



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: #15-078

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. XXXXXXXXXXXX, 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.

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 XXXXXXXXXXXXXXXX. 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 XXXXXXXX XXXX (XXXXXXX) to review the student's educational record, and interviewed:
 - a. Ms. Sara Egorin-Hooper, Supervisor, Office of Special Education, BCPS;
 - b. Ms. XXXXXXXXXXXX, IEP Team Chairperson, XXXXXXXXXXXXXXXX;
 - c. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXX;
 - d. Ms. XXXXXXXXXXXXXXXX, Special Education Department Chairperson, (XXXXXXXXXX);
 - e. Ms. XXXXXXXXXXXXXXXX, Case Manager, (XXXXXX);
 - f. Ms. XXXXXXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXXXXXX; and
 - g. Ms. XXXXXX, IEP Team Chairperson, (XXXXXXXXXXXXX).

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.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Functional Behavior Assessment (FBA), dated November 15, 2011;
 - b. Behavior Intervention Plan (BIP), dated November 15, 2011;
 - c. IEP, dated November 26, 2013 and written summary of the November 26, 2013 IEP team meeting;

- d. Report of a classroom observation conducted on November 5, 2014;
- e. Report of the student's progress towards achievement of an IEP goal, dated November 13, 2014;
- f. IEP, dated November 25, 2014 and written summary of the November 25, 2014 IEP team meeting;
- g. The student's attendance record for the 2014-2015 school year; and
- h. Student Record Card 7 (undated).

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. f).

At the start of the 2014-2015 school year, the student attended XXXXXXXXXXXXXXXX in the Communication and Learning Support (CALS) Program.¹ The student did not attend school from December 2014 until he was transferred to the CALS Program at XXXXXXXXXXXXXXXX on April 29, 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. g, h, 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. c and f).

FINDINGS OF FACTS:

1. At the start of the 2014-2015 school year, the student was identified with social, emotional, and behavioral needs related to reacting to stimuli that prevented him from focusing and remaining on task. A Functional Behavior Assessment (FBA) that was conducted reflects that, when the student becomes anxious, he engages in "self-injurious behavior and self stimulation." In order to address the student's needs in this area, a Behavior Intervention Plan (BIP) was in place, which contains strategies to address the behavior (Docs. a - c).
2. On November 25, 2014, the IEP team convened to conduct the 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 student's educational record contains a November 13, 2014 report of the student's progress towards achievement of the goal to improve his functional communication skills. This

¹ This is a program designed for students who require communication and learning support services, in which instruction can be provided in a highly structured environment, using visually based strategies, with emphasis on the development of language and social skills, and individualized behavioral strategies (<https://www.bcps.org>).

report states that the student was “clearly having anxiety problems (usually about going home).” The record also includes the report of a classroom observation conducted on November 5, 2014, stating that the student was observed to exhibit anxiety and self injurious behavior after “having a rough morning on the bus,” when physical restraint was required to be used with him. 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 , as a result, his school attendance. However, there is no documentation that the IEP team considered positive behavioral interventions to address the behavior (Docs. d - f and interviews with the complainant and the school system staff).

3. The student stopped attending school in December 2014 (Doc. g).
4. 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.² 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 CALS Program is offered in order to determine whether he was able to attend school in another location (Doc. g).
5. 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).
6. 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).
7. On April 29, 2015, the student was withdrawn from the CALS Program at XXXXXXXX XXXXXXXX and enrolled in the CALS Program at XXXXXXXXXXXX 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 CALS Program that he was already enrolled in at XXXXXXXX XXXXXXXXXXXX (Doc. h and interviews with the complainant and the school system staff).
8. From May 2015 until the end of the 2014-2015 school year, the student transitioned back to school, attending XXXXXXXXXXXX on a part-time basis, and the parties report that

² 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).

his transition has been successful (Doc. g and interviews with the complainant and the school system staff).

9. 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 SINCE THE START OF THE 2014-2015 SCHOOL YEAR

Based on the Findings of Facts #1 - #4 and #7 - #9, 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 #4 and #5, 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 #6, 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 XXXXXXXXXXXX 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 complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE

XXX

Ms. Rebecca Rider

July 13, 2015

Page 7

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
XXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Kathy Aux