



Nancy S. Grasmick  
State Superintendent of Schools

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April 28, 2011

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Ms. Kalisha Miller  
Director of Special Education  
Baltimore County Public Schools  
6901 North Charles Street  
Towson, Maryland 21204

RE: XXXXX  
Reference: #11-066

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.

**ALLEGATION:**

On March 1, 2011, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, "the complainant," filed on behalf of her son. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the allegation that BCPS did not provide the complainant with notice of the student's in-school suspensions that have occurred since the start of the 2010-2011 school year<sup>1</sup>, in accordance with COMAR 13A.08.01.11C(2).

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 3, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS; Mr. J. Stephen Cowles, Associate General Counsel, BCPS; and Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS.

<sup>1</sup> While the complaint included allegations of additional violations, these matters were resolved by the parties through mediation on March 3, 2011. Therefore, they were not addressed through the State complaint investigation.

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3. On March 9, 2011, Ms. Moyo conducted a telephone interview with the complainant in order to clarify the allegation to be investigated and to explain that this office would not investigate the allegations that had been resolved through the March 3, 2011 settlement agreement.
4. On March 17, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Miller of the allegation and requested that her office review the alleged violation.
5. On March 21, 2011, Ms. Moyo contacted Mr. Cowles and requested documentation from the student's education record. On the same date, Ms. Moyo conducted a second telephone interview with the complainant regarding the allegation in the complaint.
6. On March 30, 2011, BCPS provided MSDE with copies of documents from the student's education record.
7. On April 1, 2011, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's education record and interview the following school staff:
  - a. Mr. XXXXXXXXXXX, Assistant Principal;
  - b. Ms. XXXXXXXXXXX, Assistant Principal; and
  - c. Ms. XXXXXXXXXXX, Special Education Department Chairperson.

Mr. Cowles attended the site visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.
8. On April 14, 2011, Mr. Cowles provided Ms. Moyo with additional documentation from the student's education record.
9. On April 20, 2011, Ms. Moyo conducted a telephone interview with Mr. Cowles.
10. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Individualized Education Program (IEP), dated June 8, 2010;
  - b. Student's daily point sheet and behavior intervention log form, dated September 20, 2010;
  - c. Student's daily point sheet and behavior intervention log form, dated September 22, 2010;
  - d. Student's daily point sheet and behavior intervention log form, dated October 4, 2010;
  - e. Student's daily point sheet and behavior intervention log form, dated October 13, 2010;

- f. IEP team meeting summary, dated October 15, 2010;
- g. Student's daily point sheet and behavior intervention log form, dated October 18, 2010;
- h. Student's daily point sheet and behavior intervention log form, dated November 16, 2010;
- i. Behavior intervention plan (BIP), dated December 1, 2010;
- j. Student's daily point sheet and behavior intervention log form, dated December 2, 2010;
- k. IEP team meeting summary, dated December 8, 2010;
- l. Student's daily point sheet and behavior intervention log form, dated December 10, 2010;
- m. Student's Student Development Center plan sheet, dated December 20, 2010;
- n. Excerpts from the Student Development Center log book dated from December 20, 2010 to December 21, 2010;
- o. Student Development Center daily report of progress, dated December 21, 2010;
- p. Correspondence from school staff to the complainant, dated February 8, 2011;
- q. Correspondence from the complainant to MSDE, dated March 1, 2011;
- r. Student attendance data from the start of the 2010-2011 school year through April 1, 2011; and
- s. Correspondence from school staff to "Parent/Guardian", undated.

**BACKGROUND:**

The student is fourteen (14) years old and is identified as a student with autism under IDEA. From the start of the 2010-2011 school year until January 25, 2011, the student attended XXXXXXXXXXXX where he received special education instruction and related services. From January 25, 2011 to March 31, 2011, the complainant did not send the student school<sup>2</sup>. Since April 1, 2011, the complainant has been providing the student with home school instruction. During the period addressed by this investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parental rights, as required (Docs. a, f, i, k, q, and r).

**FINDINGS OF FACT:**

- 1. The IEP in effect at the start of the 2010-2011 school year was developed on June 8, 2010 and requires that the student be provided with special education instruction in a separate special education classroom (Doc. a).
- 2. There is documentation that on December 20 and 21, 2011, the student was sent to the Student Development Center (SDC), a general education classroom where students are placed as a disciplinary action and as an alternative to an out-of-school suspension. There is also documentation that while the student was in the SDC, he was provided with instruction and counseling regarding the incident that occurred (Docs. m – p).

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<sup>2</sup> There is documentation that BCPS took action under compulsory school attendance law when the complainant did not send the student to school (Doc. p)

3. A review of the student's behavior intervention plan (BIP) and reports from school staff indicate that the student was provided with the behavior interventions required by the BIP, when he displayed inappropriate behaviors. Excerpts from the student's behavior log document that, in response to the student's behavior, on eight (8) occasions between the start of the 2010-2011 school year until January 25, 2011, when the student stopped attending school, school staff utilized the following behavioral interventions to address the student's inappropriate behavior:
  - removing the student from the classroom to another location where he could calm himself;
  - sensory breaks during which the student would walk with school staff around the school building; and
  - counseling to discuss his behaviors (Docs. b – e, g – j, l and interview with school staff).
4. A review of the SDC log book indicates that, between the start of the 2010-2011 school year and January 25, 2011, the student attended class in the SDC only on December 20 and 21, 2010 (Review of SDC log book.).
5. There is correspondence from BCPS staff addressed to the "Parent/Guardian" which indicates that the student would be placed in the SDC for two (2) days. However, the document is not dated and does not indicate the dates that the student would be in this setting. Additionally, there is a daily report of progress completed by school staff, dated December 21, 2010 which states that the student was placed in the SDC on December 20 and 21, 2010. The report requires that the complainant sign the document indicating her receipt of the document. However, the report maintained in the student's education record does not contain the complainant's signature and there is no documentation that the complainant was provided with the report (Docs. o, s and review of the education record).

### **DISCUSSION/CONCLUSIONS:**

In-school suspension means the removal within the school building of a student from the student's current education program for up to but not more than ten (10) school days in a school year for disciplinary reasons by the school principal or principal's designee. If the student receives an in-school suspension as the result of a disciplinary action, then the school principal must provide the student's parents with written notification of the in-school suspension action taken by the school (COMAR 13A.08.01.11C(2)).

A student is considered to be receiving an in-school intervention and not an in-school suspension if the following occurs:

- A continuance of appropriate progress in the general curriculum;
- The provision of special education and related services on the student's IEP;

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- The provision of instruction commensurate with the program afforded to the student in the regular classroom; and
- Participation with peers as they would in their current education program to the extent appropriate.

If these four criteria above are met, the disciplinary action taken may not be considered an in-school suspension (*MSDE Letter of Clarification from Nancy S. Grasmick to the Local School System Superintendents, dated December 17, 2009*).

In this case, the complainant reports that she believes that the student received several in-school suspensions between the start of the 2010-2011 school year and January 25, 2011. The complainant further asserts that when the student received the in-school suspensions, she was not provided with written notice of the actions taken as required by the regulations.

Based on Finding of Fact #1, MSDE finds that the student's IEP required that he receive services in a separate special education classroom. Based on Finding of Fact #2, MSDE finds that while implementing the student's BIP, school staff occasionally removed the student from the classroom so that he could calm himself. Based on Findings of Fact #2-4, MSDE finds that while the student was provided with the interventions required by his BIP, he only received an in-school suspension, which required written notice to the complainant, on December 20 and 21, 2011.

Based on Finding of Fact #4, MSDE finds that while there is documentation in the student's education record indicating that written notice was completed to inform the complainant of the in-school suspension, there is no documentation indicating that the complainant was provided with the written notice, as required. Therefore, this office finds that a violation occurred.

#### **CORRECTIVE ACTION/TIMELINE:**

MSDE requires that BCPS provide MSDE with documentation by the end of the 2010-2011 school year that steps have been taken to ensure that XXXXXXXXXX staff provide appropriate written notice to parents when a student is placed in in-school suspension.

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 consistent with the requirements of the United States Department of Education, Office of Special Education Programs Memorandum #09-02.

Documentation of the 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.

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**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. Pending the decision on a request for reconsideration, the school system must implement the corrective action consistent with the timeline requirement as reported in this LOF.

Questions regarding the findings, conclusions and corrective action 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 free appropriate public education for the student, including issues 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

c: Joe A. Hairston  
Sharon Floyd  
Pam Weitz  
J. Stephen Cowles  
XXXXXXXX  
Koliwe Moyo  
Martha J. Arthur