



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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

January 25, 2013

XXX
XXX
XXX
XXX

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: #13-016

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.

ALLEGATION:

On November 26, 2012¹, the MSDE initiated a State complaint investigation, at the request of Ms. XXXXXXXXX and Ms. XXXXXXXXXXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter and granddaughter, respectively. In that correspondence, the complainants 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 allegation that the BCPS did not follow proper procedures when conducting a reevaluation which began in January 2012, in accordance with 34 CFR §§300.301 - .311 and COMAR 13A.05.05 and .06.

¹ On November 1, 2012, the complainants filed a State complaint with this office and a due process complaint with the Office of Administrative Hearings (OAH) regarding the same allegation. As a result, the State complaint investigation was placed in abeyance, pending the outcome of the due process complaint. On November 26, 2012, this office received documentation that the due process complaint was withdrawn and, at that time, initiated this State complaint investigation.

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 2

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 7, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On November 13, 2012, Ms. Moyo spoke with the student's grandmother by telephone to clarify the allegation to be investigated. During that telephone conversation, the student's grandmother and Ms. Moyo discussed that the complainants filed a due process complaint and request for mediation regarding the same allegation included in the State complaint. At that time, Ms. Moyo informed the student's grandmother that the State complaint would be held in abeyance.
4. On November 15, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and indicated that, since a due process complaint regarding the same issue was filed, the State complaint investigation was placed in abeyance pending the outcome of the due process complaint or receipt of a settlement agreement. On the same date, the MSDE notified the BCPS staff that the case was in abeyance.
5. On November 26, 2012, the MSDE received electronic mail correspondence from the Office of Administrative Hearings (OAH) indicating that the complainants were withdrawing the due process complaint and request for mediation.
6. On November 29, 2012, the MSDE sent correspondence to the complainants indicating that, since the due process complaint had been withdrawn, the State complaint investigation timeline would begin. The correspondence also identified the allegation to be investigated.
7. On December 10, 2012, Ms. Moyo conducted a telephone interview with the student's grandmother and discussed the State complaint investigation process.
8. On December 18, 2012, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to complete the review of the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Principal;
 - b. Ms. XXXXXXXX, Social Worker;
 - c. Ms. XXXXXXXX, School Psychologist; and
 - d. Ms. XXXXXXXX, Individualized Education Program (IEP) Chairperson.

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 3

Mr. Darnell Henderson, Legal Counsel, BCPS attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

9. On October 2, 3, and 11, 2012 and January 22, 2013, Ms. Moyo conducted telephone interviews with the student's grandmother regarding the allegation being investigated. On these same dates, the student's grandmother provided the MSDE with additional documentation related to the investigation.
10. On January 22, 2013, Ms. Moyo conducted a telephone interview with Baltimore County Public Schools staff. On the same date, the Baltimore County Public Schools staff provided the MSDE with documentation from the student's educational record.
11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainants to MSDE, received on November 26, 2012;
 - b. IEP, dated April 7, 2011;
 - c. Class progress reports, dated October 6, 2011;
 - d. Reports of progress from November 2011;
 - e. Class progress reports, dated December 14, 2011;
 - f. Receipt of the provision of meeting documents, dated December 22, 2011;
 - g. Indirect services contact log from September 19, 2011 to March 12, 2012;
 - h. IEP team meeting notice, dated January 3, 2012;
 - i. General educator progress reports, dated January 4 and 10, 2012;
 - j. Special educator progress report, dated January 10, 2012;
 - k. Psychology services progress report, dated January 13, 2012;
 - l. Prior written notice, dated January 19, 2012;
 - m. Receipt of parental rights, dated January 19, 2012;
 - n. IEP team meeting attendance sheet, dated January 19, 2012;
 - o. IEP, dated January 19, 2012;
 - p. Consent for assessment, dated January 19, 2012;
 - q. Education assessment report, dated January 30, 2012;
 - r. IEP team meeting notice, dated March 7, 2012;
 - s. Psychology services progress report, dated March 12, 2012;
 - t. Receipt of the provision of meeting documents, dated March 19, 2012;
 - u. General educator progress reports, dated March 22, 2012;
 - v. IEP, dated March 29, 2012;
 - w. Receipt of parental rights, dated March 29, 2012;
 - x. Prior written notice, dated March 29, 2012;
 - y. Communication log from January 3, 2012 to March 29, 2012;
 - z. Reports of progress from January and March 2012;
 - aa. 504 Accommodations Plan, dated April 11, 2012;

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 4

- bb. Psychology services encounter logs from August 31, 2011 to April 27, 2012;
- cc. Baltimore County Public Schools release for records, dated September 19, 2012;
- dd. Request for records from XXXXXXXXXXXXX, dated October 10, 2012; and
- ee. Determination of eligibility form, dated January 18, 2013.

BACKGROUND:

2011-2012 School Year

During the 2011-2012 school year, the student, who is fourteen (14) years old, attended XXXXXXXXXXXXXXXX. From the start of the 2011-2012 school year until March 29, 2012, she was identified as a student with Other Health Impairment (OHI) under the IDEA related to a diagnosis of Attention Deficit Disorder (ADD), and she received special education instruction and related services through an Individualized Education Program (IEP).

On March 29, 2012, the IEP team determined that the student was no longer a student with a disability under the IDEA. On April 14, 2012, the student was identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 and a 504 Accommodations Plan (504 Plan) was developed.

2012-2013 School Year

At the start of the 2012-2013 school year, the student transferred to XXXXXXXXXXXXXXXX. On September 14, 2012, the Student Support Team determined that the student no longer required a 504 Plan.

On September 19, 2012, the student transferred to XXXXXXXXXXXXXXXX, a Baltimore County Public School. On January 18, 2013, the student was identified as a student with a specific learning disability under the IDEA and will begin to receive special education instruction and related services (Docs. a – p and r - ee).

FINDINGS OF FACTS:

1. The IEP required that the student be provided with special education instruction in the general education classroom. The IEP also required that the student be provided with “psychological services,” as a related service (Doc. b).
2. On January 19, 2012, the IEP team convened to conduct a reevaluation to determine if the student continued to require special education instruction since she was making progress in her classes and would be transitioning to high school for the next school year. At the meeting, the team considered reports from the student’s teachers, the school psychologist, and reports of progress towards achieving the IEP goals (Docs. l - p).

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 5

3. At the meeting, the team reviewed the student's progress on her IEP goals which indicated that she was making sufficient progress towards achieving all of her goals (Doc. d and z).
4. The school psychologist's progress report indicates that the student was making progress with individual and group counseling, verbalizing her feelings, and demonstrating insight into the triggers for her behavior. However, the report also indicates that she continues to have difficulty demonstrating appropriate behavior in the classroom (Doc. k).
5. The progress report completed by the special education teacher indicates that the student made progress in all academic areas since the start of the school year. However, the report also indicates that the student did not make an effort to complete her assignments even though she is "capable of doing the work." During the meeting, the special education teacher indicated that she believes that the student may no longer need special education instruction and suggested that her special education services be reduced or discontinued (Docs. j and l).
6. The progress reports completed by the student's general education teachers indicate that the student was not making satisfactory progress in her math, reading, written language, and science classes. The teachers further note that they believe the reason the student was not progressing in her classes is because she was "not putting forth the effort" to complete her assignments. However, they also note that, when she is "engaged in class" she does well (Doc. i).
7. Based on its review, the team decided that additional data was necessary to determine if the student continued to be a student with a disability under the IDEA. The team recommended that an educational assessment be conducted and consent was provided (Docs. l - p).
8. On March 29, 2012, the IEP team reconvened and completed the reevaluation to determine whether the student continued to meet the criteria for identification as a student with an OHI under the IDEA. At the meeting, the team considered the educational assessment report, reports from the student's teachers and the school psychologist, reports of the student's progress towards achieving the IEP goals, and input from the student's grandmother (Docs. s, u, v and x).
9. Reports of the student's progress towards achieving the IEP goals document that she continued to make sufficient progress towards achieving her goals and that she achieved the reading comprehension, math problem solving, and behavioral skills goals (Doc. z).
10. The report of the results of the educational assessment indicates that the student is performing in the high average range in reading, and the average range in math, written

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 6

expression, and spelling. However, it also states that the student's grade equivalents are "below average in the areas of written language and math computation" and as a result, "the student requires special education services" (Doc. q).

11. Based on its review, the team determined that because the student has "mastered the IEP goals and objectives" and has been successful in the general education setting, she is no longer a student with a disability under the IDEA. The team documented that this decision was based on the data from the educational assessment and the student's progress reports. However, while there is documentation that the team considered the student's strengths, there is no documentation that the IEP team considered the student's continuing difficulty with classroom behavior and completing her work. Further, there is no documentation that the team considered the results from the educational assessment indicating that the student continues to have needs in the areas of math and written language, or the recommendation that the student continue to receive special education instruction (Docs. v and x).

DISCUSSION/CONCLUSIONS:

Preliminary Discussion

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of a State complaint under the IDEA, the State Educational Agency must review the procedures used by a school system to reach determinations. Additionally, the State Educational Agency must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (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).

Reevaluation Process

During a reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents; current classroom-based, local, or State assessments; and observations by the teachers and related service providers. On the basis of that review and input from the student's parents, the team must identify what additional data, if any, is needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

When determining whether a student meets the criteria for identification as a student with a disability under the IDEA, requiring special education instruction and related services, the IEP team must decide if the student has one of a list of specific disabilities. This includes "Other Health Impairment," which means having limited strength, vitality, or alertness, including a

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 7

heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is adversely affecting a student's educational performance, due to chronic or acute health problems such as Attention Deficit Disorder (34 CFR § 300.8).

In this case, the complainants allege that the BCPS should have continued the provision of special education instruction and related services for the student. Specifically, they allege that, as a result of her identified disability, the student continued to require the services to access the general curriculum.

Based on the Findings of Facts #1 - #11 the MSDE finds that the IEP team convened to conduct a reevaluation and reviewed information from the teachers, related service provider, the student's grandmother, as well as reports of the student's progress. Based on the Findings of Facts #7 - #9, the MSDE finds that the team determined that additional data was necessary and conducted the educational assessment recommended. Based on the Findings of Facts #8 - #11, the MSDE finds that there is documentation that the team reconvened and, at that meeting, the IEP team determined that the student was not identified as a student with a disability under the IDEA.

However, based on the Findings of Facts #8 - #11, the MSDE further finds that the basis for the determination documented by the IEP team is not consistent with the data. 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 April 1, 2013, that the BCPS has convened an IEP team meeting with the Baltimore County Public Schools, where the student currently is enrolled. The BCPS must determine the amount of *compensatory services*² or other agreed upon remedy for the loss of services from March 29, 2012, when the BCPS determined that the student no longer required special education instruction and related services until January 18, 2013, when the student was again determined to be eligible for these services. The BCPS must also coordinate with the Baltimore County Public Schools to determine the provision of the *compensatory services*² or other remedy.

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

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).

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 8

School-Based

The MSDE requires the BCPS to provide documentation by May 1, 2013, of the steps taken to determine if the violation related to the proper procedures for conducting a reevaluation is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. 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 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 verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, 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: Attention: Chief, Family Support and Dispute Resolution 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 BCPS and the complainants have the right to submit additional written documentation to this office 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.

XXX

XXX

Dr. Kim Hoffmann

January 25, 2013

Page 9

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants 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 the State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF/km

cc : Andrés Alonso
Charles Brooks
XXXXXXXXXXXX
XXXXXXXXXX
Dori Wilson
Anita Mandis
Koliwe Moyo
Martha J. Arthur