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State Superintendent of Schools

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February 11, 2014

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Ms. Debra Y. Brooks
Executive Director of Special Education
Baltimore County Public Schools
The Jefferson Building, 4th Floor
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #14-044

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 December 13, 2013, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegations listed below.

1. The BCPS did not follow proper procedures to identify and address the student’s social, emotional, and behavioral needs from December 13, 2012 until the end of the 2012-2013 school year, in accordance with 34 CFR §300.324;

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2. The BCPS did not ensure that the student was provided with the support of a Study Skills class from the beginning of the 2013-2014 school year until September 24, 2013¹, as required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323;
3. The BCPS did not ensure that the student was provided with additional adult support, from September 24, 2013 until December 17, 2013, as required by the IEP, in accordance with 34 CFR §§300.101 and .323;
4. The BCPS did not ensure that the complainant was provided with an accessible copy of the draft IEP document that the IEP team planned to discuss at the September 6, 2013 IEP team meeting, at least five (5) business days before the scheduled meeting, in accordance with Md. Code Ann., Educ. §8-405 (2013) and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 16, 2013, the MSDE sent a copy of the complaint, via facsimile, to Mr. Steven Cowles, Associate General Counsel, Special Education Compliance, BCPS; and Ms. Sharon Floyd, Supervisor of Compliance and Related Services, BCPS.
3. On December 17 and 19, 2013 and January 9, 2014, Ms. Williams conducted telephone interviews with the complainant regarding the allegations being investigated.
4. On January 6, 2014, the complainant sent the MSDE electronic correspondence (email), containing documentation to consider when conducting the investigation.
5. On January 15, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation.
6. On January 29, 2014, Ms. Williams and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXX to review the student's educational record, and interviewed Ms. XXXXXXXXX, Department Chairperson, Learning Resource and IEP Chairperson. Ms. Floyd, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

¹ The complainant alleged violations of the IDEA that dated back to September 25, 2013. However, based upon the review of the student's educational record, this office determined that the allegation dates back to September 24, 2013 (Review of the educational record).

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7. 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 December 13, 2013;
 - b. Private Neuropsychological Assessment, dated May 24, 2012;
 - c. IEP, dated September 6, 2012;
 - d. Student's class schedule for the 2013-2014 school year;
 - e. Email correspondence from the school staff to the complainant, sent September 4, 2013;
 - f. IEP team meeting summary, dated September 6, 2013;
 - g. IEP, dated September 24, 2013;
 - h. IEP team meeting summary, dated September 24, 2013; and
 - i. Email correspondence among the BCPS staff, dated December 18, 2013.

BACKGROUND:

The student is eighteen (18) years old and attends the XXXXXXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXX. She is identified as a student with Other Health Impairment under the IDEA, related to congenital hydrocephalus, and has an IEP that requires the provision of special education instruction. 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. f, g, and h).

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS FROM DECEMBER 13, 2012 UNTIL THE END OF THE 2012-2013 SCHOOL YEAR

FINDINGS OF FACTS:

1. The IEP in effect on December 13, 2012 was developed on September 6, 2012. At the September 6, 2012 IEP team meeting, the IEP team considered information from a private neuropsychological assessment that indicated the student has neurocognitive deficits and, as a result, the student has deficits with understanding nonverbal cues, attention, and executive functioning. The IEP team also considered the complainant's input that the student has both depression and anxiety related to school and educational difficulties, which affects her ability to focus on academic work and intensifies when she does not have enough time to process complex instruction (Docs. b and c).
2. Based on the evaluation data, two annual goals were developed to address the student's social, emotional, and behavioral needs. The first goal was for the student to improve her work habits and organizational skills through the maintenance of organized supplies and

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the use of a planner/homework assignment book. In order to assist her in achieving the goal, the IEP required that the student be provided with special education instruction and visual cues, notes and outlines, calculations devices, and visual and graphic organizers (Doc. c).

3. The second annual goal was for the student to utilize coping strategies to prevent anxiety, stress, and frustration from impacting her academic performance. In order to assist the student in achieving the goal, the IEP required that the student be provided with special education instruction, as well as the opportunity to leave the classroom when feeling anxious in order to work independently and to receive support to address her anxiety. The IEP also required that the school staff consult with the student's private therapist about the implementation of the IEP (Doc. c).
4. On September 6, 2013, the IEP team met to review the student's IEP and progress towards the IEP goals. At that meeting, the IEP team documented that while the student had not achieved the goal related to work completion and organization within a year of development of the goal, she had made slow progress on the goal. Based on that information, the IEP team decided to continue the goal. The IEP team also determined that the student had achieved the short-term objectives within the goal related to the use of coping strategies and revised the goal to include new objectives for the student to further improve her skills (Doc. f).
5. The reports of the student's progress on February 11, 2013, April 9, 2013, and June 13, 2013 document that the student is making sufficient progress to achieve the goal to use coping strategies and that she is making slow, but sufficient progress toward the goal to improve her organizational skills (Doc. c).

DISCUSSION/CONCLUSION:

In order to provide a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

Based on the Findings of Facts #1-#5, the MSDE finds that the IEP team identified social, emotional, and behavioral needs for the student consistent with the evaluation data, and ensured that the IEP included goals for the student to improve her skills in these areas and services to assist her in achieving the goals. Therefore, this office does not find that a violation occurred.

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This office understands that the complainant disagrees with the IEP team's decisions. When conducting a State complaint investigation of an allegation related to the provision of an appropriate IEP, the State Educational Agency (SEA) must review the procedures that were followed in making determinations about the student's educational program. Additionally, the SEA must review the evaluation data to determine if decisions made by the IEP team are consistent with the data (United States Department of Education, Office of Special Education Programs (OSEP) Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the local public agency has not followed proper procedures, the SEA may require the public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may also require the local public agency to provide a remedy to the student for loss of appropriate services (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

The SEA may not, however, overturn an IEP team's decisions, as long as the IEP team considered all of the evaluation data and there is data to support its decisions. The IDEA provides parents with the right to challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

ALLEGATIONS #2 AND #3

PROVISION OF A STUDY SKILLS CLASS AND ADDITIONAL ADULT SUPPORT

FINDINGS OF FACTS:

6. At the start of the 2013-2014 school year, the student's IEP required that the student's class schedule include time for a "structured study skills" class in order to provide her with assistance with addressing anxiety and improving study skills (Docs. c and d).
7. On September 24, 2013, the IEP team met and discussed that the student's class schedule could not accommodate the "structured study skills" class during the 2013-2014 school year. However, in order to address this need, the IEP team decided that the student would be provided with additional adult support in her other classes in place of the "structured study skills" class (Docs. d, g, and h).
8. There is documentation that the additional adult support required by the IEP was not obtained until December 17, 2013 (Doc. i and interviews with the complainant and school staff).

DISCUSSION/CONCLUSIONS:

Each public agency must ensure that students with disabilities received the special education instruction and related services required by the IEP (34 CFR §§300.101 and .323).

Allegation #2 Study Skills Class

Based on the Findings of Facts #6 and #7, the MSDE finds that the student was not provided with a “structured study skills” class from the start of the school year until September 24, 2013, as required by the IEP. Therefore, this office finds that a violation occurred with respect to the allegation.

Allegation #3 Additional Adult Support

Based on the Findings of Facts #7 and #8, the MSDE finds that the student was not provided with additional adult support in her classes from September 24, 2013 until December 17, 2013, as required by the IEP. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #4 PROVISION OF THE DRAFT IEP

FINDINGS OF FACTS:

9. The BCPS has a policy, consistent with the requirements of State law, which requires that at least five (5) business days before an IEP meeting, parents must receive a copy of the documents that the team plans to discuss at the IEP meeting (Doc. www.bcps.org/offices/special_ed/Procedural-Safeguards.htm).

10. The school staff report that they attempted to provide the complainant with a copy of the draft IEP electronically at least five (5) business days prior to the September 6, 2013 IEP team meeting. However, due to difficulties with their electronic equipment, they acknowledge that they were unable to provide the complainant with a copy of the draft IEP until one (1) business day before the meeting (Docs. a, e, review of the educational record, and interview with school staff).

DISCUSSION/CONCLUSION:

In order to ensure meaningful participation as an IEP team member, the parent must be provided with a copy of each assessment, report, data chart, draft IEP, or other document that the team plans to discuss at an IEP team meeting at least five (5) business days before the meeting (Md. Code Ann., Educ., § 8-405(c) (2010) and COMAR 13A.05.01.07D). However, failure to provide parents with copies of documents at least five (5) business days prior to an IEP team meeting does not constitute a substantive violation of the requirement to provide a student with a FAPE (Md. Code Ann., Educ., §8-405 (2010), COMAR 13A.05.01.07D(3), and the MSDE *Technical Assistance Bulletin #20*, dated September 2012).

Based on the Findings of Facts #9 and #10, there is no documentation that the complainant was provided with a copy of the draft IEP that the IEP team planned to discuss at the

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September 6, 2013 IEP team meeting at least five (5) business days before the meeting. Therefore, the MSDE finds that a violation has occurred with respect to this allegation.

Notwithstanding the violation, because the failure to provide copies of documents to parents at least five (5) business days prior to an IEP team meeting does not constitute a substantive denial of a FAPE, no student-specific corrective action is required.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the BCPS to provide documentation by April 15, 2014, that an IEP team has convened to determine *compensatory services*² or other remedy for the loss of services resulting from the violations regarding the “structured study skills class” and the adult assistant identified in this investigation. When making the determination, the IEP team may consider alternative methods to redress the loss of services to assist the student with transition from high school to post-school activities.

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

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 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

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 even when the student is no longer eligible for an IEP under the IDEA (34 CFR §300.151 and *OSEP Letter to Riffel*, August 22, 2000).

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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 a 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:tw

cc: S. Dallas Dance
J. Stephen Cowles
Sharon Floyd
XXXXXX
Dori Wilson
Anita Mandis
Tyra Williams
Martha J. Arthur