



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

September 16, 2015

XXX
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: #16-013

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 July 21, 2015, the MSDE received a complaint from Dr. XXXXXXXXXXXXX and Mr. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son, the above-referenced student. In that correspondence, the complainants 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 ensured that proper procedures were followed when conducting a reevaluation during the 2014-2015 school year, in accordance with 34 CFR §§300.304, .305, .306 and COMAR 13A.05.01.06.

INVESTIGATIVE PROCEDURES:

1. On July 23, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS. On the same date,

XXX

Ms. Rebecca Rider

September 16, 2015

Page 2

Mr. Kenneth Hudock, Family Support Program Specialist, MSDE, conducted a telephone interview with the student's mother about the allegation.

2. On July 29, 2015, the MSDE sent correspondence to the complainants that identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the BCPS review the alleged violation.
 3. On August 6, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a review of the student's educational record at XXXXXXXXXXXXXXXXXXXX with Ms. XXXXXXXXXXXX, IEP Team Chairperson and Special Education Chairperson, XXXXXXXXXXXXXXXXXXXX. Ms. Conya Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS, was also present. On the same date, the BCPS provided documents to the MSDE for consideration.
 4. On August 18, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXX Middle School and interviewed the following school staff:
 - a. Ms. XXXXXX;
 - b. Mr. XXXXXXX, Behavior Interventionist; and
 - c. Ms. XXXXXXXXXXX, Social Worker.
- Ms. Bailey 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. The BCPS provided additional documentation to the MSDE on this date.
5. On August 28, 2015, Ms. Austin and Ms. Mandis conducted a telephone interview with the student's mother, and she provided the MSDE with additional documentation for consideration. On the same date, the MSDE requested additional documentation from the BCPS.
 6. On August 31, 2015, the MSDE received additional documentation from the BCPS for consideration.
 7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program (IEP), dated April 23, 2014;
 - b. Reports of the student's progress towards achievement of the annual IEP goals, dated October 31, 2014, February 2, 2015, and April 1, 2015;

XXX

Ms. Rebecca Rider

September 16, 2015

Page 3

- c. Electronic mail (email) messages between the complainants and the school staff, dated March 30, 2015;
- d. The student's daily progress sheets tracking the completion of his homework and classwork, dated September 2014 to January 2015;
- e. Report of the school social worker, dated April 13, 2015;
- f. Email message from the complainants to the school staff, dated April 19, 2015;
- g. Invitation to an IEP team meeting scheduled for April 22, 2015;
- h. Invitation to an IEP team meeting scheduled for May 5, 2015;
- i. Written Summary of the May 5, 2015 IEP team meeting;
- j. Notice of documents provided to parent, dated May 26, 2015;
- k. Correspondence from the student's private psychologist addressed "to whom it may concern," dated June 2, 2015;
- l. Correspondence from the student's private therapist addressed "to whom it may concern," undated;
- m. Correspondence from the student's medical provider addressed "to whom it may concern," dated June 30, 2015;
- n. The report of an independent psychological evaluation, dated February 2013;
- o. Invitation to an IEP team meeting scheduled for June 3, 2015;
- p. Written Summary of the June 3, 2015 IEP team meeting;
- q. The student's report card for the 2014-2015 school year;
- r. The student's discipline history for the 2014-2015 school year;
- s. The student's enrollment history for the 2015-2016 school year; and
- t. Correspondence from the complainants, containing allegations of violations of the IDEA, received by the MSDE on July 21, 2015.

BACKGROUND:

The student is fourteen (14) years old and attended XXXXXXXXXXXXXXXX during the 2014-2015 school year. At the start of the 2014-2015 school year, the student was identified as a student with an Other Health Impairment related to Attention Deficit Hyperactivity Disorder and had an IEP that required the provision of special education and related services. On June 3, 2015, the IEP team determined that the student no longer met the criteria for identification as a student with a disability (Docs. a and p).

On July 31, 2015, the complainants withdrew the student from the BCPS and placed him in a private school (Doc. s).

During the period of time addressed by this investigation, the complainants participated in the education-making process and were provided with written notice of the procedural safeguards (Doc. i).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2014-2015 school year was developed on April 23, 2014. The IEP stated that the student “demonstrates symptoms and behaviors associated with his Attention Deficit Hyperactivity Disorder (ADHD) diagnosis, as well as emotional and behavioral needs, including depression, difficulty maintaining positive social relationships and anger management.” The IEP also included information about the student’s levels of performance from the first three (3) quarters of the 2013-2014 school year. The information stated that he was seen twenty-nine (29) times by the behavior interventionist for behavior support services totaling 898 minutes. It further stated that he had five (5) lunch detentions, five (5) peer conflicts, two (2) instances of disrespect towards an adult, and four (4) major office referrals for behavior that included fighting and using inappropriate language (Doc. a).
2. The IEP included three (3) behavioral goals for the student to improve his on-task behavior, to use management and coping strategies to manage his emotions, and to decrease his impulsive behaviors, and indicated that he requires the supports of a Behavior Intervention Plan (BIP). The IEP reflected that the student was to be provided with five (5) thirty (30) minute sessions of special education instruction per week, and two (2) thirty (30) minute sessions of social work services per month, in order to assist him with achieving the annual IEP goals. It also required that the student be provided with reduced distractions, access to keyboarding, crisis intervention, strategies to initiate and sustain attention, and consultation by a school psychologist (Doc. a).
3. The IEP also required that the student be provided with daily adult support to assist him with problem solving, emotional regulation, transitioning, social interactions, on-task behavior, and completion of tasks. However, it also stated that the complainants and the school staff agreed to fade the adult support provided to the student. There is documentation that the parties developed and implemented a plan to fade the adult support during the 2014-2015 school year (Docs. a – c).
4. The IEP reflected that the student could earn daily lunch visits to the behavior interventionist’s room when he completed his classwork and met classroom expectations (Doc. a).

May 5, 2015 IEP Team Meeting

5. The IEP team convened on May 5, 2015¹ to conduct the annual review of the student’s IEP (Doc. h).

¹ The annual IEP meeting was originally scheduled for April 22, 2015, but was rescheduled for May 5, 2015 at the request of the student's mother (Docs. f and g).

XXX

Ms. Rebecca Rider

September 16, 2015

Page 5

6. The IEP team considered the student's progress and teacher reports. The IEP team also considered input from the student's mother, including information that the student would be attending a private high school for the next school year (Doc. i).
7. The student's report card for the first three quarters of the 2014-2015 school year reflects that he achieved As, Bs and one (1) C (Doc. q).
8. The student's daily progress sheets between September 2014 and January 2015 reflect that he was consistently turning in homework and completing classwork in all of his classes. At the time of the May 5, 2015 IEP team meeting, the use of the daily progress sheets had been discontinued based on this consistency (Docs. d and i, and interview with the school staff).
9. The reports of the student's progress, dated April 1, 2015, reflect that the student had achieved all of his annual IEP goals. They reflect that the student was completing his classwork, and state that he is "confident in himself and his ability to manage stressors," "continues to deny any stress related to school expectations," and "is managing just fine as the external supports are gradually decreased." The reports also state that the student had no school-wide referrals for minor or major incidents during the 2014-2015 school year, and no behavior referrals to the behavior interventionist (Doc. b).
10. The IEP team also considered that the student's adult support has been gradually faded, and that he responds well to directions, is self-motivated, has "excellent" participation, turns in work regularly, "displays a positive attitude and works well with his peers," and can be redirected even when "agitated" (Doc. i).
11. The IEP team discussed that the student "does not demonstrate a skill deficit needing special education services," and that he "no longer requires specialized instruction." The school staff documented that the IEP team began the discussion to consider "dismissing [the student] from special education services" (Doc. i).
12. The written summary of the meeting reflects that the student's mother expressed her belief that the student continues to require an IEP in order to provide him with emotional supports, including, specifically, regular contacts with a designated individual, such as a behavior interventionist or social worker. The summary also reflects that the student's mother's belief that the student requires an IEP was based on her concern about the possibility that the student may need continued support during an upcoming transition to high school, that he may lose his hearing,² and that his ADHD medication may be discontinued. The student's mother also indicated that her opinion was, in part, based on

² The written summary of the meeting reflects that there is a family history of hearing loss, and that the student's mother indicated that while the student has not experienced hearing loss, three (3) of her children have "demonstrated marked hearing loss" (Doc. i).

the belief that an IEP would provide the student with “protection” that she believed would ensure his eligibility in college for disability related services (Doc. i).

13. The school staff discussed the possibility that the student may be able to receive the types of accommodations and supports currently in his IEP through a 504 Plan, if he is identified as a student with a disability under Section 504 of the Rehabilitation Act of 1973 based on his ADHD diagnosis. The IEP team decided to refer the student to the Student Support Team to consider his eligibility for a 504 Plan with classroom accommodations. The student’s mother expressed her concern that a 504 Plan would not provide adequate “protection” for the student, and the absence of confidence that it would be fully implemented (Doc. i)
14. The student’s mother objected to further consideration of whether the student continues to require special education and requested that the IEP team reconvene at a later date (Doc. i).

June 3, 2015 IEP Team Meeting

15. The IEP team reconvened on June 3, 2015 to conduct a reevaluation of the student. The written notice of the meeting, provided in advance to the complainants, identifies that the purpose of the meeting was to consider the “dismissal of the student from special education services” (Docs. o and p).
16. The IEP team considered existing data about the student based on the IEP progress reports, school-wide behavior data, office referral data, the student’s report card and current grades for fourth (4th) quarter of the 2014-2015 school year, daily point sheets, and teacher and related service provider reports. The school staff documented the review of assessment data about the student, including the following information about his performance and progress:
 - a. His IEP included only behavioral goals, and he had achieved all of his IEP goals as of April 1, 2015;
 - b. He has not required behavior intervention during the 2014-2015 school year;
 - c. He has not had any referrals to the behavior interventionist, and has not requested to consult with the behavior interventionist for management of his emotions or frustration;
 - d. He earns daily rewards for his behavior;
 - e. The school staff discontinued the use of his daily point sheet because he consistently achieved “on average 90% - 100% of his points on a daily basis;”
 - f. He has had no major or minor office referrals during the 2014-2015 school year;
 - g. He has had no conflicts with peers, is polite with purrs, and has developed a connection with new friends during the 2014-2015 school year;

- h. He has self-confidence, displays self-control, and does not demonstrate “impulsive behaviors;”
 - i. His daily adult support in the classroom has been gradually reduced from all classes to only two (2) classes;
 - j. He earned seventeen (17) As, six (6) Bs, and one (1) C during the 2014-2015 school year; and
 - k. He has completed 89% to 100% of all classwork during the 2014-2015 school year (Doc. p).
17. At the time of the IEP team meeting, the school staff had available to it the report of the social worker, dated April 13, 2015, describing the student’s progress. The report states that the student “has demonstrated the ability to identify stressors, manage stressors appropriately” and that he “has developed an increase in self-control.” The report also reflects that, while the student challenges authority in specific classes, he is compliant and responsive to redirection due to his development of “more self-control and confidence” (Doc. e).
18. There is documentation that the IEP team also considered information about the student from the student’s mother, and her concern that he may have difficulty with the planned transition to high school in a private school environment. The student’s mother also expressed concern about the student’s ability to interact socially with other students, and that he is “bossy and nosy.” The written summary of the meeting reflects that the student is “very social,” appropriately interacts with other students on a regular basis, and that he has found new friends during the 2014-2015 school year (Doc. p).
19. The IEP team also considered information provided by the student’s mother contained in correspondence from two (2) of the student’s private providers who recommended that the student’s IEP be continued.³ The correspondence from the student’s private psychologist states that the writer has “seen an amazing transformation” in the student since 2013, and notes that he now makes good choices, completes classwork, has become more “thoughtful and caring,” and has a “true increase of self-esteem and self-worth” as a result of the positive changes in his social skills, anger control and self management. The writer indicates that the student may still need “some” assistance in making good decisions “from time to time,” and that he may encounter some stress during the transition to high school. For this reason, the writer recommended that the student have an IEP that provides behavioral supports that the student can access should he experience any such stress or difficulty. The correspondence from the student’s private therapist indicates that the student can be easily distracted, must work hard to stay on task, and can become “anxious” with new experiences. The writer indicated her belief that the student

³ The student’s mother also obtained correspondence, dated June 30, 2015, from the student’s pediatrician, stating that “it would be beneficial” for him to have an IEP while transitioning to a new high school. However, this documentation was obtained by the student’s mother after the June 3, 2015 IEP team meeting (Doc. m).

XXX

Ms. Rebecca Rider

September 16, 2015

Page 8

would benefit from receiving the current supports in his IEP in order to assist with the transition to high school in a new setting because it “could trigger anxieties” (Docs. p).

20. The IEP team determined that the student no longer meets the requirements under the IDEA for eligibility as a student with a disability, and that the student's mother's concerns anticipating the student's possible needs could be addressed through the consideration of his eligibility for a 504 Plan (Doc. p).
21. The student's mother disagreed with the IEP team's decision. The school staff did not refer the student to the 504 Team for consideration of possible accommodations because the student's mother expressed her disinterest in a 504 Plan (Doc. p.)
22. There is no documentation that the school staff informed the complainants of the right to request an assessment following the IEP team's determination that he is no longer a student with a disability (Doc. p and interview with the school staff).

DISCUSSION/CONCLUSIONS:

A student with a disability under the IDEA is one who has been evaluated under the IDEA, has been determined to have an identified disability and who, as a result of that disability, requires special education. If a student is determined to have one (1) or more of an identified disability, but is found to require only related services, and not special education instruction, the student will not meet the criteria for identification as a student with a disability under the IDEA (34 CFR §300.8 and COMAR 13A.05.01.03).

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a student with a disability. Specially designed instruction means adapting, as appropriate to the needs of an eligible student under the IDEA, the content, methodology, or other delivery of instruction to address the unique needs of the student that result from his/her disability, and to ensure the student's access to the general curriculum (34 CFR §300.39).

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. This may include services such as counseling services and social work services (34 CFR §300.34).

A public agency must evaluate a student with a disability before determining the student is no longer a student with a disability. As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the

XXX

Ms. Rebecca Rider

September 16, 2015

Page 9

team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability. The public agency must notify the parent of that determination and the reasons for the determination, and the right of the parent to request an assessment to determine whether the student continues to be a student with a disability. The public agency is not required to conduct the assessment unless the parent requests an assessment (34 CFR §300.305 and COMAR 13A.05.01.06).

In this case, the complainants assert that the student continues to require special education and related services.

Based on the Findings of Facts #15 and #16, the MSDE finds that, on June 3, 2015, the IEP team convened to conduct a reevaluation of the student. Based on the Findings of Facts #16 - #19, the MSDE finds that the IEP team considered the existing data about the student, as well as information from school staff, and the student's mother. In addition, based on the Findings of Facts #6, #12 and #18, the MSDE further finds that the student's mother's desire for him to have an IEP was based on her belief that the IEP was needed in order to assist with his transition to a private school that she planned for the upcoming 2015-2016 school year.

Based on the Findings of Facts #16 - #20, the MSDE finds that the IEP team determined that the student does not require special education, and that the IEP team's decision was consistent with the data.

However, based on the Finding of Fact #22, the MSDE further finds that the BCPS did not ensure that the complainants were provided with notice of the right to request an assessment when the IEP team determined that no additional data was needed in making the decision that the student is no longer a student with a disability. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation, by November 1, 2015, that the IEP team has provided the complainants with notice of the right to request an assessment in order to determine whether the student continues to be a student with a disability. If the complainants indicate a desire for the student to receive a Free Appropriate Public Education (FAPE) through the BCPS and request an assessment before December 1, 2015, the MSDE requires the BCPS to ensure that the assessment is conducted within the required timeline. If an assessment is conducted, the MSDE requires that the IEP team convene a meeting with the complainants, in accordance with the required timeline, to review the results of the assessment in order to determine whether the student is a student with a disability under the IDEA. The MSDE requires the BCPS to provide documentation, within thirty (30) days, after any such IEP meeting.

XXX

Ms. Rebecca Rider
September 16, 2015
Page 10

The BCPS must ensure that the complainants are 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 November 1, 2015, of the steps that the XXXXX Middle School has taken to ensure compliance with the IDEA and related State requirements that parents must be provided notice of the right to request an assessment when an IEP team has determined that no additional data is needed to determine whether a student continues to be a student with a disability, in accordance with 34 CFR §300.305 and COMAR 13A.05.01.06.

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 Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainants 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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement 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 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 for the student, including issues subject to this State complaint investigation, consistent with the

XXX

Ms. Rebecca Rider
September 16, 2015
Page 11

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 (w/encl.)
Rebecca Rider (w/encl.)
Conya Bailey (w/encl.)
XXXXXXXX (w/encl.)
Anita Mandis
K. Sabrina Austin