



August 13, 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: #14-110

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 June 19, 2014, 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.

The MSDE investigated the allegations listed below:

1. The BCPS did not ensure that adult assistance was provided as required by the Individualized Education Program (IEP) during the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the BCPS did not ensure that the individual assigned to provide the service was not informed of her role and did not provide the amount and nature of assistance that was required.
2. The BCPS did not ensure that periodic consultation occurred between an occupational therapist and the student’s teachers, as required by the IEP during the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.

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3. The BCPS did not ensure that the student was provided with social and emotional support from a guidance counselor, as required by the IEP during the 2013-2014 school year, in accordance with 34 CFR §§300.101 and .323.
4. The BCPS did not ensure that the accommodations and supplementary aids and services required by the IEP were provided during the 2013-2014 school, in accordance with 34 CFR §§300.101 and .323.
5. The BCPS has not ensured that the IEP addresses the student's reading comprehension, written language, and social, emotional, and behavioral needs, and her need for the use of a "resource room"¹ to address sensory issues and those related to anxiety since June 6, 2014, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 20, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Executive Director of Special Education, BCPS.
3. On June 27, 2014, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On July 16, 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. In addition, Ms. Anita Mandis, Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, sent correspondence to Ms. Conya Bailey, Supervisor of Compliance, BCPS, requesting to review documents at XXXXXXXXXXXXXXXX.
5. On August 1, 2014, Ms. Mandis and Ms. Janet Jacobs, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record and other documents. Ms. Bailey and Ms. XXXXXXXXXXXX, IEP Team Chairperson, attended the site visit.

¹ This is a room that is designated for the provision of instruction and supports outside of the general education classroom (Doc. d).

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6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated July 1, 2013;
 - b. Electronic mail (email) correspondence between the complainant and the school system staff, dated August 26, 2013 to April 4, 2014;
 - c. Written summaries of the March 14, 2014 IEP team meeting;
 - d. Written summaries of the IEP team meeting held on June 6 and 20, 2014 and the IEP, dated June 20, 2014;
 - e. Reports of the student's progress toward achieving the annual IEP goals, dated November 1, 2013, January 17, 2014, April 7, 2014, and May 21, 2014; and
 - f. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on June 19, 2014.

BACKGROUND:

The student is twelve (12) years old and is identified as a student with Autism under the IDEA. She attends XXXXXXXXXXXXXXXXXXXX, where she has an IEP that requires the provision of special education and related services (Doc. d).

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, c, and d).

ALLEGATIONS #1 - #4 PROVISION OF ADULT ASSISTANCE, CONSULTATION BETWEEN TEACHERS AND AN OCCUPATIONAL THERAPIST, SOCIAL/EMOTIONAL SUPPORT FROM A GUIDANCE COUNSELOR; AND OTHER ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SERVICES DURING THE 2013-2014 SCHOOL YEAR

FINDINGS OF FACTS:

IEP Requirements – Adult Assistant

1. The IEP in effect during the 2013-2014 school year indicates that the student requires assistance with completing her work when she becomes frustrated by challenging academic tasks. It also indicates that the student requires assistance with improving her ability to infer information, increasing her understanding of the perspectives of others, and improving her conversational interaction skills as a result of her “moderately reduced pragmatic language skills.” The IEP requires that the student be provided with adult support “in all academic classes to help her monitor her emotions and behaviors.” It also requires that the adult assistant be informed of the need to use strategies such as hand

signals to communicate the student's need to take breaks and the need to monitor the student's use of the breaks. The IEP further requires that the student be provided with "daily access each morning to the counselor/adult assistant where she can check in [for a] (pep talk and review of prior day)." The IEP explains that a "hierarchy of adults" will be used for this "check in," as needed (Doc. a).

IEP Requirements – Guidance Counselor Support

2. The IEP in effect during the 2013-2014 school year also requires that the student be provided with special education instruction to assist her with improving her self management/coping strategies and her pragmatic language skills by a general education teacher, a special education teacher, or instructional assistant. It also requires the provision of assistance from a social worker and guidance counselor with replacing negative thought patterns using positive "self-talk" (Doc. a).

IEP Requirements – Occupational Therapist Consultation

3. The IEP states that the student's teachers will maintain daily communication with her parents to "establish positive home-school communication." It also reflects that the student's teachers will have access to periodic consultation with a school nurse or other school health staff member and an occupational therapist due to the complexity of the student's medication administration (Doc. a).

IEP Requirements – Other Accommodations and Supplementary Aids and Supports

4. To further assist the student with managing stress and avoiding frustration, the IEP requires that she be provided with the following supports:
 - Provision of work that is broken down work into smaller units;
 - Removal of extraneous information on assignments and tests;
 - Use of graphic organizers and other organizational aids;
 - Use of a scribe to allow the student to process her thoughts without having to divide her attention between processing and the mechanics of writing;
 - Use of calculation devices;
 - Provision of manipulatives and sensory activities to promote listening and focusing skills;
 - Provision of frequent changes in activity or opportunities for movement;
 - Provision of breaks during instruction and testing;
 - Preferential seating for easy access to take breaks;
 - Provision of extended time to complete tasks;
 - Use of a small group setting to reduce the amount of visual and auditory distractions;
 - Use of highlighters during instruction and in completing assignments;

- Prompting the student to repeat or paraphrase information to ensure her understanding;
 - Encouragement to seek assistance when needed;
 - Advanced preparation for schedule changes;
 - Frequent eye contact and proximity control;
 - Use of a “peer buddy” to assist with transitions;
 - Access to the “resource room” for academic support, coaching for homework completion, study skills, and notebook organization;
 - Provision of concise directions and due dates for assignments;
 - Monitoring of the student’s use of an agenda book to ensure that she has the information needed to complete daily assignments;
 - Provision of an extra set of textbooks for use at home;
 - Provision of notes and other materials for use at home;
 - Coaching to remind the student to read questions during test taking and to organize her desk and monitor her need for materials such as paper and other supplies; and
 - Test monitoring to assist the student with pacing herself so that she does not race through and skip test items (Doc. a).
5. On March 14, 2014, the IEP team met and considered teacher reports of the student’s progress. At that meeting, the complainant requested that the following be required by the IEP:
- a. A review with the student of each chapter in her language arts class by an accredited teacher to make sure that she is comprehending each chapter, to include having the student develop written responses to questions about the material;
 - b. Work on language arts and speech/language skills together to strengthen complete recall and grasp of events in reading assignments, with a focus on relationships between characters and events;
 - c. Short comprehension checks in the “resource room” in order for the student to develop underlining and note taking skills;
 - d. Opportunity for the student to meet with teachers for reinforcement of instruction as part of a “lunch bunch,” where her social interactions can be monitored;
 - e. A check of the student’s agenda book by an educator at the end of the day to ensure that it clearly describes the assignments that need to be completed;
 - f. Provision of the student’s class work home to the complainant each day; and

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- g. Guidance on the number of examples that are adequate for answering each question or to be included in an essay (Doc. c).
- 6. The written summary of the March 14, 2014 IEP team meeting that was developed by the school system staff reflects that the IEP team rejected the request for a “lunch bunch” due to the inability of all of the student’s teachers to be available at a specific time during the school day for this purpose, and because the teachers offer coach classes before and after school and during their lunch periods to provide such assistance. The summary reflects that the team discussed that classwork is not sent home because when it has been sent home, it has not been returned to school, and the student needs to maintain the work in her binder for future use in the classroom. It also reflects a disagreement between the complainant and the school-based members of the team about the manner in which services should be provided. The summary indicates that the IEP team decided to consider the requested strategies further after obtaining information about whether they would be helpful to the student (Doc. c).
- 7. The complainant prepared a summary of the March 14, 2014 IEP team meeting that reflects that the IEP team decided that the additional services that she requested “would be included in the next draft” of the IEP (Doc. c).
- 8. On June 20, 2014, the IEP team discussed the disagreement between the complainant and the school-based members of the team about whether the services requested by the complainant were agreed upon at the previous IEP team meeting. The team documented its further consideration and decisions regarding the requested services, and based on those decisions, revised the IEP (Doc. d).

IEP Implementation

- 9. The following documents the provision of the adult assistance, support from a guidance counselor, and the accommodations, and supplementary aids and services required by the IEP:
 - a. IEP team meeting summaries reflecting the team’s consideration of the reports of the provision of services and supports by teachers and service providers, a discussion of how the supports were being provided in response to the complainant’s concerns, and the complainant’s disagreement with the school staff’s assessment of the student’s progress;
 - b. Reports of the student’s progress toward achievement of the annual goals, dated November 1, 2013, January 17, 2014, April 7, 2014, and May 21, 2014, reflecting that the student made sufficient progress toward all of the annual goals and achieved all but one of them by the end of the school year with the provision of the supports required by the IEP;

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- c. Electronic mail messages between the complainant and school staff reflecting regular communication about the work to be completed by the student, and the complainant's concerns about the manner in which services were being provided;
 - d. A review of samples of the student's work, the agenda book, behavior charts, and the school staff's monitoring of the student's emotions and her use of breaks; and
 - e. A review of the student's 2013-2014 report card reflecting that she earned a "B" in two (2) of her classes and an "A" in the remaining classes (Docs. a – e and review of documents at XXXXXXXXXXXXXXXX).
10. There is no documentation that the student regularly lost her materials and was unable to complete her work (Review of documents at XXXXXXXXXXXXXXXX).
11. There is no information or documentation that the student's teachers required consultation with a school nurse or other school health staff member, or with an occupational therapist (Interview with school staff, and review of documents at XXXXXXXXXXXXXXXX).

LEGAL REQUIREMENTS:

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).

The decision about the special education services that are required must be made by the IEP team based on the individual student's needs. While an IEP team may determine that specific methods of delivering special education services to a student are needed, the IDEA does not require the team to do so. While school staff are expected to use the most effective methods of instruction, the IDEA does not reflect that the provision of services that are not based on peer-reviewed research results in a denial of a Free Appropriate Public Education (FAPE) (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46665, August 14, 2006).

Allegation #1 Adult Assistance

In this case, the complainant asserts that the individual assigned to provide the student with adult assistance did not have sufficient training and experience working with students with Autism and that she did not have an accurate understanding of her role in implementing the IEP. As a result, the complainant alleges that the student was not provided with the amount and nature of adult assistance required by the IEP, as indicated below.

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The complainant asserts that the IEP required the adult assistant to provide support to the student throughout the school day, and alleges that she did not consistently provide the student with assistance at the start of the day and during her last period physical education class (Doc. f and interview with the complainant). Based on the Finding of Fact #1, the MSDE finds that the IEP required that the support be provided “in all academic classes” and not throughout the school day. Based on the Finding of Fact #9, the MSDE finds that there is documentation of the provision of assistance to the student in her academic classes. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant asserts that the adult assistant did not assist the student with remaining organized, and that as a result, the complainant had to meet with the IEP team chairperson and the assistant principal to “discuss the agenda book and how [the student] lost supplies every day” (Doc. f). Based on the Findings of Facts #1 and #4, the MSDE finds that the documentation does not reflect that it was the specific responsibility of the adult assistant to help the student to remain organized. Based on the Findings of Facts #4, #6, and #9, the MSDE finds that there is documentation that the student was provided with assistance with remaining organized and with the use of her agenda book, and that the complainant does not agree with the manner in which the services are provided.

Based on the Findings of Facts #9 and #10, the MSDE further finds that while there is documentation that clarification from the student’s teachers about the information provided in the agenda book was occasionally needed, there is no documentation that the student regularly lost supplies and was unable to complete assignments. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant asserts that the adult assistant did not chart the student’s use of breaks, including the amount of time taken and the reason for the breaks in order for the student to use this as a self-examination tool. The complainant also indicates that the behavior chart was “only rarely used and never complete,” and that the student’s emotional state was not monitored so that she could be referred to the guidance counselor when she was unable to use coping techniques (Doc. f). Based on the Findings of Facts #4, #5, and #9, the MSDE finds that the documentation does not support this aspect of the allegation.

Allegation #2 Occupational Therapist Consultation

In this case, the complainant alleges that the student’s teachers were required to consult with an occupational therapist, and that there is no report that such consultation occurred (Doc. f). Based on the Findings of Facts #3, #9, and #11, the MSDE finds that the IEP indicates that consultation with an occupational therapist was a support that was to be made available to teachers, and that there is no information or documentation that the teachers required such support. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #3 Support from a Guidance Counselor

In this case, the complainant alleges that because the student met with the case manager at the start of the day to organize her materials, she was not provided with the opportunity to check in with the guidance counselor to address any anxieties or concerns that she might have at the start of the school day (Doc. f). Based on the Findings of Facts #2 and #9, the MSDE finds that there is documentation that the guidance counselor met with the student. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #4 Other Accommodations and Supplementary Aids and Services

In this case, the complainant alleges that the student was not provided with additional supports, including math textbooks for use at home, classroom seating that enabled the student to take breaks, opportunity to work with peers, use of organizational tools, monitoring of test taking, and prompting the student to repeat or paraphrase information. The complainant asserts that the “teachers do not appear to understand [the student’s] learning differences and didn’t seek out [a] conference with me or the [student’s private] tutors to know how is the best way to teach the students with [her] weaknesses” (Doc. f).

Based on the Findings of Facts #4 and #9, the MSDE finds that there is documentation of the provision of the supports to the student. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the IEP team decided on March 14, 2014 that additional supports would be provided at her request, but that the team’s decision was not implemented (Doc. f). Based on the Findings of Facts #5 - #7, the MSDE finds that there was disagreement between the complainant and the school-based members of the team about the decisions made at the March 14, 2014 IEP team meeting and that each party documented its respective understanding of the decisions that were made.

Based on the Finding of Fact #8, the MSDE further finds that the IEP team met on June 20, 2014 and again considered the complainant’s request for specific services and clarified the services that are required by the IEP. Because there was conflicting documentation of the team’s decisions regarding the additional services requested by the complainant on March 14, 2014, this office finds that there is no reliable documentation that the services were required to be provided during the 2013-2014 school year. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

This office understands that the complainant disagrees with the school staff regarding the manner in which services and supports are provided. However, because there is documentation of the provision of the services and supports required by the IEP, the MSDE does not find violations with respect to Allegations #1 through #4.

ALLEGATION #5 ADDRESSING THE STUDENT’S READING COMPREHENSION, WRITTEN LANGUAGE, SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS AND THE NEED FOR THE USE OF A RESOURCE ROOM SINCE JUNE 6, 2014

FINDINGS OF FACTS:

Reading Comprehension and Written Language Needs

12. On June 6 and 20, 2014, the IEP team reviewed and revised the IEP. At that time, the team considered information from the student’s teachers that she is now performing at or above grade level in all academic areas except for math. The IEP team also considered the complainant’s concern that the student continues to have trouble translating verbal responses into writing. The school-based members of the team explained that the student rushes to demonstrate her understanding and to complete her work, and does not always pay careful attention to accuracy. They further reported that the student understands the material and can complete tasks accurately with the provision of rewards for slowing the pace of her work in order to revisit her answers and correct her work when prompted. The complainant’s advocate expressed disagreement with the school-based members of the team, indicating that she believes that the student rushes through the work because she does not understand the material (Doc. d).
13. The IEP team revised the math goal based on the student’s progress. Based on the information provided by the student’s teachers, the team decided to discontinue the reading and written language goals, but to continue the provision of adult assistance and other supports in all academic areas. The written meeting summaries document that the complainant and the school-based members of the team continue to disagree about the manner in which those supports should be provided (Doc. d).

Social, Emotional, and Behavioral Needs and the Need for the Resource Room

14. The IEP team discussed that the school would no longer be using the same room all of the time for the provision of services to students outside of the general education classroom as they had during the 2013-2014 school year. Instead, different rooms within the school building would be designated to serve as the “resource room” as students require the provision of supports outside of the general education classroom. In addition, there will not be a specific staff member assigned to the room throughout the day as was done last school year. Instead, the room will be staffed by teachers and other service providers of students as they require the provision of services in the room. The school-based members of the team explained that this would not impact the student’s access to space outside of the general education classroom for the provision of the supports that she was currently receiving in the designated resource room. The only changes would be to the location of the room and the school staff working in the room (Doc. d).

15. The complainant expressed concern that the student requires a consistent place and person throughout the school day, and that if a specific room is not designated for the student's use, which is consistently staffed with a certified teacher, she will become anxious and "shut down." A school-based member of the team shared that the student did not have such a reaction when the "resource room" was relocated during the 2013-2014 school year, and explained that the room was not consistently staffed by the same person during the 2013-2014 school year (Doc. d).

16. The complainant and the school-based members of the IEP team disagreed about the student's needs with respect to peer relations. The complainant reported that the student prefers friendships with first graders, and expressed concern that the student only has one classmate whom she considers a friend, and that the complainant has observed that student being mean to her daughter. The school-based members of the team reported that the student's interactions with her peers are typical for students her age, that she works well with peers in the classroom, and that she is observed laughing and holding conversations with peers at lunch. The complainant expressed her belief that this information does not prove that the interactions between the student and her peers are appropriate. The IEP team decided that any needs related to peer interactions would be addressed through goals for the student to manage her emotions and improve pragmatic language skills (Doc. d).

DISCUSSION/CONCLUSIONS:

In order to offer a Free Appropriate Public Education (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. 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 assessment data, information from the student's teachers about the student's classroom performance, and the concerns of the student's parents (34 CFR §§300.34, .101, .320, .323 and .324).

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 that were followed 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 it 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 not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to

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support the 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 #12 - #16, the MSDE finds that there is documentation that the IEP team considered the required data and made decisions in each area that were based on information provided by the school-based members of the team. Therefore, the MSDE does not find that a violation occurred with respect to the allegation. This office understands that the complainant continues to disagree with the IEP team's decisions, and reminds her of the right to request mediation or to file a due process complaint to resolve the dispute.

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.

Questions regarding the findings and conclusions 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 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