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State Superintendent of Schools

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September 22, 2006

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

RE: XXXXX
Reference: #07-007

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.

ALLEGATION:

On July 24, 2006, MSDE received correspondence from Ms. XXXXXXXXXXXXX, 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) and the corresponding federal and State regulations with respect to the above-referenced student. This office investigated the allegation that BCPSS did not follow proper procedures in the identification and evaluation process during the 2005-2006 school year, as required by 34 CFR §§300.530-.543.

INVESTIGATIVE PROCEDURES:

1. Ms. Kendra Riley, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 1, 2006, Ms. Dori Wilson, Section Chief, Complaint Investigation and Due Process Branch, MSDE, contacted the complainant to clarify the allegation to be investigated.

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3. On August 2, 2006 a copy of the complaint was provided by facsimile to Ms. Idalyn Hauss, Director of Special Education, BCPSS; Ms. Maryanne Ralls, Acting Student Services Officer, BCPSS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPSS.
 4. On August 4, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE also notified Ms. Idalyn Hauss of the allegation to be investigated and requested that her office review the alleged violation.
 5. On August 24, 2006, Ms. Riley and Ms. Leslie Morrissey, Education Program Specialist, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXX Academy (XXXXXXX Academy) to review the student's education record and conducted interviews with the following BCPSS staff:
 - a. Ms. XXXXXXXXXXXXX, Principal, XXXXXXXX Academy;
 - b. Ms. XXXXXXXXXXXXX, Special Educator, XXXXX Academy;
 - c. Ms. XXXXXXXXXXX, IEP Team Associate, XXXXXXXX Academy;
 - d. Mr. Donnie B. Bushrad, Area Special Education Coordinator; and
 - e. Ms. Louise Saltzman, Educational Specialist.
- Mr. Ronald Grove, Attorney, BCPSS, attended the site visit as a representative of BCPSS and to provide information on BCPSS policies and procedures, as needed.
6. On September 1, 2006, Ms. Wilson conducted a telephone interview with the complainant.
 7. On September 15, 2006, Ms. Riley conducted a phone interview with the complainant. On the same day, Ms. Riley requested documentation from the September 15, 2006 IEP team meeting from BCPSS.
 8. Documentation provided by the parties was reviewed. The documents referenced in the Letter of Findings (LOF) include:
 - a. Correspondence from complainant to MSDE, dated July 24, 2006;
 - b. BCPSS Communication Log, dated January – July 2006;
 - c. Copies of Notices to IEP team meetings, dated January – July 2006;
 - d. IEP team minutes, dated February 6, 2006;
 - e. Parental Consent for Assessments, dated February 6, 2006;
 - f. Educational Assessment, dated March 20, 2006;
 - g. Psychological Assessment and Addendum, dated March 29 and June 19, 2006, respectively;
 - h. Speech/Language Assessment, dated March 31, 2006;
 - i. IEP team meeting summary, dated April 3, 2006;

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- j. IEP team meeting summary, dated June 12, 2006; and
- k. IEP team meeting summary, dated July 18, 2006.

BACKGROUND:

The student is seven (7) years old, and he attends XXXXXXXX Academy, a public charter school. On September 15, 2006, the IEP team determined that the student does not meet the criteria of a student with a disability under IDEA. During the period addressed by the investigation, the complainant was provided with the opportunity to participate in the education decision-making process. Notice of procedural safeguards was provided to the complainant, as required by the regulations (Doc. b).

FINDINGS OF FACT:

1. On January 6, 2006, the complainant requested that the student be referred to the IEP team in order to determine whether the student was a student with a disability and in need of special education and related services (Doc. c and interview with school personnel).
2. On February 6, 2006, in response to the complainant's request, the IEP team convened a meeting to determine whether the student was a student suspected of having a disability. The written summary of the meeting indicates that the complainant "shared assessment reports which documented Attention Deficit Hyperactivity Disorder and possible speech/language delays." Based on the available information, the team recommended that educational, cognitive, and psychological assessments be conducted. The team also determined that a classroom observation of the student be conducted. The complainant gave consent for the assessments at the meeting (Docs. d - h).
3. On April 3, 2006, the IEP team reconvened to review the evaluative data. School staff report, and the written summary of the meeting indicates, that only the educational assessment was reviewed at the meeting. There is no documentation that the cognitive, speech/language, classroom observation, and psychological report were reviewed at this meeting. Based on its review of the results of the educational assessment, the team determined that the student does not meet the criteria of a student with a disability under IDEA. However, there is no documentation of the basis of the team's April 3, 2006 determination (Docs. f, i and interview with school staff).
4. On June 12, 2006, the IEP team met to continue its review of the evaluative data. There is no documentation that the team reviewed the results of the speech/language, or cognitive assessments, nor is there documentation that a classroom observation of the student was conducted. The written summary also states that the complete results of the psychological assessment were unavailable. Therefore, the team adjourned the meeting and agreed to reconvene to review the results of the assessments at a later date (Doc. j).

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5. On July 18, 2006, the IEP team again met to continue the review of the evaluative data. There is no documentation that the team reviewed the results of the speech/language, cognitive, or the psychological assessments nor is there documentation that a classroom observation of the student was conducted. Notwithstanding, the team determined that the student does not meet the criteria of a student with a disability under IDEA (Doc. k).
6. On September 15, 2006, the IEP team again met to complete its review of the evaluative data. The complainant and BCPSS personnel report that all of the recommended assessments and the classroom observation were reviewed at this meeting, and that based on the data, the team determined that the student did not meet the criteria for a student with a disability under IDEA. As of the date of this Letter of Finding, the written notice of the team's decisions has not been provided to the complainant or MSDE (Interview with complainant and school system staff).

DISCUSSION/CONCLUSION:

When a student is referred for evaluation to determine eligibility under IDEA, in accordance with State regulations, an IEP team must meet to review existing data, information from the parent, instructional interventions and strategies, current classroom-based assessments, and observations by teachers and related service providers. Based on the review, the IEP team must determine whether the student is suspected of being a student with a disability and if additional data is required to complete the evaluation (COMAR 13A.05.01.04). The IEP team must complete the evaluation within sixty (60) days of parental consent for evaluation or within ninety (90) days of the date of referral, whichever is sooner (20 U.S.C. §1414(a)(1)(C) and COMAR 13A.05.01.06A). If the IEP team does not suspect the student of being a student with a disability, the public agency must provide the parent with proper written notice of the decision, including the right to request mediation or a due process hearing (34 CFR §§300.503 and .504).

The school system must provide written notice to parents of the decisions made by the IEP team (34 CFR §300.503). Notice to parents is required when the IEP team proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to a student. Specific content is required to inform the parents of the decisions and of their rights, including a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action (34 CFR§300.503(b)). Records that document this process must be kept for three (3) years (20 U.S.C. §1232f).

In this case, based on Findings of Fact #1 and 2, MSDE finds that on January 6, 2006, the student was referred to the IEP team to determine if the student is a student with a disability under IDEA and requires special education and related services. As a result, the identification and evaluation process should have been completed no later than April 6, 2006.

Based upon Findings of Fact #3 – 6, MSDE finds that the evaluation was not completed within the required timelines, in accordance with 20 U.S.C. §14149a)(1)(c) and COMAR 13A.05.01.06A.

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Based upon these same Findings of Fact, MSDE finds that the IEP team did not provide the complainant with documentation of the basis of the determinations made by the team at the IEP team meetings, in accordance with 34CFR §300.503.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

BCPSS must provide the complainant with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the team's determination that the student does not meet the criteria for identification as a student with a disability under IDEA. MSDE further requires BCPSS to provide this office with a copy of the documents provided to the complainant, and requires that this documentation is provided to the complainant and MSDE within ten (10) days of the date of this LOF. Upon receipt, MSDE will review the proper written notice documentation to ensure that it sufficiently meets the regulatory requirements and determine if any further corrective action is required. If the complainant disagrees with the decisions, she maintains the right to initiate a due process hearing and/or mediation to resolve the dispute consistent with IDEA 2004.

School-Based

MSDE requires that BCPSS 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 XXXXXX Academy. 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 XXXXXX Academy staff properly implement the requirements, including ensuring that evaluations are completed within the required timelines and that parents are provided with proper written notice of the IEP team's decisions. BCPSS shall also provide MSDE with a description of how it 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.

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

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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 complainant and the school system maintain the right to initiate mediation or a due process hearing if they disagree with the identification, evaluation, placement or provision of FAPE for the student, including matters addressed in this complaint investigation, consistent with IDEA 2004. The MSDE recommends that this LOF be included with any request for mediation or due process hearing.

Sincerely,

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

CAB/kr

c: Charlene Cooper Boston
Everene Johnson-Turner
Ronald Grove
Harry Fogle
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