



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

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

April 11, 2013

XXX
XXX
XXX

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: #13-053

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 February 14, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 a Free Appropriate Public Education (FAPE) since October 31, 2012, in accordance with 34 CFR §§300.101 and .324, COMAR 13A.05.01.08, and COMAR 13A.05.01.10.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.

XXX

Dr. Kim Hoffmann

April 11, 2013

Page 2

2. On February 19, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director, BCPS; and Ms. Nancy Ruley, Associate General Counsel, BCPS.
3. On that same date, Ms. Stump conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On February 21, 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 Dr. Hoffmann of the allegation and requested that her office review the alleged violation.
5. On March 13, 2013, Ms. Stump; Ms. Nancy Vorobey, Section Chief, Early Education Section, Programmatic Support and Technical Assistance Branch, MSDE; and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at the BCPS Central Office to review the student's educational record and interviewed Ms. Roberta Courte, Lead, Office of Early Learning, BCPS. Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On March 21, 2013, Ms. Stump and Ms. Hartman conducted a tour of the XXXXX
XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXXXX).
7. On March 27, 2013, Ms. Stump conducted a telephone interview with the complainant.
8. On April 5, 2013, Ms. Stump conducted a telephone interview with XXXX XXXX,
XXXXXXXXXXXX and Individualized Education Program (IEP) Team XXXXXXX, XXX
XXXXXXXXXXXX. Ms. Ruley participated in the phone conference as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence from the complainant to the MSDE, received on February 14, 2013;
 - b. Individualized Family Service Plan, dated July 23, 2012;
 - c. IEP and meeting notice for the October 10, 2012 IEP team meeting;
 - d. Prior Written Notice form, dated October 10, 2012;
 - e. Correspondence from the BCPS to the complainant, dated October 22, 2012;
 - f. Correspondence from the BCPS to the complainant, dated November 15, 2012;
 - g. Electronic mail (e-mail) correspondence among BCPS personnel, dated between January 11 and 15, 2013;
 - h. IEP and meeting notice for the February 14, 2013 IEP team meeting;
 - i. Receipt of Parental Rights Notice form, dated February 14, 2013;

XXX

Dr. Kim Hoffmann

April 11, 2013

Page 3

- j. Prior Written Notice form, dated February 14, 2013;
- k. Parent Contact Log for the 2012-2013 school year;
- l. Occupational Therapist Service provider log for the 2012-2013 school year; and
- m. Student's attendance data for the 2012-2013 school year.

BACKGROUND:

The student is three (3) years old and is identified as a student with a Developmental Delay under the IDEA. On October 10, 2012, an IEP was developed that requires the provision of special education instruction and related services. Prior to October 10, 2012, the student received services through an Extended Individualized Family Service Plan (IFSP) as a student with a Developmental Delay. The services were provided by the Baltimore City Infants and Toddlers Program. The complainant enrolled the student in school on February 28, 2013. On March 1, 2013, the student began attending XXXXXXXXXXX/XXXXXXXX.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a, b, c, h, and i).

FINDINGS OF FACTS:

1. On October 10, 2012, the IEP team developed an IEP for the student after the complainant decided that she no longer wished for her to receive services through an Extended IFSP. The documentation of the meeting indicates that the team determined that the Least Restrictive Environment (LRE) in which the IEP can be implemented with the provision of supplementary aids and services is the separate special education classroom (Docs. c and d).
2. The IEP team determined that the IEP cannot be implemented in the school the student would attend if she were not disabled due to her need for specific services that cannot be provided at that school. The team determined there were no potential harmful effects on the student or the quality of services she requires as a result of the placement decision (Docs. c, d, and interview with BCPS personnel).
3. On October 22, 2012, the BCPS informed the complainant that the student had been assigned to attend a preschool program at XXXXXXXXXXXXXXX, the school that can provide the services the student requires in the closest location to her home (Doc. e).
4. The complainant reports that, after visiting the XXXXXXXXXXXXXXX, she requested that the student be assigned to a preschool program in another school because she reports that school staff informed her that the student's program could not be implemented at that location (Docs. f, g, l, and interviews with both parties).

XXX

Dr. Kim Hoffmann

April 11, 2013

Page 4

5. There is no documentation that the complainant was informed by school staff at XXXXXXXXXXXX that the student's IEP could not be implemented there. Further, school staff at XXXXXXXXXXXXXXXXXXXX report that they did not indicate to the complainant that the IEP cannot be implemented at the school and have no information about what gave the complainant that impression (Review of educational record and interviews with both parties).
6. On November 15, 2012, in response to the complainant's concerns, the school system informed the complainant that the student had been reassigned to XXXXXXXXXXXX XXXXXXXX/XXXXXX School (XXXXXXXXXXXX XX/XX), the only other school with a preschool program in which the student's IEP can be implemented (Doc. f).
7. On January 11, 2013, the complainant informed the BCPS that she did not enroll the student in XXXXXXXXXXXXXXXX due to her concerns regarding the distance that the student would have to travel between the school and her home (Doc. g).
8. On February 14, 2013, the IEP team convened to again consider the student's educational placement as a result of the complainant's concerns about the schools identified by the school system. The documentation of the meeting indicates that the team considered the potential harmful effect of transportation to XXXXXXXXXXXXXXXXXXXX and decided that placement at the school is appropriate (Docs. h and j).
9. There is documentation that the complainant enrolled the student at XXXXXXXXXXXXXXXX XXXXXXXX on March 1, 2013 (Docs. k and m).

DISCUSSION/CONCLUSIONS:

A FAPE must be available to all students with disabilities, birth through the end of the school year in which the student turns twenty-one (21) years old, who reside within the State (COMAR 13A.05.01.01). In order to ensure that the student is provided with a FAPE, each public agency must ensure that the student has an appropriate program and educational placement where the program can be implemented (34 CFR §§300.101 and .323).

The educational placement must be based on the IEP and unless the IEP requires some other arrangement, the public agency must ensure that the student is educated in the school setting that the student would attend if not disabled. If the IEP team determines a student with a disability cannot be educated in the school the student would attend if not disabled, the IEP team must consider any potential harmful effect on the student or the quality of services, including consideration of the specialized transportation needs of the student (34 CFR §300.116 and COMAR 13A.05.01.10C(1)(e)). The consideration of the specialized transportation needs of the student requires a consideration of the effect transportation may have on the student in relation to the student's age, disability, specialized equipment, personnel needed to assist the student during

XXX

Dr. Kim Hoffmann

April 11, 2013

Page 5

transportation, the amount of time involved in transporting the student, and the distance the student will be transported (COMAR 13A.05.01.10C(1)(e)).

In this case, the complainant alleges that the BCPS has not ensured that the student has been offered a FAPE because it has not made an appropriate educational placement available to the student (Doc. a and interviews with the complainant).

Based on the Findings of Facts #1, #2, and #8, the MSDE finds that when determining the educational placement, the IEP team considered whether the IEP can be implemented in the school the student would attend if not disabled. Based on those same Findings, the MSDE further finds that after determining that the IEP cannot be implemented at the student's school, the team determined there were no harmful effects of the placement decisions.

Based on the Findings of Facts #3 - #5, the MSDE finds that there is no documentation that the first school offered by the BCPS was not an appropriate placement. Based on the Finding of Fact #6, the MSDE finds that after the complainant rejected placement at the school located closest to the student's home, the BCPS offered a placement in a preschool program located at another school.

Further, based on the Findings of Facts #7 - #9, the MSDE finds that when the complainant expressed concerns about transportation to that school, the BCPS ensured that the IEP team convened to consider the complainant's concerns about potential harmful effects of placement at that school and determined that the placement was appropriate. Therefore, the MSDE finds that the BCPS followed proper procedures to ensure that an appropriate educational placement has been made available to the student, and does not find that a violation occurred.

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 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,

XXX

Dr. Kim Hoffmann

April 11, 2013

Page 6

placement, or provision of a FAPE 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
 Charlene Iannone-Campbell
 Miriam Greenleaf-Miller
 Nancy Ruley
 XXXXXX
 XXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Vorobey
 Kathy Stump