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April 19, 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: 13-056

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 19, 2013, the MSDE received a complaint from XXXXXXXXXXXXXXXX, Esquire, hereafter, “the complainant,” on behalf of 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) with respect to the above-referenced student. The MSDE investigated the allegation that the BCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s social/emotional/behavioral needs from February, 2012¹ to October, 2012, in accordance with 34 CFR §300.324.

¹ The complainant alleged that the violation began prior to this date. She was informed in writing, on February 28, 2013, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received (34 CFR §300.153).

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 20, 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. On February 25, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegation to be investigated.
4. On February 28, 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 the BCPS of the allegation and requested that the BCPS review the alleged violation.
5. On March 13, 2013, Ms. Hartman reviewed the student's educational record at the BCPS's Central Office. On the same date, Ms. Hartman and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX XXXXX, and interviewed the following school staff:
 - a. Mrs. XXXXXXXXXXXX, Special Educator;
 - b. Ms. XXXXXXXX, Principal; and
 - c. Ms. XXXXXXXXXXXX, IEP Chairperson.

Ms. Ruley was present at the record review and attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

6. 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 February 19, 2013;
 - b. IEP, dated October 12, 2011;
 - c. IEP, dated April 19, 2012;
 - d. IEP, dated June 6, 2012;
 - e. Functional Behavioral Assessment and Behavioral Intervention Plan, dated May 31, 2011;
 - f. Correspondence from the BCPS to the student's parent, dated July 11, 2012;
 - g. Correspondence from the BCPS to the student's parent, undated;
 - h. Correspondence from the BCPS to the student's parent, dated May 31, 2012, assigning the student to Calverton Elementary School;
 - i. Communication Log, dated between August 29, 2012 and September 24, 2012;

- j. Notice of IEP Team Meeting, dated August 29, 2012;
- k. Correspondences from the student's parent to the BCPS, dated September 19 and 21, 2012;
- l. Correspondence from the BCPS to the student's parent, dated September 25, 2012;
- m. Therapeutic Service Log, dated between October 4, 2012 and October 24, 2012;
- n. IEP, dated October 2, 2012;
- o. Report of the student's classroom performance by the student's Extended School Year teacher, dated September 21, 2012;
- p. IEP, dated October 25, 2012; and
- q. Functional Behavioral Assessment and Behavioral Intervention Plan, dated October 25, 2012.

BACKGROUND:

The student is six (6) years old and is identified as a student with a Developmental Delay under the IDEA. He currently attends XXXXXXXXXXXXXXXXXXXXXXXX, a public separate special education school, where he receives special education instruction and related services.

During the 2011-2012 school year, the student participated in an Early Learning Environment (ELE)² preschool program for four (4) year olds located at XXXXXXXXXXXXXXXXXXXXXXXX.

At the start of the 2012-2013 school year, the student participated in an ELE² preschool program for five (5) year olds located at XXXXXXXXXXXXXXXXXXXXXXXX. On September 18, 2012, the student was assigned to an ELE² preschool program for five (5) year olds at XXXXXXXXXXXXXXXX as a result of a request for a transfer that was made by the parent.³

On October 25, 2012, the student was assigned to XXXXXXXXXXXXXXXXXXXXXXXX as a result of a change in educational placement determined by the IEP team.

During the period of time addressed by this investigation, the student's parent participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-r).

² The ELE program is a special education program for preschool aged children with educational and language delays within the BCPS which can include instruction in a general education classroom, a special education classroom, or a combination of general and special education classrooms (<http://www.baltimorecityschools.org/Page/220>).

³ The student lives with his grandmother, who is acting as a "parent" under the IDEA. For the purposes of this Letter of Findings, the student's grandparent will be referred to as the "parent."

FINDINGS OF FACTS:

2011-2012 School Year

October 12, 2011 IEP Team Meeting

1. The IEP in effect in February 2012, the start of the time period covered by this investigation, was developed on October 12, 2011. At the October 12, 2011 IEP team meeting, the team considered information from school staff that the student exhibits “disrespectful,” “aggressive” and “disruptive” behavior at school, including fighting with other children and adults, and has difficulty transitioning to different activities (Doc. b).
2. The IEP team also considered information provided by the parent that the student has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Autism by his private physician, as well as her concern that he requires additional support in a full-day program to address his behavioral needs (Doc. b)
3. The IEP team revised the annual IEP goal for the student to improve his social/emotional/behavioral skills based upon parent and school staff information about his current levels of functional performance. In order to assist him in achieving the goal, the IEP team determined that the student would be provided with an increased amount of special education instruction and that it would be provided in both the general and separate special education classrooms. The team also decided that the student would be provided with advance preparation for schedule changes (Doc. b).

April 19, 2012 IEP Team Meeting

4. On April 19, 2012, the IEP team convened and considered information from school staff that, when properly motivated, the student would sometimes participate in group activities and interact with peers, but that his behavior was inconsistent, and that he continued to display “impulsive” and “aggressive” behavior. It also considered school staff reports that the student continued to have difficulty adjusting to changes and with transitioning to different activities, but that he had begun to increase his social interaction (Doc. c).
5. The IEP team also considered the parent’s concern that the student continued to demonstrate difficulty with transitions, as well as her concerns that the student was “babbling” and was unable to retain information (Doc. c).
6. The IEP team revised the annual IEP goal for the student to improve his social/emotional/behavioral skills based upon current school staff reports about his current levels of functional performance and recommended that a Functional Behavioral Assessment (FBA) be conducted in order to obtain additional information needed to address his continued difficulty with transitions. The IEP team also revised the annual

IEP goal for the student to improve his speech/language skills based on the parent's concern about "babbling" (Doc. c).

7. The IEP team considered whether the IEP could be implemented in the general education and separate special education classrooms. The team decided that, even with the provision of supplementary aides and services, the Least Restrictive Environment (LRE) in which the IEP could be implemented was a separate special education classroom due to the student's need for increased supports to address his inconsistent progress with improving his social skills and making transitions (Doc. c).

June 6, 2012 IEP Team Meeting

8. On June 6, 2012, the IEP team convened and considered the results of the FBA, indicating that the student's behaviors are "attention-seeking" in nature and are triggered or exacerbated by when he feels ignored by adults or peers. The FBA also indicated that the behavioral intervention strategies that had been utilized were unsuccessful, and recommended new strategies, including a daily behavior chart, a home-school communication log, positive reinforcement for desirable behaviors, preferential seating, frequent breaks, and a peer buddy (Docs. d and e).
9. The IEP team also considered information from the student's teachers that the student has made progress on the IEP goals, but that his performance is inconsistent due to his behavior (Doc. d).
10. The IEP team also considered information from the parent that the student has been diagnosed with Bipolar Disorder and that she disagreed with reports of school staff about the student's progress, including information that the student was able to copy information from the chalkboard (Doc. d).
11. The IEP team revised the annual IEP goals based on the information about the student's current levels of functional performance and decided that additional supports would be provided, including visual cues, frequent or immediate feedback, frequent eye contact, and proximity control. The IEP team also developed a Behavioral Intervention Plan (BIP) that required the use of a daily behavior chart, positive incentives, a home-school communication log, social breaks accompanied by a peer, and seating next to a preferred peer or adult (Doc. d).
12. The student's parent expressed concern that the student be placed in a preschool program that could address his needs for the 2012-2013 school year. The team decided that the student would participate in the preschool program for five (5) year olds located at XXXXXXXXXXXXXXXXXXXX because it was the school closest to the student's home with an ELE² preschool program for his age group (Doc. d).

13. The IEP team also determined that the student would be provided with Extended School Year (ESY) services to address the annual IEP goal related to improving his social/emotional/behavioral skills (Doc. d).

Extended School Year (ESY)

14. Correspondences from the student's ESY teachers to the student's parent document that the student continued to demonstrate aggressive and disruptive behavior interspersed with periods of acceptable behavior while participating in the ESY program (Docs. f and g).

2012-2013 School Year

15. At the start of the 2012-2013 school year, the student began attending XXXXXX XXXXXXXXXXXXX in the ELE² preschool program for five (5) year olds, but transferred to the same program located at XXXXXXXXXXXXXXXXXXXX on September 18, 2012, at the parent's request (Docs. a, h and i, and interviews with the BCPS staff).
16. While the student was still attending XXXXXXXXXXXXXXXXXXXX, the parent requested that an IEP team meeting be expedited in order to conduct a reevaluation. The IEP team meeting was scheduled for September 20, 2012. However, because the student began attending XXXXXXXXXXXXXXXXXXXX on September 18, 2012, the parent requested that the meeting at XXXXXXXXXXXXXXXXXXXX be cancelled, and requested that XXXXX XXXXXXXXXXXX convene an IEP team meeting on an expedited basis (Docs. i-k).
17. The documentation reflects that the student experienced difficulty transitioning to XXXX XXXXXXXXXXXXX and exhibited aggressive and disruptive behaviors. The student received a two (2) day disciplinary removal from school on September 25, 2012 as a result of such behavior (Docs. i, l and m).

October 2, 2012 IEP Team Meeting

18. On October 2, 2012, the IEP team convened and considered information shared by the parent that the student receives private counseling from a behavioral specialist twice monthly, and has been admitted to a psychiatric hospital on an in-patient basis in the past, as well as her concern that the educational placement be appropriate to meet his emotional needs (Doc. n).
19. The IEP team also considered information from the student's teachers, including the teacher who provided ESY services, which indicates that the student continued to display aggressive and disruptive behavior, demonstrate difficulty with transitions to different activities, and engages in power struggles with adults (Docs. n and o).
20. The IEP team recommended that psychological, educational, and speech/language assessments be conducted, as well as another FBA. The IEP team determined that

additional supports would be provided to the student pending the completion of the reevaluation, including redirection of behaviors, adult support, reinforcement of positive behavior through verbal and non-verbal communication, frequent changes in activities or opportunities for movement, a visual behavior chart, use of a “first/then” board to denote order of activities, and home-school communication. The IEP team also decided that passive physical restraint would be used as a behavioral intervention during periods of crisis so the student would not hurt himself or others (Doc. n).

October 25, 2012 IEP Team Meeting

21. On October 25, 2012, the IEP team considered the assessment results indicating “significant deficits” in fine motor, cognitive, and language skills, a “severe delay” in auditory and expressive skills, and stereotypical behaviors in the “average range” for Autism. The data reflects that, while the student has “emotional limitations,” he has the ability to play with other children appropriately, and can stop himself from hitting if he has not fully escalated (Doc. p).
22. The IEP team also reviewed the results of the FBA, indicating that the student acts out when transitioning to a non-preferred location or activity, and that his behavior escalates when he is ignored and when he has an audience. The FBA also indicated that the behavioral intervention strategies that had been utilized were only partially successful, and recommended that additional strategies be used, including a picture schedule, a “first/then” chart, redirection, and close adult proximity at all times (Docs. p and q)
23. The IEP team also considered teacher reports indicating that the student continues to exhibit aggressive behavior, but at times can play with other children if his behavior has not escalated (Doc. p).
24. Based on this data, the IEP team revised the annual IEP goals, and determined that the student will be provided with psychological counseling on a weekly basis. The IEP team also determined that the student will be provided with additional supplemental supports, including a structured behavior management plan, crisis intervention, and social stories. The team also decided that monthly consultation between school staff and a school psychologist would occur (Doc. p).
25. The IEP team also revised the BIP to require the use of a picture schedule, a “first/then” chart, redirection, and close adult proximity at all times, to assist the student with transitioning to non-preferred locations and activities (docs. p and q).
26. The IEP team considered the parent’s request for placement in a nonpublic separate special education school. The team decided that the LRE in which the IEP can be implemented is a public separate special education school due to the student’s need for a small school environment, limited requirements for transition, intensive specialized

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instruction with a low student/teacher ratio, social work and psychological services, and crisis intervention services (Doc. q).

DISCUSSION/CONCLUSIONS:

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. 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).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

In this case, the complainant alleges that the IEP was not reviewed in a timely manner to address the lack of expected progress toward achieving the annual IEP goal related to his social/emotional/behavioral needs. The complainant further alleges that, prior to October 2, 2012, the IEP was not revised to address the student's behavior (Doc. a).

Based on the Findings of Facts #1 – #26, the MSDE finds that, during the time period addressed by this investigation, the IEP team met throughout the school year to consider the student's progress, determined additional data needed, considered the parent's concerns, and revised the IEP consistent with the data. Therefore, the MSDE does not find that a violation has occurred.

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency must review the procedures used by a school system to reach determinations about the program. Additionally, the State Educational Agency must review the evaluation data to determine if decisions made by the IEP team are consistent with the data (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).

This office understands that the parent disagrees with the IEP team's decisions regarding the student's IEP and educational placement.

While the State Educational Agency may require corrective actions when violations are identified in determining an appropriate educational program for a student, it may not overturn an IEP team's decisions. Since no violations were identified, this office does not have the authority to require the

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school system to take further action. However, the parent may challenge the IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20).

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 student's parent 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: XXXXXXXXXXXX
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