



June 14, 2013

XXX
XXX
XXX

Dr. Michael J. Bina
President
Maryland School for the Blind
3501 Taylor Avenue
Baltimore, Maryland 21236

RE: XXXXX
Reference: #13-068

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 March 18, 2013,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Maryland School for the Blind (MSB) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student. The MSDE investigated the following allegations:

1. The MSB has not ensured that a reevaluation of the student has been conducted at least every three (3) years, in accordance with 34 CFR §300.303;

¹ Correspondence containing allegations of violations of the IDEA was received on March 8, 2013. On March 18, 2013, the complainant provided a proposed remedy, which is required in order to initiate the State complaint investigation.

In accordance with the IDEA, the MSDE was required to hold the investigation in abeyance because the complainant also filed a due process complaint with the Maryland Office of Administrative Hearings that included the same issues subject to the State complaint (34 CFR §300.152). On April 18, 2013, the due process complaint was withdrawn and the State complaint investigation was resumed.

XXX

Dr. Michael J. Bina

June 14, 2013

Page 2

2. The MSB has not ensured that the student's Individualized Education Program (IEP) includes present levels of academic achievement and functional performance in order to properly identify and address all of the needs that arise from his disability since March 2012,² in accordance with 34 CFR §§300.303-.311, .320, and .323;
3. The MSB has not ensured that the student has been provided with the amount of special education instruction by a special education teacher or a teacher of the visually impaired, as required by the IEP since March 2012,¹ in accordance with 34 CFR §§300.101 and .323; and
4. The MSB did not ensure that the complainant was provided with accessible copies of each assessment, report, data chart, draft IEP, or other document the IEP team planned to discuss at the January 15, 2013 IEP team meeting at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ., § 8-405 (2010) and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 8, 2013, the MSDE received written correspondence from the complainant containing allegations of violations of the IDEA.
3. On March 12, 2013, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated. During that conversation, Ms. Mandis also informed the complainant of the requirement that a State complaint include a proposed remedy that the local school system can provide in order for this office to initiate a State complaint investigation. During that conversation, the complainant informed the MSDE that she had filed both a request for mediation and a due process complaint to resolve the matters that were raised in the State complaint.
4. On March 18, 2013, the complainant provided the MSDE with a proposed remedy, via electronic mail (e-mail).
5. On that same date, the MSDE sent a copy of the completed complaint, via facsimile, to Dr. Michael J. Bina, President, MSB; and Ms. Carol Bouge, Director of Education and Student Services, MSB.
6. On March 22, 2013, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint, informed the complainant that this office was

² The complainant alleged that violations had occurred since 2006. The complainant was informed, in writing, on March 22, 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, in accordance with 34 CFR §300.153.

XXX

Dr. Michael J. Bina

June 14, 2013

Page 3

- required to hold the State complaint investigation in abeyance until the resolution of the due process complaint, pursuant to 34 CFR §300.152, and identified the allegations to be investigated if the due process complaint did not resolve the matter.
7. On the same date, the MSDE notified the MSB of the allegations to be investigated if the due process complaint did not resolve the matter and requested that the MSB review the alleged violations.
 8. On April 18, 2013, the MSDE received information from the Maryland Office of Administrative Hearings that the complainant had withdrawn the due process complaint.
 9. On April 19, 2013, the MSDE notified the parties, in writing, that this office was proceeding with the State complaint investigation.
 10. On May 8, 2013, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at the MSB to review the student's educational record, and interviewed Ms. Bogue and Ms. Maureen Bisesi, Director of Residential and Related Services, MSB. Ms. Rochelle Eisenberg, attorney for the MSB, also attended the site visit.
 11. On May 16, 2013, the MSDE requested that the MSB provide additional documentation from the student's educational record.
 12. On June 5, 2013, the MSB provided the MSDE with the additional documentation, via e-mail.
 13. 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 March 8 and 18, 2013;
 - b. IEP and *Team Meeting Notes*, dated March 5, 2010;
 - c. IEP team meeting attendance sheet, dated March 5, 2010;
 - d. *Notice of No Assessment Needed* form, dated March 5, 2010;
 - e. IEP, dated January 24, 2012;
 - f. *Status Report*, compiled by the student's teachers and service providers, dated October 24, 2012;
 - g. *Student Progress Report*, dated October 26, 2012;
 - h. *Speech-Language Status Summary*, dated December 3, 2012;
 - i. E-mail correspondence between the Occupational Therapist and the complainant, dated between December 3, 2012 and December 21, 2012;
 - j. *Occupational Therapy Status Summary*, dated December 5, 2012;
 - k. *Physical Therapy Status Summary*, dated December 20, 2012;
 - l. E-mail correspondence from the Physical Therapist to the complainant, dated December 21, 2012;

XXX

Dr. Michael J. Bina

June 14, 2013

Page 4

- m. *Notice of Documents Provided to Parent/Guardian for Review at an IEP Meeting* form, dated January 7, 2013;
- n. *Student Progress Report*, dated January 11, 2013;
- o. *IEP Team Meeting Notes*, dated January 15, 2013;
- p. *Notice and Consent for Assessment* form, dated January 15, 2013;
- q. *Learning Media Assessment Report*, dated February 1, 2013;
- r. *Physical Therapy Services Assessment Report*, dated February 25, 2013;
- s. *Functional Vision Assessment*, dated March 5, 2013;
- t. *Occupational Therapy Services Assessment Report*, dated March 12, 2013;
- u. *Psychological Assessment Report*, dated March 18, 2013;
- v. *Educational Assessment Report*, dated March 18, 2013;
- w. *Speech and Language Assessment Report*, dated March 18, 2013;
- x. *Assistive Technology Status Summary*, dated March 27, 2013;
- y. *IEP Team Meeting Notes*, dated March 27, 2013;
- z. Parent Contact Log, dated between January 2009 and May 2013;
- aa. E-mail correspondence from the Attorney for the MSB to the MSDE, dated June 5, 2013; and
- bb. E-mail correspondence between the Attorney for the MSB and the MSDE, dated between June 10 and 11, 2013.

BACKGROUND:

The student is sixteen (16) years old, is identified as a student with multiple disabilities under the IDEA, related to an Intellectual Disability and a Visual Impairment, and has an IEP that requires that he receive special education instruction and related services. The student attends the Maryland School for the Blind. 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, e, o, and y).

ALLEGATION #1: CONDUCTING A REEVALUATION AT LEAST EVERY THREE (3) YEARS

Findings of Facts:

1. On March 5, 2010, the IEP team, including the complainant, convened to conduct a reevaluation, since the previous reevaluation was conducted on March 7, 2007. The documentation of the meeting indicates that the team considered the existing data and determined that no additional data was needed. Based on the existing data, the IEP team determined that the student continues to meet the criteria for identification as a student with a disability under the IDEA and determined his educational needs (Docs. b-d).
2. The documentation of the March 5, 2010 IEP team meeting indicates that the complainant was informed of her right to request that assessments be conducted as part of the reevaluation process. There is no documentation that the complainant requested assessments be conducted at that time (Docs. b and d).

XXX

Dr. Michael J. Bina

June 14, 2013

Page 5

3. On January 15, 2013, the IEP team, including the complainant, convened to conduct a reevaluation. The team recommended that educational, psychological, occupational therapy, physical therapy, speech-language, and vision assessments be conducted and the complainant provided written consent for the assessments to be conducted (Docs. o and p).
4. The assessments were completed between January 28, 2013 and March 18, 2013 (Docs. q-x).
5. On March 27, 2013, the IEP team, including the complainant, reconvened and considered the assessment results. Based on the data, the team determined that the student continues to meet the criteria for identification as a student with a disability. The IEP team agreed to reconvene to revise the student's program (Doc. y).
6. The documentation of the March 27, 2013 IEP team meeting indicates that the team determined that the first mutually convenient date on which to reconvene was May 1, 2013 (Doc. y).
7. The school communication log documents that on April 23, 2013, the complainant requested that the May 1, 2013 IEP team meeting be rescheduled. Based on this request, the IEP team meeting was rescheduled to June 4, 2013 (Doc. z and interview with school staff).
8. The parties agree that the IEP team convened on June 4, 2013. The complainant reports that she provided the IEP team with reports of the results of privately-obtained occupational therapy and physical therapy assessments. The parties agree that the IEP team did not complete the reevaluation process and have agreed to reconvene (Doc. bb and interview with the complainant).

Discussion/Conclusions:

In this case, the complainant alleges that because no additional data was obtained in order to complete the reevaluation on March 5, 2010, the MSB has not ensured that proper procedures have been followed to conduct a reevaluation every three (3) years (Doc. a).

The public agency must ensure that a reevaluation of a student with a disability is conducted at least once every three (3) years unless the parent and the public agency agree that a reevaluation is unnecessary (34 CFR §300.303).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parent, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parent, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the

XXX

Dr. Michael J. Bina

June 14, 2013

Page 6

special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

If the IEP team determines that no additional data are needed, the public agency must notify the parent of that determination and the reasons for that determination and the right of the parent to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's educational needs. If the parent requests an assessment, the public agency is required to conduct it (34 CFR §300.305 and COMAR 13A.05.01.06).

If the IEP team determines that additional data are needed, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #1 and #2, the MSDE finds that the MSB followed proper procedures when conducting the March 5, 2010 reevaluation despite the fact that no additional data was obtained as part of that reevaluation. Based on the Findings of Facts #3 and #4, the MSDE finds that a reevaluation was subsequently initiated within three (3) years of the March 5, 2010 reevaluation. Based on the Findings of Facts #5-#8, the MSDE finds that while the team considered the assessment results and determined the student's continued eligibility within the required timelines, it has not yet reviewed and revised the IEP consistent with the data. Therefore, the MSDE finds that the reevaluation has not been completed within the required timelines and that a violation has occurred regarding this allegation.

ALLEGATION #2: **IEP THAT INCLUDES PRESENT LEVELS OF ACADEMIC ACHIEVEMENT AND FUNCTIONAL PERFORMANCE TO IDENTIFY AND ADDRESS ALL OF THE NEEDS THAT ARISE FROM THE STUDENT'S DISABILITY SINCE MARCH 2012**

Findings of Facts:

9. The IEP in effect since March 2012 includes statements of the student's present levels of academic achievement and functional performance in reading, math, communication, vision, fine motor skills, "functional mobility," and independent living skills, consistent with the evaluation data that indicates that the student is performing in all areas in the "emerging pre-kindergarten" and "pre-kindergarten" levels (Doc. e).

10. The IEP in effect since March 2012 includes annual goals for the student to improve the specific skills identified as areas of need in the present levels of academic achievement and functional performance. The IEP requires the provision of special education instruction, related services, accommodations, supplementary aids and services, and use of assistive technology devices and services to assist the student with achieving the annual goals (Doc. e).

XXX

Dr. Michael J. Bina

June 14, 2013

Page 7

Discussion/Conclusions:

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that an IEP team develops an IEP that includes a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop annual measurable goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must also include a statement of the special education instruction and related services to be provided to assist the student in achieving the annual goals. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to be involved in and make progress in the general education curriculum, the annual IEP goals must be aligned with the student's present levels of performance (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

In this case, the complainant alleges that because the IEP team continues to identify needs related to the same skills and has only made revisions to short-term objectives within the annual goals that have been continued from IEP to IEP, the MSB has not ensured that the student's needs have been properly identified and addressed.

Based on the Findings of Facts #9 and #10, the MSDE finds that the student's needs have been identified, consistent with the evaluation data, and that the IEP includes annual goals and special education services to assist the student to address the needs identified in these areas. However, because a reevaluation has not been completed within the required timelines, the MSDE finds that the MSB has not ensured that all needs have been identified and addressed since April 15, 2013, and that a violation has occurred regarding this allegation.

ALLEGATION #3:

**PROVISION OF THE AMOUNT OF SPECIAL
EDUCATION INSTRUCTION BY A SPECIAL EDUCATION
TEACHER OR A TEACHER OF THE VISUALLY
IMPAIRED SINCE MARCH 2012**

Findings of Facts:

11. The IEP in effect since March 2012, which was developed by an IEP team that included the complainant, requires that the student be provided with special education instruction for twenty-nine (29) hours and twenty-five (25) minutes per week from a special education teacher or a teacher of the visually impaired (Doc. e).

XXX

Dr. Michael J. Bina

June 14, 2013

Page 8

12. School staff report that they have informed the complainant that the special education teacher provides the direct instruction to the student and that the teacher of the visually impaired consults with the special education classroom teacher on the provision of special education instruction. School staff report that, despite this information, the complainant has continued to express her belief that a teacher of the visually impaired is also required to provide direct instruction. However, there is no documentation or information that the IEP team has been convened in order to clarify the matter (Docs. a, o, and interview with the parties).
13. There is documentation that the student has been provided with special education instruction from a special education teacher since March 2012 (Docs. f-h, j, k, n, o, and interviews with both parties).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education 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 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 12, 1999).³

Based on the Findings of Facts #11-#13, the MSDE finds that there is documentation that the student has been provided with special education instruction from a special education teacher, consistent with the IEP. However, based on the Finding of Fact #12, the MSDE finds that while the complainant has expressed confusion over how the services of the teacher of the visually impaired are to be provided, there is no documentation that the IEP team has convened to clarify this issue. Therefore, the MSDE finds that the IEP is not written in a manner that is clear to all IEP team members involved in its development and that a violation has occurred.

ALLEGATION #4: PROVISION OF DOCUMENTS TO BE DISCUSSED AT THE JANUARY 15, 2013 IEP TEAM MEETING AT LEAST FIVE (5) BUSINESS DAYS BEFORE THE MEETING

Findings of Facts:

14. On December 7, 2012, the MSB sent a written invitation to the January 15, 2013 IEP team meeting to the complainant (Doc. z).
15. There is documentation that on December 21, 2012 and January 7, 2013, copies of documents that were to be considered at the January 15, 2013 meeting were sent to the complainant and that a draft IEP was sent on January 7, 2013. However, there is no

³ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

XXX

Dr. Michael J. Bina

June 14, 2013

Page 9

documentation that a speech-language report that was to be considered at the meeting was sent to the complainant (Docs. i-m and aa).

16. The documentation of the January 15, 2013 IEP team meeting reflects that, at the meeting, the complainant informed the team that she did not receive the draft IEP. The documentation of the meeting also reflects that the team recommended that assessments be conducted and decided to delay reviewing the draft IEP until the additional data is obtained (Docs. p and q).

Discussion/Conclusions:

The public agency must provide the parents with an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at an IEP team meeting at least five (5) business days before the IEP team meeting (Md. Code Ann., Educ., §8-405 [2010] and COMAR 13A.05.01.07).

Based on the Findings of Facts #14 and #15, the MSDE finds that there is documentation that the draft IEP was sent to the parent within the required timelines but that the complainant reported not having received it. Based on the Finding of Fact #16, the MSDE finds that while the complainant did not receive the draft IEP that was sent at least five (5) business days before the January 15, 2013 IEP team meeting, the team did not consider the draft IEP at the IEP team meeting. However, based on the Finding of Fact #15, the MSDE finds that there is no documentation that school staff sent the complainant a copy of the speech-language therapy status summary, which was considered at the meeting, at least five (5) business days before the meeting. Therefore, the MSDE finds a violation regarding this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the MSB to provide documentation by August 1, 2013, that the IEP team has completed the actions below:

1. Review and revise the IEP consistent with the data, including any independently obtained assessments provided by the complainant;
2. If the IEP requires revision based on the data, determine the nature and amount of *compensatory services*⁴ or other remedy necessary to redress the delay in completing the reevaluation process; and

⁴ Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

XXX

Dr. Michael J. Bina

June 14, 2013

Page 10

3. Ensure that the IEP is written clearly regarding the provision of special education instruction by the teacher of the visually impaired.

The MSB 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, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the MSB to provide documentation by the start of the 2013-2014 school year, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the MSB.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP). Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the MSB.

Documentation of all corrective action taken is to be submitted to this office to: Attention: 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 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

XXX

Dr. Michael J. Bina

June 14, 2013

Page 11

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 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, placement, or provision of a FAPE 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:ks

cc : Robin Churchill
Carol Bogue
Rochelle Eisenberg
Dori Wilson
Anita Mandis
Martha J. Arthur
Kathy Stump