



Bernard J. Sadusky, Ed.D.
Interim State Superintendent of Schools

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

April 5, 2012

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

RE: XXXXX
Reference: #12-049

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 our investigation.

ALLEGATIONS:

On February 8, 2012, the MSDE received correspondence from Ms. XXXXXXXXX, hereafter “the complainant,” filed on behalf of the above-referenced student for whom she serves as the parent surrogate. 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. The BCPS did not ensure that a parent surrogate was appointed prior to November 2011, in accordance with 34 CFR § 300.519, and Md. Code Ann., Educ. §8-412;

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2. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's social/emotional/behavioral needs since February 8, 2011¹, in accordance with 34 CFR § 300.324; and
3. The BCPS did not ensure that the IEP addressed the student's life skills needs from February 8, 2011¹ until December 22, 2011, in accordance with 34 CFR § 300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegations in the complaint.
2. On February 10, 2012, a copy of the complaint was provided by facsimile to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On February 14, 2012, Ms. Williams conducted a telephone interview with the complainant and clarified the allegations to be investigated.
4. On February 22, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On that same date, the MSDE also notified the BCPS of the allegations to be investigated and requested that the BCPS review the alleged violations.
5. On February 27, 2012, Ms. Williams conducted a review of the student's educational record at the BCPS Central Office.
6. On February 29, 2012, Ms. Williams and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXXXX, IEP Team Chairperson, XXXXXXXXXX;
 - b. Ms. Mary Agbaje, Speech Language Pathologist, BCPS; and
 - c. Mr. XXXXXXXX, Principal, XXXXXXXXX.

Ms. Tiffany Puckett, Associate Counsel, Office of Legal Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

¹ The complaint alleges violations dating back to the start of the 2010-2011 school year. However, the complainant was informed, in writing, on February 22, 2011, that the MSDE has authority to investigate allegations of violations that occurred not more than one (1) year from the date that the complaint was received, in accordance with 34 CFR § 300.152.

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7. On March 14, 2012, the MSDE received additional documentation from the BCPS to be considered during the complaint investigation.
8. On March 20, 2012, the MSDE received additional documentation from the BCPS to be considered during the complaint investigation.
9. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Correspondence from the complainant to the MSDE, alleging violations of the IDEA, received on February 8, 2012;
 - b. Howard County Public Schools Psychological Evaluation, dated April 19, 2006;
 - c. BCPS Educational Evaluation, dated May 4, 2006;
 - d. IEP, dated April 15, 2010;
 - e. IEP, dated October 12, 2010;
 - f. Court Order, Baltimore City Circuit Court, dated May 5, 2011;
 - g. BCPS contact logs, dated September 16, 2011 – February 23, 2012;
 - h. IEP Meeting Invitation, dated September 16, 2011;
 - i. BCPS progress report, dated October 6, 2011;
 - j. Facsimile cover sheet, dated October 7, 2011;
 - k. IEP, dated October 7, 2011;
 - l. IEP Meeting Attendance Sheet, dated October 7, 2011;
 - m. Parent Surrogate Request, dated October 11, 2011;
 - n. Correspondence from the BCPS to the complainant confirming her appointment as the student's Parent Surrogate, dated November 3, 2011;
 - o. BCPS progress report, dated December 19, 2011;
 - p. BCPS progress report, dated December 22, 2011;
 - q. BCPS meeting attendance sheet, date December 22, 2011;
 - r. IEP, dated December 23, 2011;
 - s. BCPS Special Education City Wide School Assignment, dated January 4, 2012;
 - t. BCPS Receipt of IEP and Initiation of Service, dated January 10-11, 2012;
 - u. IEP, dated December 23, 2011, amended January 11, 2012;
 - v. BCPS progress report, dated February 5, 2012;
 - w. BCPS Educational Evaluation, dated February 5, 2012;
 - x. BCPS Social Worker progress report, dated March 1, 2012;
 - y. BCPS Psychological Evaluation, dated March 5, 2012; and
 - z. IEP, dated March 12, 2012.

BACKGROUND:

The student is seventeen (17) years old. He is identified as a student with multiple disabilities (intellectual disability and an other health impairment related to Attention Deficit Hyperactivity Disorder [ADHD]) under the IDEA, and receives special education instruction and related services.

The student is committed to the custody of the Baltimore City Department of Social Services (DSS). He lived with a relative until February 17, 2011, when the DSS placed the student at a group home located in Baltimore City, Maryland.

The student has attended the following schools during the period of time covered by this investigation:

- During the 2009-2010 school year the student was enrolled at XXXXXXXXXXXXXXXX, a Howard County Public School;
- From the start of the 2010-2011 school year until January 10, 2012 the student attended XXXXXXXXXXXXXXXX (XXXXXXXXXX), a Baltimore City Public School; and
- Since January 10, 2012, the student has attended the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX (XXXXXXXXXX), another Baltimore City Public School, where he is participating in a life skills program (Doc. s).

ALLEGATION #1 APPOINTMENT OF A PARENT SURROGATE

FINDINGS OF FACTS:

1. On May 5, 2011, the Baltimore City Circuit Court issued a Court Order committing the student to the custody of the DSS with limited guardianship to the DSS². The Court Order states that the student's "parents are not a resource for the [student]" and that the next Court action would take place on November 17, 2011 (Doc. f).
2. On September 16, 2011, the BCPS sent an invitation for an IEP team meeting, scheduled on October 7, 2011, to the Director of the group home where the student was currently living. There is no documentation or information regarding when school staff were informed that the student was no longer living with his relative, who had previously participated in the IEP meetings (Doc. h).
3. On October 7, 2011, the IEP team met, with group home staff present, to conduct an annual review of the student's IEP, which had last been reviewed on October 12, 2010 (Docs. k and l).

² Prior to being placed in the custody of the DSS, the student was placed with his relative under an Order of Custody and Guardianship (Doc. f).

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4. At that meeting, group home staff provided the BCPS with a copy of the May 5, 2011 Court Order. After reviewing the Court Order, the BCPS determined that a parent surrogate should be appointed and that the team would reconvene to conduct the annual IEP review following the appointment (Docs. f, j, and m).
5. There is no documentation that the BCPS made attempts to obtain the Court Order prior to the October 7, 2011 meeting or that attempts were made to obtain the subsequent Court Order issued as a result of the November 17, 2011 hearing (Review of the educational record and interviews with the BCPS staff).
6. On October 11, 2011, the BCPS submitted a request to the Chief Executive Officer of the BCPS for a parent surrogate to be appointed (Doc. m).
7. On November 3, 2011, the complainant was appointed to serve as the student's parent surrogate (Doc. n).
8. On December 22, 2011, the IEP team reconvened with the parent surrogate and conducted the annual review of the IEP (Docs. q and r).

DISCUSSION/CONCLUSIONS:

The Appointment of a Parent Surrogate

To ensure that the rights of a student are protected, the student's parent must be provided with the opportunity to participate in IEP team meetings (34 CFR §300.322). Under the IDEA, a "parent" means a biological or adoptive parent, a foster parent unless prohibited by State law, a guardian, a relative with whom the student lives or an individual who is legally responsible for the child's welfare, or a parent surrogate (34 CFR §300.30).

The IDEA requires the public agency to ensure the rights of a student with a disability are protected. This includes the appointment of a parent surrogate if a parent cannot be identified, if after reasonable efforts, the public agency cannot locate a parent, if the child is a ward of the State, or if the child is an unaccompanied homeless youth (34 CFR §300.519).

In Maryland, a parent surrogate must be appointed at any point in the educational decision making process if it is suspected that the child is disabled and if the child is a ward of the State. A child is a ward of the State if a State or county agency or official has been appointed legal guardian, or if the child who has been committed by a Court of competent jurisdiction to the legal custody of a State or county agency or official with the *express authorization* [emphasis added] that the State or county agency or official make educational decisions for the student (Md. Ann. Code, Educ. § 8-412).

The public agency must have a method for determining whether a child needs a parent surrogate and for assigning a parent surrogate to the child (34 CFR § 300.519). If a public agency becomes aware that a child has been placed by a Court in the custody of a State or county

agency, the public agency must take steps to obtain the Court Order to determine whether the student is a ward of the State and requires the appointment of a parent surrogate.

Based on the Finding of Fact #1, the MSDE determines that prior to February 2011, there is no information that the student was committed to the custody of the DSS and the student was living with a relative who was legally responsible for his welfare. Therefore, the student did not require a parent surrogate at that time.

Based on the Findings of Facts #1, #4, and #6, the MSDE finds that, as of May 5, 2011, when the student was committed to the DSS with limited guardianship to the DSS, the student became a ward of the State. Therefore, the student required a parent surrogate while the May 5, 2011 Court Order was in effect.

Based on the Findings of Facts #2 - #4, the MSDE determines that there is documentation that, since September 16, 2011, school staff were aware that the student was placed in a group home. However, the MSDE further finds that it was not until October 11, 2011, when the BCPS was provided with the May 5, 2011 Court Order, that any steps were taken to determine whether the student was a ward of the State who requires a parent surrogate.

Finally, based on the Findings of Facts #1 and #5, the MSDE finds that, since November 17, 2011, the BCPS has not taken steps to obtain the most recent Court Order to determine whether the student remains a ward of the State who requires a parent surrogate. Therefore, this office finds that violations have occurred with respect to this aspect of the allegation.

Annual Reviews of the IEP

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate. The public agency must also ensure that the IEP team reviews and revises the IEP, as appropriate, to address any lack of expected progress toward achievement of the annual goals, the student's anticipated needs, or other matters (34 CFR §300.324).

In this case, based on the Findings of Facts #5 - #8, the MSDE finds that the delay in determining whether the student required a parent surrogate necessitated re-scheduling the IEP meeting scheduled for October 7, 2011. As a result, based on the Finding of Fact #8, the annual meeting to review the student's program did not occur until December 22, 2011, more than one year after the IEP team last reviewed the student's IEP. Therefore, the MSDE finds a violation occurred.

**ALLEGATIONS # 2 AND # 3 ADDRESSING THE STUDENT'S
SOCIAL/EMOTIONAL/BEHAVIORAL AND LIFE
SKILLS NEEDS SINCE FEBRUARY 8, 2011**

FINDINGS OF FACTS:

IEP in Effect From February 8, 2011 to December 22, 2011

9. The IEP in effect on February 8, 2011 was developed at an IEP meeting convened by the BCPS on October 12, 2010. The IEP developed states that the team considered the data listed below (Doc. e).
 - a. An April 19, 2006 report of a psychological assessment indicating that the student's cognitive ability is in the "mild to moderate range of intellectual functioning," and that his daily living and functional communication skills and academic scores fall within "the deficient range." The report further indicates that the student is diagnosed with ADHD and has "emotional difficulties" related to a Bipolar disorder (Doc. b).
 - b. A May 4, 2006 report of an educational assessment indicating that the student's achievement levels in all areas of academic skills are in the "low range" for his age. The report indicates that the student has difficulty with identifying missing key words, performing simple mathematical subtraction calculations, and writing simple sentences (Doc. c).
 - c. An April 15, 2010 IEP developed by the Howard County Public Schools (HCPS) indicating that the student was identified with an intellectual disability with needs in all areas of academics and behavior. The IEP included annual goals for the student, including goals to "demonstrate an understanding of functional math skills involving time and money," and to develop sentences with prompting to use proper grammar and punctuation. The IEP required that the student be provided with special education instruction and accommodations, including extended time and multiple or frequent breaks, in order to achieve the goals (Doc. d).
 - d. A March 22, 2010 functional behavior assessment (FBA) conducted by the HCPS indicating that the student has difficulty understanding the need to ask permission to use items belonging to others, and bringing appropriate materials to class (Doc. d).
 - e. An April 15, 2010 behavioral intervention plan (BIP), developed by the HCPS, requiring school staff to provide the student with prompts and rewards for demonstrating appropriate behavior (Doc. d).
10. There is no documentation that at the October 12, 2010 meeting the IEP team considered whether the student continued to have the behavioral needs identified in the HCPS IEP

and no documentation that the student would continue to receive the behavioral supports required by the IEP or the basis for why he no longer required those supports required by the IEP (Doc. e).

11. At the October 12, 2010 meeting, the relative with whom the student was living expressed concern that the student was being provided with homework and classwork beyond his ability to understand. There is no documentation that the team addressed this concern (Doc. e).
12. At the October 12, 2010 meeting, the IEP team developed a math goal for the student to represent and analyze two and three-dimensional figures using tools and technology, a written language goal for the student to compose oral, written, and visual presentations that inform, persuade, and express personal ideas, and a reading goal for the student to use effective strategies before, during, and after reading, viewing, and listening to self-selected and assigned materials. The IEP was revised to require that the student be provided with special education instruction, extended time to complete assignments, reduced distractions, and frequent breaks in order to remain on task (Doc. e).

IEP in Effect From December 22, 2011 to March 12, 2012

13. On December 22, 2011, the IEP team convened to conduct the annual review of the IEP. At that meeting, the parent surrogate and the parent surrogate's advocate expressed concerns that the student was having difficulty understanding instruction, and they questioned why the annual goals were revised on October 12, 2010 and no longer focused on improving the student's life skills. The student's teachers reported that the student was not making satisfactory progress because he could not understand directions, which caused him frustration, and that he was not attending school regularly (Doc. v).
14. Based on these concerns, the IEP team decided that psychological and educational assessments would be conducted and revised the annual IEP goals. The reading goal was revised to focus on the improvement of the student's comprehension when identifying location, action, and purpose of text. The math goal was revised to focus on the improvement of the student's ability to tell time and count money. The written language goal was revised to focus on the improvement of the student's ability to express personal ideas. A new goal was developed for the student to attend school and counseling was added as a related service to assist the student in achieving this goal. The IEP team decided that a separate special education classroom is the least restrictive environment in which the IEP can be implemented and that instruction will be provided in a life skills program at the XXXXXX XXXXX (Docs. t and u).

IEP in Effect Since March 12, 2012

15. On March 12, 2012, the IEP team reconvened and considered results of the educational and psychological assessments. The report of the February 5, 2012 educational assessment indicates that the student's overall academic achievement is "very low." The

report of the March 5, 2012 psychological assessment states that the student “is functioning four to twelve years below grade expectations in all areas (Communication, Daily Living Skills, and Socialization).” The report further states that “these results are generally below [the student’s] previous evaluations and indicate some additional regression in [the student’s] cognitive performance (Docs. w and y).”

16. At the March 12, 2012 IEP meeting, the parent surrogate expressed concern that the student continues to have poor school attendance. The student’s counseling services provider reported that, while student’s school attendance does not meet the school’s expectations, it is improving. The annual goals were revised based on teacher reports of the student’s progress and the team decided that the student will continue to receive instruction in the life skills program (Docs. v, x, and z).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student with a disability is provided with a Free Appropriate Public Education (FAPE). This is done through the development of an IEP, that includes the student’s present levels of academic achievement and functional performance, measurable annual goals designed to meet the needs that arise from the disability, and special education instruction and related services to assist the student with achieving the goals (34 CFR §§300.101 and .320).

To appropriately identify the needs that arise from the disability, the team must consider the strengths of the student, the concerns of the parents, the results of the most recent evaluations, and information about the student’s academic and functional performance in the classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must also consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

Functional Life Skills Needs: February 8, 2011 – December 22, 2011

Based on the Findings of Facts # 9, #11, #13, and #14, the MSDE finds that, from February 8, 2011 until December 22, 2011, the BCPS did not ensure that the IEP team considered concerns expressed by the student’s parent about the student’s ability to understand the special education instruction provided. Therefore, this office finds that the school system did not ensure that the student’s needs were identified and addressed, and a violation occurred from February 8, 2011 until December 22, 2011.

Social/Emotional/Behavioral Needs Since February 8, 2011

Based on the Findings of Facts #10 and #12, the MSDE finds that, from February 8, 2011 through December 22, 2011, the BCPS did not ensure that the IEP team considered whether the student continued to have behavioral needs, as previously identified, and there is no documentation of the basis for discontinuing the behavioral supports required by the IEP.

Therefore, this office finds that a violation occurred from February 8, 2011 through December 22, 2011.

Based on the Findings of Facts #14 - #16, the MSDE finds that, since December 22, 2011, the IEP team has considered the student's behavioral needs, has revised the IEP to address those needs, and continues to monitor the student's progress. Therefore, this office does not find a violation since December 22, 2011.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by May 15, 2012 that the IEP team has met to determine the amount and nature of compensatory services³ or other remedy necessary to redress the violations identified.

The BCPS must provide the parent with proper written notice of the determinations made at the IEP team meeting, as required by 34 CFR §300.503, including a written explanation of the basis of the determinations. If the parent disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

School-Based

The MSDE requires the BCPS to provide documentation by the end of the 2011-2012 school year of the steps taken to determine if the procedural violations found in this investigation are unique to this case or if they represent 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 Complaint Investigation and Due Process Branch 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 date of the school system's initial determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance.

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.

³ 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).

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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, 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.

Questions regarding the findings, conclusions and corrective action 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 FAPE for the student, including issues subject to a State complaint investigation, consistent with 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/tw

cc: Andrés Alonso
Tiffany Puckett
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XXXXXXXXXX
Dori Wilson
Anita Mandis
Martha J. Arthur
Tyra Williams