



October 16, 2012

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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: 13-008

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 August 17, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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 following allegations:

1. The BCPS did not ensure that proper procedures were followed in response to the referral for evaluation made by the student’s teacher in March 2012, in accordance with 34 CFR §§300.300 - .302, .304 - .311, .503, and COMAR 13A.05.01.04 - .06.
2. The BCPS did not follow proper procedures when conducting an evaluation in response to the complainant’s written referral for evaluation in April 2012, in accordance with 34 CFR §§300.300 - .302, .304 - .311, .503, and COMAR 13A.05.01.04 - .06.

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3. The BCPS did not follow proper procedures when disciplinarily removing the student from school following the referrals for evaluation made during the 2011-2012 school year, in accordance with 34 CFR §§.530 and .534.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 21, 2012, Ms. Kathy Stump, Education Program Specialist, MSDE spoke with the complainant by telephone and discussed the need for the complainant to provide a proposed remedy in order for a State complaint investigation to be initiated.
3. On August 22, 2012, the MSDE received a proposed remedy from the complainant.
4. On August 23, 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.
5. On August 30, 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 Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
6. On September 13, 2012, Ms. Moyo began a review of the student's educational record at the BCPS Central Office.
7. On September 24, 2012, Ms. Moyo and Ms. Christine Hartman, 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. XXXXXXXXXXXX, Teacher;
 - b. Ms. XXXXXXXXXXXX, Social Worker;
 - c. Ms. XXXXXXXXXXXX, Social Worker;
 - d. Ms. XXXXXXXX, Principal;
 - e. Ms. XXXXXXXXXXXX, Assistant Principal;
 - f. Ms. XXXXXXXXXXXX, Educational Associate;
 - g. Mr. XXXXXXXX, Educator; and
 - h. Ms. XXXXXXXXXXXX, Paraeducator.

Ms. Ruley, Ms. Lara Huffman, Special Education Liaison, BCPS, and Ms. Catherine Van Allen, Student Support Liaison, BCPS attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.

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8. On October 2, 3, and 11, 2012, Ms. Moyo conducted telephone interviews with the complainant. On these same dates, the complainant provided the MSDE with additional documentation related to the investigation.
9. 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 MSDE, received on August 22, 2012;
 - b. Correspondence from the student's physician provided to school staff, dated October 28, 2011;
 - c. Communication log from October 31, 2011 to April 25, 2011;
 - d. 504 Accommodations Plan, dated January 1, 2012;
 - e. Progress report, dated January 1, 2012;
 - f. Discipline referral, dated January 19, 2012;
 - g. Discipline referral, dated January 25, 2012;
 - h. Request for screening, dated January 25, 2012;
 - i. Psychology assessment report conducted by a community based psychologist, dated February 20, 2012;
 - j. Notice of no assessment, dated March 1, 2012;
 - k. SST meeting sign in sheet, dated March 1, 2012;
 - l. Discipline referral, dated March 7, 2012;
 - m. Discipline referral dated March 27, 2012;
 - n. Discharge summary, printed on March 27, 2012;
 - o. Correspondence from the complainant to school staff, dated April 17, 2012;
 - p. SST meeting notes and sign in sheet, dated May 8, 2012;
 - q. Correspondence from the XXXXXXXX, dated May 9, 2012;
 - r. General education progress report, dated May 23, 2012;
 - s. Child Find Referral, dated May 23, 2012;
 - t. Notice and Consent for Assessment form, dated May 23, 2012;
 - u. BCPS educational assessment report, dated July 6, 2012;
 - v. BCPS psychological assessment report, dated July 6, 2012;
 - w. IEP team meeting notes, dated August 2, 2012;
 - x. Evaluation report, dated August 2, 2012;
 - y. Notice of parental rights, dated August 2, 2012;
 - z. Student record transfer request, dated August 28, 2012;
 - aa. Discipline incident report from August 31, 2011 to June 15, 2012;
 - bb. Report card for the 2011-2012 school year;
 - cc. Maryland School Assessment scores for the 2011-2012 school year; and
 - dd. Attendance record for the 2011-2012 school year.

BACKGROUND:

The student is eleven (11) years old and he attends XXXXXXXXXXXXXXXXXXXXXXXX, a BCPS charter school. During the period of time covered by this investigation, the student attended XXXXXXXXXXXXXXXXXXXXXXXX. The student is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 based on Attention Deficit Hyperactivity Disorder (ADHD), and has a 504 Accommodations Plan (504 Plan) (Docs. a, b, d, z, and dd).

ALLEGATION #1: **RESPONDING TO THE MARCH 2012 REFERRAL**

Findings of Facts:

1. On March 1, 2012, the Student Support Team (SST)¹ convened to conduct a screening in response to a request made by the student’s teacher on February 18, 2012. At the meeting, the teacher reported that the student was demonstrating difficulty with following directions, completing tasks, and maintaining attention. The teacher also reported that the student was distracting other students by displaying “disruptive outbursts” that included throwing chairs. She reported that the student was “unhappy” because he had been transferred into her classroom earlier in the school year (Docs. j and k).
2. The SST considered information the student was being provided with accommodations through a 504 Plan developed to address his behaviors related to ADHD. The accommodations included preferential seating, positive feedback and praise, a self monitoring behavior chart, and prompts to remain on task. The SST also considered information from school staff that the student had been transferred into a new classroom since the referral for a screening was made. The student’s new teacher reported that since the student transitioned into his classroom, his behaviors had improved and he was completing his assignments (Docs. d and j).
3. The SST did not suspect that the student had a disability under the IDEA because his behavior was improving since transitioning into a new classroom. The complainant was provided with written notice of the basis for the decision that the student was not suspected of having a disability under the IDEA (Doc. j).

Discussion/Conclusion:

It is 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. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation in the general education

¹ The SST is utilized by school staff to address concerns about students that are not responding to in-class or in-school interventions. The SST coordinates support services for general education students and works to ensure behavioral, academic, and family supports are in place for these students (www.baltimorecityschools.org).

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program is not considered to be an evaluation for eligibility for special education and related services under the IDEA (34 CFR §§300.111 and .302).

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 in the general education program. However, the public agency must ensure that the implementation of intervention strategies does not delay or deny a student's access to special education services under IDEA (34 CFR § 300.111).

Upon receipt of a written referral from a parent, a public agency must promptly assess the student to determine if the student requires special education instruction and related services. If school staff suspect that the student has a disability under the IDEA, the public agency must promptly request consent to assess the student and ensure that assessments are conducted, if needed.

However, if the public agency does not suspect that the student has a disability under the IDEA, the public agency must provide the student's parent with written notice that no additional assessment data is needed or that the student is not suspected of being a student with a disability. This notice includes a statement of the decision, the basis for the decision, the options considered and reasons for rejection of options, a description of any other factors relevant to the determination, and notice of the procedural safeguards (34 CFR §300.503 and COMAR 13A.05.01.04 and .06).

Based on the Findings of Facts #1 - #3, the MSDE finds that while the student's teacher requested that a screening be conducted there is no documentation the teacher made a referral for an evaluation under the IDEA in March 2012. Therefore, the procedures for conducting an evaluation under IDEA do not apply and the MSDE does not find that a violation occurred with regard to this allegation.

ALLEGATION #2: RESPONDING TO THE MAY 2012 REFERRAL

Findings of Facts:

4. On April 17, 2012, the complainant sent correspondence to the school social worker regarding concerns that the student was having difficulty completing a school project because he could not sit still and focus for long periods of time (Doc. o).
5. On May 23, 2012, the IEP team convened in response to a request for an evaluation under the IDEA made by the student's teacher. The team considered reports from the student's teacher that the student had poor peer relationships, was disrespectful to school staff, and did not participate during class. The team also considered the complainant's concerns and the student's progress with the provision of supports under the 504 Plan. The team recommended that academic, cognitive, occupational therapy, and assistive technology assessments be conducted. On the same date, the complainant provided consent for the assessments to be conducted (Docs. p - t).

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6. On August 2, 2012, the IEP team reconvened and reviewed the results of the assessments ordered on May 23, 2012. The team considered the report of the BCPS psychological assessment indicating that the student has difficulty establishing and maintaining positive relationships with peers and adults and the student's functional performance is impacted by these social, emotional, and behavioral issues (Docs. u - x).
7. The team considered information from the complainant that the student was hospitalized on March 16, 2012, and diagnosed with a mood disorder. The complainant also reported that he is receiving medical treatment for the mood disorder and ADHD (Docs. n, o, q, w, and x).
8. The team considered information from the student's teacher that the student has "poor peer relationships" and difficulty accepting the teacher's authority (Docs. r, w, x, and aa).
9. The team considered information from the student's report card for the 2011-2012 school year indicating that the student performed satisfactorily in some academic areas. However, the report card also indicates that throughout the school year the student displayed unsatisfactory conduct and was disciplinarily removed from school, as a result of his conduct (Docs. w, x, and bb).
10. The team considered information that the student received a proficient score on the Maryland School Assessment for reading (Docs. w, x, and cc).
11. There is no documentation that the team determined whether the student has one of the disabilities listed in the IDEA. The team determined the student does not require specialized instruction to make progress in the general curriculum and thus does not meet the criteria for a disability under the IDEA (Docs. w, y and review of the educational record).

Discussions/Conclusions:

When determining whether a student meets the criteria for identification as a student with a disability under the IDEA, who, by reason thereof, requires special education instruction and related services. The IEP team must decide whether the student has one of a list of specific disabilities, including Emotional Disability (ED), and Other Health Impairment (OHI) (34 CFR §300.8).

An "Emotional Disability" is defined as a condition exhibiting one or more of a list of characteristics over a long period of time and to a marked degree that adversely affects the student's educational performance. These characteristics include an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression;

or a tendency to develop physical symptoms or fears associated with personal or school problems (34 CFR §300.8).

An “Other Health Impairment” means having limited strength, vitality, or alertness, including a 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 ADHD (34 CFR § 300.8).

Based on the Findings of Facts #4 and #5, the MSDE finds that while there is no documentation that the complainant made a written referral for evaluation, a request for evaluation under the IDEA was made by the student’s teacher.

Based on the Finding of Fact #8, the MSDE finds that the evaluation data indicates the existence of one of the characteristics of ED. However, based on the Findings of Facts #5 - #7 and #9 - #11, the MSDE finds that there is no documentation that the team determined whether the student has an ED under the IDEA. In addition, based on the Findings of Facts #4 - #11, the MSDE finds that despite the fact that the data indicates that the student has ADHD, there is no documentation that the team determined whether the student has an OHI under the IDEA. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #3: PROVISION OF DISCIPLINARY PROTECTIONS

Finding of Fact:

12. During the IEP team meeting held on August 2, 2012, the team considered information regarding the student’s disciplinary record from the 2011-2012 school year. Specifically, the team considered that the student was disciplinarily removed from school on January 19, 2012 for two (2) days for causing a classroom disruption; January 25, 2012, for five (5) days for engaging in a physical altercation with a teacher; March 7, 2012 for three (3) days and March 27, 2012 for three (3) days for engaging in physical altercations with other students. In total, the student was disciplinarily removed from school for thirteen (13) days, during the 2011-2012 school year (Docs. f, g, l, m, w, x, and aa).

Discussions/Conclusions:

The IDEA provides specific protections to students with disabilities who are disciplinarily removed from school in excess of ten (10) days during the school year. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a code of student conduct may assert the protections provided to students with disabilities if the public agency had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred (34 CFR §§300.530-536).

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The public agency must be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred, if the parent expressed concern in writing to supervisory or administrative personnel of the public agency or a teacher of the student's that the student is in need of special education services, the parent has made a written request for an evaluation of the student, or the student teacher or other public agency personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the agency or other supervisory personnel of the public agency (34 CFR §300.533).

Based on the Finding of Fact #4, 5, 6, and 12, the MSDE finds that the disciplinary removals did not occur after the complainant made a written request for evaluation or expressed concern that the student requires special education services. Based on the same Finding, the MSDE further finds that the disciplinary removals did not occur after the student's teacher or other school staff expressed concern to the director of special education or other supervisory personnel that the student was demonstrating a pattern of behaviors.

Thus, the school system did not have knowledge that the student was a student with a disability under the IDEA at the time of the disciplinary removals, and therefore the disciplinary procedures did not apply. As a result, the MSDE does not find that a violation occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by December 31, 2012, that the IEP team has convened and determined whether additional data is needed and if so, the BCPS has ensured that the data is obtained. The BCPS must also determine whether the student meets the criteria for identification as a student with a disability under the IDEA based on the data and document the basis for its determination.

If the IEP team determines that the student is a student with a disability under the IDEA, the BCPS must provide documentation by January 31, 2013, that the IEP team has developed an IEP that addresses the identified needs and has determined the nature and amount of *compensatory services*² or other remedy necessary to redress the delay in identification.

The BCPS must provide the complainant with proper written notice of the IEP team's determinations including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or to 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).

School-Based

The MSDE requires the BCPS to provide documentation by February 1, 2013, of the steps 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 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 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.

Please be advised that 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 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.

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Questions regarding the findings, conclusions and corrective actions contained in this letter 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 this 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 complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF/km

cc : Andrés Alonso
XXXXXXX
Nancy Ruley
XXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo