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State Superintendent of Schools

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March 1, 2013

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Ms. Kalisha Miller
Director of Special Education
Baltimore County Public Schools
6901 Charles Street
Towson, Maryland 21204

RE: XXXXX
Reference: #13-029

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 January 2, 2013,¹ the MSDE received a complaint from Mr. XXXXXXXXXXX and Dr. XXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son. In that correspondence, the complainants alleged that the Baltimore County 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 an Individualized Education Program (IEP) has been developed that contains a statement of the special education services determined by the IEP team on June 5, 2012, in accordance with 34 CFR §300.320. Specifically, the complainants alleged that the IEP team decided that the student would be provided with a behavioral plan, study carrels, a supervised lunch, modified homework, in-class homework, and increased interaction with a social group.

¹ On December 18, 2012, the MSDE notified the student’s mother that the IDEA requires a proposed remedy for the school system to provide in order to resolve the complaint. On January 2, 2013, the MSDE received this information via electronic mail.

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2. The BCPS has not ensured that the student has been provided with the special education services determined by the IEP team on June 5, 2012, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the student has been provided with special education instruction during the student's lunch period, as required by the IEP, since January 2012, in accordance with 34 CFR §§300.101 and .323.
4. The BCPS did not provide the complainants with copies of the assessments and data charts at least five (5) business days prior to the meeting scheduled on April 20, 2012, in accordance with Md. Code Ann., Educ. §8-405 and COMAR 13A.05.01.07D(3).
5. The BCPS did not provide the complainants with a copy of the draft IEP within five (5) business days after the April 20, 2012 IEP team meeting, and a copy of the final IEP within five (5) business days after the June 5, 2012 IEP team meeting, in accordance with Md. Code Ann., Educ. §8-405 and COMAR 13A.05.01.07D(3).

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 18, 2012, Ms. Kathy Stump, Education Program Specialist, MSDE spoke with the student's mother, by telephone, to explain that the IDEA requires that a complaint include a proposed remedy in order for a complaint investigation to be initiated.
3. On January 2, 2013, the student's mother provided the MSDE with a proposed remedy and the complaint investigation was initiated.
4. On January 2, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS; Mr. Stephen Cowles, Associate General Counsel, Special Education Compliance, BCPS; and Ms. Sharon Floyd, Supervisor of Compliance, BCPS.
5. On January 11, 14, 18, and 23, 2013, the student's mother provided the MSDE with documentation to be considered during the investigation.
6. On January 15, 2013, Ms. Williams conducted a telephone interview with the student's mother to clarify the allegations to be investigated.
7. On January 18, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this

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investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.

8. On January 29, 2013, the BCPS provided the MSDE with documentation to be considered during the investigation.
9. On February 11, 2013, Ms. Williams and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXX XXXXXX School to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Special Education/Resource Teacher;
 - b. Ms. XXXXXXXXXXXX, Occupational Therapist;
 - c. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - d. Ms. XXXXXXXXXXXX, Principal; and
 - e. Mr. XXXXXXXXXXXX, Assistant Principal.

Ms. Pamela Weitz, Compliance Support, Special Education Compliance, BCPS attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

10. On February 13, 2013, Ms. Williams conducted a telephone interview with the student's mother regarding the allegations being investigated.
11. On February 13, 2013, the MSDE requested additional information and documentation from the BCPS regarding the complaint investigation.
12. On February 14, 2013, the student's mother provided the MSDE with additional documentation to be considered during the investigation.
13. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings are listed below.
 - a. Correspondence from the complainants to the MSDE alleging violations of the IDEA, received on January 2, 2013;
 - b. IEP, dated November 17, 2011;
 - c. IEP Team Meeting Notice, dated March 26, 2012;
 - d. IEP Team Meeting Notes, dated April 20, 2012;
 - e. Consent for assessments, dated April 20, 2012;
 - f. IEP Team Meeting Notice, dated April 25, 2012;
 - g. Speech and Language Assessment, dated May 22, 2012;
 - h. IEP Team Meeting Notes, dated June 5, 2012;
 - i. Statement of Special Education Services, for the 2012 – 2013 school year;

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- j. Social Skills Training Notes, dated from September 28, 2012 through December 12, 2012;
- k. IEP Team Meeting Invitation, dated November 2, 2012;
- l. Electronic correspondence to the student's mother from the BCPS staff, dated November 9, 2012;
- m. Electronic correspondence from the student's mother to the BCPS, dated November 10, 2012;
- n. Team Meeting Invitation, dated December 2, 2012;
- o. IEP Team Meeting Notes, dated December 14, 2012; and
- p. Electronic correspondence to the student's mother from the BCPS staff, dated January 7, 2013.

BACKGROUND:

The student is six (6) years old, is identified as a student with a developmental delay under the IDEA, and has an IEP that requires special education and related services. He attends XXXXXX XXXXXXXXXXXX (XXXXXXX). During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. b, c, d, f, h, k, n, and o).

ALLEGATIONS #1, #2, AND #3: IEP CONTENT AND IMPLEMENTATION

FINDINGS OF FACTS:

IEP Revisions

1. On June 5, 2012, the IEP team convened to consider the results of a speech/language assessment, recommended by the IEP team on April 20, 2012, in response to concerns with articulation expressed by the student's mother. The meeting summary indicates that, after reviewing the assessment data, the IEP team determined that the student did not have needs in the area of articulation (Docs. c, d, e, f, g, and h).
2. At the June 5, 2012 meeting, the IEP team also considered concerns expressed by the student's mother that the student was having difficulty completing homework. In response to these concerns, the school staff reported on various supports being provided to the student in the classroom to ensure his understanding of instruction. The complainants expressed concerns that the student may need to be retained in Kindergarten if he will not be provided with the same level of support to ensure understanding of the instruction next year. School staff explained that retaining the student might cause him frustration since he had acquired the skills learned in Kindergarten, and assured the complainants that the student would continue to receive the same level of support next year (Doc. h).

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3. On November 10, 2012, the student's mother sent school staff electronic correspondence complaining that she did not receive a revised IEP following the Spring 2012 meetings that reflected the IEP team's decisions to require the provision of additional services. The student's mother described the services as including "modified homework plans, in school study periods to eliminate the hours spent on homework, assistive technology to reduce distractions, a behavioral plan, etc..." (Doc. m).
4. There is no information or documentation that school staff refuted the assertions of the student's mother that the IEP team decided that services would be added to the IEP and the written IEP document was not revised after either the April 20, 2012 or June 5, 2012 IEP team meetings (Review of the record).

Behavioral Plan and Social Group Interaction

5. The IEP requires social/behavioral supports that include the "use of positive/concrete reinforcers daily as needed" and social group interaction "weekly as needed." The IEP states that the behavioral supports "may include" using a positive behavioral plan with immediate reinforcers (Doc. b).
6. There is documentation that, at the April 20, 2012 IEP team meeting, the student's mother expressed concerns about the student's willingness to hug strangers. The written summary of the April 20, 2012 meeting states that the IEP team determined that the behavior would be addressed through social group interaction and the provision of "social stories" (Doc. d).
7. Although there is documentation that the student is provided with social group interaction, there is no documentation that the concerns expressed by the student's mother on April 20, 2012 have been addressed through social group interaction activities. In addition, there is no documentation that the concerns were addressed through the use of "social stories" (Docs. d and j).
8. There is no documentation that the student is provided with supports in accordance with the support of a behavioral plan (Review of the educational record).

Study Carrels

9. The student's IEP requires preferential seating to limit distractions, but does not require the use of a study carrel for this purpose (Doc. b).

Supervised Lunch and Special Education Instruction at Lunch

10. The student's IEP does not require the student to be provided with special education instruction or supports, such as adult supervision during lunch (Doc. b).

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11. There is documentation that the assistant principal provided the student's mother with a "Schedule of Services" for the 2012-2013 school year that states that "services listed on the current IEP" include "feeding assistance," which consists of school staff encouraging the student to eat his food. School staff report that this support is being provided at the request of the student's mother, who has indicated to them that the student has been diagnosed with "failure to thrive," but that there has been no decision made by the IEP team that this is a required part of the educational program (Doc. i).
12. In addition to the correspondence from the assistant principal, the student's general education teacher sent the student's mother electronic correspondence on January 7, 2013, indicating that services provided during lunch are considered "part of the special education program." In that electronic correspondence, the teacher indicated that the student's mother should add thirty (30) minutes for lunch to the amount of time for the provision of special education instruction that is stated on the IEP in order to understand the amount of services being provided. While the teacher indicated that special education services are being provided during lunch, she did not characterize the service specifically as special education instruction (Docs. l and p).

Modified Homework

13. The IEP does not require that the student's homework be modified (Doc. b).
14. The written summary of the June 5, 2012 IEP team meeting states that the student's mother expressed concerns that the student was having difficulty completing homework. In response to these concerns, the school staff reported on various supports being provided to the student in the classroom to ensure his understanding of instruction (Doc. h).
15. There is no documentation that the student's homework is being modified (Review of the educational record).

Completion of Homework at School

16. The IEP does not require that the student be provided with time to complete homework at school (Doc. b).
17. There is documentation that, during the 2012-2013 school year, "[h]omework is completed in the school if not finished in the home;" but, there is no documentation that a study period has been added to the student's schedule in order for him to complete his homework (Doc. o).

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DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP (34 CFR §300.101). In order to ensure that the student receives the services required, the IEP must include a clear statement of the special education instruction, related services, and supplementary aids and services to be provided (34 CFR§300.320). The IEP must be written in a manner that is clear to all persons involved in the development and implementation of the IEP (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999²).

In this case, the complainants alleged that the IEP team decided that the student would be provided with a behavioral plan, increased interaction with a social group, use of study carrels, adult supervision and special education instruction at lunch, modified homework, and time to complete homework at school. The complainants assert that these services have not been provided because the IEP was not revised to reflect the IEP team's decisions (Doc. [complaint]).

Allegation #1a: IEP Content – Behavioral Plan

Based on the Findings of Facts #3 - #5, and #8, the MSDE finds that there is documentation that reflects that there is disagreement about whether the IEP team decided that a behavioral plan is required, but the BCPS has not ensured that the IEP team has reviewed and revised the IEP to ensure that it is written clearly. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Allegation #2a: IEP Implementation – Behavioral Plan

As stated above, the MSDE finds that the IEP is not written clearly with respect to the provision of supports in accordance with a behavioral plan. Therefore, the MSDE finds that the BCPS has not ensured the student has been provided with behavioral supports, in accordance with the IEP team's decisions, and that a violation occurred with regard to this aspect of the allegation.

Allegation #1b: IEP Content – Social Group Interaction

Based on the Findings of Facts #5 and #6, the MSDE finds that there is documentation from the April 20, 2012 IEP team meeting that the IEP team decided that the student would be provided with increased social group interaction and social stories to address specific behavior, but that the BCPS has not ensured that the IEP has been revised to reflect this determination. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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Allegation #2b: IEP Implementation – Social Group Interaction

Based on the Finding of Fact #7, there is no documentation that the student's behaviors have been addressed through social group interaction activities or the provision of social stories in accordance with the decisions made at the IEP team meeting on April 20, 2012. Therefore, the MSDE finds that a violation has occurred with regard to this aspect of the allegation.

Allegation #1c: IEP Content – Study Carrels

Based on the Finding of Fact #9, the MSDE finds that the IEP does not specifically require that the student be provided with the use of a study carrel and there is no documentation that the IEP team determined it is required. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #2c: IEP Implementation – Study Carrels

As stated above, the MSDE finds that there is no documentation that the team decided that the use of a study carrel is required. Therefore, the MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Allegation #1d: IEP Content – Modified Homework

Based on the Findings of Facts #3, #4, #13 - #15, the MSDE finds that there is documentation that there is disagreement about whether the IEP team decided that the student must be provided with modified homework, but the BCPS has not ensured that the IEP team has reviewed and revised the IEP to ensure that it is written clearly. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Allegation #2d: IEP Implementation – Modified Homework

As stated above, the MSDE finds that the IEP is not written clearly with respect to the provision of modified homework. Therefore, the MSDE finds that the BCPS has not ensured the student has been provided with the accommodations to assist him with completing homework, in accordance with the IEP team's decisions. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Allegation #1e: IEP Content – Completion of Homework at School

Based on the Findings of Facts #1, #2, #16, and #17, the MSDE finds existing documentation that there is disagreement about whether the IEP team decided that the student is to be provided with a study period to complete homework, but has not ensured that the IEP team reviewed and revised the IEP to ensure that it is written clearly. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

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Allegation #2e: IEP Implementation – Completion of Homework at School

As stated above, the MSDE finds that the IEP is not written clearly with respect to the provision of a study period to complete homework. Therefore the MSDE finds that the BCPS has not ensured that the student has been provided with the supports to assist him in completing homework, in accordance with the IEP team's decisions. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

Allegation #1f: IEP Content – Adult Supervision at Lunch

Based on the Findings of Facts #10 - #12, the MSDE finds that the IEP does not require the provision of adult supervision at lunch, but that school staff indicated to the student's mother that provision of such supports are a part of the student's special education program. Based on the same Findings of Facts, the MSDE finds that despite the provision of this information to the student's mother there is disagreement among school staff about whether the IEP team decided that supports are required as a part of the student's special education program. However, the BCPS has not ensured that the IEP team has reviewed and revised the IEP to ensure that it is written clearly regarding the provision of adult supervision at lunch. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #2f: IEP Implementation – Adult Supervision at Lunch

As stated above, the MSDE finds that the IEP is not written clearly with respect to the provision of adult supervision at lunch. Therefore, the MSDE finds that the BCPS has not ensured the provision the support of adult supervision at lunch is in accordance with the IEP team's decisions. Therefore, the MSDE finds that a violation occurred with respect to this aspect of the allegation.

Allegation #3: Provision of Special Education Instruction at Lunch

Based on the Finding of Fact #10, the MSDE finds that there is no documentation that the IEP team decided that the student requires special education instruction at lunch and the information provided by school staff about the supports provided at lunch does not indicate that this constitutes special education instruction. Therefore, the MSDE finds that there is no requirement to provide special education instruction during lunch, and does not find that a violation occurred with regard to this allegation. However, as stated above in Allegation #2f, the MSDE finds that the IEP needs to be reviewed and revised to clarify whether the support provided during lunch is a required part of the educational program.

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ALLEGATIONS #4 AND #5: PROVISION OF DOCUMENTS PRIOR TO AND FOLLOWING THE IEP TEAM MEETINGS

SUMMARY OF FINDINGS/CONCLUSIONS:

Parents must be provided with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at an IEP team meeting at least five (5) business days before the meeting. Additionally, the public agency must provide parents with a completed IEP

not later than five (5) business days after an IEP team meeting (Md. Code Ann., Educ., § 8-405(c) (2010) and COMAR 13A.05.01.07D).

The BCPS staff acknowledges that the BCPS did not provide copies of the assessments and data charts reviewed at the April 20, 2012 meeting at least five (5) business days prior to the meeting. Further, the BCPS acknowledges that it did not provide a copy of the draft IEP within five (5) business days after the April 20, 2012 IEP team meeting, and a copy of the final IEP within five (5) business days after the June 5, 2012 IEP team meeting. Therefore, the MSDE finds that violations occurred with respect to Allegations #4 and #5.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the BCPS to provide documentation by May 1, 2013, that the IEP team has reviewed and revised, as appropriate, the IEP to ensure that it includes a clear statement of the special education instruction, related services, and supplementary aids and services to be provided. The documentation must also reflect that the IEP team determined the amount and nature of *compensatory services*³ or other remedy for the violations identified in this investigation with respect to not ensuring that the student has not been provided with the special education services determined by the IEP team.

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.

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.

³ 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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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 complainants 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 school system must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

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 : S. Dallas Dance
Stephen Cowles
Sharon Floyd
Pamela Weitz
XXXXXX
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Martha J. Arthur
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