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State Superintendent of Schools

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August 12, 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: #14-109

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.

ALLEGATION:

On June 16, 2014, the MSDE received a complaint from Mr. and Mrs. XXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the allegation that the BCPS did not ensure that the student’s Individualized Education Program (IEP) includes positive behavioral interventions and strategies to address his refusal to attend class and participate in counseling sessions, in accordance with 34 CFR §300.324.

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INVESTIGATIVE PROCEDURES:

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 18, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Executive Director of Special Education, BCPS.
3. On July 1, 2014, Ms. Williams conducted a telephone interview with the student's mother to clarify the allegation to be investigated.
4. On July 8, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the BCPS review the alleged violation.
5. On July 28, 2014, Ms. Williams and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted at site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record. Ms. XXXXXXXXXXXX, Special Education Department Chairperson, XXXXXXXXXXXXXXXXXXXX, and Ms. Conya Bailey, Supervisor of Compliance, BCPS, attended the site visit.
6. On August 4, 2014, Ms. Williams discussed the allegation with Ms. Bailey and requested additional documentation.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 27, 2013;
 - b. IEP, dated October 24, 2013 and written summary of the IEP team meeting;
 - c. Written summary of the December 11, 2013 IEP team meeting;
 - d. IEP, dated March 6, 2014 and written summary of the IEP team meeting;
 - e. Written summary of the June 16, 2013 IEP team meeting; and
 - f. Correspondence from the complainants containing an allegation of a violation of the IDEA, received by the MSDE on June 16, 2013.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with a Specific Learning Disability (SLD) under the IDEA. He attends XXXXXXXXXXXXXXXXXXXX, where he has an IEP that requires the provision of special education and related services (Docs. d, e, and f).

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During the period of time addressed by this investigation, the complainants participated in the education decision-making process and were provided with written notice of the procedural safeguards (Docs. a - e).

FINDINGS OF FACTS:

March 27, 2013 IEP Team Meeting

1. The IEP in effect at the start of the 2013-2014 school year was developed on March 27, 2013. The IEP documents identified needs for the student in the areas of work habits, organization, and compliance with school rules. It includes annual goals for the student to manage long term assignments, complete and turn in homework assignments, and to follow school/class rules, routines, and expectations. The IEP requires that the student be provided with special education instruction and counseling services to assist him in achieving the goals. In addition, the IEP requires that the student be provided with extended time to complete assignments, frequent breaks, a setting with reduced distractions, organizational aids, repetition of information, chunking of texts into smaller units, as well as assistance from a behavior interventionist with the use of strategies to initiate and sustain attention (Doc. a).
2. A report of the student's progress toward achievement of the annual goals, made on June 5, 2013, states that the student was not making sufficient progress to meet the goals and that the IEP team needed to meet to address the lack of progress. However, there is no documentation that the IEP team convened until October 24, 2013, when it met to conduct the annual IEP review (Docs. a and b).

October 24, 2013 IEP Team Meeting

3. At the October 24, 2013 IEP team meeting, the team considered teacher reports that, at that time, the student was again making sufficient progress toward achievement of the annual goals. The team also considered information from the complainants that the student had stopped taking prescribed medication, but that he had subsequently resumed taking the medication. The complainants expressed concern about the student's grades and his need to begin to advocate for assistance. In response, the IEP was revised to require that the student be encouraged to seek assistance and clarification of information from teachers and other school staff, and the student be observed in two (2) classes per day in order to identify and address any need for additional support (Doc. b).

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December 11, 2013 IEP Team Meeting

4. On December 11, 2013, the IEP team convened to begin a three (3) year reevaluation. At the meeting, the team considered information from the student's teachers that the student was leaving school before the end of the school day, that he was not participating in class, and that he was not completing assignments. The IEP team recommended that updated psychological and educational assessments be conducted, as well as a classroom observation, and the complainants provided consent for the additional data to be obtained. However, the IEP team did not consider positive interventions that could be provided to address the student's behavior at that time (Doc. c).
5. The report on the student's progress towards achievement of the annual goals, made on January 22, 2014, states that the student was not making sufficient progress to meet the goals and that the IEP team needed to meet to address the lack of progress. However, there is no documentation that the IEP team convened until March 6, 2014, when it met in order to complete the reevaluation (Doc. b).

March 6, 2014 IEP Team Meeting

6. The documentation of the March 6, 2014 IEP team meeting reflects that the team considered the assessment data and determined that the student continues to meet the criteria for identification as a student with a Specific Learning Disability under the IDEA. The team also considered the report of the classroom observation, which states that the student was "very distracted in class," and that while he "appeared to have good ideas in class," he was "unable to follow through due to his lack of attention to the task at hand." The student's teachers reported that he was again making sufficient progress towards achievement of the annual goals, but that he continued to struggle with homework, class work, and class participation (Doc. d).
7. The documentation of the March 6, 2014 IEP team meeting reflects that the complainants expressed concern about the student displaying a lack of motivation and about the IEP team not convening to address the matter. In response, the IEP Team chairperson stated that the student's "level of motivation is a concern, however it is not an academic instructional area that would be addressed in the IEP" (Doc. d).

June 6, 2014 IEP Team Meeting

8. On June 16, 2014, the IEP team convened and considered the complainants' concern that, despite the supports being provided through the IEP, as well as the additional efforts

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made by themselves and the school system staff,¹ the student was continuing to exhibit the same behavior and was refusing to participate in the counseling that was intended to assist him with his behavior. The complainants reported that they were struggling with getting the student to take his medication in the morning, which resulted in his late arrival to school, and requested that he be permitted to take his medication at school under the supervision of the school nurse (Doc. e).

9. The documentation of the June 16, 2014 IEP team meeting states that in response to the complainants' concerns, a general education teacher of the student's "shared that there are student behaviors that a teacher doesn't have control of [such as] student attendance, sporadic prescription medication use, and sleeping in class." The documentation also reflects that the IEP Team chairperson reported that she was not sure about whether it would be possible for the student to take his medication at school (Doc. e).
10. At the June 16, 2014 IEP team meeting, the complainants requested a Functional Behavioral Assessment (FBA). The documentation of the meeting reflects that the school psychologist "suggested waiting until the fall to see what behaviors [the student] demonstrates that impact his education in the fall." The IEP team decided to reconvene in August to "again discuss the possible need for a FBA," but did not consider positive behavior interventions to address the student's lack of regular school attendance and refusal to participate in counseling (Doc. e).

DISCUSSION/CONCLUSIONS:

It is the responsibility of the local school system to offer a Free Appropriate Public Education (FAPE) to all students within its jurisdiction. In order to offer a FAPE, the public agency is required to develop an IEP that includes special education and related services designed to address the needs that arise from the student's disability. In the case of a student whose behavior impedes his or her learning or that of others, the IEP must also include strategies to address that behavior (34 CFR §§300.34, .101, .320, .323 and .324).

Related services means transportation and such developmental, corrective, and other supportive services, such as counseling, required to assist the student with a disability to benefit from special education. These services may include school health and school nurse services (34 CFR §300.34).

¹ There is doc that the BCPS Pupil Services staff met numerous times with the student during the 2013-2014 school year about his lack of regular school attendance, additional assistance was offered to the student by the Special Education Department Chairperson and the Guidance Counselor, and mentoring was offered by one of the student's teachers. The complainants unsuccessfully attempted to persuade the student to participate in a drug treatment program to address issues of self medication that occurred when the student did not take his prescribed medication (Doc. e).

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The needs that arise from the student's disability are identified through information obtained about the student's present levels of academic and functional performance. In order to obtain this information, the IEP team must consider the assessment data, information from the student's teachers about the student's classroom performance, and the concerns of the student's parents (34 CFR §300.324).

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any lack of expected progress toward the annual goals, information provided by the parents, or the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #1, #2, #5, and #6, the MSDE finds that the BCPS did not ensure that the IEP team convened between June 5, 2013 and October 4, 2013 and between December 11, 2013 and March 6, 2014 to review and revise, as appropriate, the IEP to address the lack of expected progress towards achievement of the annual goals.

Based on the Findings of Facts #3, #4, and #6 - #10, the MSDE further finds that, while efforts were made by the complainants and the school system staff to address the student's interfering behavior, the BCPS has not ensured that the IEP team has considered strategies to address the behavior.

Based on the Findings of Facts #8 - #10, the MSDE also finds that the BCPS did not ensure that the IEP team considered the complainants' requests for school nursing services and for the team to obtain additional data to address the student's interfering behavior. As a result, this office finds that violations occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation, by November 1, 2014 that it has sought consent from the complainants to conduct an FBA, and that the IEP team has convened and completed the following:

1. Considered the results of the FBA if consent is provided;
2. Considered the complainants' request for school nursing services;
3. Considered strategies to address the student's behavior;
4. Reviewed and revised, as appropriate, the student's IEP based on the data; and

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5. Determined the levels of academic and functional performance that were expected to be achieved by that time;
6. Determined 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
7. Developed a plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings if accepted by the student.

School-Based

The MSDE requires the BCPS to provide documentation, by November 1, 2014, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXX staff comply with the requirements related to the IEP team's consideration of parent concerns, and the review and revision, as appropriate, of the IEP to address interfering behaviors and the lack of expected progress toward achievement of IEP goals.

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.

Please be advised that both the complainants 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.

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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants 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 a due process complaint.

Sincerely,

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

MEF/am

c: S. Dallas Dance
Conya Bailey
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Dori Wilson
Anita Mandis
Tyra Williams