



Nancy S. Grasmick
State Superintendent of Schools

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

March 4, 2011

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

RE: XXXXX
Reference: #11-052

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 January 7, 2011, MSDE received a complaint from Mr. XXXXXXXXXXXX. and Ms. XXXXXXXXXXXX, hereafter, "the complainants," on behalf of their son. 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. MSDE investigated the following allegations:

1. BCPS did not follow proper procedures when the Individualized Education Program (IEP) team determined the student's educational placement for the 2010-2011 school year, in accordance with 34 CFR §§300.114 and .116; and
2. BCPS has not ensured that the student has been provided with the special education instruction and services required by the IEP since the start of the 2010-2011 school year. Specifically, BCPS has not ensured that the student has been provided with access to a

computer, computer programs and software programs required by the IEP, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On January 11, 2011, MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Lewis, Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, BCPS.
 3. On January 13, 2011, Ms. Moyo spoke with the student's mother by telephone and clarified the allegations to be investigated.
 4. On January 21, 2011, MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Dr. Lewis of the allegations and requested that her office review the alleged violations.
 5. On February 8, 2011, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXX to review the student's education record and interview the following BCPS staff:
 - a. Ms. XXXXXXXXXXXX, Educational Specialist, XXXXXXXXXXXX;
 - b. Mr. XXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXX; and
 - c. Ms. Connie S. Fantom, NonPublic Coordinator, BCPS.
- Ms. Ruley attended the site visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.
6. On March 1, 2011, Ms. Moyo conducted a telephone interview with the student's mother about the allegations in the complaint.
 7. MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
 - a. IEP, dated November 30, 2006;
 - b. Receipt of Parental Rights Document, signed on March 22, 2010, June 2, 2010, August 23, 2010, September 8, 2010, October 7, 2010, and December 7, 2010;
 - c. Report of BCPS educational assessment, dated August 29, 2010;
 - d. Report of BCPS psychological assessment, dated August 30, 2010;

- e. Written summary of the IEP team meeting held on August 31, 2010;
- f. IEP, dated September 8, 2010, October 7, 2010, and December 7, 2010;
- g. Reports of the student's progress toward achieving the annual IEP goals, generated on November 10, 2010 and December 7, 2010; and
- h. Correspondence from the complainants to MSDE alleging violations of IDEA, received on January 7, 2011.

BACKGROUND:

The student is eighteen (18) years old, is identified as a student with a specific learning disability, and receives special education instruction and related services under IDEA. He has attended schools as follows:

- The student attended XXXXXXXXXXXXX, a BCPS charter school through the end of the 2006-2007 school year, where he received special education instruction and related services as a student identified with a disability under IDEA;
- During the 2007-2008, 2008-2009, and 2009-2010 school years, the student attended XXXXXXXXXXXXXXXXXXXX, a private parochial school, where he was enrolled by the complainants; and
- The student was re-enrolled in BCPS by the complainants at the start of the 2010-2011 school year after XXXXXXXXXXXXXXXXXXXX closed. The student has been attending XXXXXXXXXXXXX, a BCPS charter school, since the start of the 2010-2011 school year.

During the period of time addressed by this investigation, the complainants participated in the education decision-making process, and were provided with written notice of IEP team decisions and notice of the procedural safeguards, as required (Docs. a, b, e, f, and h).

**ALLEGATION #1 PLACEMENT DETERMINATION FOR THE
2010-2011 SCHOOL YEAR**

FINDINGS OF FACT:

1. In preparation for the student's re-enrollment in BCPS at the start of the 2010-2011 school year, BCPS conducted assessments in August 2010. At an IEP team meeting held on August 31, 2010, the IEP team determined the student's present levels of performance based on a review of the assessment data. Due to time constraints, the team had to reconvene on September 8, 2010 to develop the annual IEP goals and determine the special education instruction and related services needed to assist the student in achieving the goals (Docs. c – f).

2. At the September 8, 2010 meeting, after developing the annual goals and determining the required services, the IEP team considered the student's educational placement. Documentation of the meeting indicates that the team considered whether the IEP could be implemented in the general education classroom or separate special education classroom with the provision of supplementary aids and services. The documentation further indicates that the team decided that the least restrictive environment in which the IEP can be implemented is a nonpublic separate special education school due to the student's need for services to address his "anxiety and frustration related to his learning differences" (Doc. f).
3. Documentation of the September 8, 2010 meeting indicates that the team discussed that the IEP could be implemented at XXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXX, and XXXXXXXXXXXXXXXX, and that consent was requested from the complainants to submit applications for the student to these schools. The documentation further indicates that the complainants expressed concerns with "the approach to teaching" used at the schools suggested by the school system, and that the complainants requested placement at the XXXXXXXX. Documentation of the meeting reflects that school-based members of the team reported that the XXXXXXXX will not provide the school system with assurances that it will ensure implementation of the IEP for students placed at the school, and therefore, they believed the school would be inappropriate. School system staff requested that the complainants visit the suggested nonpublic schools suggested by BCPS and that the team reconvene to continue the discussion after the complainants had the opportunity to learn more about the schools. The team agreed that in the meantime, the student would attend XXXXXXXXXXXX, where the student had been enrolled by the complainants (Doc. f).
4. On October 7, 2010, the team reconvened. At the meeting, the complainants rejected the nonpublic schools proposed by BCPS and again requested placement at the XXXXXXXX, noting that the XXXXXXXX utilizes a teaching approach that includes the integration of technology throughout the school day. Documentation of the meeting indicates that the team rejected the request because there was no data indicating that the student requires the integration of technology throughout the school day and based on information from school system staff that the XXXXXXXX will not provide assurances that they will ensure that the IEP will be implemented. Because the complainants did not withdraw consent to the provision of special education instruction and related services in accordance with the previous IEP, the team decided to begin implementing that IEP at XXXXXXXXXXXXXXXX with the recent revisions made to the goals and services (Doc. f).
5. On December 7, 2010, the team reconvened to consider the student's progress. Documentation of the meeting indicates that the team considered information from the student's teachers that the student was making sufficient progress toward achieving the annual IEP goals with the special education instruction and supplementary aids and services being provided in a combination of general and separate special education classrooms at XXXXXXXXXXXXXXXX. Based on this information, the team determined that the

least restrictive environment that the IEP can be implemented is a combination of general and separate special education classrooms in a public school setting (Docs. f and g).

DISCUSSION/CONCLUSIONS:

When determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP team in conformity with the requirement to ensure that special education instruction is provided in the least restrictive environment. This means that the public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment may occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §§300.114 - .116).

Based on Findings of Fact #1 - 5, MSDE finds that the IEP team considered the full range of educational placements and made the educational placement decision based on the least restrictive environment in which the data indicated the IEP can be implemented successfully with the provision of supplementary aids and services. Therefore, MSDE does not find that a violation occurred.

This office understands that the complainants disagree with the IEP team's decisions. However, because a procedural violation was not identified, MSDE may not require that the school system change the student's educational placement. The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data. The state educational agency may not, however, overturn an IEP team's decisions (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). The complainants are reminded that they maintain the right to request mediation or to file a due process complaint in order to resolve any continuing dispute regarding the student's educational placement.

ALLEGATION #2 PROVISION OF ACCESS TO A COMPUTER SINCE THE START OF THE 2010-2011 SCHOOL YEAR

FINDINGS OF FACT:

6. BCPS staff report that the implementation of the IEP began on October 26, 2010 (Interview with BCPS staff).

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7. The IEP in effect prior to the student's re-enrollment in BCPS at the start of the 2010-2011 school year did not require the provision of access to a computer. The revisions made to that IEP on October 7, 2010 include the requirement that the student be provided with access to a computer in the classroom to do research on the Internet, as well as text-to-speech technology that assists the student with reading (Docs. a and f).
8. Documentation of the December 7, 2010 IEP team meeting reflects that while the student has been provided with a word processing device to assist him with note taking, school staff had not yet taken steps needed to obtain the text-to-speech technology the team previously determined that the student requires (Doc. f).
9. There is no documentation of the provision of access to text-to-speech technology that assists the student with reading, as required by the IEP since October 7, 2010 (Review of education record).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). In this case, the complainants allege that the student is not being provided with the speech-to-text technology required by the IEP (Doc. h and Interview with the student's mother).

Based on Findings of Fact #6 – 9, MSDE further finds that there is no documentation that the student has been provided with access to text-to-speech technology, as required by the IEP since October 7, 2010. Additionally, based on Findings of Fact #5 – 9, MSDE finds that from the start of the 2010-2011 school year until October 26, 2011, the student was not provided with the special education instruction and related services required by the IEP. Therefore, MSDE finds that violations have occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

MSDE requires that BCPS provide documentation by April 15, 2011 that the student is being provided with the assistive technology required by the IEP.

BCPS must provide documentation by the end of the 2010-2011 school year that the IEP team has convened and determined the *compensatory services*¹ necessary to redress the loss of services identified as a result of this investigation.

¹ 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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BCPS must provide the complainants 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 complainants disagree with the IEP team's determinations, they maintain the right to request mediation or file a due process complaint to resolve the dispute consistent with IDEA.

Systemic

The violation related to IEP implementation is the subject of an ongoing corrective action plan for BCPS. In October 2010, MSDE Office of Quality Assurance and Monitoring for Continuous Improvement issued an Enhanced Monitoring for Continuous Improvement report that documents the status of this corrective action. MSDE will continue to monitor the school system to ensure correction. At this time, MSDE does not require any additional corrective actions.

The findings in the LOF will be shared with MSDE Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring. Verification of the school system's compliance will also be conducted through this process consistent with the requirements of OSEP Memorandum #09-02.

In addition, MSDE will conduct a review to verify compliance with the requirement to ensure that proper procedures are followed. Documentation of the completion of corrective 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.

Please be advised that both parties 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 LOF. 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 LOF. If additional information is provided, it will be reviewed and 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 and conclusions 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

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subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH/km

cc: Andrés Alonso
Nancy Ruley
XXXXXXXX
Erin Leff
Martha J. Arthur
Koliwe Moyo