



Nancy S. Grasmick
State Superintendent of Schools

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May 17, 2011

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

RE: XXXXX
Reference: #11-079

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 March 22, 2011, MSDE received correspondence from Ms. XXXXXX XXXXXXXXXXXX, the student's mother, hereafter "the complainant," filed 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) and related State requirements with respect to the above-referenced student. This office investigated the following allegations:

1. BCPS did not provide the student with special education instruction in the educational placement required by the student's Individualized Education Program (IEP) from September 2010 to February 2011, in accordance with 34 CFR §300.101; and
2. BCPS did not ensure that proper procedures were followed in response to the complainant's requests for an IEP team meeting since November 2010, as required by 34 CFR §§300.324 and .503.

INVESTIGATIVE PROCEDURES:

1. On March 22, 2011, MSDE received correspondence from the complainant alleging violations of IDEA.

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2. On April 11, 2011, a copy of the complaint was provided by facsimile to Dr. Kim Lewis, Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
3. On April 11, 2011, Ms. Christine R. Hartman, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 12, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to the investigation.
5. On April 26 and 29, 2011, Ms. Hartman corresponded, via electronic mail, with Ms. Nancy Ruley and Ms. Tiffany Puckett, Associate Counsel, Office of Legal Counsel, BCPS, regarding the allegations in the complaint. In those correspondences, Ms. Hartman requested that additional documentation be provided to this office.
6. On April 27, 2011 and May 4 and 5, 2011, Ms. Puckett provided this office with additional documentation.
7. On May 4 and 5, 2011, Ms. Hartman contacted the complainant and requested additional documentation, which she provided on those same dates.
8. On May 10, 2011, Ms. Hartman and Ms. Dori Wilson, Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a site visit to review the education record at the BCPS Central Office, and conducted interviews with the following BCPS staff:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXX);
 - b. Ms. XXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXXXXXX; and
 - c. Ms. XXXXXXXXXXXX, School Secretary, XXXXXXXXXXXXXXXXXXXX.

Ms. Puckett attended the visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.

9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence from BCPS to the complainant, dated March 7, 2011;
 - b. Correspondence from the complainant addressed to "Special Education Teacher," dated November 6, 2010;
 - c. BCPS Communication Log for the months of November and December, 2010;
 - d. BCPS Invitation to an IEP team meeting, dated February 10, 2011;
 - e. IEP team meeting attendance sheet, dated February 18, 2011; and
 - f. BCPS Communication Log, dated February 18, 2011 and March 24, 2011.

BACKGROUND:

The student is six (6) years old and attends XXXXXXXXXXXXX. He is identified as a student with a disability under the IDEA based on a developmental delay and receives special education and related services. The complainant has participated in IEP team meetings and has been provided notice of her procedural safeguards during the time period covered by this investigation (Doc. a. and Review of on-line IEP documents and parent notices).

ALLEGATION #1: IMPLEMENTATION OF THE IEP

FINDINGS OF FACT:

1. On February 8, 2011, the complainant filed a complaint with the BCPS Special Education Parent Response Unit regarding the provision of special education instruction to the student from September 13, 2010 to February 16, 2011, the same time period covered by her complaint filed with MSDE on March 22, 2011 (Doc. a).
2. On March 3, 2011, as a result of BCPS' investigation into the complaint filed with their office, the school system determined that the IEP had not been consistently implemented, and that services will be provided to the student to remediate the loss of service (Doc. a).

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, based on Finding of Facts #1 and #2, MSDE concurs with BCPS' finding that the student was not provided the amount of special education instruction required by his IEP. Therefore, MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #2: RESPONDING TO A REQUEST FOR AN IEP TEAM MEETING

FINDINGS OF FACT:

3. The complainant provided MSDE with a copy of written correspondence addressed to "Special Education Teacher," from the complainant, dated November 6, 2010. In that correspondence, the complainant indicated that she wanted the IEP team to review the student's progress toward achieving the goals from an IEP developed on February 25, 2010 (Doc. b, Interview with the complainant, and Review of the on-line IEP document).
4. There is no indication in the school's communication log or in the student's education record that the complainant's November 6, 2010 correspondence was received by school staff, and school staff report that they did not receive the correspondence. Further, there is no written documentation that the complainant followed up on that correspondence with BCPS staff (Doc. c, Review of the education record and Interview with BCPS staff).

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5. When the complainant contacted BCPS Central Office personnel in February 2011 regarding her IEP implementation concerns, she also inquired about whether the IEP team was being convened to review of the student's progress. School system staff informed the complainant that they were not aware that she wanted the IEP team to convene, and they scheduled a team meeting, which was held on February 18, 2011 and March 24, 2011 to consider the complainant's concerns about the student's progress (Docs. a and d-f, Interview with the complainant, Interview with BCPS staff, and Review of on-line IEP documents and parent notices).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP team reviews the IEP not less than annually to determine whether the annual goals are being achieved. Additionally, the public agency must ensure that the team reviews and revises the IEP, as appropriate, to address information provided by the parents (34 CFR §300.324). If a parent requests an IEP team meeting, the public agency must either ensure that the team is convened or provide the parent with proper written notice of the refusal to do so (34 CFR §300.503).

The complainant alleges that she hand-delivered a written request for an IEP team meeting to the school in November 2010, but that school staff did not respond to the request. Based on Findings of Facts #3-#5, MSDE finds that, while the complainant had a copy of that request for an IEP team meeting, there is no documentation that the request was received by school staff.

Further, based on Finding of Fact #5, MSDE finds that the IEP team was convened when school system staff became aware of the complainant's request. Therefore, MSDE finds there is no violation with regard to this allegation.

CORRECTIVE ACTION/TIMELINE:

BCPS must provide this office with documentation of the services provided to the student to remediate the violation related to the lack of implementation of the IEP no later than the end of the first quarter of the 2011-2012 school year. Documentation of the corrective action taken is to be submitted to the attention of: 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 parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact or conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional

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documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions. Questions regarding the findings of fact, conclusions or corrective action contained in this LOF should be addressed to this office in writing. The school system and the complainant 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 (FAPE) for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/crh

cc: Andrés Alonso
Tiffany Puckett
Jay Salkauskas
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Dori Wilson
Christine R. Hartman