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State Superintendent of Schools

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July 16, 2014

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

RE: XXXXX
Reference: #14-086

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 April 30, 2014,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of 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 student.

There is a sixty (60) day timeline for completion of the complaint investigation process. However, the timeline may be extended for exceptional circumstances (34 CFR §300.152). In this case, the parties informed the MSDE on June 20, 2014 that they would submit additional documentation for consideration. Therefore, in order to obtain and review the needed information to complete the investigation, it was necessary to extend the timeline for completion of this Letter of Findings.

¹ On April 8, 2014, the MSDE received correspondence from the complainant containing allegations of violations of the Individuals with Disabilities Education Act (IDEA). On April 30, 2014, the complainant provided this office with a requested remedy, which was required to initiate the complaint investigation (Doc. a)

The MSDE investigated the allegations listed below:

1. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's needs related to communication, peer relations, and distractibility since April 30, 2013,² in accordance with 34 CFR §300.324.
2. The BCPS has not ensured that the student has been provided with the "checks for understanding" and a reduced workload, as required by the IEP, since April 30, 2013,² in accordance with 34 CFR §§300.101 and .323.
3. The BCPS did not ensure that a copy of the finalized IEP was provided to the complainant within five (5) business days of the October 10, 2013 IEP team meeting, in accordance with Md. Code. Ann. Educ. §8-405 (2014) and COMAR 13A.05.01.07D(3).

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 30, 2014, Ms. Anita Mandis, Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated. On the same date, the MSDE received additional correspondence from the complainant regarding the complaint, via electronic mail (email).
3. On May 1, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Executive Director of Special Education, BCPS; Mr. Stephen Cowles, Associate General Counsel, Special Education Compliance, BCPS; and Ms. Denise Mabry, Coordinator of Compliance and Related Services, BCPS.
4. On May 6, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
5. On May 19 and 22, 2014, and June 5, 13, 14, and 16, 2014, the BCPS provided the MSDE with information and documentation, via email and hand-delivery.

² While the complaint alleges violations that occurred more than one (1) year ago, the complainant was informed, in writing, that the MSDE has authority to investigate allegations of violations that occurred no more than one (1) year from the date the complaint was received (34 CFR §300.153(c)).

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6. On May 29, 2014, Ms. Hartman and Ms. Vickie Strange-Moscoco, Consultant, MSDE, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student’s educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Special Educator;
 - b. Ms. XXXXXXXXXXXX, Special Educator and IEP Chairperson;
 - c. Ms. XXXXXXXXXXXX, General Educator; and
 - d. Mr. XXXXXXXXXXXX, General Educator.

Ms. Maureen Hartlieb, Compliance Resource Teacher, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

7. On June 19, 2014, Ms. Hartman conducted a telephone interview with the complainant regarding the allegations contained in the complaint.
8. On June 20, 2014, Ms. Hartman and Ms. Mandis conducted an interview with the complainant and the student at MSDE and reviewed documents brought by the complainant. On the same date, Ms. Hartman requested additional documentation from the complainant and the BCPS.
9. On June 26, 2014, Ms. Hartman requested additional documentation from the complainant.
10. On July 1, 2014, Ms. Hartman requested additional documentation from the BCPS.
11. On July 7, 2014, Ms. Mandis requested additional documentation from the BCPS.
12. On July 10, 2014, the complainant provided the MSDE with additional documentation.
13. 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 April 8 and 30, 2014;
 - b. IEP and IEP team meeting summary, dated April 23, 2013;
 - c. IEP and IEP team meeting summary, dated October 10, 2013;
 - d. IEP team meeting summary, dated October 29, 2013;
 - e. IEP team meeting summary, dated February 26, 2014;
 - f. IEP team meeting summary, dated March 26, 2014;
 - g. Report of Independent Psychological Evaluation from the XXXXXXXXXXXX XXXXXXXXXXXX, dated September 18, 2013;
 - h. Report of Independent Psychology Diagnostic Interview from the XXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, dated October 22, 2013;

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- i. Teacher Information Reports, dated February 3, 2014;
- j. Student work samples from the 2013-2014 school year;
- k. Correspondence from the school principal to the complainant, dated October 1, 2012;
- l. Correspondence from the BCPS Superintendent of Middle Schools to the complainant, dated October 3, 2012; and
- m. Correspondence from the complainant to the student's special education teacher, dated September 30, 2013.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment under the IDEA based on a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD). She attends XXXXXXXXX, where she receives 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. a-j).

ALLEGATION #1: ENSURING THAT THE IEP HAS ADDRESSED THE STUDENT'S NEEDS RELATED TO COMMUNICATION, PEER RELATIONS, AND DISTRACTIBILITY SINCE APRIL 30, 2013²

FINDINGS OF FACTS:

1. The IEP in effect at the start of the time period covered by this investigation was developed on April 23, 2013. The IEP documents that the student has needs related to distractibility and her ability to communicate in writing. There is no documentation that the student was identified as having any other communication needs or with needs related to peer relations. The IEP contains goals for the student to increase her on-task behavior and written language skills. To assist her in achieving these goals, the IEP requires that she receive special education instruction in the general education classroom. The IEP also requires accommodations and supplementary aids and services to assist the student in remaining on task, including reduced distractions during testing, preferential seating, the breaking down of assignments into smaller units, the use of organizational aids, and the provision of strategies to initiate and sustain attention. The team decided that distractions can be reduced sufficiently for the student to take tests in the classroom by ensuring minimal student movement. However, the team decided that the student could choose to take math and science tests outside of the classroom in the "resource room" (Doc. b).
2. There is documentation that IEP team meetings were held on October 10 and 29, 2013, February 26, 2014, and March 26, 2014. At these meetings, the complainant expressed concerns regarding the student's self-esteem and peer interaction. There is documentation that the team considered the results of private assessments obtained by the complainant, which indicate that, in addition to having ADHD, the student has

Asperger's Syndrome. The assessment reports indicate that the complainant and the student reported that the student has a history of difficulty with self-esteem and peer interactions³ (Docs. c – h and review of audio recordings of IEP team meetings).

3. At the IEP team meetings, the team documented its consideration of teacher reports that the student was making progress on the annual IEP goals, was doing well in class and getting good grades. The team also documented that the teachers reported that the student works well with others, has “positive peer interactions,” including at lunch, in class, and in the halls, and that “any concerns that are noted are very typical for a middle school 7th grader.” Based on the teacher reports, the team decided that the student does not have educational needs related to peer interactions or self esteem. However, the written summary of the October 10, 2013 IEP team meeting reflects that the student's math teacher reported that the student was earning a “D” grade and that she stated that the student “has the potential to do well but appears to lack the confidence.” In addition, there is documentation that on September 30, 2013, the complainant requested that the student be permitted to have lunch in the cafeteria instead of in the resource room with the special education teacher (Docs. c – f, i, m, and review of audio recordings of IEP team meetings).
4. There is documentation that by the February 26, 2014 IEP team meeting, the student brought her math grade up to a “B” and was earning “As” in all other subjects. There is also documentation that by the March 26, 2014 IEP team meeting, the student was participating in two after school activities. The teachers continued to report not having observed the student experiencing any difficulty with peer relations at school. However, based on the complainant's continued concerns, it was decided that a referral would be made for the student for community-based services to address the feelings of anxiety and frustration that she was expressing to the complainant at home (Docs. e and f).
5. The reports of the private assessments that were considered by the IEP team contain recommendations that the student be provided with an environment where distractions are reduced when tests are administered. The IEP team documented its consideration of the complainant's request that the IEP require the administration of tests outside of the classroom to ensure that the student is not distracted. The team also documented its consideration of information from the student's teachers that, while the student had taken math and science tests outside of the classroom in the “resource room,” this did not result in an improvement of her performance on tests. The team documented that, based on teacher reports, distractions can be sufficiently reduced in the classroom and that the student does not require the use of a “resource room” for test taking (Docs. c - i and review of audio recordings of IEP team meetings).

³ There is documentation that during the 2012-2013 school year, the student began boarding the bus at a bus stop that was not her designated bus stop due to concerns about interaction with other students at her assigned stop. The student met with and reported to the BCPS Superintendent of Middle Schools her difficulty with peer interactions at school and at her designated bus stop. The BCPS informed the student and the complainant that the student was required to report to her designated bus stop or to discontinue taking the bus, and it was suggested that the student meet with the school guidance counselor to address any concerns that arise with peer relationships (Docs. k and l).

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6. The documentation of the IEP team meetings also reflects that the complainant requested that the student be provided with the assistance of a “one-to-one aide.” The reports of the private assessments that were considered by the team state that, as the student’s academic demands increase at school, “she may need more individualized attention” to address attention and executive functioning problems. However, the reports do not contain specific recommendations for the provision of a “one-to-one aide” (Docs. c - h).
7. The documentation of the IEP team meetings reflects that the IEP team considered information from the student’s teachers that the student was doing well with the level of support that she was currently receiving. Based on the teacher reports, the IEP team rejected the complainant’s request for a “one-to-one aide” (Docs. c - f, i, and review of audio recordings of IEP team meetings).

DISCUSSION/CONCLUSIONS:

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. The academic, developmental, and functional needs may include communication, socialization, and emotional needs, depending on the individual needs of the student (34 CFR §300.324 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46684, August 14, 2006).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures used by a local public agency to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services. The SEA may not, however, overturn an IEP team’s decisions. The OSEP indicates that parents may 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 the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on the Findings of Facts #1 - #7, the MSDE finds that the IEP team documented its consideration of the complainant’s concerns, the evaluation data, and teacher information about the student’s classroom performance. However, based on the Findings of Facts #2 and #3, the MSDE finds that the basis for the IEP team’s October 10, 2013 decision to deny the complainant’s request for additional supports was not consistent with the data, and that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #4 - #7, the MSDE finds that the IEP team's decisions were consistent with reports of the student's classroom performance since the February 26, 2014 IEP team meeting and that there is no documentation of data that is inconsistent with those reports.

ALLEGATION #2: PROVISION OF CHECKS FOR UNDERSTANDING AND A REDUCED WORKLOAD SINCE APRIL 30, 2013²

FINDINGS OF FACTS:

8. The IEP in effect since the start of the investigation includes a goal for the student to increase her self-advocacy skills, and requires that the student "monitor for her own comprehension" in order to request assistance when needed. It also requires that teachers monitor for the student's comprehension by "checking-in" with her to assess whether she comprehends the material. The documentation reflects that the student has demonstrated improvement in her ability to request assistance when needed, and that the teachers "check-in" with the student to assess if she understands the material (Docs. b - f, i, and j).
9. The IEP in effect since the start of the investigation does not specifically state that the student is to be provided with a reduced work load. However, while some of the teachers report that it is not their understanding that this is a required accommodation, others are documenting that this is an accommodation that is being provided (Docs. b - f, i, and j, and interviews with the complainant and the school staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education services required by the IEP. In order to do so, the IEP must include a clear statement of the special education services required, and each teacher and provider of the student must be informed of his or her specific responsibilities related to implementing the IEP, including the specific accommodations, modifications, and supports that must be provided (34 CFR §§300.101, .320, and .323).

Based on the Finding of Fact #8, the MSDE finds that there is documentation that the student is improving her self-advocacy skills and that she is provided with "checks for understanding," as required by the IEP. Therefore, the MSDE does not find that a violation has occurred with regard to this aspect of the allegation.

However, based on the Finding of Fact #9, the MSDE finds that the BCPS has not ensured that the student's teachers have a consistent understanding of whether the student is required to be provided with a reduced workload. Therefore, the MSDE finds that a violation has occurred with regard to this aspect of the allegation.

ALLEGATION #3: PROVISION OF A FINALIZED COPY OF THE IEP WITHIN FIVE (5) BUSINESS DAYS OF THE OCTOBER 10, 2013 IEP TEAM MEETING

FINDINGS OF FACTS:

10. While the school staff reports that a copy of the finalized October 10, 2013 IEP was sent home with the student on the same day as the meeting, the staff acknowledges that this was not documented (Interviews with the BCPS staff and review of the student's educational record).
11. The complainant reports that while she was not provided with the IEP within five (5) business days of the meeting, she has now been provided with a copy (Doc. a and interviews with the complainant).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that parents are provided a copy of the student's IEP within five (5) business days of the IEP team meeting at which the program was reviewed. If the IEP is not completed, the parents must be provided with the draft copy of the IEP (Md. Code Ann., Educ., §8-405 and COMAR 13A.05.01.07D).

Based on the Finding of Fact #10, the MSDE finds that there is no documentation that the complainant was provided with a complete copy of the IEP within five (5) business days of the October 10, 2013 IEP team meeting. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

However, based on the Finding of Fact #11, the MSDE finds that the complainant has since received a completed copy of the October 10, 2013 IEP. Therefore, no student-specific corrective action is required with regard to this violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation, by the start of the 2014-2015 school year, that the IEP team has reviewed and revised, as appropriate, the student's IEP to ensure that it contains a clear statement of all required accommodations and supports, and that the student's teachers have been informed of their specific responsibilities for implementing the IEP.

At this meeting, the IEP must make the following determinations based on the evaluation data:

1. the student's current levels of academic and functional performance;
2. the levels of academic and functional performance that were expected to be achieved by that time;

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3. the amount and nature of services needed to compensate the student for the violations identified, based upon any identified discrepancy between the student's expected and actual levels of performance; and
4. a plan for how and when the services are to be provided within a year of the date of this Letter of Findings.

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, she maintains the right to request mediation or file a due process complaint in order to resolve the dispute, in accordance with IDEA.

School-Based

The MSDE requires the BCPS to provide documentation, by the start of the 2014-2015 school year, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX. 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 date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the Office of Special Education Programs. Additionally, the findings in the 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 actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS by the Family Support and Dispute Resolution Branch, MSDE, at (410) 767-0255.

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Please be advised that both the complainant and the BCPS 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 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 Free Appropriate Public Education (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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/ch

c: S. Dallas Dance
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