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Interim State Superintendent of Schools

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October 26, 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: #16-020

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 September 2, 2015, the MSDE received a complaint from Ms. XXXXXXXXXX, 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 allegation that the BCPS has not ensured that the student was provided with a Free Appropriate Public Education (FAPE) following her attempt to enroll him in school at the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .102.

INVESTIGATIVE PROCEDURES:

1. On September 2, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On September 11, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.
3. On September 14, 2015, the MSDE sent correspondence to the complainant 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.
4. On September 22, 2015, the MSDE conducted a telephone interview with the complainant about her attempts to enroll the student at XXXXXXXXXXXXXXXX for the 2015-2016 school year.
5. On September 24, 29 and 30, 2015, the BCPS provided documentation to the MSDE for consideration.
6. On September 30, 2015, and October 1 and 6, 2015, the MSDE requested additional documentation from the BCPS.
7. On October 5 and 7, 2015, the BCPS provided the MSDE with additional documentation to consider.
8. On October 7, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed Ms. XXXXXXX, Transition Team Leader, BCPS, and Mr. XXXXXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXX. 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.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program (IEP), dated November 12, 2012, and written summary of the November 8, 2012 IEP team meeting;
 - b. The student's transcript;
 - c. The student's enrollment history and attendance record for the 2012-2013 school year;

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- d. Electronic mail (Email) message between the school system staff, dated October 3, 2014;
- e. Email message between the school system staff, dated October 9, 2014;
- f. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on September 2, 2015; and
- g. Correspondence from the school staff to the complainant, dated October 1, 2015.

BACKGROUND:

The student is twenty (20) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires the provision of special education and related services. The student attended XXXXXXXXXXXXXXXX in the Functional Academic Learning Support (FALS) Program¹ for a portion of the 2012-2013 school year. However there is no information that he has attended school since the 2012-2013 school year (Docs. a - c).

FINDINGS OF FACTS:

1. The documentation of a November 2, 2012 IEP team meeting reflects that the student stated that he wanted to exit school during the 2012-2013 school year in order to attend a training program offered through the Maryland Department of Rehabilitative Services (DORS). The documentation also reflects that the complainant agreed that “the student should be offered an early graduation² to help him prepare” for services offered through DORS, and that the anticipated start date for the student to begin receiving services through a DORS training program was Spring of 2013 (Doc. a).
2. On November 21, 2012, the student was awarded a Maryland High School Certificate of Program Completion and was withdrawn from XXXXXXXXXXXXXXXX. At that time, the student was less than one (1) week from his eighteenth (18th) birthday, and had earned one (1) credit towards the requirements for a Maryland High School Diploma (Docs. b and c).
3. On October 3, 2014, when the student was nineteen (19) years old, the complainant met with the school staff at XXXXXXXXXXXXXXXX, the last school the student had attended, and requested that he be re-enrolled in school in order to earn a Maryland High School Diploma (Doc. d).

¹ The FALS Program is 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>).

² The student’s IEP identifies June 2013 as the projected date for the student to exit/graduate from school (Doc. a).

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4. There is documentation that the school staff decided not to enroll the student in the school system because he had already obtained a Maryland High School Certificate of Program Completion. The documentation also indicates that the school staff explained to the complainant that the student's "testing and achievement demonstrate that he is not able" to satisfy the requirements for earning a Maryland High School Diploma, but that the school staff would try to arrange for the school system staff to contact the complainant about transition assistance (Doc. d).
5. On October 9, 2014, the BCPS transition facilitator met with the complainant. There is documentation that the complainant requested assistance in getting the student "back into school" because she wanted him to earn a Maryland High School Diploma and to attend college. The school system staff discussed available transition services and linkages to agencies that offer training and independent living skills programs. However, the documentation reflects that the BCPS transition facilitator explained that she could not assist the complainant with the student's return to school because it was "an administrative decision" (Doc. e).
6. On September 25, 2015, the complainant met with the school staff at XXXXXXXXXXXX XXXX³ for the purpose of enrolling the student. The complainant expressed her desire for the student to earn a Maryland High School Diploma. There is documentation that the school staff discussed that students must earn a total of twenty-one (21) credits and meet State testing requirements in order to earn a Maryland High School Diploma, and that the student had earned one (1) credit thus far towards such requirements. The school staff also explained that the student would no longer be entitled to education services by the BCPS after the end of the 2015-2016 school year because he will have reached the age of twenty-one (21) years prior to the start of the 2016-2017 school year. They further explained that he would not be able to earn an additional twenty (20) credits during the 2015-2016 school year (Doc. g).
7. The documentation reflects that, while the school staff informed the complainant that the student may return to school, the complainant did not have the necessary documentation to complete the enrollment process. The school staff provided the complainant with information identifying the items that are required for enrollment, and directed her to schedule an appointment if she should wish to complete the enrollment process. The school staff also informed the complainant that an IEP team would convene in order to determine the appropriate supports and services for the student upon his re-enrollment in the school system (Doc. g).

³ XXXXXXXXXXXXXXXXXXXX is the school that the student would attend if he was not disabled (Doc. a and interview with the school system staff).

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8. There is no information that, since September 25, 2015, the complainant has provided the required documentation to enroll the student in the BCPS (Interview with the school system staff).

LEGAL REQUIREMENTS:

A Free Appropriate Public Education (FAPE) must be available to all students between the ages of three (3) and twenty-one (21), in accordance with the student's IEP. FAPE means the provision of special education and related services that include an appropriate preschool, elementary school, or secondary school education in the State involved (34 CFR §§300.17 and .101).

In Maryland, a FAPE must be made available to all students residing in the State from birth through the end of the school year in which the student turns twenty-one (21) years old (Maryland Annotated Code §8-403 and COMAR 13A.05.01.01).

The obligation to provide a FAPE no longer applies to students with disabilities who have graduated from high school with a regular high school diploma. However, it continues to apply to students with disabilities who have graduated from high school but have not been awarded a regular high school diploma (34 CFR §300.102). The U.S. Department of Education, Office of Special Education Programs (OSEP), has explained that "children with disabilities who have not graduated with a regular high school diploma still have an entitlement to FAPE until the child reaches the age at which eligibility ceases under the age requirements within the State."

(*Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46580, August 14, 2006).

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the BCPS has not allowed the student to return to school since the start of the 2014-2015 school year in order to obtain a Maryland High School Diploma.

Based on the Findings of Facts #2 - #5, the MSDE finds that the BCPS denied the student a FAPE for the 2014-2015 school year when it refused to re-enroll the student based on his having obtained a Maryland High School Certificate of Program Completion.

However, based on the Findings of Facts #6 - #8, the MSDE further finds that the BCPS has offered to re-enroll the student for the 2015-2016 school year if the complainant provides the documentation that is required. Therefore, this office finds that the denial of a FAPE is for the 2014-2015 school year only.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation, by January 1, 2016, that the complainant has been offered assistance with obtaining the documentation necessary to re-enroll the student in the school system. The BCPS must also provide documentation, by January 1, 2016, that the IEP team has convened and determined the amount and nature of compensatory services or other remedy for the student's loss of FAPE during the 2014-2015 school year, to be provided if the complainant provides the documentation required to re-enroll the student during the 2015-2016 school year.

The MSDE requires the BCPS to ensure that the complainant is provided with proper written notice of the IEP team's decisions regarding the remedy to be provided. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

Systemic

The MSDE requires the BCPS to provide documentation, by January 1, 2016, of the steps it has taken to ensure compliance with the requirement to permit students who have been awarded a Maryland High School Certificate of Program Completion to re-enroll in school until the end of the school year in which the student turns twenty-one (21) years old.

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 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. Pending the decision on a

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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 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
Rebecca Rider
Conya Bailey
XXXXXXXXXXXX
Anita Mandis
K. Sabrina Austin
Bonnie Preis