).

Based on Findings of Facts #13-#18, the MSDE finds that the BCPS staff provided the complainant with a list of psychologists who could conduct the assessment. However, the MSDE also finds that the BCPS did not provide her with the public agency criteria applicable to IEEs, limiting the ability to choose an evaluator other than those that are used by the BCPS.

Further, based on these same Findings of Facts, the MSDE finds that the BCPS did not ensure that an IEE was provided without unnecessary delay following the complainant's December 7, 2010 request for an IEE nor did the BCPS pursue a due process hearing to defend the appropriateness of the school system's assessment. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #3: IMPLEMENTATION OF THE IEP

Findings of Facts:

18. The IEP in effect at the start of the 2010-2011 school year was dated June 17, 2010 and required that the student be provided with two (2) hours per week of special education instruction in written language in the general education classroom (Doc. c).
19. On August 26, 2010, the special education case manager provided a copy of the student's IEP to all of his teachers and reviewed the IEP with each teacher (Doc. d).
20. Service logs maintained by the student's teachers document that the student was provided with at least two (2) hours per week of special education instruction in written language from August 30, 2010 to November 11, 2010 and from February 16, 2011 to April 29, 2011 (Docs. e and w).

Discussion/Conclusions:

The IDEA requires that the public agency ensure that each student with a disability be provided with the special education services determined by the IEP team unless the IEP team determines that the student is no longer a student with a disability (34 CFR §§300.101 and .323). As discussed in Allegation #1, the MSDE determined that the IEP team did not follow proper procedures when conducting a re-evaluation of the student, and that to date, the IEP team has not properly determined that the student no longer requires special education services.

As a result, based on Findings of Facts #18-#20, the MSDE determines that the student's IEP should have continued to be implemented during the 2010-2011 school year. However, based on Finding of Fact #20, the MSDE finds that the student was not consistently provided with the special education instruction required by the IEP. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by December 1, 2011 that the IEP team has conducted a re-evaluation following proper procedures. If the student is identified as a student with a disability under the IDEA, the IEP team must determine the amount and nature of *compensatory services*² or other remedy necessary to redress the violations identified in this letter.

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/Systemic

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 within the school system and at Stoneleigh ES. 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, and 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 Attention: Chief, 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.

² *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).

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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 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 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

c: Joe A. Hairston
Sharon Floyd
Pam Weitz
J. Stephen Cowles
XXXXXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo