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State Superintendent of Schools

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August 11, 2015

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

RE: XXXXX
Reference: #15-090

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 16, 2015, the MSDE received a complaint from Mallory Finn, Esq., hereafter, “the complainant,” on behalf of the above-referenced student, and his mother, Ms. XXXXXXXXXX, hereafter, “the parent.” 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 has not ensured that the student was consistently provided with the services of additional adult support, as required by the Individualized Education Program (IEP), during the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.

2. The BCPS did not ensure that the IEP team convened to address lack of expected progress towards achievement of the annual IEP goals during the 2014-2015 school year, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. On June 16, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On June 22, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated, and the complainant provided documentation to the MSDE for consideration. 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 June 30, 2015 and July 6, 14 and 27, 2015, the MSDE requested documentation from the BCPS.
4. On July 7, 2015, the BCPS submitted documentation to the MSDE for consideration.
5. On July 13 and 23, 2015, the MSDE discussed the allegations with the complainant.
6. On July 14, 2015, Ms. Austin and Dr. Kathy Aux, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following school system staff:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXXXXXXX, and former Assistant Principal, XXXXXXXXXXXX;
 - b. Ms. Stefani Merlo, Psychologist, BCPS; and
 - c. Ms. XXXXXXXXXXXX, Special Education Teacher, XXXXXXXXXXXX.

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 documentation to the MSDE for consideration.
7. On July 21, 2015, the BCPS provided the MSDE with documentation to consider.
8. On July 23, 2015, the complainant provided additional documentation to the MSDE for consideration.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
- a. Behavior Intervention Plan (BIP), revised September 30, 2013;
 - b. IEP, dated May 20, 2014, and written summary of the IEP team meeting held on May 20, 2014;
 - c. The school system's procedural guidelines for additional adult support, undated;
 - d. The schedule of the kindergarten classroom aide, undated;
 - e. Response to Intervention document identifying interventions for the student, undated;
 - f. Reports of the student's progress towards achievement of the IEP goals, dated October 31, 2014, January 23, 2015, April 2 and 15, 2015 and June 10 and 18, 2015;
 - g. Written summary of the November 25, 2014 IEP team meeting;
 - h. The complainant's consent for assessment (FBA), dated November 25, 2014;
 - i. Functional Behavior Assessment, dated December 9, 2014;
 - j. BIP, dated December 9, 2014;
 - k. Correspondence from the complainant to the school system staff, dated February 16, 2015;
 - l. IEP, dated March 17, 2015, and written summary of the March 17, 2015 IEP team meeting;
 - m. The complainant's consent for assessments, dated March 17, 2015;
 - n. Report of a classroom observation of the student, dated March 31, 2015;
 - o. Report of a psychological assessment performed on April 21 and 23, 2015 and May 5, 2015;
 - p. Report of an educational assessment, dated April 28, 2015;
 - q. Report of a speech and language assessment, dated May 14, 2015;
 - r. Written summary of the May 26, 2015 IEP team meeting;
 - s. IEP, dated June 11, 2015, and written summary of the June 11, 2015 IEP team meeting;
 - t. The student's kindergarten fall and spring progress report card for the 2014-2015 school year;
 - u. The student's attendance record for the 2014-2015 school year; and
 - v. Correspondence from the complainant, containing allegations of violations of the IDEA, received by the MSDE on June 16, 2015.

BACKGROUND:

The student is six (6) years old, is identified as a student with an Other Health Impairment under the IDEA as a result of Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education and related services. During the 2014-2015 school year, the student attended XXXXXXXXXXXXXXXXXXXX (Docs. b, l and s).

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. b, l and s).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2014-2015 school year was developed on May 20, 2014. It identifies that the student has needs relating to increasing attention and participation, following rules, routines and directions, sharing and turn taking, and that he needs to decrease his interfering behaviors. The IEP states that the student demonstrates “a range of difficult behaviors that make it challenging to control or keep [him] safe,” including defiance, high activity, aggression, and opposition to directions and commands, and that the behaviors impact his education. The IEP includes a goal for the student to remain in his assigned location and follow directions, with a decrease in adult support. The IEP also includes a goal for the student to increase his participation and to remain on task and complete classroom activities, and a goal that he interact with adults and peers appropriately. In addition, the IEP includes a reading goal, a math goal, and two (2) communication goals to address the student’s needs in these areas (Doc. b).
2. At the May 20, 2014 IEP team meeting, the IEP team discussed the student’s transition to kindergarten, and documented in the written summary of the meeting that “he will require adult support in the inclusive setting in kindergarten” (Doc. b).
3. The BCPS has developed procedural guidelines to assist IEP teams when considering the supplementary aid of additional adult support. The guidelines state that IEP team should identify a student’s activities throughout the school day and determine which ones can and cannot be done independently. After the IEP team has determined that additional adult support is needed, the guidelines indicate that the IEP team should consider the levels of support which include continuous, partial and decreased support, when identifying the location and manner of the support, and that the environment, proximity, duration and frequency of the additional adult support should be “describe[d] in detail” in the IEP (Doc. c).
4. The IEP clarifies that the additional adult support is required in order to assist the student in transition to group settings, to facilitate his participation in group activities, to “closely monitor” him due to the possibility of elopement, and to ensure his safety and the safety of others. The IEP states that this support is required “daily, as needed,” and that the support is to be faded as the student demonstrates self-control (Doc. b).
5. The IEP identifies that the additional adult support will be provided by “OtherSP.” The school system staff report that “OtherSP” refers to any support staff personnel who is not the classroom teacher and who is available to provide assistance (Doc. b and interview with the school system staff).

6. The IEP reflects that the student requires the support of a Behavioral Intervention Plan (BIP). The BIP includes strategies to address the student's identified interfering behaviors of physical aggression and leaving his assigned area (Docs. a and b).
7. The IEP requires that the student be provided with thirty (30) minutes of special education instruction, in the general education classroom, three (3) times per week, and that the primary provider will be a general education teacher (Doc. b).
8. A classroom aide was assigned to the student's classroom to assist the teacher and to provide support to students, as needed, by the classroom teacher. However, the classroom aide's schedule reflects that she was assigned to provide assistance in the student's classroom for only three (3) periods of the school day (Doc. d).
9. In September 2014, the school staff developed a Response to Intervention (RTI) document identifying various interventions and strategies being used in the general education program in order to address the student's behavior. However, there is no data indicating that the student's behavior has improved with the interventions (Doc. e and interview with the school staff).
10. The IEP team convened on November 25, 2014. The IEP team considered that the student was displaying interfering behaviors including pushing other students, throwing materials, yelling, and that he was frequently noncompliant when asked to complete his work. The IEP team also considered that the student "is more successful when he has the opportunity to work one-on-one with another adult," and that he "would be more successful with more individual support." The written summary of the meeting states that the student's behavior "is impacting his education" because he is unable to fully attend to instruction. However, the IEP team did not revise the student's IEP based on this information, but obtained the parent's consent to conduct a Functional Behavior Assessment (FBA) (Docs. g and h).
11. The student's November 2014 kindergarten progress report card states that he sometimes has difficulty with transitions, he needs reminders to follow directions, and that he "needs individualized attention to complete most classroom assignments." In addition, the report card notes that the student performs "best when able to work closely with another teacher or in a small group" (Doc. t).
12. The reports of the student's progress towards mastery of the IEP goals, dated January 23, 2015, state that the student achieved two of the behavioral goals, and that he was making sufficient progress to meet the remaining behavioral goal as well as the reading, math and communication goals. However, the narrative in the report for the communication articulation goal states that the skill was not worked on due to the student's excessive absences. In addition, the narrative in the report for the behavior transitioning goal indicates that the student was actually making less progress in

following directions, or the same progress in remaining in his assigned location, when compared with the amount of progress reported on October 31, 2014. There is no documentation that the IEP team considered the lack of progress indicated in the January 23, 2015 progress reports (Doc. f).

13. On February 16, 2015, the complainant sent correspondence to the school system staff expressing concerns about the student's behavior, his progress, and the inconsistent provision of additional adult support to the student. The complainant also requested that an IEP team meeting be convened (Doc. k).
14. The IEP team reconvened on March 17, 2015 to conduct the annual IEP review. The IEP developed at this meeting reflects that the parent expressed concern about the student's behavior and its impact on his learning. She indicated that the student requires significant attention in order to meet his needs, and that he requires hands-on activities. In addition, there is documentation that she requested that the student be placed in a small classroom setting. The IEP team revised the IEP to increase the amount of specialized instruction that the student requires to five (5) sessions per week, thirty (30) minutes each, in the general education classroom. The IEP specifies that the instruction is to occur during unstructured and structured times, including circle time, small group instruction, and transitions (Doc. l).
15. At the March 17, 2015 IEP team meeting, the IEP team developed new annual goals for the student in all areas. The behavior goals address the student's need to follow rules, routines and expectations, by remaining in his assigned location and following directions, and to increase his on-task behavior. The IEP team continued the requirement for the student to be provided additional adult support, "daily as needed," but revised the IEP to identify the general educator as the primary provider of this support, and the special educator and instructional assistant as other providers (Doc. l).
16. At the March 17, 2015 IEP team meeting, the IEP team recommended that a psychological, educational, and speech and language assessment be conducted, as well as a classroom observation of the student, and the parent consented to assessments. While the parties report that the school staff developed a BIP, dated December 9, 2014, from an FBA that the school staff conducted following the IEP team's recommendation in November 2014, there is no documentation that the IEP team has considered these documents, and the IEP indicates that the FBA and BIP, dated January 23, 2013, were continued (Docs. i, j, l and m, and interviews with the parties).
17. The student's May 2015 kindergarten progress report card states that his behavior "fluctuated" during the 2014-2015 school year. The report card notes that there are times when the student is "cooperative and approachable," but also states that, at other times, it is particularly difficult for him to maintain attention and focus, follow class routines, get along with peers, and participate in class. The report card reflects several areas in

language literacy, and one area in math, in which the student is not demonstrating a desired skill (Doc. t).

18. The parties report that in May 2015, the school staff assigned an aide to provide additional adult support exclusively to the student throughout the school day. The parties report that this individual was formerly assigned to support another student, but when that student left the school, the aide was reassigned to support the student (Interview with the parties).
19. On May 26, 2015, the IEP team reconvened to review the results of assessments. The IEP team considered that the student has “average” skills in reading and writing. While the results of the educational assessment also reflect that the student has “poor” skills in math, “very poor” skills in spoken language, and is performing “below average” in the acquisition of general information, the evaluator noted her belief that the results underestimate his current academic functioning. The IEP team also considered that the student has weaknesses in receptive and expressive language, with noted difficulty “in his ability to understand and respond to basic questions.” The classroom observation report reflects that the student was having difficulty with participating, interacting appropriately with peers, and with completing work (Docs. n, p, q and r).
20. The psychological evaluation considered by the IEP team states that the student has had a “difficult year” in kindergarten, and that he is “often noncompliant and very impulsive.” While the results indicate that the student has “low average” cognitive functioning, the evaluator noted that this was likely an underestimate due to the impact of his high activity level and difficulty maintaining attention and focus. The report reflects “very elevated” ratings of the student in the areas of inattention, hyperactivity/impulsivity, learning problems, executive functioning, aggression and peer relations (Docs. o and r).
21. The IEP team reconvened on June 11, 2015. The IEP team reviewed the student’s progress. The April 2015 and June 2015 reports of the student’s progress indicate that the student did not make any progress towards mastery of the behavioral, math, reading, and written language goals. The IEP team documented that the student’s difficulty with focus and impulsive behavior “throughout the school day” are impacting his education. The IEP team also considered that the student “has been responding well to one-on-one assistance and has begun to complete more classroom work.” Based on this information, the IEP team determined that the student requires a smaller class size and specialized instruction in reading and math in order to help control his behavior. The IEP team revised the IEP to require three (3) hours per day of instruction in the resource room. The IEP team determined that the student requires two (2) hours of specialized instruction in reading, and one (1) hour of specialized instruction in math, by a special education teacher as the primary provider (Docs. f and s).

22. The student's kindergarten progress report card reflects a lack of regular school attendance by the student throughout the 2014-2015 school year. It documents that the student was absent thirteen (13) days during the first marking period, twenty-three (23) days during the second marking period, fifteen (15) days during the third marking period, and fifteen (15) days during the fourth marking period. The student's attendance rate for the school year was sixty-four percent (64%) (Doc. t).
23. The attendance record indicates that the high number of the student's absences was due to "illness." The complainant reports that the student was unable to attend school on days when he was displaying interfering behaviors, and when he had medical and therapy appointments. The complainant and the parent reported in IEP team meetings that medical providers were attempting to determine the proper dosage of medication for the student. However, because he was experiencing a major growth spurt, this was an especially difficult process of trial and error, and that the student's response to the medication changes included "severe" behaviors and "tantrums." The parties acknowledge that the student's medical situation was discussed in IEP team meetings during the 2014-2015 school year. However, there is no documentation that school staff has explored with the parent the possibility of Home and Hospital Teaching (HHT) for the student when he has been unable to attend school due to a medical issue (Doc. u and interviews with the parties).

DISCUSSION/CONCLUSIONS:

A Free Appropriate Public Education (FAPE) means special education and related services that are provided in conformity with an IEP. The public agency is required to ensure that the student is provided with the special education services and supports required by the IEP (34 CFR §§300.101, .320, and .323).

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 (34 CFR §§300.101, .320, and .324).

Each public agency must make instructional services available to students, including students with disabilities, who are unable to attend the school of enrollment due to a physical or emotional condition (COMAR 13A.03.05.03).

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).

In this case, the complainant alleges that the student did not receive additional adult support throughout the school day, and that he struggled to make progress due to his behavior (Doc. v and interview with the complainant).

Allegation #1 Provision of Additional Adult Support

Based on the Findings of Facts #1, #2, #4, #5 and #8, the MSDE finds that the student was not consistently provided the additional adult support required by the IEP throughout the 2014-2015 school year. Therefore, this office finds a violation occurred.

Allegation #2 IEP Meeting to Address Lack of Expected Progress

Based on the Findings of Facts #22 and #23, the MSDE finds that the student did not attend school on a regular basis throughout the 2014-2015 school year, and that there is information that his absenteeism was predominantly the result of a medical situation. Based on the Finding of Fact #23, the MSDE finds that there is no documentation that the BCPS explored HHT services for the student when he was unable to attend school due to health related issues. Therefore, the MSDE finds a violation occurred, and that the violation is ongoing.

Based on the Finding of Fact #12, the MSDE finds that the student was not making sufficient progress towards mastery of the annual IEP goals. Based on the Findings of Facts #12 and #14, the MSDE finds that the IEP team did not address the student's lack of expected progress towards achieving the annual IEP goals until March 17, 2015. Therefore, the MSDE finds a violation occurred from January 23, 2015 until March 17, 2015.

Further, based on the Finding of Fact #16, the MSDE finds that while the parties report that the IEP team considered proposed revisions to the positive behavior interventions and supports in the student's BIP when the IEP team convened on March 17, 2015, there is no documentation that the revisions were approved by the IEP team. Therefore, the MSDE finds that the BCPS did not ensure that proper procedures have been followed, and that an additional violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation, by the start of the 2015-2016 school year, that it has followed proper procedures to explore the possibility of HHT with the parent.

The MSDE requires the BCPS to provide documentation, by the start of the 2015-2016 school year, of the availability of additional adult support for the student throughout the school day. The BCPS must also provide documentation that the IEP team has convened and taken the following actions:

1. Reviewed, and revised if appropriate, the proposed FBA and BIP, dated December 9, 2014; and
2. Determined the amount and nature of compensatory services to redress the violations identified in this investigation and developed a plan for the provision of those services within one (1) year of the date of the Letter of Findings.

The BCPS must ensure that the parent is provided with written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations.

School-Based

The MSDE requires the BCPS to provide documentation, by October 1, 2015, that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at Deer Park Elementary School. 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

Mallory Finn, Esq.
Ms. Rebecca Rider
August 11, 2015
Page 11

findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parent and the school system staff 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

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