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State Superintendent of Schools

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March 19, 2015

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Ms. Rebecca Ryder
Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #15-047

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 January 22, 2015, the MSDE received a complaint from Mr. XXXXXXXXXXXX of the XXXXXXXXXXXX, Baltimore Campus, hereafter, “the complainant,” on behalf of the above-referenced student.¹ In that correspondence, the complainant alleged that the BCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

¹ The XXXXXXXXXXXX, Baltimore Campus, is the residential facility in which the student is placed by the Baltimore County Department of Social Services (Docs. a and f).

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) team has convened to address the lack of expected progress towards achievement of the annual IEP goals during the 2014-2015 school year, in accordance with 34 CFR §300.324.
2. The BCPS has not ensured that proper procedures have been followed when disciplinarily removing the student during the 2014-2015 school year, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.

INVESTIGATIVE PROCEDURES:

1. On January 28, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Ryder, Director of Special Education, BCPS.
2. On January 29, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations. On the same date, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation and requested that the BCPS review the alleged violations.
3. On January 29, 2015 and February 3, 2015, the complainant provided the MSDE with documents to be considered during the investigation.
4. On February 3, 2015, Ms. Mandis and Ms. Janet Jacobs, Monitoring and Accountability Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and conducted interviews with the following school staff:
 - a. Ms. XXXXXXXXXXXXXXXX, Acting Principal;
 - b. Ms. XXXXXXXXXXX, IEP Team Chairperson; and
 - c. Ms. XXXXXXXXXXX, Case Manager.

Ms. Conya Bailey, Supervisor of Compliance, BCPS, attended the site visit as a representative of the BCPS providing information about the school system's policies and procedures, as needed. During the site visit, the MSDE requested documents from the BCPS.

5. On February 20, 2015, the complainant provided additional information to the MSDE for consideration.
6. On February 24, 2015 and March 2, 2015, the BCPS submitted documentation to the MSDE to be considered.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Court Order committing the student to the custody of the Baltimore County Department of Social Services, dated September 3, 2013;
 - b. Written summary of the September 24, 2014 IEP team meeting;
 - c. Behavior Intervention Plan (BIP), dated November 27, 2012;
 - d. Reports of the student's progress towards achieving the annual IEP goals, dated June 7, 2014, November 7, 2014, January 23, 2015, and February 2, 2015;
 - e. Notice of bus suspension, dated January 16, 2014;
 - f. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on January 22, 2015;
 - g. IEP, dated February 6, 2015 and written summary of the February 6, 2015 IEP team meeting;
 - h. The student's disciplinary record for the 2014-2015 school year; and
 - i. The BCPS Policy #3410, *Transportation Services*.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services. He is placed by the Baltimore County Department of Social Services at The XXXXXXXXXXXX, Baltimore Campus, and he attends XXXXXXXXXXXXXXXXXXXX (Docs. a and g).

During the period of time addressed by this investigation, the student's mother participated in the education education-making process and was provided with written notice of the procedural safeguards (Doc. g).

FINDINGS OF FACTS:

1. The IEP states that the student demonstrates "[verbal] and physical aggression behaviors that make it unsafe for peers and staff" and that he requires the services of a "consistent behavioral management program," social work services, conflict resolution services, and social skills instruction. It requires that the student be provided with special education instruction to assist him in achieving annual goals to use management/coping strategies, decrease impulsive behaviors, follow school and class rules, and improve positive peer interactions. It also requires the implementation of a Behavioral Intervention Plan (BIP) and crisis intervention services (Doc. g).
2. The BCPS staff report that it is the school system's practice to convene IEP team meetings for students with a disabilities following each quarter of the school year in which insufficient progress is made towards achievement of annual IEP goals (Interview with the school system staff).

3. The reports of the student's progress towards achievement of the annual IEP goals, dated June 6, 2014, reflect that the student was not making sufficient progress (Doc. d).
4. On September 24, 2014, the IEP team decided that progress was not being made because the student was exhibiting "constant disruptive behavior" and spending a "significant" time away from instruction in an attempt to avoid class time. However, the team did not document the consideration of positive behavior interventions to address the student's interfering behavior (Docs. b and c).
5. The reports of the student's progress towards achievement of the annual IEP goals, dated November 6, 2014 and January 23, 2015, reflect that the student continued to not make sufficient progress (Doc. d).
6. The student received a bus suspension that began on January 16, 2015 and lasted for eight (8) school days. At that time, he had already been disciplinarily removed from school during the 2014-2015 school year for four (4) days for other incidents (Docs. e and h).
7. At the time of the bus suspension, the IEP did not require transportation as a related service because the student attends the school he would attend if not disabled. The student was receiving bus transportation in accordance with the BCPS policy that provides bus transportation for all students who are residing more than one (1) mile from school (Docs. g and i).
8. In order to ensure that the student had access to instruction during the suspension from the school bus, the complainant provided him with transportation to and from school from January 16, 2015 until February 2, 2015. The school staff report that, if the complainant had not provided transportation during this time period, the school system would have provided the student with an alternative means of transportation during the bus suspension (Doc. f and interviews with the complainant and the school staff).
9. The reports of the student's progress towards achievement of the annual IEP goals, dated February 2, 2015, reflect that the student continued to not make sufficient progress (Doc. d).
10. On February 6, 2015, the IEP team decided that a Functional Behavioral Assessment (FBA) would be conducted in order to review and revise the BIP, and that transportation would be added to the IEP to include personnel to assist the student with complying with school rules and demonstrating appropriate peer interaction. The team also decided that the complainant would be reimbursed for transporting the student during the bus suspension, and that it would reconvene to consider the student's progress with these additional supports (Doc. g).

DISCUSSION/CONCLUSIONS:

Allegation #1 Review/Revision of IEP to Address Lack of Expected Progress

In order to provide a student with 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 consider 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. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals. In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress, information from the student's parents, and the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #1 - #10, the MSDE finds that there is no documentation that the IEP team has considered positive behavioral interventions and other supports to address the lack of expected progress on the annual IEP goals resulting from the student's interfering behavior since the start of the 2014-2015 school year. Based on those Findings of Facts, the MSDE finds that, while the IEP team decided on February 6, 2015 that additional data is needed to ensure that the student's social, emotional, and behavioral needs are being addressed, that data has not yet been reviewed by the team. Therefore, this office finds that a violation occurred with respect to the allegation since the start of the 2014-2015 school year.

Allegation #2 Disciplinary Procedures and Bus Suspensions

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten (10) school days for each incident that results in disciplinary removal. Once a change in educational placement² occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of specific protections to the student (34 CFR §300.530 and COMAR 13A.08.03).

² A disciplinary removal constitutes a change in educational placement if the student is removed for more than ten (10) consecutive school days or ten (10) cumulative school days in a school year if those removals constitute a pattern of removal of the student (34 CFR §300.530).

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There is no basic entitlement to transportation for the general student population. Transportation provisions are a matter of individual school policy. The local education agencies that provide transportation do so for students who live beyond a designated range from school. If a local education agency does not provide transportation to the general student population, it must ensure that the IEP team determines whether a student requires transportation as a related service (*Letter to Smith*, 23 IDELR 344, United States Department of Education, Office of Special Education Programs [OSEP], 1995 and *Letter to Maisterra*, 114 LRP 45033 [OSEP] 2013).

The IDEA defines transportation as including travel to and from school, travel in and around school buildings, and specialized equipment (34 CFR §300.34). If the IEP team determines that a student requires transportation in order to receive a FAPE, the local education agency must provide that service at no cost to the parents. However, if the IEP team determines that the student does not require transportation as a related service, the local education agency is only required to provide transportation in the same manner as it would be provided for nondisabled students (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46576).

If a student receives transportation as a related service and a bus suspension will result in removals that exceed ten (10) school days, and the local education agency does not provide alternate transportation, the local education agency must provide the student with the IDEA disciplinary protections. This is the case even if the student's parent or another adult voluntarily transports the student to school during the period of exclusion (*Letter to Sarzynski*, 112 LRP 35343 [OSEP] 2012).

In this case, the complainant alleges that, because the BCPS has not ensured that the student's behavioral needs have been addressed, the student has exhibited behaviors that have resulted from his removal from bus transportation. The complainant alleges that such bus transportation removals should be counted as disciplinary removals from school for purposes of ensuring that the student is provided with the required IDEA protections (Doc. f).

Based on the Findings of Facts #6 - #8, and #10, the MSDE finds that, because the student's IEP did not require the provision of transportation as a related service, and since the school system has ensured that an alternative means of transportation was provided at no cost to the student's parent, the bus suspension did not constitute a disciplinary removal from school. Based on those Findings of Facts, this office finds that the student was not removed from school in excess of ten (10) days during the year. Therefore, the disciplinary protections do not apply, and this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the end of the 2014-2015 school year that the IEP team has developed a BIP based on the results of the FBA and determined the

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amount and nature of services needed to remediate the violation identified through this investigation, to be provided to the student within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2015-2016 school year of the steps taken to determine whether the violation identified through this investigation is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXX.

Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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 by contacting Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parent 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: XXXXXXXXXX
 S. Dallas Dance
 Conya Bailey
 XXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Kathy Aux