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April 9, 2015

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Ms. Rebecca Rider
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Baltimore County Public Schools
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Towson, Maryland 21204

RE: XXXXX
Reference: #15-056

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 February 27, 2015, the MSDE received a complaint from Maureen van Stone, Esq., M.S., hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Ms. XXXXXXXXXXXXXXX and Mr. XXXXXXXXXXXXXXX. 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 allegation that the BCPS has not followed proper procedures when conducting an evaluation under the IDEA, in accordance with 34 CFR §§300.8, .101, .111, and .301-.306.

- e. Written summary of the Student Support Team (SST) meeting held on October 23, 2014;
- f. Written summary of the SST meeting held on November 10, 2014;
- g. Consent for assessments to be conducted, dated November 10, 2014;
- h. Receipt of notice of the procedural safeguards, dated November 10, 2014;
- i. Report of the educational assessment conducted on November 25, 2014;
- j. Report of the psychological assessment conducted on January 5 and 8, 2015;
- k. Written summary of the January 12, 2015 IEP team meeting;
- l. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on February 27, 2015;
- m. The student's 2014-2015 school year report card;
- n. The student's 2014-2015 attendance records; and
- o. The BCPS *Gifted and Talented Education Program Status Report*, dated April 2005.

BACKGROUND:

The student is ten (10) years old and he attends XXXXXXXXXXXXXXXXXXXX. He is not identified as a student with a disability under the IDEA. He is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973, and has a "504 Plan," due to Attention Deficit Hyperactivity Disorder (AHDH) and a Depressive Disorder, which requires that he be provided with accommodations (Docs. c, e, f, and k).

During the period of time addressed by this investigation, the student's parents participated in the education-making process and were provided with written notice of the procedural safeguards (Docs. c, e, f, h, and k).

FINDINGS OF FACTS:

504 Plan

1. The 504 Plan, which was developed by the Student Support Team (SST),¹ states that the student's ADHD and Depressive Disorder substantially limit his ability to concentrate and learn. It requires that the student be provided with preferential seating, the opportunity to type or keyboard lengthy written work, opportunities for movement throughout the day, and the provision of choices to "empower" him, alleviate power struggles, and prevent him from "shutting down" (Doc. c).
2. The 504 Plan requires that the student's teachers use visuals and non-verbal cues and graphic organizers, organize the student's graded work for him, break down his assignments into smaller units, monitor the completion of the assignments, and reduce the

¹ The SST addresses complex student needs by developing and monitoring general education interventions and supports through individualized SST Plans and 504 Plans (www.bcps.org).

amount of homework that he is assigned. It also requires daily communication with the student's parents (Doc. c).

3. The 504 Plan further requires that the student be provided with extended time to complete testing, multiple breaks during testing, the use of graphic organizers and a scribe during testing, and reduced distractions during testing (Doc. c).

October 23, 2014 Meeting

4. On October 23, 2014, the SST,² serving as an IEP team, convened at the request of the student's mother, who reported that the student's educational performance and willingness to come to school were declining. The student's mother shared information with the team that the student had recently been psychiatrically hospitalized and was receiving outpatient hospital services. She expressed concern regarding the student's "academic and social-emotional functioning as he transitions back to XXXX [XX]," and she inquired about the student receiving "a greater level of services that could be delivered through an IEP" (Doc. e).
5. At the October 23, 2014 meeting, the team considered information from the student's reading teacher that the student "sometimes displays difficulty with attending to tasks, but works well in small groups." The team also considered a report from the student's math teacher that the student is "struggling with the pace of skill acquisition of 5th grade [gifted and talented] mathematics." The team documented that it agreed that "at least part of this challenge in math can be accounted for by [the student's] absence from instruction due to his recent hospitalization, as well as his emotional state prior to this medical intervention" (Doc. e).
6. On October 23, 2014, the team documented its decision that the student has impairments related to ADHD and a Depressive Disorder, and that they impact his education. The team documented that the basis for these decisions was a report of a private assessment from the XXXXXXXXXXXXXXXXXXXX that describes the student has having a history of "anger" and "poor frustration tolerance," and having been psychiatrically hospitalized in the past.³ The team also documented that the decision was based on information from XXXXXXXXXXXXXXXXXXXX about the student's October 6, 2014 psychiatric hospitalization (Docs. b, d, and e).

² The team included the required participants for an IEP team (Docs. e, f, and k).

³ This May 22, 2013 report states that, although the student currently demonstrates the cognitive ability and core skills to meet grade-level expectations, "his behavioral and affective dysregulation puts him at risk for losing ground academically, secondary to missed instruction due to his inattention and/or behavioral outbursts." It further states that "both family and school-based interventions will be critical, with a focus on antecedent management and clear and consistent behavioral consequences" (Doc. b).

7. At the October 23, 2014 meeting, the school-based members of the team disagreed with the position of the parents and the student's private psychologist that the student requires special education instruction in order to access the general curriculum. The school-based members of the team documented that the basis for its decisions was data from classroom-based assessments in reading, which indicated that the student was performing "commensurate with" his performance during the spring evaluation⁴ (Doc. e).
8. The team did not consider whether the student required additional accommodations in the general education program to address his difficulty in math as a result of his emotional state and hospitalization. Instead, the team decided that the student's instructional level in math was lower than those students in the gifted and talented (GT) math class,⁵ and that he should be moved to a regular math class. However, the team did not document the data used as the basis for this decision. The student's mother reported that the student "derives a portion of his identity and some aspect of self-esteem through his membership in the GT class." The school staff suggested that placement in a regular math class where he might be more successful could have more of a positive impact (Doc. e and interview with the school staff).
9. At the conclusion of the October 23, 2014 meeting, the team decided to continue the discussion of the student's progress and the parents' concerns on another date (Doc. e).

November 10, 2014 Meeting

10. On November 10, 2014, the SST,² serving as an IEP team, reconvened and considered information from the student's teachers that he was "off to a good start" with classes other than math. However, the team did not document consideration of any current information about the student's performance in math (Doc. g).
11. After reviewing the student's progress, the team recommended that educational, psychological, and occupational therapy assessments be conducted within sixty (60) days in order to address the parents' continued concerns, and the father provided consent. In the meantime, the school-based members of the team again recommended moving the student out of the GT math class. The student's father requested that the move not take place until the results of the assessments had been considered. However, the school staff report that the student was moved to a regular math class (Docs. g and h).

⁴ The Measures of Academic Progress (MAP) Interim Assessments in both math and reading reflect that the student has performed at above national grade/age expectations during the last three (3) years (Doc. a).

⁵ The BCPS *Gifted and Talented Education Program Status Report*, dated April 2005, states that the goal of the GT Program is to "enhance academic success" for students with "high achievement capabilities," and that the school system is committed to the principle that "every student who gives evidence of high achievement capabilities should have access to high quality gifted and talented services regardless of that student's race/ethnicity, gender, socio-economic status, geographic location, primary language or disability" (Doc. o).

January 12, 2015 Meeting

12. On January 12, 2015, the IEP team considered the results of the psychological assessment, which states that the student's overall level of intelligence is within the "high average" range. The evaluator states that both the student's teacher and the student's father reported that the student demonstrates "very elevated levels of difficulty in the area of peer relations along with elevated levels of the behaviors measured on the Oppositional Defiant Disorder subscale." However, the evaluator also found that the parents and teachers noted that "these difficulties seriously affect [the student's] grades, school work, friendships and relationships only occasionally" (Docs. j and k).
13. The student's report card for the first (1st) quarter of the school year reflects that the student was demonstrating "satisfactory effort" in the areas of math and behavioral functioning. However, the psychological report contains a recommendation for consultation between the teacher and a school counselor or psychologist to discuss how to address the student's "elevated levels of difficulty in the areas of peer relationships, oppositional defiance, and somatization⁶ while in his homeroom and math classes" (Docs. j and m).
14. At the January 12, 2015 meeting, the team documented that it was unable to complete the assessments within the timeframe recommended on November 10, 2014 "due to the illness between [the student] and the resulting logistic ensnarement with the XXXXXXXX [ES] school psychologist"⁷ (Doc. k).
15. At the January 12, 2015 meeting, the team also considered the report of the educational assessment, which states that the student's standard score in brief mathematics was "superior," that it was "high average" in reading, brief reading, broad mathematics, math calculation, and written expression, and "average" in broad written language and brief writing (Docs. i and k).
16. On January 12, 2015, the team further considered the report of an occupational therapy observation, which states that the student's fine and visual motor skills "do not appear to negatively impact his ability to produce written work," but recommends the provision of accommodations to assist him with improving his writing (Doc. k).

⁶ A tendency to experience distress in the form of physical symptoms due to a psychiatric condition such as anxiety (www.nlm.nih.gov).

⁷ The school staff notified the student's parents that, by the end of the month of January 2015, the student had "an absentee rate of 13%, while 22% of his school days have been negatively impacted by attendance issues." The notice further states that, according to the school system's policy, "an absentee rate of 10% classifies as chronic absenteeism and can result in failure of affected classes" (Doc. n).

17. The team documented that, based on the above assessment results, teacher reports of the student's academic and behavioral performance, classroom-based assessments, and report card grades, it found that the student has an Emotional Disability, but that he does not require the provision of special education instruction as a result of the disability (Doc. k).
18. There is no documentation that the team considered providing additional general education supports to address the student's difficulty with peer relationships, oppositional defiance, and somatization while in his homeroom and math classes, as recommended in the assessment data (Doc. k).
19. The school system staff report that they do not require that a student need goals and special education instruction in academic areas in order to be identified with a disability under the IDEA. They further report that they considered whether the student requires special education instruction in the areas of social, emotional, and behavioral functioning in order to access instruction (Interview with the school system staff).
20. There is no documentation that the team discussed that the student must require goals and special education instruction in academic areas in order to be identified with a disability under the IDEA (Docs. e, f, and k).

LEGAL REQUIREMENTS:

The public agency must ensure that each student with a disability residing within its jurisdiction is identified and is offered a Free Appropriate Public Education (FAPE) through an Individualized Education Plan (IEP). This is required even if the student has not failed or been retained in a course or grade, and is advancing from grade to grade (34 CFR §§300.101, .111, and .320).

Upon receipt of a referral for evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

The public agency must obtain parental consent to conduct an evaluation and must ensure that the evaluation is completed within sixty (60) days of parental consent for assessments and within ninety (90) days of the receipt of the referral for evaluation. The only exceptions to these timelines are if the parent repeatedly fails to produce the student for the evaluation or the student enrolls in a school of another public agency during the evaluation process (34 CFR §§300.300, .301, and COMAR 13A.05.01.06).

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The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student is classified. The eligibility determination must be made on an individual basis and be based on the student's specific needs. The IEP team must review the evaluation data, and based on that data, determine whether the student meets the criteria for identification as a student with a disability under the IDEA (COMAR 13.A.05.01.06).

In order to meet the criteria for identification as a student with a disability under the IDEA, a student must have at least one (1) of a list of impairments, including an Emotional Disability, and who, by reason thereof, requires special education and related services. If a student is determined to have one (1) of the impairments listed, but is found to require only related services, and not special education instruction, the student does not meet the criteria for identification as a student with a disability under the IDEA (34 CFR §300.8).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during a State complaint investigation under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach the determinations that were made. 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).

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the BCPS has a practice of finding that a student does not meet the criteria for identification as a student with a disability under the IDEA if the IEP team finds that the student does not require special education instruction in the academic areas of reading, written language, or mathematics (Doc. e). Based on the Findings of Facts #6, #17, #19, and #20, the MSDE finds that the documentation does not support the allegation.

However, the MSDE finds that a violation occurred with respect to the evaluation conducted on October 23, 2014. Based on the Findings of Facts #4, #5, and #7, the MSDE finds that the basis for the request for evaluation was the student's academic struggles in math, and while the math teacher and parents reported that the student's emotional state and absences from school were causing him to struggle with skill acquisition in this area, the documented basis for the eligibility determination was the student's performance in reading.

Based on the Findings of Facts #4, #5, and #7 - #9, the MSDE finds that there is no documentation that the team considered whether the student's performance in math reflected a need for special education instruction. Therefore, the MSDE finds that the October 23, 2014 evaluation was not sufficiently comprehensive and that a violation occurred.

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Based on the Findings of Facts #1 - #3 and #7, the MSDE finds that the team decided that the student's needs could continue to be addressed in the general education program through a 504 Plan. However, based on the Findings of Facts #1 - #5, #7, and #8, this office finds that there is no data to support the decision because the team did not consider providing additional accommodations through the 504 Plan to address the difficulty the student was experiencing in the area of math with the supports of the current 504 Plan.

In addition, based on the Findings of Facts #7, #8, #10, and #15, the MSDE finds that there is no documentation of the data used to decide that the student would not be provided with instruction at his current performance level in the GT math class.

The MSDE also finds that a violation occurred with respect to the evaluation conducted on January 12, 2015. Based on the Findings of Facts #10 - #17, the MSDE finds that the evaluation was not completed within the required timelines.

Based on the Findings of Facts #12 - #16, the MSDE further finds that the team documented that it considered the results of assessments and information from the student's parents and teachers when making the January 12, 2015 eligibility determination. However, based on the Findings of Facts #5 and #10 - #17, this office finds that it did not consider the student's attendance data in response to the math teacher's report of the impact of the student's lack of regular attendance on his performance in math. Therefore, the MSDE finds that the January 12, 2015 evaluation was not sufficiently comprehensive and that violations occurred.

In addition, based on the Findings of Facts #13, #17, and #18, the MSDE finds that the team's decision that the student's needs could continue to be addressed through the current 504 Plan is not consistent with the assessment data containing recommendations for additional supports.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the end of the 2014-2015 school year that an IDEA evaluation has been conducted and that an eligibility decision is made that is consistent with the evaluation data. If the student is identified as a student with a disability under the IDEA, the BCPS must also provide documentation that the IEP team has determined the services needed to compensate the student for the delay in identification, to be provided within one (1) year of the date of this Letter of Findings if the student's parent provides written consent for the initiation of special education and related services.

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School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2015-2016 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 XXXXXX. 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation,

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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: XXXXXXXXXXXXXXXXX
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