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April 16, 2012

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

RE: XXXX XXXXX
Reference: #12-054

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.

ALLEGATION:

On February 16, 2012, the MSDE received a complaint from Amy Walters, Esq. hereafter, “the complainant,” on behalf of her clients, the above referenced student and his mother. 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. This office investigated the allegation that the BCPS has not followed proper procedures when conducting a re-evaluation of the student, since October 13, 2011,¹ in accordance with 34 CFR §§ 300.303 and .305 and COMAR 13A.05.01.06E.

¹ There was a second allegation initially identified for investigation regarding the complainant’s requests that Individualized Education Program meetings be scheduled. During the course of the investigation, it was discovered that these requests were made in an effort to ensure that the re-evaluation would be completed. Therefore, this matter will be addressed as a part of the allegation regarding the re-evaluation process.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
 2. On February 16, 2012, the MSDE received correspondence from the complainant containing allegations of violations of the IDEA.
 3. On February 17, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kimberly Hoffmann, Interim Executive Director, Special Education, BCPS; Ms. Nancy Ruley, Associate Counsel, BCPS, and Ms. Tiffany Puckett, Associate Counsel, BCPS.
 4. On February 23, 2012, Ms. Moyo spoke with the complainant, by telephone, and clarified the allegation to be investigated.
 5. On February 28, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegation and requested that her office review the alleged violation.
 6. On March 2 and 7, 2012, the MSDE requested that the BCPS provide documentation from the student's educational record.
 7. On March 14, 2011, Ms. Moyo reviewed the student's educational record at the BCPS Central Office. Ms. Puckett was present during the review to provide information on the BCPS policies and procedures, as needed.
 8. On March 20, 2012, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Mr. XXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXX, School Psychologist;
 - c. Ms. XXXXXXXXXXX, Individualized Education Program (IEP) Chairperson;
 - d. Mr. XXXXXXXXXXX, Program Support Teacher; and
 - e. Ms. XXXXXXXX, Aide.
- Ms. Puckett and Ms. Christa McGonigal, Education Specialist, BCPS attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed. On the same date, the BCPS staff provided the MSDE staff with documentation regarding the allegation being investigated.
9. On April 12, 2012, Ms. Zondra Johnson, Special Education Coordinator, MSDE Juvenile Services Education Program (MSDE/JSEP), provided Ms. Moyo with documents from the student's educational record.

10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Court Order, dated June 11, 2011;
 - b. Electronic mail correspondence (Email) from the Department of Juvenile Services (DJS) to the BCPS staff and the complainant, dated July 18, 2011;
 - c. The MSDE/JSEP IEP meeting notes, dated August 1, 2011;
 - d. Email from the complainant to the MSDE/JSEP staff, dated August 11, 2011;
 - e. Email from the DJS staff to the BCPS staff and the complainant, dated September 30, 2011;
 - f. Email from the DJS staff to the BCPS staff and the complainant, dated October 7, 2011;
 - g. Email from the complainant to the BCPS staff, dated October 13, 2011;
 - h. Email from the BCPS staff to the BCPS staff, dated October 14, 2011;
 - i. Correspondence from the BCPS to the student's mother regarding the student's school assignment, dated October 14, 2011;
 - j. Email from the complainant to the BCPS staff, dated October 26, 2011;
 - k. Emails between the BCPS Central Office staff and the BCPS school staff, dated October 28, 2011;
 - l. Emails between the complainant and the BCPS staff, dated October 28, 2011;
 - m. Email from the BCPS Central Office staff to the BCPS school staff and the complainant, dated October 31, 2011;
 - n. Email from the BCPS Central Office staff to the BCPS school staff, dated November 9, 2011;
 - o. Emails between the complainant and the BCPS staff, dated November 9, 2011;
 - p. Email from the complainant to the BCPS staff, dated November 30, 2011;
 - q. Email from the complainant to the BCPS staff, dated December 7, 2011;
 - r. Email from the complainant to the BCPS staff, dated December 12, 2011;
 - s. Emails between the complainant and the BCPS staff, dated December 16, 2011;
 - t. Email from the complainant to the BCPS staff, dated December 20, 2011;
 - u. Email from the complainant to the BCPS staff, dated January 4, 2012;
 - v. BCPS IEP team meeting notice, dated January 13, 2012;
 - w. Excerpt from the parent contact log, dated January 13, 2012;
 - x. Excerpt from the parent contact log, dated January 24, 2012;
 - y. IEP, dated January 31, 2012;
 - z. Consent for assessment, dated January 31, 2012;
 - aa. *Prior written notice*, dated February 3, 2012;
 - bb. Correspondence and attachments from the complainant to the MSDE, received February 16, 2012;
 - cc. Court Order, dated March 13, 2012; and
 - dd. IEP, dated March 27, 2012.

BACKGROUND:

The student is seventeen (17) years old. He is identified as a student with an intellectual disability under the IDEA and he receives special education instruction and related services. During the period of time addressed by this investigation, the student's mother was provided with notice of the procedural safeguards.

The student is co-committed to the Maryland Department of Juvenile Service (DJS) and the Maryland Department of Health and Mental Hygiene (DHMH). From June 1, 2011 to October 4, 2011, the student was placed by the DJS at the XXXXXXXXXXXX (XXXXXX), which has an educational program located on the grounds that is operated by the MSDE Juvenile Services Education Program (MSDE/JSEP). During this period of time, the student was provided with special education instruction and related services by the MSDE/JSEP.

On October 4, 2011, the student was released from XXXXXXXX and returned to the care and custody of his mother in Baltimore City. From October 5, 2011 to December 4, 2011, the student was not enrolled in school and did not attend school.

From December 5, 2011 until March 26, 2012, the student was enrolled at XXXXXXXXXXXX XXXXX (XXXXXXX), a BCPS school. On March 27, 2012, the student was placed at XXX XXX, a BCPS public separate special education school, as a result of a change in the educational placement made by the IEP team (Docs. a-d, f-i, q, v, and w-dd).

FINDINGS OF FACTS:

1. On August 11, 2011, while the student was placed at XXXXXXX, the MSDE/JSEP IEP team determined that educational, psychological and vocational assessments were needed and his mother provided consent for the assessments to be conducted (Docs. c and d).
2. On October 4, 2011, the student was released from XXXXXXXX and returned to the community in the care of his mother (Doc. f).
3. On October 7, 2011, the DJS notified the BCPS, the school system in which the student attended school prior to being placed at XXXXXXX, that the student had been released from XXXXXXXX (Doc. f).
4. On October 13, 2011, the complainant also contacted the BCPS to inform school system staff that the student would be returning to the BCPS. At that time, she also requested that an IEP team meeting be scheduled to complete the re-evaluation that began on August 11, 2011 (Doc. g).
5. There is documentation that the BCPS scheduled an IEP team meeting for November 1, 2011 to complete the re-evaluation (Docs. j - m).
6. On October 14, 2011, the BCPS sent correspondence to the student's mother identifying the BCPS school to which the student had been assigned and indicating that he must re-enroll in that school within ten (10) days of the date of the letter (Doc. i).

7. On October 26, 2011, the complainant requested that the BCPS provide her with a copy of the assessment reports that would be reviewed at the November 1, 2011 IEP team meeting (Doc. j).
8. On October 28, 2011, in response to the complainant's request, the BCPS staff indicated that they had not received reports of all the assessments that had been conducted (Doc. l).
9. There is no documentation that the BCPS requested the student's educational record from the MSDE/JSEP (Review of the educational record).
10. On October 31, 2011, the complainant requested that the BCPS reschedule the IEP team meeting in order to obtain the results of the assessments that had been conducted and the school system agreed (Doc. m).
11. On November 9, 2011, the complainant contacted the BCPS to request a new date for the IEP team meeting. On the same day, the BCPS staff informed the complainant that the student had not re-enrolled in the BCPS and that the re-evaluation would not be completed until the student was enrolled. The complainant explained that the student's mother was waiting until the IEP was revised to re-enroll the student to ensure that the student would be provided with appropriate services upon his return to school (Docs. n and o).
12. On December 5, 2011, the student re-enrolled at XXXXXXXX, a BCPS school (Doc. q).
13. On December 7, 12, and 16, 2011, the complainant contacted the BCPS staff to inform them that the student had enrolled in XXXXXXXXXX and to request that an IEP team meeting be scheduled (Docs. r and s).
14. On December 16, 2011, the BCPS staff informed the complainant that assessment results had not yet been obtained (Doc. s).
15. On December 20, 2011, the complainant obtained copies of the assessment reports from the MSDE/JSEP. On the same date, she provided those reports to the BCPS (Doc. t).
16. On January 4, 2012, the complainant contacted the BCPS to, again, request an IEP team meeting (Doc. u).
17. On January 31, 2012, the IEP team convened to consider assessment results. Based on the information contained in the assessment reports, the IEP team determined that additional data was needed and revised the IEP based on the data obtained (Docs. y - aa).
18. On March 27, 2012, the IEP team re-convened to complete the re-evaluation that began on August 11, 2011. At the meeting, the team determined that the student continues to be a student with a disability under the IDEA, and determined that his program would be implemented at XXXXXXX, a public separate special education school (Doc. dd).

DISCUSSION/CONCLUSIONS:

Residency, the Provision of a Free Appropriate Public Education, and “Child Find” Requirements for Re-evaluation

The State must have in effect policies and procedures to ensure that all students with disabilities residing within the State, in need of special education instruction and related services, are identified, located, and evaluated and that a practical method is developed and implemented to determine which children are currently receiving those services (34 CFR §300.111). The State must ensure that an IEP is developed, reviewed, and revised for each student identified with a disability unless the parent refuses to consent to the provision of services or does not respond to the request to provide consent for those services. This “child find” requirement is not limited to those students who are enrolled in a local public school system (34 CFR §§300.112 and .300).

An IEP must include a written statement of the student’s present levels of academic performance, and a statement of measurable annual goals and services designed to meet the needs identified (34 CFR §300.323). Information about the student’s present levels of performance is obtained through the evaluation process. A re-evaluation must be conducted at least once every three (3) years in order to ensure that the student continues to be a student with a disability and that there is current information about the student’s levels of performance so that the student’s needs are appropriately identified and addressed through an IEP (34 CFR §§300.303 and .304). However, the public agency will not be considered to have violated the “child find” obligation in 34 CFR §300.111 if it declines to pursue a re-evaluation when the parent refuses to consent to the re-evaluation (34 CFR §300.300).

Students must attend a public school in the county where the student is domiciled with the student’s parent, guardian, or relative providing informal kinship care (Md. Code, Ann., Educ. §7-101 (2008)). Therefore, each local school system must ensure that a Free Appropriate Public Education (FAPE) is available to all students with disabilities, from birth until the end of the school year in which the student turns twenty-one (21), who reside within the jurisdiction of that local school system (34 CFR §300.101 and COMAR 13A.05.01.02). In order to do so, each local education agency must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 34 CFR §§300.101 - .163 and .165 - .174 (34 CFR §300.201).

Re-evaluation Timelines

When conducting a re-evaluation, the IEP team must review existing assessment data and determine whether additional data is needed. If the team decides that additional data is required, the public agency must ensure that the necessary assessment data is obtained and that the assessment results are considered by the team in reviewing, and as appropriate, revising the IEP within 90 days of the date the team decides that the additional data is required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #3 - #5 and #7, the MSDE finds that the BCPS was responsible for offering a FAPE to the student since he was domiciled with his mother in that jurisdiction. Based on the Findings of Facts #1 - #19, the MSDE further finds that the BCPS did not ensure that the re-evaluation was completed within the required timelines, and that a violation occurred.

Further, based on the Findings of Facts #1 - #19, the MSDE finds that the BCPS refused to complete a re-evaluation of a student domiciled within Baltimore City with his mother until the student re-enrolled in the school system despite the fact that there was parental consent for the re-evaluation and the school system was aware that the mother was seeking a FAPE for the student. Based on the same Findings of Facts, the MSDE further finds that the school system has a practice of not completing re-evaluation for students residing within Baltimore City who are transferring from another public agency, until they re-enroll in the BCPS. Therefore, the MSDE also finds that the BCPS does not offer a FAPE to all students with disabilities residing within that jurisdiction and finds a violation related to the school system's "child find" requirements.

Maintenance of the Student's Educational Record

Student records provide a written picture of the academic performance of a student. Therefore, the orderly and complete maintenance of these records is necessary to ensure that accurate information is available to plan for a student's education.

In order to ensure that student records are relevant and accurate, State regulations require that a public agency must provide for reviewing and updating of student records in accordance with the Maryland Student Records System Manual. Changes in information for students must be made within a reasonable time after those changes occur (COMAR 13A.08.02.06, .07, and .09). When a student transfers to another public school in Maryland, within or outside of a local school system, official student records in their entirety, including special education and discipline records, must be transferred by the sending school system upon the request of the receiving school system. Each public agency is required to develop and implement procedures to ensure that the required data is collected and records maintained accurately in accordance with the guidelines set forth in the Manual (*2008 Maryland Student Records System Manual*).

In this case, the BCPS was required to obtain and review the student's educational record upon notice that he was transferring back to the school system from the MSDE. The educational record would have contained all of the information needed to complete the re-evaluation process started by the MSDE/JSEP. Based on the Findings of Facts #7 - #18, the MSDE finds that the BCPS did not ensure that the student's educational record was obtained from the MSDE/JSEP, and that as a result, there was a delay in completion of the re-evaluation begun by the MSDE/JSEP, in accordance with COMAR 13A.05.01.06E.

Summary of Findings

As a result of the violations above, the MSDE finds that the BCPS did not ensure that the student's needs were identified and addressed from November 11, 2011, the date when the re-evaluation should have been completed, until March 27, 2012, the date the re-evaluation was completed.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires that the BCPS provide documentation, by June 4, 2012, that the IEP team has convened and determined the nature and amount of *compensatory services*² necessary to redress the violations identified through this investigation.

The BCPS must provide the student's mother with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's mother 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.

Systemic

The MSDE requires that the BCPS provide documentation by the start of the 2012-2013 school year that there is a system in place to ensure that a FAPE is offered to all students who are identified with a disability and are domiciled within its jurisdiction without regard to whether the student is enrolled in the school system. The documentation must describe the actions taken to ensure that the BCPS is properly implementing the requirements of the IDEA and the COMAR, and provide a description of how the BCPS will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violations do not recur.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring (QAM) is being informed of the violations identified through this investigation for consideration during monitoring activities.

Documentation of completion of the required actions is to be submitted to this office 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 complainant and the school system 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

² Compensatory services, for the purpose 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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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 of Facts, conclusions, and corrective actions contained in this Letter of Findings should be addressed to this office in writing. The student's mother 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, in accordance with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/km

cc: Andrés Alonso
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