



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

July 13, 2015

XXX  
XXX  
XXX

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

RE: XXXXX  
Reference: #15-077

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 May 21, 2015, the MSDE received a complaint from Ms. XXXXX, hereafter, “the complainant,” on behalf of her son, 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 following allegations:

1. The BCPS did not ensure that the student was consistently provided with an Individualized Education Program (IEP) that addresses his social, emotional, and behavioral needs during the 2014-2015 school year, in accordance with 34 CFR §300.324.
2. The BCPS did not ensure that assistance was provided by the school social worker, as determined by the IEP team on February 10, 2015, in accordance with 34 CFR §§300.101 and .323.

XXX

Ms. Rebecca Rider

July 13, 2015

Page 2

**INVESTIGATIVE PROCEDURES:**

1. On May 21, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On May 26, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On May 28, 2015, the MSDE sent correspondence to the complainant that 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.
4. On June 4, 2015, Ms. Austin conducted a review of the student's educational record at the XXXXXXXXXXXXX. On the same date, the BCPS provided documents to the MSDE for consideration.
5. On June 17, 2015, Ms. Mandis and Ms. Austin conducted a site visit at the XXXXXX XXX (XXXXXX) to review the student's educational record, and interviewed the following school system staff:
  - a. Ms. Sara Egorin-Hooper, Supervisor, Office of Special Education, BCPS;
  - b. Ms. XXXXXXXXXXX, IEP Team Chairperson, XXXXXXXXXXXXX;
  - c. Ms. XXXXXX, Special Education Teacher, XXXXXXXXXXXXX;
  - d. Ms. XXXXXXXXXXX, Special Education Department Chairperson, (XXXXXXXXXX);
  - e. Ms. XXXXXXXXXXX, Case Manager, (XXXXXXX);
  - f. Ms. XXXXXXX, Special Education Teacher, XXXXXXXXXXXXX;
  - g. Ms. XXXXXXX, IEP Team Chairperson, (XXXXXXX); and
  - h. Ms. XXXXXXXXXXX, Special Education Teacher, (XXXXXXXXXX).

Ms. Conya Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS, participated in the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

On the same date, the BCPS provided additional documentation to the MSDE for consideration.

6. On July 7, 2015, the BCPS and the complainant provided additional documentation to the MSDE for consideration.

XXX

Ms. Rebecca Rider

July 13, 2015

Page 3

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated November 26, 2013;
  - b. Draft report of the student's progress towards achievement of the IEP goals, dated October 31, 2014;
  - c. IEP, dated November 25, 2014 and written summary of the November 25, 2014 IEP team meeting;
  - d. Electronic mail communications (Emails) from the complainant to the school staff, dated December 2 - 4, 8 and 16, 2014;
  - e. Report of the student's progress towards achievement of the IEP goals, dated January 28, 2015, February 5, 2015 and April 17, 2015;
  - f. The student's attendance record for the 2014-2015 school year; and
  - g. Student Record Card 3(undated);
  - h. The complainant's application for administrative transfer, dated April 1, 2015;
  - i. Emails among the school system staff regarding approval of an administrative transfer of the student to XXXXXXXXXXXX, dated April 27 and 28, 2015; and
  - j. Correspondence from the complainant to the MSDE, received on May 21, 2015.

### **BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services (Doc. e).

At the start of the 2014-2015 school year, the student attended XXXXXXXXXXXXX in the Functional Academic Learning Support (FALS) Program.<sup>1</sup> The student did not attend school from December 2014 until he was transferred to the FALS Program at XXXXXXXXXXXXXXXX on May 11, 2015. The student attended XXXXXXXXXXXXXXXX on a part time basis for the remainder of the 2014-2015 school year while transitioning back to school. It is expected that the student will return to XXXXXXXXXXXXXXXX full time at the start of the 2015-2016 school year (Docs. f and g, and interview with the school system staff).

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

---

<sup>1</sup> This is a program designed for students who require functional academic learning support, in which instruction can be provided in areas of personal management, community, recreation/leisure, career/vocational, and communication/decision-making (<https://www.bcps.org>).

XXX

Ms. Rebecca Rider

July 13, 2015

Page 4

### **FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2014-2015 school year indicates that the student has needs in the areas of communication, community skills, math, reading, career and physical education. While the IEP does not include a present level of performance section in the area of social and emotional behavior, the IEP states that the student has “low frustration tolerance and exhibits behavioral outbursts when asked to participate in instructional and/or non-preferred activities.” In addition, the IEP includes the complainant’s input that the student pinches and lashes out physically at others when he is asked to perform less-preferred tasks, and that he needs “to interact more appropriately with peers and adults” and gain control of his impulses. The IEP requires that the student be provided social and behavioral supports of positive, concrete reinforcers to assist in following directions, and sensory activities to promote listening and focusing skills. In addition, the IEP states that the student is allowed to read books at lunchtime if he has “good behaviors,” but also states that he may “lose the privilege” and that he “will not receive tangible rewards for poor behavior” (Doc. a).
2. The complainant reports that beginning in September 2014, the student began to display anxiety that resulted in “tantrums” that impacted his ability to be transported to school, and that these behaviors escalated and continued in October 2014. However, there is no documentation of the complainant’s reports about the student’s behavioral difficulty in September 2014 or October 2014 (Doc. j, interview with the complainant, and review of the student’s educational record).
3. On November 25, 2014, the IEP team convened to conduct the student’s annual IEP review. At that time, the student had nine (9) absences from school, had been tardy for school on five (5) occasions, and had eleven (11) early dismissals from school. The IEP team reviewed teacher reports, and progress reports indicating that the student had achieved, or was making sufficient progress towards achievement of the annual IEP goals (Docs. b, c and f).
4. The school staff documented that the IEP team reviewed the complainant’s parental input, and that she had “no concerns” at the November 25, 2014 IEP team meeting. Both the complainant and the student’s teachers report that the student’s anxiety was resulting in behavior problems that were impacting his ability to be transported to school, and thus, his school attendance. However, the IEP team did not revise the IEP developed on November 25, 2014 to include any additional behavioral supports, and there is no documentation that the IEP team considered positive behavioral interventions to address the behavior at the meeting. The school system staff report that, outside of the meeting, they “brainstormed” with the complainant, via emails, about incentives to encourage the student to attend school including additional social stories, rewards, and breaks, but the student’s IEP does not reflect that these supports are required (Doc. c, and interviews with the complainant and the school system staff).

XXX

Ms. Rebecca Rider

July 13, 2015

Page 5

5. In early December 2014, the complainant sent several emails to the school system staff documenting the student's behavior problems and the resulting interference with his school attendance (Doc. c).
6. The student stopped attending school on December 17, 2014 (Doc. f).
7. The reports of the student's progress, dated January 28, 2015 and February 5, 2015, reflect that the student was not working on, or not making sufficient progress towards achievement of, the annual IEP goals due to excessive absences (Doc. d).
8. The complainant and the school staff report that an IEP team meeting was held in February 2015 to discuss the student's lack of school attendance.<sup>2</sup> The parties report that, at the February 2015 meeting, the team discussed that the student's anxiety was preventing him from being transported to school and that the IEP team was unable to identify the reason for the anxiety. The parties further report that the IEP team discussed having the student tour other schools in which the FALS Program is offered in order to determine whether he would be able to attend school in another location (Doc. f).
9. The school system staff report that, at the February 2015 IEP team meeting, the IEP team recommended that the complainant obtain a private therapist for the student and that the school social worker would consult with this private provider in order to assist the student with returning to school (Interviews with the complainant and the school system staff).
10. The school system staff report that, because the complainant did not obtain a private therapist for the student, no services were provided by the school social worker (Interview with the school system staff).
11. On April 29, 2015, the student was withdrawn from the FALS Program at XXXXXXXX XXXX and enrolled in the FALS Program at XXXXXXXX School after being granted an administrative transfer. The school system staff report that there was a delay in obtaining an administrative transfer because the IEP team had not decided that the student was unable to participate in the FALS Program that he was already enrolled in at XXXXXXXXXXXXXXXX (Docs. f, h and i, and interviews with the complainant and the school system staff).
12. From May 2015 until the end of the 2014-2015 school year, the student transitioned back to school, attending XXXXXXXXXXXXXXXX on a part-time basis. The parties report that the student's transition has been successful, and the school staff at XXXXXXXXXXXXXXXX report that the student has not displayed any behavioral problems (Doc. f and interviews with the complainant and the school system staff).

---

<sup>2</sup> The school system staff report that the meeting was documented and that an electronic copy is available. However, a copy of such documentation was not included in the student's educational record (Interview with the school system staff and review of the educational record).

XXX

Ms. Rebecca Rider

July 13, 2015

Page 6

13. The school system staff report that the IEP was recently reviewed and revised. However, documentation of the IEP team's decisions is not yet available (Interview with the school system staff).

### **LEGAL REQUIREMENTS:**

A Free Appropriate Public Education (FAPE) means special education and related services that are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge to the parent (34 CFR §§300.17, .101 and .323).

In order to provide a student with a 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 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. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

### **DISCUSSION/CONCLUSIONS:**

#### **ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS DURING THE 2014-2015 SCHOOL YEAR**

Based on the Findings of Facts #3 - #9 and #11 - #12, the MSDE finds that the BCPS did not ensure that the IEP team considered positive behavioral interventions and supports to address the student's behavior, which interfered with his ability to access special education instruction on a regular basis from the start of the 2014-2015 school year until he was able to return to school in May 2015. Therefore, this office finds that a violation occurred with respect to the allegation.

#### **ALLEGATION #2 PROVISION OF ASSISTANCE FROM THE SCHOOL SOCIAL WORKER AS DETERMINED BY THE IEP TEAM ON FEBRUARY 10, 2015**

Based on the Findings of Facts #8 and #9, the MSDE finds that the IEP team determined that counseling services were needed in order to assist the student to return to school. However, based on the Finding of Fact #10, the MSDE finds that the BCPS did not ensure that these counseling services have been provided to the student, without charge to the parent, since February 2015. As a result, this office finds that a violation occurred with respect to the allegation.

## **CORRECTIVE ACTIONS/TIMELINE:**

### **Student-Specific**

The MSDE requires the BCPS to provide documentation by the start of the 2015-2016 school year that the IEP team has determined the services needed to remediate the loss of appropriate services to the student during the 2014-2015 school year.

### **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 ensure that the XXXXXXXXXXXXX staff properly implements the requirements for ensuring that the IEP addresses each student's social, emotional, and behavioral needs and that services determined necessary by the IEP team are provided at no cost to parents. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 parties maintain the right to request mediation or to file a due process

XXX

Ms. Rebecca Rider

July 13, 2015

Page 8

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

c: S. Dallas Dance  
Conya Bailey  
XXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Kathy Aux