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State Superintendent of Schools

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August 27, 2009

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Ms. Kim Lewis  
Executive Director, Special Education  
Baltimore City Public School System  
200 East North Avenue, Room 407B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #09-104

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 June 30, 2009, MSDE received correspondence from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore City Public School System (BCPSS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the following allegations:

1. BCPSS did not develop and implement an Individualized Education Program (IEP) to address the student’s identified needs during the 2008-2009 school year<sup>1</sup>, in accordance with 34 CFR §§300.302 and .324.
2. BCPSS did not follow proper procedures when determining that the student is not eligible for Extended School Year services (ESY) for the summer of 2009, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.

<sup>1</sup> While the complainant indicated that the violations had occurred during previous school years as well, she was informed that this office may only investigate allegations of violations that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Vickie Frazier, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 6, 2009, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE, contacted the complainant by telephone and clarified the allegations to be investigated.
3. On July 7, 2009, a copy of the complaint was provided by facsimile to:  
Ms. Kim Lewis, Executive Director, Special Education, BCPSS;  
Ms. Everene Johnson-Turner, Director of Student Services, BCPSS; and  
Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPSS.
4. On July 13, 2009, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation, notified Ms. Lewis of the allegations to be investigated, and requested that her office review the alleged violations.
5. On July 22, 2009, Ms. Frazier reviewed the student's education record at the BCPSS Central Office. Ms. Ruley was present during the record review.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. Correspondence from the complainant to MSDE, dated June 29, 2009;
  - b. Student progress reports, dated October 2007;
  - c. Transition Planning Inventory, dated October 25, 2007;
  - d. IEP, dated October 25, 2007;
  - e. *Verification of Start Date and Receipt of IEP*, dated August 2008;
  - f. Student progress reports, dated September and October 2008;
  - g. *School Psychologist Recording Form*, dated October 6, 2008;
  - h. Transition Planning Inventory, dated October 6, 2008;
  - i. IEP, dated October 6, 2008;
  - j. Electronic Mail (e-mail) correspondence between BCPSS staff regarding provision of a one-to-one aide, dated October 30, 2008;
  - k. *School Psychologist's Recording Form*, dated December 3, 2008;
  - l. IEP, dated December 3, 2008;
  - m. Assistive Technology Assessment, dated February 3, 2009;
  - n. Functional Behavioral Assessment, dated February 17, 2009;
  - o. Report of an observation of the student, dated February 19, 2009;
  - p. Educational Assessment Report, dated February 19, 2009;
  - q. Psychological Assessment Report, dated February 25, 2009;
  - r. Correspondence from the complainant to BCPSS staff, dated February 26, 2009;
  - s. Report of the student's aide, dated April 20, 2009;
  - t. Transition Planning Inventory, dated April 20, 2009;

- u. IEP, dated April 20, 2009;
- v. Treatment Update report, dated April 27, 2009;
- w. Correspondence from the student's psychiatrist to BCPSS staff, dated April 27, 2009;
- x. IEP, dated April 28, 2009;
- y. Report of the student's progress in a math intervention program, dated May 28, 2009;
- z. Student progress reports, dated June 2009;
- aa. IEP, dated June 8, 2009;
- bb. Service provider logs of the provision of special education instruction for the 2008-2009 school year;
- cc. Service provider logs of the provision of counseling services for the 2008-2009 school year; and
- dd. Reports of the student's progress on his IEP goals for the 2008-2009 school year.

**BACKGROUND:**

The student is fifteen (15) years old. He is identified under the IDEA as a student with an other health impairment, related to a diagnosis of Attention Deficit/Hyperactivity Disorder, and there is documentation that the student has an emotional disturbance. The student attends XXXXXX XXXXX High School and he receives special education and related services. During the period addressed by this investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parent's rights as required (Docs. d, i, l, u, x, and aa).

**ALLEGATION #1:                    DEVELOPMENT AND IMPLEMENTATION OF AN IEP  
   THAT ADDRESSES THE STUDENT'S IDENTIFIED NEEDS**

**Findings of Fact:**

1. The IEP in effect at the start of the 2008-2009 school year indicates that the IEP team considered informal assessments conducted by the student's teachers, which identified needs in the areas of reading, math, written language, following directions, and interacting with peers. Based on the review of the data, the team developed an IEP that includes goals to increase the student's skills in reading comprehension, reading vocabulary, math calculation, math problem solving, and written expression. The IEP also contains a goal to assist him in following directions and interacting appropriately with others. The IEP required that the student receive special education instruction in a separate special education classroom, and two (2) counseling sessions per month for thirty (30) minutes to assist the student in achieving the goals (Docs. b and d).
2. The IEP in effect at the start of the 2008-2009 school year indicated that a Transition Planning Inventory, completed by the student, had been reviewed. Based on that inventory, the team developed a transition plan which contained post-secondary goals to address the

- student's transition needs and determined the transition services necessary to assist the student in meeting those goals (Docs. c and d).
3. On October 6, 2008, the IEP team met to conduct its annual review of the student's program and progress. At that meeting, the team considered the parent's concerns, reports of the student's progress in the classroom and in counseling, and revised the student's annual goals based on that information. At that meeting, the complainant requested that the student be provided with transportation services. The IEP documents that the team reviewed the student's needs and determined that he did not require transportation as a related service (Docs. f, g, h and i).
  4. On December 3, 2008, the IEP team met to consider his progress with the provision of a one-to-one assistant, which was being used on a trial basis to assist the student. The team considered parental input and reports of the student's progress in the classroom and in counseling, which documented that the student was making progress with the help of the one-on-one assistant. Based on that information, the IEP team determined that he requires the support of a one-to-one assistant (Docs j, k and l).
  5. At the December 3, 2008 IEP team meeting, at the request of the complainant's advocate, the team also agreed to conduct updated assessments including an educational assessment, a social-emotional assessment, and an assistive technology assessment. An IEP team meeting was scheduled for February 26, 2009 to review the results of the assessments, but this meeting was rescheduled at the request of the complainant (Docs. k, l and r).
  6. On April 20 and 28, 2009, the IEP team met to review the results of the assessments. The team also reviewed notes from the student's community-based therapist, which had been shared by the complainant. Additionally, the team reviewed teacher reports that the student's academic and behavioral performance had improved and the student's report that the aide was helping him to make progress (Docs. n, o, p, q, r, s, u, v, w and x).
  7. Based upon its review of the assessment results and teacher input, the team determined that the student had additional needs in the area of reading, and the team added additional reading goals to address those areas of need and increased the number of hours of special education instruction to be provided to the student to assist him in achieving his goals (Docs. n, o, p, q, r, s, u, v, w and x).
  8. On April 20 and 28, 2009, the IEP team reviewed an updated Transition Planning Inventory completed by the student on April 20, 2009, and revised the post-secondary goals based on the data. Additionally, the student's academic goals were revised to include objectives designed to assist the student with transitioning from high school (Docs. t, u and x).
  9. On June 8, 2009, the IEP team met to review and revise, as appropriate, the student's program. At that meeting, the IEP team considered teacher reports of the student's progress and, based on this information, determined that the student's goals remained

appropriate. The team also considered the complainant's request that the student receive additional special education instruction in science, and increased the student's special education services to address the complainant's concerns (Docs. y, z and aa).

10. There is documentation, including IEP progress reports and service provider logs, that the student's IEP was implemented during the 2008-2009 school year (Docs. e, bb, cc and dd).

### **Discussion/Conclusions:**

#### **IEP Development**

The IEP must include a statement of the student's present levels of academic achievement and functional performance, and must include annual goals and services designed to address the student's identified needs (34 CFR §300.320). When determining the levels of academic achievement and functional performance, the team must consider the evaluative data, information from the student's teachers, and the parents' concerns (34 CFR §300.324). 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 (34 CFR §300.324).

Beginning not later than the first IEP that is in effect when a student turns fourteen (14) years old, or younger if appropriate, the IEP must also include appropriate measurable postsecondary goals related to training, education, employment, and independent living, as appropriate. The IEP must also include the transition services, including course of study needed to assist the student in achieving those goals (34 CFR §300.320).

Based on Findings of Fact #1, 3, 4, 5, 6, 7, and 9, MSDE finds that, during the 2008-2009 school year, the IEP team met and reviewed evaluative data, including teacher reports and parental input, to determine the student's present levels of academic performance and behavioral needs, and revised the student's IEP based on that data. Additionally, based on Findings of Fact #2 and 8, MSDE finds that the IEP team considered the student's transition needs, developed transition goals, and recommended transition services to assist him in achieving those goals. Therefore, MSDE does not find a violation with regard to the development of the student's IEP.

#### **IEP Implementation**

Once an IEP is developed, the public agency must provide special education and related services to a student with a disability in accordance with the student's IEP (34 CFR §300.323). Based on Finding of Fact #10, MSDE finds that there is documentation that the student's IEP was implemented during the 2008-2009 school year. Therefore, MSDE does not find a violation with regard to the implementation of the student's IEP.

**ALLEGATION #2**

**ESY DETERMINATION FOR THE  
SUMMER OF 2009**

**Findings of Fact:**

11. On April 20, 2009, the IEP team convened and considered the student's need for ESY services. The IEP documents that the team considered the student's disability, whether the student's IEP addressed critical life skills and whether there were emerging skills or interfering behaviors. Based on that consideration, the team determined that the student's progress would not be significantly jeopardized by the summer break (Doc. s).

**Discussion/Conclusion:**

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a free appropriate public education (FAPE) by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)). In making the decision, the team must consider the following factors:

- a. The likelihood of substantial regression of critical life skills and a failure to recover those skills within a reasonable time;
- b. The student's degree of progress toward mastery of the IEP goals related to critical life skills;
- c. The presence of emerging skills or breakthrough opportunities;
- d. Interfering behaviors;
- e. The nature and severity of the student's disability; and
- f. Any other special circumstances (MSDE Technical Assistance Bulletin 5, revised July 2003).

Following consideration of the required factors, the IEP team shall determine whether the gains made by the student during the regular school year will be significantly jeopardized if the student is not provided with an educational program during the normal break in the school year (COMAR 13A.05.01.08(B)).

In this case, the complainant disagrees with the IEP team's determination that the student did not require ESY services for the summer of 2009. Based on Finding of Fact #11, MSDE finds that, on April 20, 2009, the IEP team considered the required criteria and, using the correct legal standard, determined that the student did not require ESY services. Therefore, MSDE does not find a violation with regard to this allegation.

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 findings of fact or 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

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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 and conclusions contained in this LOF 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 free appropriate public education for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/vmf

c: Andrés Alonso  
Kim Lewis  
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