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State Superintendent of Schools

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January 14, 2013

Nicholas A. Szokoly, Esquire
216 E. Lexington Street
Baltimore, Maryland 21202

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: #13-026

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 20, 2012, the MSDE received a complaint from Nicholas A. Szokoly, Esquire, hereafter, “the complainant,” on behalf of his client, 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 allegation the BCPS should have suspected the student of being a student with a disability under the IDEA prior to November 2012, when the complainant requested an evaluation, in accordance with 34 CFR §300.111.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 26, 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 General Counsel, BCPS.

3. On November 16, 2012, Ms. Stump conducted a telephone interview with the complainant and clarified the allegation to be investigated.
 4. On November 28, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegation and requested that her office review the alleged violation.
 5. On December 11, 2012, Ms. Stump reviewed the student's educational record at the BCPS Central Office. Mr. Darnell Henderson, Associate General Counsel, BCPS, was present at the record review.
 6. On December 17, 2012, Ms. Stump and Ms. Dori Wilson, Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Mr. XXXXXXXX, Spanish teacher;
 - b. Ms. XXXXXXXXXXXXXXXX, English teacher; and
 - c. Ms. XXXXXXXXXXXXXXXX, IEP Team Chairperson.
- Mr. Henderson attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
7. On December 21, 2012, the MSDE requested additional documentation from the BCPS, which the BCPS provided via electronic mail (e-mail) on the same date.
 8. On December 26, 2012 and January 2, 2013, the MSDE requested additional information and documentation from the BCPS;
 9. On January 11, 2013, the BCPS provided the MSDE with additional documentation from the student's educational record, via e-mail.
 10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on November 20, 2012;
 - b. Correspondence from school staff to the student's mother, dated October 29, 2011;
 - c. XXXXXX contact log, dated October 2011
 - d. Correspondence from school staff to the student's mother, dated November 1, 2011;

- e. Correspondence from school staff to the student's mother, dated November 28, 2011;
- f. BCPS *Student Support Teams – SST Referral Form*, dated March 9, 2012;
- g. Student's attendance data for the 2011-2012 school year;
- h. Student's report card for the 2011-2012 school year;
- i. Correspondence from the complainant to school staff, dated November 19, 2012;
- j. Individualized Education Program (IEP) team meeting invitation to a January 11, 2013 IEP team meeting;
- k. Student's attendance data for the 2012-2013 school year;
- l. Student's high school transcript; and
- m. BCPS *Special Education Compliance Manual*, revised August 2012.

BACKGROUND:

The student, who is not identified as a student with a disability under the IDEA, is nineteen (19) years old and attends XXXXXXXXXXXXXXXX (XXXXXX). An evaluation under the IDEA is currently pending (Docs. a, i, j, review of educational record, and interviews with the complainant and school staff).

FINDINGS OF FACTS:

2011-2012 school year

1. During the 2011-2012 school year, the student was enrolled at XXXXXXXXXXXX in the eleventh (11th) grade. There is documentation that the student was absent from school for one hundred fifty-six (156) days during the school year (Docs. g and l).
2. There is documentation that school staff scheduled three (3) conferences with the student and his mother during the school year regarding the student's lack of school attendance, but that neither the student nor his mother attended any of the scheduled conferences (Docs. b-f).
3. There is documentation that in March 2012, one of the student's teachers referred the student to the Student Services Team (SST)¹ due to his lack of regular school attendance. However, there is no documentation that the SST convened or that any other action was taken in response to the teacher's concerns (Doc. f and review of educational record).
4. The student did not earn any credits toward graduation during the 2011-2012 school year due to his absences (Docs. h and l).

¹ The Student Support Team is a general education process that brings together school resources to support general education students and teachers in prevention and intervention plans related to academics, attendance, behavior and other issues. When a student does not respond to standard teaching and behavior management techniques, different approaches are identified by the Student Support Team (Doc. m).

2012-2013 school year

5. There is documentation that the student's chronic absenteeism from school has continued since the start of the 2012-2013 school year (Doc. k).
6. On November 19, 2012, the complainant sent to school staff a request for an evaluation to determine if the student is a student with a disability who requires special education under the IDEA. The complainant included with his request copies of a private neuropsychological assessment, conducted on February 7, 2012, indicating that the student has a "borderline IQ." The complainant also included a copy of an August 3, 2011 report of a psychological diagnostic evaluation stating that the student's full scale IQ is in the "extremely low range of intellectual functioning" (Docs. a and i).
7. There is no documentation in the student's educational record that indicates that school staff had knowledge of the information contained in the assessment reports prior to being provided with them on November 19, 2012 (review of educational record).
8. An IEP team meeting is scheduled for January 11, 2013 to conduct an initial evaluation under the IDEA in response to the November 19, 2012 referral (Doc. j).

BCPS Policies and Procedures

9. There is documentation that the BCPS has policies and procedures in place to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services (Doc. m).
10. There is documentation that the BCPS also has procedures in place to address the academic and behavioral needs of students who are not suspected of having a disability, including convening a SST to consider interventions that can be provided in the general education program. The SST membership may include school social workers, psychologists, administrators, and general and special education teachers, who consider information about the student and determine the steps needed to address the student's needs. These steps can include development of an intervention plan that includes strategies for school staff and parents to use to assist the student. The procedures then require the SST to review any plan developed in four (4) to six (6) weeks after implementation to determine whether it is achieving the desired results. If the plan is not successful, the SST can determine additional strategies and interventions to implement in the general education program, refer the student to other support services such as a 504 team, or refer the student for an evaluation under the IDEA (<http://www.baltimorecityschools.org>).

DISCUSSION/CONCLUSIONS:

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). It is, however, the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services.

To meet this expectation, school staff may review a student's academic and behavior performance and determine teaching strategies, modifications to instruction, and behavior management techniques that will appropriately assist the student. However, the public agency must ensure that implementation of intervention strategies do not delay or deny a student's access to special education services under the IDEA (34 CFR § 300.111).

In this case, the complainant alleges that the student has "borderline intelligence" and "performs years below grade level in academics" and, as a result, should have been identified as a student with a disability who requires special education instruction and related services prior to his November 2012 request for an evaluation under the IDEA (Doc. a and interview with complainant).

Based on the Findings of Facts #1-#8, the MSDE finds there is no documentation that school staff were aware of the student's cognitive ability and results of current achievement testing prior to being provided with copies of the assessment reports in November 2012.

However, based on the Findings of Facts #3, #9, and #10, the MSDE finds that the BCPS did not ensure that school staff followed the school system's procedures for providing interventions in the general education program in order to assist the student in accessing instruction. Therefore, this office finds that the BCPS did not follow proper procedures to obtain information that could have been used by the school system to determine whether the student is suspected of being a student with a disability. As a result, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by March 15, 2013, that the evaluation process has been completed and an IEP has been developed if the student is identified as a student with a disability under the IDEA. In addition, if the student has been identified as a student with a disability under the IDEA, the BCPS must also provide documentation that the

IEP team has determined the nature and amount of *compensatory services*² or other remedy necessary to redress the delay in the identification of the student.

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 the IDEA.

School-Based

The MSDE requires the BCPS to provide documentation by April 15, 2013, of the steps it has taken to determine if the violation identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXX.

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 re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

Documentation of all corrective action taken 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 For the purpose of this letter, these are services, as determined by the IEP team, needed 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 Facts 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.

Questions regarding the Findings, Conclusions and Corrective Actions contained in this letter should be addressed to this office in writing. The student's parent 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, 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:ks

cc : Andrés Alonso
Charles Brooks
Darnell Henderson
XXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Kathy Stump