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Interim State Superintendent of Schools

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May 21, 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: XXXXX
Reference: #12-064

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.

ALLEGATIONS:

On March 22, 2012, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. 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 allegations listed below.

1. The BCPS did not ensure that proper procedures were followed in response to the request the complainant made for an Individualized Education Program (IEP) team meeting in October 2011, in accordance with 34 CFR §§300.324 and .503; and
2. The BCPS did not follow proper procedures when developing the IEP on January 30, 2012¹, in accordance with 34 CFR §300.324. Specifically, the complainant alleged that:
 - a. The BCPS did not ensure the complainant’s input was considered; and
 - b. The BCPS did not ensure that the IEP addresses the student’s emotional needs.

¹ This office initially identified January 23, 2012, as the date this meeting occurred. However, during the course of the investigation, it was discovered that this meeting actually occurred on January 30, 2012 (Docs. p and n).

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 27, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On March 30, 2012, Ms. Moyo conducted a telephone interview with the complainant and clarified the allegations to be investigated.
4. On April 4, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On April 18, 2012, Ms. Moyo reviewed the student's educational record at the BCPS Central Office. Ms. Ruley was present during the review to provide information on the BCPS policies and procedures, as needed.
6. On April 24, 2012, Ms. Moyo and Ms. Tyra Williams, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX and interviewed Ms. XXXXXXXXXXXX, Assistant Principal.

Ms. Ruley attended the site visit as a representative 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 copies of documents from the educational record.

7. On Friday April 27, 2012, Ms. Moyo and Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with Ms. Ruley and Ms. Kimberly Matthews, IEP Chairperson, XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX, BCPS. On the same day, Ms. Ruley provided Ms. Moyo with additional documentation from the student's educational record.
8. On May 8, 2012, Ms. Moyo conducted a telephone interview with the complainant.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. XXXXXXXXXXXXXXXX Development and Learning assessment report, dated October 3, 2011;
 - b. IEP team meeting notice, dated November 1, 2011;
 - c. Complainant's response to the meeting notice, dated November 4, 2011;
 - d. Social Studies class progress report, dated November 11, 2011;

- e. Child Find referral form, dated November 14, 2011;
- f. Consent for assessment, dated November 14, 2011;
- g. Educational assessment report, dated November 16, 2011;
- h. Withdrawal record, dated December 13, 2011;
- i. Correspondence from the BCPS to the complainant; dated December 15, 2011;
- j. IEP team meeting notice, dated January 2, 2012;
- k. Complainant's response to the meeting notice, dated January 6, 2012;
- l. Psychological assessment report, dated January 6, 2012;
- m. IEP team meeting notice, dated January 13, 2012;
- n. IEP, dated January 13 and 30, 2012;
- o. Electronic mail correspondence between XXXXXXXXXXXX school staff and XXXXXXXXXXXXXXXX staff, dated February 6, 2012;
- p. Correspondence from the complainant to the MSDE, received March 22, 2012;
- q. Report of progress, dated March 27, 2012;
- r. Reports of progress, dated April 13, 2012; and
- s. Completed IEP signature page, dated April 23, 2012.

BACKGROUND:

The student is thirteen (13) years old. On January 13, 2012, she was identified as a student with an Other Health Impairment (OHI) under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD) and she receives special education instruction and related services. During the period of time addressed by this investigation, the complainant was provided with notice of the procedural safeguards.

From the start of the 2011-2012 school year through December 13, 2011, the student attended XXXXXXXXXXXXXXXXXXXX, a Baltimore City Public School. On December 15, 2011 the student was granted an administrative transfer to XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX), at the complainant's request (Docs. b, c, e - k, m, n, and p - s).

FINDINGS OF FACTS:

1. On November 1, 2011, the complainant made a written referral for an evaluation under the IDEA. On the same date, an IEP team meeting notice was developed indicating that an IEP team meeting was scheduled for November 14, 2011, in response to the complainant's request for an evaluation. There is no documentation that the complainant requested an evaluation prior to November 1, 2011 (Docs. e, f, n, and review of the educational record).
2. On November 14, 2011, an IEP team meeting was convened and the team considered teacher reports indicating that, even with the provision of interventions including breaks, preferential seating, re-direction, and modified assignments to assist the student with organization and motivation in the classroom, the student was failing her classes. The team also considered an "educational progress report" completed by the student's social studies teacher indicating that she walks in and out of class, does not follow directions,

does not complete assignments, and is unresponsive to requests redirecting her behavior (Docs. d - f).

3. The team also considered information from the complainant indicating she is concerned that the student is angered easily, has difficulty remaining still, and is not doing well in school (Docs. e and f).
4. XXXXXXXXXXXXXXXXXXXX “Development and Learning” assessment report obtained by the complainant was also considered at the meeting. The report indicates that the student exhibits impulsive behaviors, has poor organization skills, has difficulty making friends, is often irritable, and has trouble understanding her school work. The report concludes that the student has ADHD, Oppositional Defiance Disorder (ODD), adjustment disorder, disruptive behavior disorder, and “learning disabilities” in reading and math. Among other recommendations, the report suggests that the student may benefit from a referral for counseling to address ODD behaviors and small classes for math and reading as well as accommodations to provide the student with support. The report further recommends psychological and educational assessments be conducted and that the student be provided with support services in school to assist with her ability to access the curriculum (Doc. a).
5. Based on the data, the team determined that the student was suspected of having a disability under the IDEA and recommended that educational and psychological assessments be conducted. On the same date, the complainant provided the BCPS with consent to conduct the assessments (Docs. e and f)
6. On January 13, 2012, the IEP team, including staff from XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXX, as well as the complainant, convened to review the assessment results. At the meeting, the team considered the assessment results, teacher reports, and a report from the complainant (Doc. n).
7. At the meeting, the team considered the results of the BCPS psychological assessment which indicates the student “exhibits poor concentration, is easily distracted, has difficulty finishing tasks, talks a lot, has a high activity level, and is impulsive.” The report reveals that these behaviors are characteristic of individuals with ADHD. The report also indicates that the student has poor control over feelings of anger and aggression and can be oppositional. The report recommends that the student be provided with supports including checking with the student to ensure she understands directions to assist with processing difficulties, preferential seating to assist with her attention and concentration, and counseling to assist with improving her interpersonal relationships and coping skills (Doc. l).
8. The team also considered the results of the BCPS educational assessment report indicating the student “appears to be functioning below grade level,” has difficulties with fluency and application in the areas of reading, mathematics, and written language. The report recommends supports such as providing the student with short, manageable tasks, modifying class and home work, allowing her to take “mini” breaks between lessons,

addressing specific behaviors when disciplining the student, developing a behavior plan, and teaching the student problem solving strategies (Doc. g).

9. The team also considered reports from the student's teachers that the student has been involved in physical altercations with other students and has exhibited disruptive behaviors in class, since her transfer (Doc. n).
10. The complainant shared with the team that the student receives private counseling on a weekly basis, but she believes the student needs additional support in order to be successful in school (Doc. n).
11. At the meeting, the team considered whether the student has an emotional condition that causes her to display inappropriate behavior. The team determined, while the student has conduct and behavior concerns, the data do not indicate that the student has an emotional disability. However, based on its review of the data, the team did determine that the student is a student with OHI related to ADHD under IDEA and as a result, requires special education services. At the meeting, the team agreed to meet at a later date to develop the IEP (Doc. n).
12. On January 30, 2012, the IEP team, including staff from XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXX, re-convened to develop the IEP. There is documentation that the BCPS issued a written invitation to the meeting, on January 13, 2012; however, the complainant did not attend the meeting. The written summary states that the complainant indicates that she planned to attend the IEP team meeting, but there is no documentation that she provided a written response to the invitation nor is there any documentation of telephone contact between her and school staff regarding the meeting. Moreover, there is no documentation that school staff made efforts to convince the complainant to participate in the meeting (Docs. m, n, and review of the educational record).
13. The IEP developed at the January 30, 2012 IEP meeting includes goals to assist the student with improving her behavior in school by increasing her positive interactions with peers and adults. The IEP also requires the student be provided with special education instruction in a general education classroom with supports and counseling, as a related service to assist the student in achieving the goals. The IEP further includes supports such as repetition of directions to ensure understanding, frequent feedback to encourage the student to continue with positive behaviors, modified tests that provide the student with questions in a clear and concise format, and modified assignments to assist the student understanding and help her to focus (Doc. m).

DISCUSSION/CONCLUSIONS:

Allegation #1: Response to the Complainant's Request for an IEP Team Meeting

When a student is referred, in writing, for evaluation to determine eligibility under the IDEA and in accordance with State regulations, the IEP team must meet to review existing data,

student's teachers regarding the student's classroom performance, and developed an IEP that addresses the behavioral needs identified in the data.

However, based on the Findings of Facts #12 and #13, the MSDE finds that the BCPS did not document efforts to ensure the complainant would participate in the meeting so that her concerns could be considered when developing the IEP. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

ADDITIONAL VIOLATION: PROVISION OF CONSENT FOR SERVICES

FINDINGS OF FACTS:

14. A review of the IEP and reports of the student's progress towards achieving the IEP goals indicates that IEP services were initiated on January 31, 2012 (Docs. n, q, and r).
15. The complainant did not provide consent for the initiation of special education services until April 23, 2012. Further, there is an electronic mail correspondence, dated February 6, 2012, between staff from XXXXXXXXXX and staff from XXXXXXXXXX XXXXXXXXXX documenting that the complainant informed BCPS staff she was unwilling to provide written consent to initiate special education services because she disagreed with the IEP that was developed (Docs. o, p, and s).

DISCUSSION/CONCLUSIONS:

The public agency must obtain informed consent from the student's parent for the initial provision of special education and related services to the student (34 CFR § 300.300 and COMAR 13A.05.01.13(B)). Based on the Findings of Facts #14 and #15, the MSDE finds that there is documentation that school staff began implementing the IEP prior to obtaining written consent from the complainant and as a result, the MSDE finds a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific:

The MSDE requires that the BCPS convene an IEP team meeting to consider the complainant's concerns and to review and revise the IEP, if necessary, to address the needs, no later than June 30, 2012. If the program requires revision, the IEP team must also determine whether the violation related to considering the complainant's concerns had a negative impact on the student's ability to benefit from the program. If there has been a negative impact, the team must determine the amount and nature of *compensatory services*² or other remedy necessary to redress the violation.

² *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).

The BCPS must provide the complainant 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 complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint to resolve the dispute consistent with the IDEA.

School Based:

The MSDE requires the BCPS to provide documentation by July 31, 2012, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the XXXXXXXXXXXX.

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 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 violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of The United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE Office of Quality Assurance and Monitoring (QAM) for its consideration during present or future monitoring of the BCPS.

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 the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

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Dr. Kim Hoffmann
May 21, 2012
Page 9

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 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 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
Nancy Ruley
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XXXXXXXXXX
Dori Wilson
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