



December 21, 2012

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Baltimore, Maryland 21211-1982

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

RE: XXXXX
Reference: #13-015

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 October 24, 2012, the MSDE received a complaint from Pamela S. Foresman, Esquire, 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. The MSDE investigated the allegations listed below.

1. The BCPS has not ensured that the student’s academic, speech/language, and social/emotional/behavioral needs have been identified and addressed since October 24, 2011,¹ in accordance with 34 CFR §§300.320 and .324; and
2. The BCPS has not ensured that the student has been provided with educational instruction in his school of origin during periods of homelessness since October 24, 2011,¹ in accordance with COMAR 13A.05.09.02, .13A.05.09.04, and 13A.05.09.06.

¹ The complainant alleged violations dating from the start of the 2010-2011 school year. However, the complainant was informed, in writing, on November 9, 2012, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On October 25, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
 3. On November 5, 2012, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
 4. On November 9, 2012, 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 the BCPS of the allegations and requested that the BCPS review the alleged violations.
 5. On November 19, 2012, the MSDE requested information and documents from the BCPS, via electronic mail (email).
 6. On November 27, 2012, Ms. Hartman reviewed the student's educational record at the BCPS Central Office.
 7. On December 7, 2012, Ms. Hartman and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXXX, Principal;
 - b. Mr. XXXXXXXXXXX, Special Educator;
 - c. Ms. XXXXXXXXXXX, IEP Chairperson;
 - d. Ms. XXXXXXXXXXX, School Psychologist;
 - e. Ms. XXXXXXXXXXXXXXXXXXX, Educational Associate; and
 - f. Ms. XXXXXXXXXXXXXXXXXXX, Educational Associate.
- Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. On December 10, 2012, the BCPS provided the MSDE with information to be considered during the investigation of the complaint, via email.
 9. On December 10 and 17, 2012, Ms. Hartman conducted additional telephone interviews with the complainant concerning the allegations contained in the complaint.
 10. On December 17, 2012, Ms. Hartman conducted telephone interviews with the student's mother and grandmother concerning the allegations contained in the complaint.

11. On December 19, 2012, Ms. Hartman provided the BCPS with information concerning current contact information for the student's mother, via email.
12. The MSDE reviewed documentation, relevant to the Findings and Conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated May 13, 2011, with signed receipt for the Procedural Safeguards document;
 - b. IEP, dated April 12, 2012;
 - c. IEP, dated November 16, 2012;
 - d. Notices of IEP Team Meetings, dated May 4, 2011, March 2, 2012, and October 25, 2012;
 - e. Parent Contact Log, dated March 2, 2012 through November 2, 2012;
 - f. Psychological Assessment Report, dated May 24, 2010;
 - g. Speech/Language Assessment Report, dated May 13, 2010;
 - h. Educational Assessment Report, dated April 27, 2010;
 - i. Evaluation Report and Determination of Initial Eligibility, dated May 27, 2010;
 - j. School Psychologist Encounter Log, dated January 9, 2012;
 - k. The BCPS' *Guidance on Homelessness and Attendance*;
 - l. Educational Progress Report, dated April 12, 2012;
 - m. Psychological Services Progress Report, dated March 26, 2012;
 - n. The student's Report Card for the 2011-2012 school year;
 - o. Open letter from the BCPS to "To Whom It May Concern," dated July 11, 2012;
 - p. Correspondence from the student's parent to the BCPS, dated September 17, 2012;
 - q. The BCPS' *Sporadic Absences Protocols*;
 - r. The BCPS' *Consecutive Absences Protocols*; and
 - s. Correspondence and attachments from the complainant to the MSDE, received on October 24, 2012.

BACKGROUND:

The student is eight (8) years old and is identified as a student with a speech/language impairment under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX, where he receives special education instruction and related services (Docs. a-c).

During the time period covered by this investigation, the student's mother was provided with notice of the procedural safeguards (Docs. #b-e, and interviews with the complainant and the BCPS staff).

FINDINGS OF FACTS:

May 13, 2011 IEP

1. The IEP in effect at the start of the time period covered by this investigation was developed on May 13, 2011, when the student was in the first grade. The IEP document indicates that the student no longer lived at the address contained in his educational record. However, there is no documentation in the IEP or in the student's educational record of the student's new address or attempts by the school staff to obtain that information. The IEP states that, even though it was no longer the school he would attend if not disabled, the student would continue to attend XXXXXXXXXXXXXXXX XXXX, and that the student's mother would provide transportation. However, there is no documentation that the student's mother requested approval from the BCPSS for the student to attend a school outside of his neighborhood (Doc. a and review of the student's educational record).
2. At the May 13, 2011 IEP team meeting, the team reviewed a psychological assessment report, dated May 24, 2010, a speech/language assessment report, dated May 13, 2010, and an educational assessment report, dated April 27, 2010 (Docs. a and f-i).
3. The report of the psychological assessment conducted when the student was six (6) years old states that he tested in the "low average" range of intelligence, and recommends that testing be repeated when the student reaches the ages of seven (7) or eight (8). It identifies needs in using appropriate grammar, using complete words and sentences when speaking, and remembering and following directions. The report indicates that the student has difficulty appropriately interacting with peers and communicating his feelings, and states that he will "shut down" when asked to complete tasks that he does not understand. In addition, it notes that the student was not wearing his school uniform on the day the assessment was conducted (Docs. a, f, and i).
4. The speech/language assessment report states that the student has "moderate" to "severe" delays in both receptive and expressive language skills. The report indicates that the student has difficulty with sentence formation, use of adverbs, superlatives and transition words in complete sentences, syntax use and word retrieval related to his expressive language skills. With regard to receptive language, it indicates that the student has difficulty with memory, listening skills, following directions, and understanding sentence structure and word relationships. In addition, as with the psychological assessment report, it notes that the student was not wearing his uniform on the day the assessment was conducted (Docs. a, g, and i).
5. The educational assessment report identifies needs in the areas of reading phonics, vocabulary, comprehension, and fluency, written language mechanics and content, and math calculation and problem solving. The specific skills identified as areas of need include blending and segmenting sounds and reading vowel sounds, answering "wh" questions, answering questions about the main idea of a story, drawing conclusions and making inferences. They also include using capitalization, punctuation, and appropriate

- spacing between words, as well as spelling, basic addition and subtraction, and multi-step math word problems (Docs. a, h and i).
6. The May 13, 2011 IEP contains goals for the student to improve the skills identified in the assessment data as areas of need related to academic and speech/language skills, and social/emotional/behavioral functioning (Docs. a and f-i, and review of the student's educational record).
 7. Reports of the student's progress toward achieving the annual goals of the IEP dated November 4, 2011 (when the student was in the second grade) indicate that he did not make sufficient progress toward achieving the goals due to his inability to focus and follow school and class rules. The reports further indicate that the IEP team needed to meet to address the lack of expected progress (Doc. a).
 8. A contact note from the school psychologist, dated January 9, 2012, indicates that when questioned about his lack of regular school attendance, the student explained that he was living in a hotel and waking up late. However, there is no documentation that a referral was made to investigate the student's living situation as a result of learning this information, consistent with the BCPS' procedures (Docs. j and k, and review of the student's educational record).
 9. Reports of the student's progress toward achieving the annual IEP goals, dated January 20, 2012, indicate that he was making sufficient progress. However, the reports state that the student's attendance and behavior issues continue to "hinder his academic progress," and that he is making "minimal progress" toward achieving the goals on the IEP (Doc. a).
 10. There is no documentation that the IEP team met to address the student's lack of expected progress, consistent with the progress reports (Review of the student's educational record).

April 12, 2012 IEP

11. On April 12, 2012, the IEP team met to review the student's IEP. There is documentation that the student's mother had advised school staff that she would participate in the IEP team meeting via conference call, but that the team could not reach her during the meeting at the telephone number she provided (Docs. a and d).
12. At the April 12, 2012 IEP team meeting, the team considered an educational progress report, dated April 12, 2012, and a psychological services progress report, dated March 26, 2012, which indicate that the student made "minimal progress" on his academic and behavioral goals due to his behavioral issues. These behaviors were identified as struggling with the ability to demonstrate mature, attentive, and appropriate behavior, as well as his "persistently poor attendance all year" (Docs. a, l, and m).

13. There is documentation that, at the April 12, 2012 IEP team meeting, the IEP team discussed the student's attendance, noting that, as of that date, he had had twenty eight (28) unexcused absences and was tardy seventy four (74) occasions during the 2011-2012 school year. However, there is no documentation that the IEP team considered strategies to improve the student's lack of regular attendance, or reviewed and revised the IEP to address the lack of expected progress towards achieving the academic and behavioral goals (Doc. b and review of the student's educational record).
14. At the April 12, 2012 IEP team meeting, the team revised the IEP to state that the XXXXXXXXXXXXXXXXXXXXXXXX was now the school the student would attend if not disabled. However, there is no documentation on the IEP or in the student's educational record of a change in the student's address (Doc. b and review of the student's educational record).
15. As a result of the student's interfering behaviors and poor academic performance, he was retained in the second grade for the 2012-2013 school year (Doc. n).
16. On July 11, 2012, the school's Attendance Manager documented that the student had never attended school regularly and did not wear a school uniform, and that his mother had not responded to requests to discuss the matter (Doc. o and review of the student's educational record).
17. There is no documentation that school staff took steps to investigate the student's living situation or the cause of his lack of regular attendance (Review of the student's educational record).
18. Information contained in the Parent Contact Log indicates that the student's aunt informed school staff in October, 2012 that the student was now living with her, and that the student's mother lives in XXXXXXXX (Doc. e).²

November 16, 2012 IEP

19. On November 16, 2012, the IEP team met to review the student's IEP at the request of the student's mother. The student's mother participated in the IEP team meeting via teleconference, and the student's aunt attended the meeting (Docs. c and p).
20. At the November 16, 2012 IEP team meeting, the team discussed that the student's attendance has improved since he has been living with his aunt. Since the start of the 2012-2013 school year, the student has had only two (2) absences and has not had any late arrivals to school. The IEP team also discussed that additional behavioral supports

² During the course of this investigation, the MSDE obtained the current address and telephone number for the student's mother, which has been shared with the BCPS (See, Investigative Procedures #10 and #11).

were being provided to the student this year, and that his behavior and performance in class has improved since the start of the 2012-2013 school year (Doc. c).

21. At the November 16, 2012 IEP team meeting, the team revised the IEP to include the supports being provided by the special education teacher. The IEP team also recommended a reevaluation due to the limited progress made by the student and on the recommendations contained in the May 24, 2010 psychological evaluation report. The IEP team is in the process of obtaining updated assessment data for the reevaluation (Docs. c and f).

LEGAL REQUIREMENTS:

In order to ensure that a student receives a Free Appropriate Public Education (FAPE), the public agency must ensure that the student's IEP addresses his identified needs. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

Lack of consistent school attendance is an example of behavior that may interfere with a student's learning. The public agency is required to monitor each student's school attendance and to provide intervention strategies to address absenteeism at its earliest stages (COMAR 13A.08.01.01 and .05). The BCPS' policy requires that school staff utilize increasingly rigorous methods of investigating the cause of absences in order to be able to assist with addressing any barriers that may impact a student's attendance (Docs. q and r).

The BCPS website, references that "homelessness presents a significant barrier to school attendance for many students." The website states that a student is considered homeless if the student "lacks a fixed, regular, and adequate nighttime residence." It explains that a student is considered homeless if the student is sharing the housing of others due to loss of housing, economic hardship, or similar reason, or if the student is living in motels, hotels, trailer parks, or camp grounds due to lack of adequate alternative accommodations (Doc. k).

The BCPS website provides information about the characteristics that may be exhibited when a student is homeless, including frequent absences or tardiness, frequent address changes, abrupt change in attendance of behavior, and lack of clean school uniforms. School staff who suspect that a student might be homeless are required to refer the student to the School-Based Homelessness Coordinator. The BCPS' guidance states that, if staff are not sure whether a student is homeless,

they should refer the student to the School-Based Homelessness Coordinator to make this determination (Doc. k).

State and federal law provide protections to homeless students to ensure that they have access to educational services. For example, the public agency must have in effect policies to eliminate barriers to such a student's success in school, which addresses the challenges faced by the student, such as transportation issues and dress code requirements (COMAR 13A.05.09.01, .03, .04, and .06).

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP that Addresses the Student's Needs

Based on the Findings of Facts #1 - #6, the MSDE finds that, on May 13, 2011, the IEP team considered the evaluative data regarding the student's academic, speech/language, and behavioral/social/emotional needs. Based on those same Findings of Facts, the MSDE finds that the May 13, 2011 IEP addressed the student's needs as identified in the evaluative data.

However, based on the Findings of Facts #7, #9 - #13, #15, and #19 - #21, the MSDE finds that the BCPS did not ensure that the IEP team addressed the student's interfering behaviors related to the lack of regular school attendance until November 16, 2012, the date the IEP was revised. Further, based on these same Findings of Facts, the MSDE finds that the BCPS did not ensure that the IEP team addressed the student's lack of expected progress towards achieving the annual IEP goals until November 16, 2012. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

Allegation #2: Ensuring the Provision of Instruction During Periods of Homelessness

In this case, the complainant asserts that the student has not been able to access instruction due to his interfering behavior and lack of regular school attendance, and alleges that the BCPS did not seek to determine the cause of the behavior in order for the IEP team to consider interventions to address the behavior (Doc. p).

Based on the Findings of Facts #1, #8, #9, #13, #14, #16, and #18, the MSDE finds that the school staff had information about the student's behavior and living situation that is similar to situations described on the BCPS' website as possible indications of homelessness that may result in lack of regular school attendance. However, based on the Findings of Facts #1, #8, #17 and #18, the MSDE finds that the school staff did not take the steps required by the BCPS to determine whether homelessness was the cause of the student's interfering behaviors.

Based upon these findings, the MSDE finds that the school staff did not follow proper procedures to ensure the student's access to educational instruction until the start of the 2012-2013 school year when the student began living with his aunt and attending school regularly. 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 March 1, 2013, that the IEP team has convened to determine the amount and nature of *compensatory services*³ necessary to remediate the identified violations related to reviewing and revising the IEP to ensure it addresses the student's needs from November 4, 2011 to November 16, 2012. When making this determination, the IEP team should consider the provision of additional behavioral supports prior to the revision of the IEP to include the supports.

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

School-based

The MSDE requires the BCPS to provide documentation by April 1, 2013, of the steps that have been taken to ensure that, for all students with IEPs, the staff at XXXXXXXXXXXXXXXXXXXX follow proper procedures to:

1. Review and revise, as appropriate, the IEP to address the lack of expected progress toward achievement of the annual IEP goals within a year of their development;
2. Consider interventions to address interfering behaviors related to lack of regular school attendance; and
3. Determine whether homelessness is the cause of the lack of regular school attendance in accordance with the BCPS' procedures.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the BCPS.

Documentation of all Corrective Actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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).

TECHNICAL ASSISTANCE:

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

Please be advised that both the complainant and the BCPS 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 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. The student's mother 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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/ch

cc: XXXXXXXXX
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