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September 12, 2005

Ms. Pat Halle, Paralegal
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Baltimore, Maryland 21201

Ms. Carol Rabin
Director of Special Education
Baltimore City Public School System
200 East North Avenue, Room 204
Baltimore, Maryland 21202

XXXXXXXXXXXX
Reference: #06-007

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.

ALLEGATIONS:

On July 14, 2005, MSDE received correspondence from Ms. Pat Halle, Paralegal, Maryland Disability Law Center (MDLC), hereafter "the complainant," filed on behalf of the above-referenced student and his parent. 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) and the corresponding federal and State regulations with respect to the student. This office investigated the following allegations:

1. BCPSS has not ensured that the Individualized Education Program (IEP) appropriately addressed the student's identified needs, since the 2002-2003 school year pursuant to 34 CFR §§300.300 and .346-.347.
2. BCPSS has not followed proper procedures when removing the student from school for disciplinary reasons since the 2003-2004 school year, including ensuring the student received a free appropriate public education (FAPE) during the removals pursuant to 34 CFR §§300.121(d)(2) and .519-.525.

INVESTIGATIVE PROCEDURES:

1. Mr. Jerome Woods, II, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On July 18, 2005, a copy of the complaint was provided by facsimile to Ms. Carol Rabin, Director of Special Education, BCPSS, and Nancy Ruley, Esq, Associate Counsel, BCPSS.
3. On July 26 and July 27, 2005, Mr. Woods attempted unsuccessfully to speak with the complainant via telephone to clarify the allegations contained in the letter of complaint.
4. On July 27, 2005, Mr. Woods spoke with the student's mother to clarify the allegations and confirm the allegations to be investigated.
5. On July 27, 2005, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations to be investigated. On the same date, MSDE notified Ms. Rabin of the allegations and requested that her office review the alleged violations.
6. On August 26, 2005, MSDE received a written response to the allegations from Ms. Rabin.
7. Documentation provided by the complainant and the school system was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence from the complainant to MSDE, dated July 14, 2005;
 - b. Correspondence from Ms. Rabin to MSDE, dated August 26, 2005;
 - c. IEP team meeting minutes, dated September 17, 2002;
 - d. Report card for the 2003-2004 school year;
 - e. Disciplinary removal log for the 2004-2005 school year;
 - f. Office Referral Form, dated November 17, 2001;
 - g. Referral for Special Education, dated November 22, 2004;
 - h. IEP team meeting minutes, dated December 8, 2004;
 - i. Educational assessment report, dated February 1, 2005;
 - j. XXXXXXXXXXXXXXXX Diagnosis Records, undated;
 - k. IEP and IEP team meeting minutes, dated February 10, 2005;
 - l. IEP and IEP team meeting minutes, dated April 14, 2005;
 - m. Alternative Educational Setting Entry/Exit Ticket, dated April 22, 2005;
 - n. IEP team meeting minutes, dated May 5, 2005;
 - o. IEP and IEP team meeting minutes, dated May 26, 2005;
 - p. Psychological/cognitive assessment report, dated May 18, 2005;
 - q. Functional Behavioral Assessment, dated May 26, 2005;
 - r. Progress report, dated May 25, 2005; and
 - s. Progress report, dated May 26, 2005.

BACKGROUND:

The student is ten (10) years old and attends fifth (5th) grade at XXXXXXXXXX Elementary School. He is identified as a student with an emotional disturbance under IDEA and receives special education and related services. BCPSS staff informed the parent of her Procedural Safeguards and Parental Rights as required by federal and State regulations during the period covered by this investigation (Docs. a, b, c, h, k, l, n and o).

FINDINGS OF FACT:

2002-2003 School Year

1. During the 2002-2003 school year, the student attended XXXXXXXX Elementary School. On September 17, 2002, when the student was in the second grade, the IEP team convened, including the parent, to determine whether the student possessed a disability under IDEA requiring special education and related services. At that meeting, the team determined that the student has a diagnosed medical condition of Attention Deficit Hyperactivity Disorder (ADHD). However, based on information from the student's teacher and parent, the team determined that the ADHD "did not adversely affect the [student's academic] progress," and the student was not suspected of having a disability requiring special education services under IDEA. Additionally, the team determined that the student sometimes demonstrated inappropriate classroom behaviors such as "not remaining in his seat during instruction and talking out in class." To address the concern, school staff developed an "Interventions Strategy Plan" to assist the student with maintaining appropriate classroom behaviors (Docs. b and c).
2. BCPSS staff report that although "the student received unsatisfactory grades throughout the school year in reading, math, and conduct, the school staff did not suspect that the student required special education services" (Doc. b).

2003-2004 School Year

3. Because of behavioral difficulties demonstrated at the start of the school year, on September 10, 2003, BCPSS staff referred the student for enrollment at the XXXXXX XXXXXXXXXXXX (XXX). BCPSS personnel report that the XXX is a "separate learning environment for regular education students who are having difficulty adhering to the behavioral demands in a comprehensive school." The student attended the XXX from September 2003 through the end of the school year. BCPSS staff and the parent report that the student "did well" at the school. The student's final report card for the 2003-2004 school year indicates that the student performed "satisfactorily on grade level" in all academic and behavioral areas. BCPSS staff report that during the third and fourth quarters, the student demonstrated the ability to "control his behavior and improve his conduct" (Docs. a and d).
4. BCPSS staff report that there is no documentation in the record that the parent nor anyone else requested an evaluation of the student during this school year (Doc. b).

2004-2005 School Year

5. At the start of the 2004-2005 school year, the student began attending XXXXX Elementary School, his neighborhood school. Because the student and his family relocated, the student attended XXXXX Elementary School instead of returning to XXXXXXXXX Elementary School (Doc. b).
6. On November 4, 2005, the student was disciplinarily removed for one (1) school day for an unspecified offense (Doc. e).
7. On November 17, 2004, the student was disciplinarily removed for three (3) school days for fighting (Docs. e and f).
8. On November 18, 2004, the parent requested that the student be evaluated to ascertain whether he possessed a disability requiring special education services under IDEA. The written referral was submitted on November 22, 2004 (Docs. b and g).
9. On December 8, 2004, the IEP team convened, including the parent, and addressed the parents concerns. The team determined that based on the parent's concerns regarding the student's academic and behavioral performance and reported diagnosis of ADHD, the team suspected that the student may have an other health impairment under IDEA. The parent provided consent for an educational assessment to be conducted and signed a release for school staff to obtain information from the XXXXXXXXXXXXXXXXXXXX Center regarding the student's psychological treatment and diagnosis of ADHD (Docs. b and h).
10. BCPSS personnel acknowledge that the parent referred the student for an evaluation on November 18, 2002, and the student was disciplinarily removed at the time of the referral. Under these circumstances, "BCPSS requires that an expedited evaluation be completed within thirty (30) days of the date of the referral unless the parent and IEP team agree to a later date." The student's evaluation should have been conducted and completed by December 18, 2004 (Doc. b).
11. On February 10, 2005, the IEP team convened, including the parent, and reviewed the results of the educational assessment and medical assessments from the XXXXXXXXXXXXXXXX. The team also reviewed information shared by the teachers and the parent (Docs. i, j, and k).
12. With regard to the student's mathematics and written language skills, the educational assessment report states that the student performed "at grade level curriculum expectations." With regard to reading comprehension skills, the student performed "two years below grade level expectations." The information obtained from the XXXXXXXXXXXXXXXXXXXX Center indicates that the student was diagnosed with ADHD, depression and Oppositional Defiance Disorder (ODD). Based upon the evaluative data and information shared by the parent and teachers, the team determined the student be met the criteria for identification as a student with other health impairments under IDEA, related to a diagnosis of ADHD, mood disorder and depression (Docs. i, j, and k).

13. At the meeting on February 10, 2005, the IEP team developed the student's IEP. The IEP states the student's present levels of performance regarding reading, math and written language skills. It also states the student's social/emotional skills and behavioral needs. The team developed annual goals to address the student's social, attention and reading comprehension skills needs. The team determined the least restrictive environment in which the student would receive specialized instruction was the general education classroom. Additionally, the team agreed that the student would receive thirty (30) minutes per week of psychological services to address his social skills and behavioral needs. The annual goals addressed the areas in which the student's involvement and progress in the general curriculum were affected by the student's disability as determined by the evaluative data discussed above (Docs. i, j, and k).
14. On February 15, 2005, the student was disciplinarily removed from school for (3) school days for an unspecified offense (Doc. e).
15. On March 3, 2005, the student was disciplinarily removed one (1) school day for an unspecified offense (Doc. e).
16. On March 23, 2004, the student was disciplinarily removed from school for three (3) school days for an unspecified offense (Docs. b and e).
17. On April 12, 2005, the student was proposed for disciplinary removal in excess of ten (10) school days "because of an assault on a staff member." The student's first day of removal was April 13, 2005. Between April 13 and 22, 2005, the student did not receive educational services. To remedy the matter, BCPSS personnel have informed MSDE staff that "the failure to provide educational services for days of removal beyond ten (10) school days is an interruption in services under the 1998 Consent Order and the Area Coordinator will submit the appropriate referral to the Office of Compensatory Services" (Docs. b and e).
18. On April 14, 2005, the IEP team met with the parent and determined that the behavior that precipitated the removal was not a manifestation of the student's disability. The team also conducted a functional behavior assessment and developed a behavior intervention plan. The team recommended that the student be placed at an Alternative Educational Setting (AES) during the period of removal (Docs. b and l).
19. Attendance information indicates that the student attended the AES (XXXXXX Elementary School) from April 22, 2005 through May 20, 2005 (Doc. m).
20. On May 5, 2005, the IEP team met with the parent in order to plan for the student's return to school from the AES. At that meeting, the team determined that additional information was necessary in order to ensure that the student's IEP continued to meet his needs. The team recommended that cognitive and psychological assessments be conducted as part of the student's re-evaluation (Doc. n).
21. On May 26, 2005, the IEP team convened, including the parent, and reviewed evaluative data, including the results of the cognitive and psychological assessments and information shared by the parent and teachers. Based upon this information, the team determined that

the student is a student with an emotional disturbance under IDEA. Additionally, the team determined the student required annual goals to address deficits in the areas of math, written language, and anger management skills. The team also added the following supplementary aids and services: *adjusted work load, modified materials, testing accommodations, passive physical restraints, crisis intervention, visual organizers and time out*. The team also revised the student's behavioral intervention plan and determined the student required one and one half (1.5) hours of direct psychological services per week and one half (.5) hours of consultative psychological services. The team determined the least restrictive environment in which the student would receive specialized instruction and related services to be a separate public day school. The parent "agreed to the implementation of the IEP, including the placement" (Docs. o through s).

22. During or about the second week of June, the student began attending XXXXXXXXXXXX Elementary School, a separate public day school (Docs. and b).

DICUSSION/CONCLUSION:

ALLEGATION #1: IEP ADDRESSED THE STUDENT'S NEEDS

Legal Requirements:

To ensure the provision of FAPE to a student with a disability under IDEA, the public agency must provide services that address the student's identified special education and related services needs (34 CFR §300.300). Thus, in developing an IEP, the team must first determine the student's present levels of educational performance and how the disability impacts involvement and progress in the general curriculum. This determination must be included as a statement in the IEP (34 CFR §300.347). In determining the student's present levels of educational performance, the team must consider the strengths of the student, concerns of the parents for enhancing the education of the student, and the results of the most recent evaluation (34 CFR §300.346).

The IEP must include, among other things, a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the student's needs that result from the disability and to enable the student to be involved in and progress in the general curriculum. The IEP must also include a statement of the special education and related services and supplementary aids and services to be provided for the student to be able to advance appropriately toward attaining the annual goals, to be involved in and progress in the general curriculum, and to participate in extracurricular and other nonacademic activities (34 CFR §300.347).

2002-2003 and 2003-2004 School Years

As indicated in Findings of Fact #1 – 3, MSDE determines that the student was not a student with a disability under IDEA during these school years. Consequently, the above-stated law is not applicable for these school years.

2004-2005 School Year

Based on Findings of Fact #9, 11, 13, 19, and 20, MSDE finds that, when developing and revising the IEP in effect during the 2004-2005 school years, the team considered the parent's concerns, the results of assessment data, reports of the student's progress, and medical information. The team developed and subsequently revised the IEP as needed, to address the needs identified in the evaluative data and provided the parent with written notice of the team's determinations and the basis for the decisions in accordance with 34 CFR §§300.26, .300, .346 and .503. Therefore, MSDE does not find a violation regarding this issue for this school year.

ALLEGATION #2: DISCIPLINARY REMOVAL

Legal Requirements:

Under 34 CFR §300.520, a student with a disability may be removed from his or her current placement for up to 10 school days within the school year for any violation of school rules to the extent removal would be applied to a student without a disability. Under 34 CFR §300.523(a), a "manifestation determination" review must be held no later than 10 school days following a disciplinary removal or a series of disciplinary removals that exceeds 10 school days during a school year and which constitutes a change in placement, as defined by 34 CFR §300.519. The manifestation determination review is necessary to determine whether the conduct, which is the subject of the disciplinary action, was a manifestation of the student's disability. When a student is removed for disciplinary reasons in excess of 10 school days in a school year, the school system is required to provide with services to the extent necessary to enable that student to "appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the IEP" (34 CFR §300.121(d)).

2003-2004 School Year

As indicated in Finding of Fact #3, MSDE determines that the student was not a student with a disability during this school year. Consequently, the above-stated discipline regulations are not applicable for this school year.

2004-2005 School Year

Based upon Finding of Fact #17, MSDE determines, and BCPSS acknowledges, that the student did not receive educational services following the disciplinary removal in excess of ten (10) school days. Consequently, MSDE determines a violation with regard to this allegation for this school year.

ADDITIONAL ISSUE: The following is a violation found as a result of the investigation that impacted the provision of appropriate services to the student.

Under 34 CFR §300.527(d)(2), if a request is made for an evaluation of a student who is suspected of having a disability under IDEA during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

As indicated in Finding of Fact #10, BCPSS personnel acknowledge that because the parent referred the student for an evaluation on November 18, 2002, and the student was disciplinarily removed at the time of the referral, the evaluation should have been conducted in an “expedited manner.” BCPSS requires that an expedited evaluation be completed within thirty (30) days of the date of the referral unless the parent and IEP team agree to a later date. The evaluation was not completed until February 10, 2005.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

BCPSS proposes to provide the student a compensatory award under the *Vaughn G.* Consent Decree as a result of the failure to provide services following the tenth (10th) day of removal during the 2004-2005 school year. If the parent does not agree with the compensatory award, she may exercise her procedural rights that are included in the procedural safeguards regarding the *Vaughn G.* Consent Decree, including the right to request mediation or a due process hearing consistent with IDEA 2004.

Additionally, BCPSS has informed MSDE personnel that the IEP team will meet to determine whether the delay completing the initial evaluation of the student adversely affected the student’s ability to benefit from his program. If the team determines that there was an adverse impact, the team will determine the amount and nature of *compensatory services*¹ necessary to address the violation. This meeting must occur within forty-five (45) days of the date of this LOF, unless the parent agrees to meet at a later date. BCPSS shall provide the parent with proper written notice of the determinations, as required by 34 CFR §§300.503 and .534, including a written explanation of the basis for the determinations. If the parent does not agree with the IEP team’s decision, she maintains the right to initiate a due process hearing and/or mediation consistent with IDEA 2004.

Systemic/School Specific:

BCPSS proposes to conduct a review of the folders of all students referred for special education services at XXXX Elementary School during the 2004-2005 school year. The purpose of the review is to determine if there is a pattern of noncompliance in conducting evaluations in an expedited manner for students who are suspected of having a disability under IDEA during the time period in which the student is subjected to disciplinary measures. If there is such a pattern of noncompliance, “BCPSS will develop a corrective action plan to ensure that proper procedures are followed. Further, for any student referred during a period of disciplinary removal whose evaluation was not conducted in an expedited manner, the IEP team will convene to determine the amount and nature of *compensatory services*¹ necessary to address the adverse impact” (Doc. b). Consequently, MSDE determines no further school specific, or systemic corrective actions are required.

¹Compensatory 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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Within fifteen (15) days of completing each corrective action, BCPSS shall submit documentation of completion of the required actions. This documentation is to be submitted to this office to: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to both parties by contacting Ms. Martha Roulette. She may be reached 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 letter 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 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 parent and the school system maintain the right to initiate mediation or a due process hearing consistent with IDEA 2004. MSDE recommends that this LOF be included with any request for a due process hearing.

Sincerely,

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

CAB/jw

c: Bonnie Copeland
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XXXXXXXXXXXX c/o MDLC