



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

November 9, 2006

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Ms. Idalyn Hauss
Interim Officer of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204B
Baltimore, MD 21202

RE: XXXXX
Reference: #07-018

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 our investigation.

ALLEGATIONS:

On September 11, 2006, MSDE received correspondence from Ms. XXXXXXXXXXXX, the student's mother, hereafter, "the complainant," filed on behalf of the above-referenced student. In that correspondence, the complainant alleged that BCPSS violated certain provisions of the Individuals with Disabilities Education Act (IDEA). This office investigated the following allegations:

1. The Individualized Education Program (IEP) team has not reviewed and revised, as appropriate, the student's IEP since the 2004-2005 school year, as required by 34 CFR §§300.343;¹
2. BCPSS has not provided the student with special education services in the placement required by the IEP since the start of the 2004-2005 school year, in accordance with 34 CFR §300.350;¹

¹ This citation reflects the IDEA 1997 regulations that were in effect at the time of the alleged violation.

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3. BCPSS has not provided the student with the anger management, substance abuse counseling, and psychological services, required by the IEP since the start of the 2004-2005 school year, in accordance with 34 CFR §300.350;¹ and
4. BCPSS has not followed proper procedures when removing the student for disciplinary reasons since the start of the 2004-2005 school year, in accordance with 20 U.S.C. §1415(k).

INVESTIGATIVE PROCEDURES:

1. Ms. Kendra Riley, Education Program Specialist, MSDE was assigned to investigate the complaint.
2. On or about September 13, 2006, Ms. Dori Wilson, Complaint Investigation Section Chief, MSDE, contacted the complainant to clarify the allegations to be investigated.
3. On September 13, 2006 a copy of the complaint was provided by facsimile to Ms. Idalyn Hauss, Interim Officer of Special Education, BCPSS; Ms. Maryanne Ralls, then Acting Student Services Officer, BCPSS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPSS.
4. On September 25, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE also notified Ms. Hauss of the allegations to be investigated and requested that her office review the alleged violations.
5. On October 16, 2006, Ms. Riley and Ms. Lesley A. Morrissey, Education Program Specialist, MSDE conducted a site visit to XXXXXX High School (XXXXXXX HS) to review the student's education record and conduct interviews with the following XXXXXX HS staff:
 - a. Ms. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXX, IEP Team Associate;
 - c. Ms. XXXXXXXXXXXXXXXXXXXX, IEP Team Associate;
 - d. Ms. XXXXXXXXXXXXXXXXXXX, Social Worker; and
 - e. Mr. XXXXXXXXXXX, Emotional Disturbance (ED) Program Leader.

Mr. Ronald Grove, Attorney, BCPSS, and Ms. Rosemary Jones, Educational Specialist, BCPSS, attended the site visit as representatives of the BCPSS Central Office and to provide information on BCPSS policies and procedures, as needed.

6. On October 23, 2006, Ms. Riley conducted a telephone interview with the complainant.

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7. Documentation provided by the parties was reviewed. The documents referenced in the Letter of Findings (LOF) include:
 - a. Correspondence from complainant to MSDE, dated September 11, 2006;
 - b. IEP and IEP team minutes, dated November 26, 2003;
 - c. IEP and IEP team minutes, dated February 10, 2005;
 - d. IEP team minutes, dated October 19, 2005;
 - e. IEP team minutes, dated November 18, 2005;
 - f. IEP and IEP team minutes, dated June 6, 2006
 - g. IEP team minutes, dated August 2, 2006;
 - h. Educational Assessment Report, dated April 4, 2006;
 - i. Psychological Assessment Report, dated February 7, 2006;
 - j. Office Referral, dated October 12, 2005;
 - k. Copy of correspondence from BCPSS staff to the complainant regarding long-term suspension, dated October 13, 2005;
 - l. Referral for Long-Term Suspension, dated October 14, 2005;
 - m. Request for Suspension, dated October 17, 2005;
 - n. Student Log of Disciplinary Actions, dated September 2005 through October 2006;
 - o. Copy of correspondence from XXXXXXXXXXXXXXX to BCPSS, dated November 11, 2005;
 - p. Copy of the Related Service Progress Summary from XXXXXXXXXXXXXXX, dated November 11, 2005;
 - q. Invitations to IEP meetings for the 2004-2005, 2005-2006, and 2006-2007 school years;
 - r. Student attendance records for the 2004-2005, 2005-2006, and 2006-2007 school years;
 - s. Social Work Progress Notes, dated September 2004 through June 2006; and
 - t. IEP Report Card, for the 2005-2006 school year.

BACKGROUND:

The student is sixteen (16) years old. He is identified as a student with an emotional disturbance under IDEA and receives special education and related services. Since the beginning of the 2004-2005 school year, the student has attended XXXXXXXX HS.

FINDINGS OF FACT:

2004-2005 School Year

1. The IEP that was in effect at the start of the 2004-2005 school year required that the student receive special education in a separate special education classroom. While the IEP required counseling as a related service, there is no documentation that the IEP required anger management or substance abuse counseling (Doc. b).

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2. On February 10, 2005, the IEP team at XXXXXXXX HS met to review the student's program and progress. Based upon that review, the team determined that the student's current program and placement continued to be appropriate (Doc. c and q).
3. There is documentation that during the 2004-2005 school year, the student was provided with the counseling services required by his IEP (Doc. s and interview with school staff).
4. There is no documentation that the student was disciplinarily removed from school during the 2004-2005 school year (Doc. r and interviews with school staff).
5. The student's progress reports for the 2004-2005 school year indicate that the student was not consistently progressing toward achieving the annual IEP goals, and the student failed the ninth grade (Docs. a, b, c, and interviews with school staff).

2005-2006 School Year

6. On September 22 and 27, 2005, the student was disciplinarily removed from school for a total of five (5) days (Doc. n).
7. On October 13, 2005, the student was disciplinarily removed from school for physically assaulting a teacher. The student was assigned to attend XXXXXXXXXXXXX as an alternative educational setting (AES). XXXXXXXXXXXXX is a non-public school placement utilized by BCPSS as an AES during disciplinary removals (Docs. j – n).
8. On October 19, 2005, the IEP team met to review the student's program and determined that the behavior that resulted in the disciplinary removal was not a manifestation of the student's disability. Although the team determined the behavior was not a manifestation, school staff have documented that the "kind of deviant behavior" which resulted in the suspension was "not unusual for [the student]." "Many intervention strategies have been implemented to assist [the student] with being successful in school...but to no avail. XXXXXX has exhausted all strategies to help him adjust to the school environment; however his behavior continues to disrupt the safe and orderly school environment and places staff as well as students in danger" (Docs. j – n and q).
9. The student did not return to XXXXXX and he did not begin attending XXXXXXXXXXXX XXXX until October 25, 2005. As a result, the student was disciplinarily removed from school for eight (8) school days. He attended XXXXXXXXXXXXX until November 11, 2005, when he returned to XXXXXX HS. There is documentation that counseling services were provided while attending XXXXXXXXXXXXX (Docs. m – p).
10. On November 18, 2005, the IEP team convened to review and re-evaluate the student's program. The meeting summary documents the complainant's concern over the student's "level of functioning, failure to make progress and increased behavior problems." At the meeting, the team determined that updated cognitive, psychological and educational

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assessment data were needed, and the complainant provided consent. The meeting summary indicates that the re-evaluation meeting was to take place no later than February 11, 2006 (Docs. e and q).

11. The IEP team did not reconvene until June 6, 2006 to review the results of the assessments. The team notes the student's lack of progress and the complainant's concerns. At the meeting, the team requested support from the Central Office in September 2006 in order to locate a more restrictive placement for the student (Docs. f, h – j, and q).
12. For the 2005-2006 school year, there is documentation that counseling services were provided (Doc. s)
13. The student's IEP report card for the 2005-2006 school year indicates that the student did not progress toward achieving the annual IEP goals and he failed the ninth grade for the second time (Doc. t).

2006-2007 School Year

14. On August 2, 2006, the IEP team convened to review the student's program and progress. The meeting summary documents the complainant's concern over the student's lack of academic achievement. Notwithstanding the June 6, 2006 determination of the need to locate a more restrictive placement for the student, the team determined that the program and placement continued to be appropriate. To date, there is no documentation of steps taken to develop an appropriate program and placement for the student. (Docs. g and q).
15. There is documentation that, since the start of the 2006-2007 school year, the student has been disciplinarily removed from school for a total of five (5) days (Doc. n).

DISCUSSION/CONCLUSION:

ALLEGATIONS 1 - 3: IEP REVIEW AND REVISION AND IEP IMPLEMENTATION

To ensure the provision of a free appropriate public education (FAPE) to a student with a disability under IDEA, the public agency must provide services to address the student's identified special education and related services needs (34 CFR §300.300)¹. The public agency is required to provide special education and related services to each student with a disability in accordance with the IEP (34 CFR §300.350).

The public agency must ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, and revises the IEP as appropriate to address any lack of expected progress. During this review, the IEP team must consider information about the student provided to or by the parents, and the student's

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anticipated needs (20 U.S.C. 1413(a) and 34 CFR §300.343(c)).¹ The team must also consider, in the case of a student whose behavior impedes his learning or that of others, strategies, including positive behavioral interventions and supports, to address that behavior (20 U.S.C. 1414(d) and 34 CFR 300.346(a)(2)).¹ If the team determines that assessments should be conducted, these must be completed and reviewed, by the team, within ninety (90) days (COMAR 13A.05.01.06E(5)).

When determining the educational placement of a student with a disability, each public agency must ensure that the placement decision is made by an IEP team and is made in conformity with the least restrictive environment provisions of the regulations (34 CFR §§300.550-.55¹ and COMAR 13A.05.01.10C).

In this case, based on Finding of Facts # 12, MSDE finds that since the start of the 2004-2005 school year, counseling services have been provided; however, based on Findings of Fact #1 – 13, MSDE finds that the student has not made progress toward achieving the IEP goals. Additionally, based on Findings of Fact # 10 and 11, MSDE finds that the results of the assessments ordered at the November 18, 2005 IEP team meeting were not reviewed in a timely manner as required by the regulations. Furthermore, based on Findings of Fact # 10 – 16, MSDE finds that although school staff reported that the student's program and progress was not appropriate and assessments were requested, there is no documentation that BCPSS has developed an IEP to address the student's identified needs since November 18, 2005. As a result of these findings, MSDE determines that BCPSS has not developed an IEP which addresses the student's identified needs.

ALLEGATION #4: DISCIPLINARY REMOVALS AND PROVISION OF SERVICES DURING PERIOD OF DISCIPLINARY REMOVAL

Under IDEA, there are specific disciplinary procedures that must be followed when removing a student with a disability from school for more than ten (10) school days within a school year (34 CFR §300.121(d) (1)).¹ The public agency is not required to provide services to a student with a disability who is disciplinarily removed from his current educational placement for ten (10) school days or less during any given school year. However, once a student with a disability is disciplinarily removed from his current placement for more than ten (10) cumulative school days in that school year, for the remainder of the disciplinary removals during that year, the public agency must provide services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP (34 CFR §300.121(d)¹). This includes students with disabilities who have been suspended or expelled from school (34 CFR §300.300(a))¹.

In this case, based upon the Finding of Fact #4, MSDE finds that there is no documentation of disciplinary removals during the 2004-2005 school year. Additionally, based on Finding of Fact #16, MSDE finds that, as of the date of this LOF, the student has not been disciplinarily removed from school for more than ten (10) school days since the start of the 2006-2007 school year.

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Notwithstanding, based on Findings of Fact #7 – 9, MSDE finds that, the student was disciplinarily removed from school for a total of thirteen (13) days during the 2005-2006 school year and that until he entered the AES on October 25, 2005, he was not provided with educational services following the tenth day of disciplinary removal, as required by the regulations. As a result, MSDE finds a violation with regard to this issue.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

MSDE requires BCPSS to expedite the location of an appropriate placement for the student and to notify this office when the process is completed. MSDE further requires that the IEP team convene as soon as possible, but no later than twenty days (20) from the date of this LOF, unless the complainant agrees to meet at a later date. At the meeting, the IEP team must determine the amount and nature of *compensatory services*² or other remedy necessary to redress the continuing failure of BCPSS to provide the student with appropriate educational services since November 18, 2005, as required by the regulations. Additionally, if an appropriate placement has not yet been obtained for the student, the team must also consider the need for additional supports and services for the student and school personnel while he remains in the school program.

BCPSS must provide the complainant with proper written notice of the determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the complainant disagrees with the decisions, they maintain the right to initiate a due process hearing and/or mediation to resolve the dispute consistent with IDEA 2004.

School-Based

MSDE requires the BCPSS to take steps to determine if the violations identified in this LOF are unique to this case or if they represent a pattern of noncompliance at XXXXXXXX HS. If it is determined that a pattern of noncompliance exists with regard to the requirements, BCPSS must inform MSDE of the steps that will be taken to ensure that appropriate staff properly implement the requirements, including a description of how BCPSS will evaluate the effectiveness of the steps taken.

The school-based corrective action must be completed within sixty (60) days of the date of this LOF. Within fifteen (15) days of completing each corrective action, BCPSS shall submit documentation of completion of the required action. This documentation is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

² 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 §300.660(b) (1)). This does not address compensable awards under the *Vaughn G. Consent Decree*.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Ms. Martha Roulette, Education Program Specialist, MSDE. Ms. Roulette may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of fact, conclusions, or corrective actions contained in this LOF should be addressed to this office in writing. The student's parent and the school system maintain the right to initiate mediation or a due process hearing consistent with IDEA 2004. The MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Baglin, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAB/kr

c: Charlene Cooper Boston
Ronald Grove
Everene Johnson-Turner
Harry Fogle
Gail Dunlap
XXXXXXXXXXXX
Edward L. Wulkan
Kendra Riley