



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

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April 3, 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: #13-046

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.

**ALLEGATION:**

On February 4, 2013, the MSDE received correspondence from Mr. XXXXXXXXXXXX and Ms. XXXXXXXX, hereafter “the complainants,” filed on behalf of the above-referenced student. In that correspondence, the complainants 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 has not ensured that the student has been provided with classroom notes and the special education instruction by a special education teacher in the educational placement required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the allegations in the complaint.
  2. On February 4, 2013, 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 4, 2013, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the student's stepmother and clarified the allegations to be investigated.
  4. On February 8, 2013, the MSDE sent correspondence to the complainants 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 March 11, 2013, Ms. Williams and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXX) to review the student's educational record, and interviewed the BCPS and school staff listed below.
    - a. Ms. Marlene Clark, Individualized Education Program Chairperson, Baltimore IT Academy;
    - b. Ms. XXXXXXXXXXX, Educational Specialist, BCPS;
    - c. Mr. XXXXXXXXXXX, Principal, XXXXXXXXXXXXX;
    - d. Ms. XXXXXXXXXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXXXXX; and
    - e. Ms. XXXXXXXXXXXXXXXXXXX, School Psychologist, XXXXXXXXXXXXXXX.
- Mr. Darnell Henderson, Associate 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. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
    - a. Correspondence from the complainants to the MSDE, received on February 4, 2013;

- b. Report of services missed for students at Baltimore IT Academy, developed by the BCPS, undated;
- c. IEP, dated September 21, 2012; and
- d. IEP, dated January 29, 2013.

**BACKGROUND:**

The student is eleven (11) years old and attends the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXX). He is identified as a student with an Other Health Impairment related to Attention Deficit Hyperactivity Disorder under the IDEA, and has an IEP that requires the provision of special education services.

During the time period addressed by this investigation, the complainants participated in the education decision-making process and were provided with notice of the procedural safeguards (Docs. c and d).

**FINDINGS OF FACTS:**

1. The student's IEP requires special education instruction in both the general education classroom and the separate special education classroom. The IEP also requires that the student be provided with instructional supports including the provision of teacher "notes, or weekly homework/assignment sheets to help [the student] with his organization and to make sure he understands everything he needs to do" (Docs. c and d).
2. There is no documentation that the student has been provided with notes or weekly homework/assignment sheets in any of his classes except for science (Review of the educational record).
3. The BCPS staff acknowledge that, due to an influx of new students into the school at the beginning of the 2012-2013 school year, some of the students who require special education instruction in a separate special education classroom did not receive the amount of instruction required by their IEPs in that environment (Interview with the BCPS staff).
4. The BCPS staff report that this student was in the placement required by his IEP and assert that his IEP was implemented in that placement. However, there is no documentation to support their assertion (Interview with the BCPS staff).
5. The BCPS staff further report that they have taken steps to ensure that all students at the school who require special education instruction in a separate special education classroom are now receiving instruction in that setting. School system staff also report that they are in the process of identifying students who were not provided with special

education instruction in a separate special education classroom, as required by their IEPs, and are convening an IEP team meeting for each student to determine whether there was a negative impact on each student, and if so, the services needed to remediate the loss of services in that setting (Doc. b and interview with the BCPS staff).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that the special education, related services, accommodations, and supplementary aids and services, are provided in the educational placement required but the IEP (34 CFR §§300.101 and .323). The public agency must also ensure that documentation of compliance with the IDEA is maintained for three (3) years (34 CFR §§76.1, 76.731, and 80.42).

In this case, the complainants allege that, on December 10, 2013, the school staff informed them that the student was not receiving special education instruction in a separate special education classroom, as required by the IEP. The complainants also allege that the student has not received the notes or homework sheets, as required by his IEP (Doc. a).

Based on the Findings of Facts #1 and #2, the MSDE finds that there is no documentation that the student has been provided with teacher notes or homework sheets in any class except science, in accordance with the IEP, since the start of the 2012-2013 school year. Further, based on the Findings of Facts #1 and #3-#5, the MSDE finds that there is no documentation that the student has been provided with the frequency of special education instruction in the separate special education classroom that is required by the IEP, since the start of the 2012-2013 school year. Based upon these findings, the MSDE finds that violations have occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student Specific**

The MSDE requires the BCPS to provide documentation by April 30, 2013, that the student is being provided with special education instruction in the educational placement required by the IEP. Also, the MSDE requires the BCPS to provide documentation by the end of the 2012-2013 that the IEP team has convened and determined whether the violations have had a negative impact on the student's ability to benefit from his program, and if so, the services needed to remediate the violation.

The BCPS must provide the complainants 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 complainants disagree with the IEP team's determinations, the complainants maintain the right to request mediation or file a due process complaint, in accordance with the IDEA.

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### **Similarly Situated Students**

The MSDE requires the BCPS to provide documentation by April 30, 2013, that similarly situated students at the Baltimore IT Academy who require special education instruction in a separate special education classroom are being provided with special education instruction in that setting.

The MSDE requires that the BCPS provide documentation by the end of the 2012-2013 school year, that it has identified every similarly situated student and that, for each student identified, the IEP team has determined whether the violation had a negative impact on the student's ability to benefit from the education program. If the IEP team determines that there was a negative impact, the MSDE requires that the BCPS also submit documentation that the team has determined the nature and amount of *compensatory services*<sup>1</sup> necessary to redress the violation identified.

Documentation of all corrective action taken is to be submitted to this office to the attention of the 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 complainants 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 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.

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<sup>1</sup> Compensatory services, for the purposes of this letter, means 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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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants 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  
Charles Brooks  
Darnell Henderson  
XXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur  
Tyra Williams