



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

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May 29, 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: #12-070

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 our investigation.

**ALLEGATION:**

On March 30, 2012, the MSDE received correspondence from Ms. XXXXXXXX, hereafter “the complainant,” filed on behalf of your son, 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 allegation that the BCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s academic needs since the start of the 2011-2012 school year, in accordance with 34§§300.320 and .324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegation in the complaint.

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2. On April 2, 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 April 13, 2012, Ms. Williams conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On April 16, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On that same date, the MSDE also notified the BCPS of the allegation to be investigated and requested that the BCPS review the alleged violation.
5. On April 23, 2012, Ms. Williams and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX School to review the student's educational record, and interviewed Ms. XXXXXXXXXXXXXXX, IEP Chairperson, and Mr. XXXXXXXX, Principal. 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.
6. On May 16, 2012, Ms. Williams contacted the BCPS via electronic mail and requested additional information about the allegation being investigated.
7. On May 22, 2012, Ms. Williams conducted a telephone interview with the complainant about the allegation being investigated.
8. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. Correspondence from the complainant to the MSDE, received on March 30, 2012;
  - b. IEP Meeting Invitation, dated April 28, 2011;
  - c. Functional Behavior Assessment, dated May 11, 2011;
  - d. Behavioral Intervention Plan, dated May 11, 2011;
  - e. IEP, dated May 12, 2011;
  - f. BCPS Teacher Progress Notes, dated September 8, 2011 – October 4, 2011;
  - g. IEP Meeting Invitation, dated September 16, 2011;
  - h. BCPS Teacher Progress Notes, dated October 4, 2011;
  - i. BCPS Incident Referral, dated October 4, 2011;
  - j. BCPS Suspension Notice, dated October 5, 2011;
  - k. BCPS Educational Progress Report, dated October 5, 2011;
  - l. BCPS Teacher Progress Notes, dated October 12, 2011;
  - m. BCPS Psychological Services Progress Report, dated October 14, 2011;
  - n. Functional Behavioral Assessment, dated October 19, 2011;
  - o. Behavioral Intervention Plan, dated October 19, 2011;
  - p. Prior Written Notice Form, dated October 19, 2011;

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- q. Reevaluation Report, dated October 19, 2011;
- r. IEP, dated October 19, 2011;
- s. BCPS Teacher Progress Notes, dated October 26, 2011;
- t. IEP Meeting Invitation, dated November 17, 2011;
- u. BCPS Home and Hospital Application, dated November 17, 2011;
- v. Correspondence from the BCPS to the complainant, dated November 17, 2012;
- w. BCPS Educational Progress Report, dated November 18, 2011;
- x. BCPS Psychological Progress Report, dated November 18, 2011;
- y. IEP, dated November 18, 2011;
- z. Prior Written Notice Form, dated November 18, 2011;
- aa. Reevaluation Report, dated November 18, 2011;
- bb. IEP Meeting Invitation, dated December 2, 2011;
- cc. IEP, dated December 19, 2011;
- dd. Prior Written Notice Form, dated December 19, 2011;
- ee. Notice and Consent for Assessment, dated December 19, 2011;
- ff. BCPS Home and Hospital Teaching Social Work Progress Report, dated December 19, 2011;
- gg. BCPS Educational Assessment, dated January 4, 2012;
- hh. BCPS Educational Assessment, dated January 6, 2012;
- ii. IEP Meeting Invitation, dated January 10, 2012;
- jj. Correspondence from the BCPS to the complainant, dated January 23, 2012;
- kk. BCPS Psychological Assessment, dated January 26, 2012;
- ll. BCPS Home and Hospital Progress Report, dated February 22, 2012;
- mm. BCPS Functional Behavior Assessment, dated February 27, 2012;
- nn. BCPS Behavioral Intervention Plan, dated February 27, 2012;
- oo. IEP, dated February 27, 2012;
- pp. Prior Written Notice Form, dated February 27, 2012;
- qq. Notice and Consent for Assessment, dated February 27, 2012;
- rr. BCPS Home and Hospital Teaching Social Work Progress Report, dated February 27, 2012;
- ss. IEP revised on February 27, 2012 and March 7, 2012;
- tt. IEP Meeting Invitation, dated April 23, 2012;
- uu. BCPS Functional Behavioral Assessment, dated May 15, 2012;
- vv. BCPS Behavioral Intervention Plan, dated May 15, 2012; and
- ww. IEP, dated May 15, 2012.

### **BACKGROUND:**

The student is nine (9) years old and is in the third (3<sup>rd</sup>) grade. He is identified as a student with an emotional disability under the IDEA, and receives special education instruction and related services. At the start of the 2011-2012 school year, the student attended XXXXX XXXXXXXXXXXX School (XXXXXXXXX). He began receiving Home and Hospital Teaching (HHT) services following the November 17, 2011 verification by his private psychiatrist that the student had an emotional condition that prevented him from attending school.

In March 2012, the student returned to school and began attending XXXXXXXXXXXX XXXXXXXX School (XXXXXXXXXXXXXXXX), as a result of a transfer requested by the complainant.

There is documentation that, during the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Docs. e, r, cc, oo, ss, ww, and interview with the complainant).

### **FINDINGS OF FACTS:**

#### **IEP in Effect at the Start of the 2011-2012 School Year**

1. The IEP in effect on August 29, 2011 was developed on May 12, 2011. At the IEP team meeting, the IEP team considered teacher reports that the student's phonetic and comprehension skills were at the first (1<sup>st</sup>) grade level, his mathematics calculation skills were at the second (2<sup>nd</sup>) grade level, his mathematics problem solving skills were at the first (1<sup>st</sup>) grade level, and his written language expression skills were at the second (2<sup>nd</sup>) grade level. The student's teachers also reported that the student's behaviors of hitting other students and refusing to complete work began to increase despite implemented behavioral interventions. The team considered information from the student's teachers and counseling service provider that the student exhibits these behaviors when he becomes anxious about his classwork and when teased by his classmates (Docs. b-e).
2. The IEP developed on May 12, 2011 included goals for the student to blend sounds and syllables to form words and use a variety of strategies to improve reading comprehension, improve math calculation and word problem solving skills, write in a variety of modes to express ideas, inform, and persuade, and manage anxiety, stress, and frustration and special education instruction to assist him to achieve the goals. The IEP also included the provision of incentives and verbal praise and required the provision of counseling services to assist the student with improving social, conflict resolution, and self-monitoring skills and with managing his frustration. In addition, the IEP required that the student be provided with immediate and frequent feedback to prevent behavior from escalating, instructional support to ensure that the student understands assignments, verbatim reading of materials, frequent breaks, and reduced distractions (Docs. c, d, and e).
3. At the May 12, 2011 meeting, the complainant expressed her desire for the student to continue to receive instruction with nondisabled peers in the general education classroom. The IEP team determined that the least restrictive environment in which the IEP could be implemented was the general education classroom with the provision of supplementary aids and services to address the student's lack of self-control and impulsivity (Docs. e, d, and e).

#### **IEP in Effect From October 19, 2011 to November 18, 2011**

4. On October 19, 2011, the IEP team convened to consider the student's progress. The IEP team raised concern regarding the student's lack of consistent school attendance. The complainant reported that she was keeping him home from school so that he could avoid conflicts with the teacher. The IEP team identified additional behavioral interventions strategies including the provision of "if-then" statements to prompt appropriate behavior and the use of a "break pass" for the student to meet with the school psychologist when he becomes frustrated. The IEP team discussed that school staff would monitor the student's attendance, and that if it did not improve, truancy proceedings would be initiated (Docs. f - r).
5. The IEP team revised the annual IEP goals based on reports of the student's progress and increased the amount of special education instruction to be provided. The team also revised the IEP to include the use of visual cues to assist the student with reading standard print, a behavior contract, and preferential seating. The team further decided that the student would be provided with the services of a Temporary Support Assistant (TSA) to assist him with remaining on task and transitioning to and from locations (Docs. n, o, and r).
6. The IEP team considered whether the IEP could be implemented in less restrictive settings but determined that the least restrictive environment in which it could be implemented was a separate special education classroom for all academic subjects due to the student's need for supports to address his increased frustration with classwork (Docs. p, q, and r).

#### **IEP in Effect From November 18, 2011 to December 19, 2011**

7. On November 18, 2011, the IEP team reconvened and considered information from the student's teachers that the student was not making progress due to continued lack of consistent school attendance. The team also considered information that the student's private psychiatrist had provided verification of his inability to attend school due to an emotional condition. The IEP team determined the Home and Hospital Teaching (HHT) services to be provided and decided that a plan would be developed to return the student to school with a goal to improve attendance and monitor his progress in this area (Docs. t, u, v, w, y, z, and aa).

#### **IEP in Effect From December 19, 2011 to February 27, 2012**

8. On December 19, 2011, the IEP team met to review the student's progress. The HHT service provider reported that the student was able to identify sources of stress, process an upsetting event and choose appropriate coping strategies (Doc s. bb, cc, dd, and ff).
9. At the meeting, the complainant requested that an educational assessment be conducted and the school psychologist recommended an updated psychological assessment in the

area of social/emotional/behavioral development. The IEP team recommended that the assessments be conducted. At that time, the complainant reported that she was requesting an extension of the HHT services (Docs. dd, ee, and cc).

10. On January 23, 2012, the BCPS Home and Hospital Program approved an extension of the HHT services through February 28, 2012 (Doc. jj).

#### **IEP in Effect From February 27, 2012 to May 15, 2012**

11. On February 27, 2012, the IEP Team met to consider assessment results and the student's progress and to revise the IEP in preparation for his return to a school-based program. The January 6, 2012 educational assessment report indicates that the student is working at a third (3<sup>rd</sup>) grade level in letter-word identification and at a second (2<sup>nd</sup>) grade level in reading comprehension. In mathematics, the student was performing at an advanced first (1<sup>st</sup>) grade level in mathematics calculation and at an early first (1<sup>st</sup>) grade level in math problem solving skills. The student performed at an early first (1<sup>st</sup>) grade level in written language (Docs. gg, hh, ii, kk, ll, mm, nn, and oo).
12. At the meeting, the complainant requested that an occupational therapy assessment be conducted because she was concerned that the student has poor handwriting and the IEP team recommended the assessment be conducted (Docs. oo, pp, and qq).
13. The IEP team considered a February 22, 2012 HHT progress report indicating that the student had been refusing to engage in class work on a regular basis since January 20, 2012. The report stated that the student reads well and will answer questions orally, that he earned a perfect score on several spelling tests, and that he can complete math calculations when he is cooperative. It further stated that the student continues to experience crying spells and that he is unable to calm down when this occurs (Doc. ll).
14. The IEP team also considered a February 27, 2012 social work progress report indicating that the student had been demonstrating difficulty complying with tasks. The report contained a recommendation for a highly structured, small classroom setting that includes a hierarchy of consequences and supports (Doc. rr).
15. The IEP Team revised the annual IEP goals based on the student's progress and added a goal for the student to improve school attendance (Doc. ss).

#### **IEP in Effect From May 15, 2012 to the Present**

16. On May 15, 2012, the IEP team convened to consider the results of the occupational therapy assessment and the student's progress since his return to a school-based program after HHT services ended on February 28, 2012. The occupational therapy assessment indicates that the student has very low visual motor integration, below average visual perception, and low motor coordination. The teachers reported that the student's

handwriting often deteriorates when he is rushing to complete a writing task and is inattentive (Docs. tt, uu, and vv).

17. The IEP team revised the annual IEP goals based on the student's progress and added a goal for the student to increase visual and perceptual motor and fine motor skills in order to write legibility and copy accurately. The IEP team decided that the student would be provided with occupational therapy to assist him in achieving the occupational therapy goal (Doc. ww).
18. The team considered less restrictive environments with the provision of supplementary aids and services and decided that the least restrictive environment in which the IEP can be implemented is in a separate special education class with a low teacher-student ratio due to his need to decrease distractibility and anxiety, and increase self-regulation skills (Doc. ww).

#### **DISCUSSION/CONCLUSIONS:**

The IEP must include annual goals and services designed to address the needs that arise from the disability, which are identified from information about the student's present levels of performance (34 CFR §300.320). When determining the levels of academic achievement and functional performance, the team must consider the evaluative data. This includes, among other things, assessment results, information from the student's teachers, and the parent's concerns. In the case of a student whose behavior impedes his learning or that of others, the IEP must include strategies, including the use of positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

In this case, the complainant alleges that the student's IEP does not address his academic needs because he is performing at or below the grade levels at which he was performing a year ago (Doc. a). Based on the Findings of Facts #1 - #6, the MSDE finds that the IEP team considered the assessment data, concerns of the complainant, and information from the student's teachers and service providers about his academic and functional performance and revised the IEP based on the data.

Based on the Findings of Fact #4 and #7, the MSDE finds that the student's lack of consistent school attendance has negatively impacted his ability to access instruction in order to work to increase the level of his academic performance. Based on the Finding of Facts #7 - #18, the MSDE finds that the IEP team continues to consider the student's progress and to add supports to address the student's inferring behaviors. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

Please be advised that both the complainant and the BCPS 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

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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.

Questions regarding the findings, conclusions 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 a Free Appropriate Public Education for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

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

MEF/tw

cc: Andrés Alonso  
Nancy Ruley  
Tiffany Puckett  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
Tyra Williams