



February 12, 2014

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

RE: XXXXX
Reference: #14-047

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 18, 2012, the MSDE received a complaint from Dr. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of 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 has not ensured that the student has been provided with a scribe and human reader required by his Individualized Education Program (IEP) in his Technical Education (Tech-Ed) class, since September 9, 2013,¹ in accordance with 34 CFR §300.101;

¹ The correspondence to the complainant, dated January 13, 2014, identified the time frame for investigation of the allegation as “since the beginning of the 2013-2014 school year.” During the course of the investigation, it was discovered that the student began receiving instruction in a Tech-Ed class on September 9, 2013 (Docs. c and d).

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2. The BCPS did not provide the complainant with access to the student's educational record prior to an IEP team meeting held on November 6, 2013, in response to her request, in accordance with 34 CFR §§300.501 and .613; and
3. The BCPS did not ensure the complainant was provided with the draft IEP which was considered at the January 9, 2014 IEP team meeting, at least five (5) days before the meeting, in accordance with Md. Code. Ann., Educ. §8-405 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 18, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Sharon Floyd, Supervisor of Compliance, BCPS; and Mr. J. Stephen Cowles, Associate General Counsel, BCPS.
3. On January 6, 2014, Ms. Williams conducted a telephone interview with the complainant regarding the allegations being investigated.
4. On January 7, 10, 13, and 14, 2014, the MSDE received electronic mail (email) correspondence from the complainant to be considered during the investigation.
5. On January 13, 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 28, 2014, Ms. Williams and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Case Manager, Special Education;
 - b. Ms. XXXXXXXXXXXXXXXX, School Counselor;
 - c. Mr. XXXXXXXX, Assistant Principal; and
 - d. Ms. XXXXXXXXXXXXXXXX, IEP Department Chairperson.

Ms. Floyd attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

7. On February 11, 2014, the MSDE received email correspondence with documentation from the BCPS to be considered during the investigation.

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8. 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 18, 2013;
 - b. IEP, dated January 23, 2013;
 - c. The student's class assignments for the 2013-2014 school year;
 - d. The student's attendance in a Tech-Ed class from September 9, 2013 through November 5, 2013;
 - e. Logs of the provision of supports and accommodations provided in the Tech-Ed class, dated September 16, 2013 through February 7, 2014;
 - f. Email correspondence from the complainant to the school staff, dated November 4, 2013;
 - g. Email correspondence from the school staff to the complainant, dated November 5, 2013;
 - h. Email correspondence from the complainant to the school staff, dated November 5, 2013;
 - i. IEP team meeting summary, dated November 6, 2013;
 - j. Correspondence from the school staff to the complainant enclosing logs of the supports and accommodations provided in the Tech-Ed class, dated November 25, 2013;
 - k. Email Correspondence from the complainant to the school staff, dated December 2, 2013;
 - l. Email correspondence from the complainant to the school staff, dated January 5, 2014;
 - m. Email correspondence from the school staff to the complainant, dated January 6, 2014; and
 - n. IEP, dated January 9, 2014.

BACKGROUND:

The student is eleven (11) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services.

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. b, i, and n).

**ALLEGATION #1: PROVISION OF A SCRIBE AND HUMAN READER IN
THE TECH-ED CLASS SINCE SEPTEMBER 9, 2013**

FINDINGS OF FACTS:

Provision of a Scribe

1. The IEP requires that the student be provided with the service of a scribe in the classroom to generate the student's written classwork based on information that is dictated by the student and to take notes for him during instruction. It also requires the provision of a scribe to generate written answers for tests, as dictated by the student (Docs. b and n).
2. There is no documentation that the student was provided with the services of a scribe in his Tech-Ed class from September 9, 2013 until September 16, 2013 (Review of the educational record).
3. Logs of the provision of accommodations and supports in the Tech-Ed class document the provision of the services of a scribe in the class by either the teacher or an instructional assistant since September 16, 2013 (Doc. e).

Provision of a Human Reader

4. The IEP also requires the provision of either a human reader or the provision of audio recordings of selected sections of tests in his Tech-Ed class (Docs. b and n).
5. There is no documentation that the student was provided with the assistance of a human reader or audio recordings of sections of tests in his Tech-Ed class from September 9, 2013 until November 11, 2013 (Doc. e and review of the Educational Record).
6. Logs of the provision of accommodations and supports in the Tech-Ed class document the provision of a human reader or audio recordings by either the teacher or an instructional assistant since November 11, 2013 (Doc. e).

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).

Provision of a Scribe

Based on the Findings of Facts #1 - #3, the MSDE finds that there is no documentation that the student was provided with the services of a scribe from September 9, 2013 until September 16, 2013. Therefore, this office finds a violation with respect to this aspect of the allegation.

Provision of a Human Reader

Based on the Findings of Facts #4 - #6, the MSDE finds that there is no documentation that the student was provided with a human reader or audio recordings for tests from September 9, 2013 until November 11, 2013. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2: ACCESS TO THE EDUCATIONAL RECORD PRIOR TO AN IEP TEAM MEETING HELD ON NOVEMBER 6, 2013

FINDINGS OF FACTS:

7. On November 4, 2013, two (2) days before the IEP team meeting, the complainant requested that the school principal arrange for her review, prior to the IEP team meeting, of documentation of the provision of supports to the student in his Tech-Ed class (Doc. f).
8. On November 5, 2013, the day before the IEP team meeting, the school principal informed the complainant that, due to a scheduled absence of the Tech-Ed teacher, the requested documentation would not be available by the date of the IEP team meeting (Docs. g and h).
9. On November 6, 2013, the principal informed the complainant that, while access to the requested documentation could not be provided on that date, it would be provided on another date (Doc. a, f, and interview with school staff).
10. On November 25, 2013, the school staff provided the complainant with copies of the logs of the accommodations and supports provided to the student, which were maintained by the Tech-Ed teacher (Docs. j and k).

DISCUSSION/CONCLUSION:

The IDEA requires public agencies to permit parents to inspect and review any educational records that are directly related to their children that are collected, maintained, or used by the public agency or institution or by a party acting for the agency or institution. The public agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing or resolution meeting, and in no case more than forty-five (45) days after the request has been made (34 CFR §99.10 and 34 CFR §300.613).

Based on the Findings of Facts #7 - #10, the MSDE finds that although access to the documents were not available prior to an IEP team meeting held two (2) days after the request for access was made, due to unavailability of the school staff member in possession of those documents, they were provided without unnecessary delay. Based on those Findings of Facts, the MSDE finds that there is documentation that the school staff provided the complainant with access to the requested documents within forty-five (45) days of her request. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #3: PROVISION OF A DRAFT IEP AT LEAST FIVE (5)
BUSINESS DAYS BEFORE THE JANUARY 9, 2014 IEP
TEAM MEETING**

FINDING OF FACT:

11. There is documentation that the school staff developed a draft IEP that was considered by the IEP team at the January 9, 2014 IEP team meeting, but no documentation that it was provided to the complainant at least five (5) business days before the meeting (Docs. l, m, and n).

DISCUSSION/CONCLUSION:

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) 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 Free Appropriate Public Education (FAPE) (Md. Code Ann., Educ., §8-405, COMAR 13A.05.01.07D, and the MSDE *Technical Assistance Bulletin #20*, dated September 2012).

Based on the Finding of Fact #11, 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 January 9, 2014 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 ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by April 1, 2014, that an IEP team has convened to determine *compensatory services*² or other remedy for the violations related to the provision of accommodations that were identified during this investigation.

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

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 §300.151).

required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the BCPS to provide documentation by the end of the 2013-2014 school year, of the steps it has taken to determine if the violation related to the provision of documents at least five (5) business before an IEP team meeting is unique to this case or if it represents a pattern of noncompliance at XX.

Specifically, the school system is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in this Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the BCPS.

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 this Letter of Findings.

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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 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 this 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
XXXXXXX
Dori Wilson
Anita Mandis
Tyra Williams
Martha J. Arthur
Donna Riley