



March 14, 2013

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

RE: XXXXXX
Reference: #13-037

Dear Ms. Miller:

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 January 14, 2013, the MSDE received a complaint from Mr. XXXXXXXXX, XXXXXXXXX XXXXXXXXXXXXXXXXXXXX,¹ hereafter, “the complainant.” In that correspondence, the complainant alleged that the Baltimore County Public School (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 follow proper procedures when disciplinarily removing the student on January 10, 2013, in accordance with 34 CFR §§300.530 - .536 and COMAR 13A.08.03.08.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 15, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS; Mr. Stephen Cowles,

¹ The student was residentially placed at the XXXXXXXXXXXXXXXXXXXX in Baltimore County by the Baltimore City Department of Social Services (BCDSS) until January 11, 2013. Following the BCDSS change in the student’s foster care placement, the MSDE informed the complainant, in writing, that because the student no longer resided at the XXXXXXXXXXXXXXXXXXXX, this office required written consent from the parent in order to be permitted to release the results of this investigation to that agency. The MSDE has not been provided with this written consent, and as a result, this Letter of Findings is addressed only to the BCPS (Doc. a and MSDE correspondence to the complainant, dated January 29, 2013).

Associate General Counsel, Special Education Compliance, BCPS; and
Ms. Sharon Floyd, Supervisor of Compliance, BCPS.

3. On January 16 and 22, 2013, the complainant sent documentation to the MSDE to be considered during the investigation, via facsimile.
4. On January 22 and 28, 2013, Ms. Williams spoke with the complainant by telephone and clarified the allegation to be investigated.
5. On January 29, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint, identified the allegation, and explained the need for parental consent in order to release the results the investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the BCPS office review the alleged violation.
6. On February 12, 2013, the BCPS provided the MSDE with a written response to the complaint.
7. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings, which includes the documents listed below.
 - a. Correspondence from the complainant to the MSDE, received on January 14 and 16, 2013;
 - b. BCPS Notice of Suspension to the Board of Education, dated January 10, 2013;
 - c. Written response to the complaint from the BCPS, dated February 12, 2013; and
 - d. Baltimore City Public Schools IEP, dated February 14, 2013.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with an emotional disability under the IDEA, and receives special education services. He is committed to the custody of the Baltimore City Department of Social Services (BCDSS).

On January 10, 2013, the student was disciplinarily removed from XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXX) in Baltimore County, Maryland, the school he attended while placed by the BCDSS at the XXXXXXXXXXXXXXXXXXXXXXX in Baltimore County, Maryland. There is no documentation that the student received educational services from January 11, 2013 to January 23, 2013.

On January 23, 2013, the student began attending XXXXXXXXXXXXXXXXXXXX/XXXXXXXX (XXXXXXXXXXXX), after the BCDSS moved the student to a foster care placement in Baltimore City, Maryland (Docs. a, d, and e).

FINDINGS OF FACTS:

1. On January 10, 2013, the student was disciplinarily removed from XXXXXXXXXXXX for behavior that included “XXXXXXXXXXXXXXXXXXXXXXXXXXXX,” failing to follow directions, and “refusing to cooperate with school rules and regulations.” The

principal referred the matter to the Superintendent's Office to consider a recommendation that the suspension be extended beyond ten (10) school days (Doc. b).

2. On January 14, 2013, the BCPS IEP team reviewed the IEP to address the behavior that resulted in the disciplinary removal. Based upon its review, the IEP team determined that the student's behavior was a manifestation of his disability (Docs. a and c).
3. However, the student was not returned to XXXXXXXX following the determination that his behavior was a manifestation of his disability and the BCPS acknowledges that a violation occurred. The BCPS also reports that the principal proceeded with the recommendation to the Superintendent's Designee for a long-term suspension. Further, there is no documentation that the student was provided with any educational instruction following the disciplinary removal until his January 23, 2013 enrollment at XXXXXXXXXXXX in Baltimore City (Docs. c and d).
4. In response to this violation, the BCPS stated that it will conduct professional development for the school administration at XXXXXXXX regarding the discipline requirements for students with disabilities under the IDEA and COMAR. Following this, the BCPS Office of Law will issue a Memorandum to all BCPS Assistant Superintendents and school principals to reiterate these requirements. Finally, the BCPS will identify any similarly situated students at XXXXXXXX and convene an IEP team meeting for each identified student in order to determine whether there was an impact on the student, and if so, the services to be provided in order to remediate the violation (Doc. c).

DISCUSSION/CONCLUSION:

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten (10) school days for each incident that results in disciplinary removal. Once a change in educational placement² occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of specific protections to the student (34 CFR §300.530 and COMAR 13A.08.03.03 and .05).

These protections include the requirement that the IEP team convene within ten (10) business days of the removal to determine, among other things, whether the student's behavior was a manifestation of the disability. If the student's behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agree to a change in placement. If the student's behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the student

² A disciplinary removal constitutes a change in educational placement if the student is removed for more than ten (10) consecutive school days or ten (10) cumulative school days in a school year if those removals constitute a pattern of removal of the student (34 CFR §300.536 and COMAR 13A.08.03.05).

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to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03.03 - .08).

In this case, the complainant alleges that the student was not permitted to return to XXXXXXXX following the IEP team determination that his behavior was a manifestation of his disability. Based on the Finding of Fact #1, the MSDE finds that the student was proposed for a disciplinary removal that constituted a change in educational placement because it was recommended that the suspension be extended beyond ten (10) school days. Based on the Finding of Fact #2, the MSDE finds that the IEP team convened and determined that the behavior was a manifestation of the student's disability and that, as a result, the student should have returned to XXXXXXXX.

However, based on the Finding of Fact #3, the MSDE finds that the BCPS acknowledges that the student was not returned to the educational placement from which he was removed following the manifestation determination. Further, based on the Finding of Fact #4, the MSDE finds that the BCPS did not ensure that the student was provided with any educational services during this period of disciplinary removal. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE appreciates the BCPS' response and concurs with the steps it is taking to address this issue by conducting professional development at XXXXXXXXXXXXXXXX, providing written guidance for the BCPS Assistant Superintendents and school principals, and convening IEP team meetings to redress any violations which may have occurred with similarly-situated students at XXXXXXXX.

The MSDE also requires that the BCPS provide documentation of the school system's process which ensures that, absent the special circumstances permitted by the IDEA, students are returned to their educational placement once the IEP team has determined that the behavior resulting in the disciplinary removal was a manifestation of the student's disability. This process must include the procedure for cancelling the hearing for a long-term disciplinary removal, before a Superintendent's Designee, when appropriate.

The MSDE further requires the BCPS to provide documentation that it has convened an IEP team meeting with the Baltimore City Public Schools, or other school system in which the student is enrolled, to determine whether the violation had a negative impact on the student's ability to benefit from his educational program. If the IEP team determines that there was a negative impact, the MSDE requires that the BCPS also submit documentation that the team has determined the services needed to remediate the violation and the plan for how the BCPS will ensure that those services are provided to the student in coordination with the current school system.

Documentation of the completion of all corrective actions must be submitted to the MSDE no later than end of the 2012-2013 school year. Please forward to: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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 school system has 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 it disagrees 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 BCPS and the student's parent 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 : XXXXXXXX
S. Dallas Dance
Stephen Cowles
Sharon Floyd
Pamela Weitz
XXXXXXXX
Dori Wilson
Anita Mandis
Tyra Williams
Martha J. Arthur