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State Superintendent of Schools

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April 11, 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: #13-052

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 February 11, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student. In an earlier correspondence received on January 31, 2013,¹ 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 allegations listed below.

1. The BCPS has not ensured that the student has been consistently provided with the amount of special education instruction by the special education teacher, or with the accommodations required by the Individualized Education Program (IEP), since the start of the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323;

¹ On January 31, 2013, the MSDE received correspondence from the complainant containing allegations of violations of the Individuals with Disabilities Education Act (IDEA). On February 11, 2013, the complainant provided this office with the requested remedy, which is required to initiate the complaint investigation (Doc. a)

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2. The BCPS has not ensured that the student's reading needs have been properly identified and addressed since the start of the 2012-2013 school year, in accordance with 34 CFR §300.324; and
3. The BCPS did not ensure that a copy of the IEP was provided to the complainant within five (5) days of the November 29, 2012 IEP team meeting, in accordance with Md. Code. Ann. Educ. §8-405 (2010) and COMAR 13A.05.01.07D(3).

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 11, 2013, 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. February 11, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On February 14, 2013, 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 the BCPS of the allegations and requested that the BCPS review the alleged violations.
5. On March 8, 2013, Ms. Hartman reviewed the student's educational record at the BCPS Central Office. Mr. Darnell L. Henderson, Associate Counsel, BCPS, was present at the record review.
6. On March 18, 2013, Ms. Hartman and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Mr. XXXXXXXXXXX, School Psychologist;
 - b. Mr. XXXXXXXXXXX, Assistant Principal;
 - c. Ms. XXXXXXXX, IEP Chairperson;
 - d. Ms. XXXXXXXX, General Educator; and
 - e. Ms. XXXXXXXXXXX, Special Educator.

Mr. Henderson attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

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 31, 2013 and February 11, 2013;

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- b. IEP, dated June 5, 2012;
- c. IEP, dated November 29, 2012;
- d. IEP, dated February 21, 2013;
- e. Special education teacher's schedule for the 2012-2013 school year;
- f. Special education teacher's notes of consultations with the student's general education teachers for the 2012-2013 school year;
- g. Reports of the student's progress toward achieving the annual IEP goals, dated October 26, 2012 and January 15, 2013;
- h. Regular education teacher's lesson plans during the 2012-2013 school year;
- i. Special education teacher's log of accommodations provided to the student during the 2012-2013 school year; and
- j. School contact log, dated from November 29, 2012 to December 3, 2012.

BACKGROUND:

The student is fourteen (14) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education instruction (Docs. a-d).

FINDINGS OF FACTS:

June 5, 2012 IEP Team Meeting

1. The IEP in effect from the start of the 2012-2013 school year until February 21, 2013 was developed on June 5, 2012. At the June 5, 2012 IEP team meeting, the team discussed that the student's full scale intelligence quotient falls "within the borderline to low average range of cognitive functioning." The team also discussed that the student has Attention Deficit Hyperactivity Disorder (ADHD) and a Specific Learning Disability (SLD) that impact his written language and math problem solving skills (Doc. b).
2. The documentation reflects that the team considered information from the student's teachers about his classroom performance, indicating that the student did not demonstrate needs in the area of reading, and information that the student was "proficient on the last [Maryland State Assessment] in reading." Based on this information, the team decided that the student's disability was not impacting his reading skills (Doc. b).
3. The IEP required that special education instruction be provided to the student in the general education classroom, and identified the general education teacher as the "primary" provider of that instruction. The IEP further stated that the special education instruction was to be provided "with consultation and interventions between the general and special educator." The special education teacher's schedule and notes of consultation with the student's general education teachers document that the special education teacher provided consultation with the general education teachers as required by the IEP (Docs. b, e, and f).
4. The IEP also required that the student be provided with the following accommodations: monitoring of test responses, calculation devices, graphic organizers, extended time for completion of assignments, multiple or frequent breaks, and reduced distractions to the

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student. Reports of the student's progress towards achieving the annual IEP goals, dated October 26, 2012 and January 15, 2013, teacher lesson plans, and a log of accommodations being provided document that the student has been provided with the accommodations required by the IEP (Docs. b, d, and g-i).

November 29, 2012 IEP Team Meeting

5. On November 29, 2012, the IEP team met and discussed the complainant's concerns about whether special education instruction from the special education teacher and accommodations were being provided on a consistent basis. The documentation of the IEP team meeting reflects that the team discussed that, during the first quarter of the 2012-2013 school year, the student was failing language arts and reading (Doc. c).
6. The documentation also reflects that the school-based members of the team explained to the complainant that the "primary" provider of the special education instruction is the general education teacher. At the meeting, the student's general education reading teacher reported that the accommodations were being provided, but that the student did not complete work in these classes. The team also discussed that, in the student's other classes, he was completing work and passing those courses. The student, who was a member of the IEP team, acknowledged that he had not been completing his work, but reported that he had begun completing his assignments in all of his classes during the second quarter of the school year and believed that this would result in improved grades (Doc. c).
7. The documentation also reflects that, at this meeting, the IEP team decided to conduct a reevaluation of the student, and recommended educational, psychological, and cognitive assessments, as well as a classroom observation, be conducted. The IEP was revised to reflect the discussion that took place during the meeting, as well as the team's decision to conduct a reevaluation. The school's communication log documents that a copy of the revised IEP document was mailed to the complainant on December 3, 2012 (Docs. c and j).

February 21, 2013 IEP Team Meeting

8. On February 21, 2013, the IEP team convened to complete the reevaluation of the student. Documentation of the meeting reflects that the IEP team considered the results of the assessments, as well as the complainant's concerns regarding the student's education program (Doc. d)
9. The documentation of the February 21, 2013 IEP team meeting also reflects that the team considered the student's classroom performance, discussed the accommodations being provided and considered the student's progress. The team discussed that the student was demonstrating "work avoidance" and defiance, and not attending classes on a regular basis. The complainant expressed concern that she was not being informed of the student's behavior. Based on this information, the team revised the IEP to require the implementation of a "home communications system," which would provide daily reports to the complainant by the teachers of the student's behavior, homework assignments, class assignments, and class attendance, and require the complainant's sign off on each day's report (Doc. d).

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10. At the February 21, 2013 IEP team meeting, the IEP team added an annual goal for the student to increase his reading comprehension and revised the IEP to require that he be provided with verbatim reading of text to assist him with reading comprehension. The team revised the IEP to increase the amount of special education instruction to be provided to the student. In order to address the complainant's concerns about the provision of instruction by a special education teacher, the IEP team decided that instruction will be provided by the special education teacher in a separate special education classroom in the areas of reading, written language, and math. Additionally, the student will continue to receive special education instruction in the general education classroom provided by the general education teachers in consultation with the special education teacher (Doc. d)
11. The IEP was also revised to require the teachers to provide the student with encouragement and reinforcement of appropriate behavior, as well as verbal and visual cues to remain on task (Doc. d).

DISCUSSION/CONCLUSIONS:

Allegation #1: Consistent Provision of Special Education Instruction from a Special Education Teacher and Provision of Accommodations

The public agency is required to ensure that the student is provided with the special education and accommodations required by the IEP (34 CFR §§300.101 and .323). In developing each student's IEP, the public agency must ensure that the IEP team considers the concerns of the parents for enhancing the education of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must also consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

Provision of Special Education Instruction by a Special Education Teacher

In this case, the complainant alleged that the special education teacher was not providing the student with the amount of special education instruction in the general education classroom required by the IEP (Doc. a and interview with the complainant).

Based on the Findings of Facts #1 – #4, the MSDE finds that the IEP requires the special education teacher to provide consultation to the general education teachers, who are the primary providers of special education instruction in the general education classroom. Based on those same Findings of Facts, the MSDE finds that there is documentation that the special education teacher has provided consultation to the general education teachers, as required. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Provision of Accommodations

In this case, the complainant alleged that the student is not making sufficient academic progress because he is not being provided with accommodations, as required by the IEP (Doc. a and interview with the complainant).

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Based on the Findings of Facts #1, #4, #5, and #9, the MSDE finds that there is documentation that the accommodations are being provided in accordance with the IEP. Based on the Findings of Facts #5, #6, #8, #9, and #11, the MSDE finds that there is documentation that the student's academic progress is negatively impacted by his interfering behaviors, and that the IEP team has considered positive behavioral interventions to address those behaviors. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Allegation #2: IEP that Addresses the Student's Reading Needs

In developing each student's 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 (34 CFR §300.324).

When conducting an investigation of an allegation that a student has not been provided with an appropriate education program under the IDEA, the State Education Agency (SEA) must review the procedures used by a school system to reach determinations about the program. The SEA must also review the evaluative data to determine if the decisions made are consistent with that data. However, the SEA may not overturn an IEP team's decision, even if procedural violations are found (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46601, August 14, 2006).

In this case, the complainant alleged that the BCPS did not ensure that the student's reading needs were properly identified and addressed at the start of the school year. The basis of the allegation is that the IEP did not include goals and services to assist the student with improving reading skills, despite his "borderline to low cognitive ability," and the fact that reading had been identified as an area of need and was addressed by the IEP in the past (Doc. a and interview with the complainant).

Based on the Findings of Facts #1 – #11, the MSDE finds that the IEP team considered information about the student's academic and functional performance, assessment results, and the complainant's concerns, and made decisions about the student's needs in the area of reading comprehension that are consistent with the data. Based on those same Findings of Facts, the MSDE further finds that, when the student's behavior began impacting his progress in reading, the IEP was revised to address the student's behavior and reading needs consistent with the data. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

Allegation #3: Provision of a Copy of the IEP within Five (5) Business Days of the November 29, 2012 IEP Team Meeting

The public agency must ensure that parents are provided with a copy of the student's IEP within five (5) business days of a scheduled IEP team meeting (Md. Code Ann., Educ., §8-405 (2010) and COMAR 13A.05.01.07D(3)).

Based on the Findings of Facts #5 – #7, the MSDE finds that there is documentation that the BCPS provided the complainant with a copy of the revised IEP within five (5) business days of

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the November 29, 2012 IEP team meeting. Therefore, the MSDE does not find that a violation occurred with regard to this 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 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.

Questions regarding the findings and conclusions 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 this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

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

MEF/ch

cc: Andrés Alonso
Charles Brooks
Nancy Ruley
Darnell Henderson
XXXXXXXX
Dori Wilson
Anita Mandis
Christine Hartman