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State Superintendent of Schools

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February 28, 2013

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

RE: XXXXX
Reference: #13-034

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 January 4, 2013, 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.

The MSDE investigated the allegation that the BCPS has not ensured that the student has been provided with the transportation services required by the Individualized Education Program (IEP) since the start of the 2012-2013 school year, in accordance with 34 CFR §300.101.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 7, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate General Counsel, BCPS.

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3. On January 8 and 9, 2013 Ms. Stump unsuccessfully attempted to contact the complainant by telephone to clarify the allegation to be investigated.
4. On January 15, 2013, 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 Ms. Hoffmann of the allegation and requested that her office review the alleged violation.
5. On January 24, 2013, Ms. Stump conducted a telephone interview with the complainant.
6. On February 11, 2013, the MSDE received a copy of a written response to the complaint from the BCPS, via electronic mail (e-mail). The MSDE received the original written response from the BCPS, via United States mail on February 13, 2013.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - A. Correspondence and attachments from the complainant to the MSDE, received on January 4, 2013;
 - B. IEP, dated May 18, 2012;
 - C. IEP team meeting sign-in sheet for the October 9, 2012 IEP team meeting;
 - D. IEP, dated October 9, 2012;
 - E. IEP, dated January 9, 2013;
 - F. Behavioral Intervention Plan, dated January 9, 2013; and
 - G. BCPS written response to the complaint, dated February 11, 2013.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with an emotional disability under the IDEA, and receives special education and related services. From the start of the 2012-2013 school year until the end of the first (1st) quarter of the 2012-2013 school year, the student attended XXXXXXXXXXXXX, a nonpublic school, where she was placed by the BCPS. Since November 5, 2012, the student has been attending the XXXXXXXXXXXXXXXXXXXX, another nonpublic school, where she was placed by the BCPS.

During the period of time addressed by this investigation, the complainant was provided with the opportunity to participate in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-f).

FINDINGS OF FACTS:

1. The IEP in effect since the start of the 2012-2013 school year requires that the student be transported to school by a taxicab due to “difficulty coping with peers on the bus” (Docs. b, d, and e).

2. In response to the complaint, the BCPS conducted an internal investigation and found that the student has not been provided with consistent transportation services as required by the IEP since the start of the 2012-2013 school year (Doc. g).
3. The BCPS internal investigation indicates that a factor contributing to the inconsistent transportation services include the taxicab arriving late or not at all to pick up the student. It also indicates that there has been difficulty securing taxicab companies that are willing to transport the student as a result of the student's behavior during her trip to and from school. The BCPS acknowledges that the inconsistent transportation services has impacted the student's ability to access her educational program (Doc. g).
4. On January 9, 2013, the IEP team convened to consider the student's transportation needs. At the meeting, the team decided to transition the student to the use of public bus transportation due to the inconsistent provision of transportation using taxicab services (Docs. e and g).
5. At the meeting, the complainant's attorney raised concerns about the decision and requested adult assistance be provided to the student during transportation. The team rejected the requested based on the student's "cognitive abilities," the determination that the student is "capable of catching the MTA," and the team's desire for the student to "build independence" (Docs. e and g).
6. There is no documentation that, at the January 9, 2013 meeting, the IEP team considered the student's identified social, emotional, and behavioral needs when rejecting the request for adult assistance during transportation. The student has a Behavioral Intervention Plan that states that the student has "poor impulse control," that she "is often off location, that she leaves the assigned areas without permission, has difficulty transitioning appropriately from class to class in a timely manner, and engages in this behavior throughout the day." The plan requires that the student be seated near school staff so that she can be provided with redirection and intervention when she becomes frustrated, as well as physical restraint if she becomes a danger to herself or others (Docs. e-g).

DISCUSSION/CONCLUSIONS:

Provision of services required by the IEP

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the Findings of Facts #1-#3, the MSDE finds that the BCPS has acknowledged that the student has not been consistently provided with the taxicab services required by the IEP. The MSDE appreciates and concurs with the BCPS acknowledgement and, based upon this information, finds that a violation has occurred.

Additional Issue: Considering the student's needs when revising the IEP

When reviewing and revising an IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Based on the Findings of Facts #4-#6, the MSDE finds that while the IEP team convened and addressed the inconsistent arrival time of the taxicab service, the team did not address the student's behaviors, which caused some of the difficulty with providing the transportation services required by the IEP. Based on those same Findings, the MSDE further finds that the team did not consider the student's social, emotional, and behavioral needs when deciding on a transition to public bus transportation. Therefore, the MSDE finds that an additional violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

In its written correspondence, the BCPS indicates that an IEP team meeting will be conducted by April 12, 2013 and compensatory services to remediate the loss of services to the student will be determined. The MSDE concurs with this proposal.

In addition, the MSDE requires the BCPS to ensure that by April 12, 2013, the IEP team determines whether the student requires adult assistance during transportation, that the team considers the student's social, emotional, and behavioral needs when making the determination, and that the team's decision is consistent with the evaluative data.

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

Documentation of all corrective action taken is to be submitted to this office by May 1, 2013, to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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 the complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date

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of this letter, if they disagree with the Findings of Facts 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 Actions 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 a Free Appropriate Public Education for the student, including issues subject to a 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:ks

cc : Andrés Alonso
Charles Brooks
Nancy Ruley
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Martha J. Arthur
Cynthia Amirault
Sarah Spross
Linda Bluth
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