



April 25, 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: #13-062

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 20, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 has not ensured that the student has been provided with prompts to use an assistive technology device in science class, as 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.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.

XXX

Dr. Kim Hoffmann

April 25, 2013

Page 2

2. On February 22, 2013, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant and clarified the allegation to be investigated.
3. On February 25, 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 Counsel, BCPS.
4. On March 8, 2013, the MSDE sent correspondence to the complainant 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 April 5, 2013, Ms. Williams and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed school staff listed below.
  - a. Ms. XXXXXXXXXXXXX, Science Teacher;
  - b. Mr. XXXXXXXXXXX, Managing Assistant Principal; and
  - c. Ms. XXXXXXXX, IEP Chairperson.

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. 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 20, 2013;
  - b. BCPS Assistive Technology Communication Log, dated August 27, 2012 through December 20, 2012;
  - c. IEP, dated October 13, 2011;
  - d. IEP, dated October 2, 2012;
  - e. Electronic correspondence (email) among school staff, dated December 11, 2012;
  - f. Email among school staff, dated January 9, 2013;
  - g. Email from school staff to the complainant, dated February 15, 2013;
  - h. Email from the complainant to school staff, dated February 15, 2013;
  - i. Email from the complainant to school staff, dated February 24, 2013; and
  - j. IEP, dated April 10, 2013.

**BACKGROUND:**

The student is eleven (11) years old and attends the XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). She 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.

XXX

Dr. Kim Hoffmann

April 25, 2013

Page 3

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

### **FINDINGS OF FACTS:**

1. The IEPs in effect during the time period of this investigation require the provision of special education instruction in a general education classroom and the supplementary aids and services listed below.
  - Use of a portable word processor that is “available to [the student] for the completion of written work during the school day;”
  - Assistance with organization through “adult support from the general and special educators in order to assist [the student] with organization of her materials in order to complete tasks and transition to the next activity in a timely manner;”
  - Continuous monitoring of independent work by teachers “to ensure that [the student] is focused on the task(s) at hand;” and
  - “[A]dult support to assist [the student] in initiating and sustaining attention, including nonverbal and verbal cues and prompts” (Docs. c, d, and j).
2. The email correspondence between school staff and the complainant documents that, since December 11, 2012, the complainant has expressed concerns about the lack of the provision of prompting for the student by the science teacher. Specifically, the complainant was concerned that this prompting was not provided in order to assist the student with using the portable word processor to complete work in the classroom. She was also concerned that the student was not being prompted to print out her homework stored on her word processor at school each day. These emails reflect that the science teacher and the complainant did not have a mutual understanding of the supports required by the IEP (Docs. a, b, and e - i).
3. On April 10, 2013, the IEP team met to discuss the complainant’s concerns and revised the IEP to clarify that the student “requires ongoing, daily prompting during class time to encourage her to use [assistive technology] for the appropriate assignments” (Doc. j).
4. The revised IEP also states that the complainant agreed to print out the student’s homework at home once it was completed so that she would have to bring it to school each day (Doc. j).

### **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 by the IEP

(34 CFR §§300.101 and .323). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p. 12479, March 1999).<sup>1</sup>

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate. The public agency must also ensure that the IEP team reviews and revises the IEP, as appropriate, to address information about the student provided to or by the parents, or the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #1 and #2, the MSDE finds that there is documentation that since December 11, 2012, the complainant has requested assistance with ensuring that the student be provided with prompting to use her assistive technology device in her science class. Further, based on the Findings of Facts #1 and #2, and the complainant and the science teacher did not have a mutual understanding of the supports required by the IEP. Based on the Findings of Facts #3 and #4, the MSDE finds that the BCPS did not ensure that the IEP was reviewed and revised to clarify the IEP requirements in response to this information, until April 10, 2013.

Thus, the MSDE finds that the IEP wasn't written clearly with respect to the support to be provided until it was revised on April 10, 2013. Therefore, this office finds that the BCPS did not ensure that supplementary aids and services were provided in the student's science class in accordance with the IEP team's decisions and a violation occurred.

### **CORRECTIVE ACTION/TIMELINE:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by the end of the 2012-2013 school year that the IEP team has determined whether the violation had a negative impact on the student's ability to benefit from her educational program, and if so, the remedy for the violation.

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, the complainant 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 to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

---

<sup>1</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

XXX  
Dr. Kim Hoffmann  
April 25, 2013  
Page 5

**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 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. Pending the decision on a request for reconsideration, the BCPS must implement the Corrective Action consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the Findings, Conclusions and Corrective Action contained in this letter should be addressed to this office in writing. The complainant and the BCPS 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  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur  
Tyra Williams