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December 11, 2015

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Ms. Rebecca Rider
Executive Director, Special Education
Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #16-032

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 October 14, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student has been provided with the accommodations and supplementary aids and services required by the Individualized Education Program (IEP) since October 2014, in accordance with 34 CFR §§300.101 and .323, as follows:
 - a. The BCPS has not ensured that the student has been provided with accommodations; and

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- b. The BCPS has not ensured that the student has been provided with the supplementary aids and services of additional adult assistance.
2. The BCPS has not ensured that proper procedures were followed in response to requests made for an IEP team meeting since October 2014, in accordance with 34 CFR §§300.324 and 503.

INVESTIGATIVE PROCEDURES:

1. On October 14, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Executive Director of Special Education and School Support, BCPS; and Ms. Denise Mabry, Coordinator of Compliance and Related Services, BCPS.
2. On October 16, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegations to be investigated.
3. On November 3, 2015, Ms. Floyd conducted a record review at XXXXXXXX High School to review documentation, and met with Ms. Susan Doyle, IEP Chairperson, and Ms. Conya Bailey, Supervisor, Compliance, BCPS.
4. On November 13, 2015, Ms. Floyd and Ms. Nicole Green, Dispute Resolution Section, MSDE, conducted a site visit at XXXXXXXX High School and interviewed:
 - a. Ms. XXXXXXX, Special Education Teacher;
 - b. Ms. XXXXXXX, Special Education Department Chairperson; and
 - c. Ms. XXXXXXX, IEP Chairperson.

Ms. Bailey attended the site visit as a representative of the BCPS to provide information on the BCPS policies and procedures, as needed.

5. On November 25, 2015, the BCPS provided the MSDE with documentation to be considered during the investigation.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Notice of the procedural safeguards, provided to the complainant on October 26, 2015;
 - b. Student work samples, dated during the 2014-2015 and 2015-2016 school years;
 - c. IEP, dated March 25, 2015 and the IEP team meeting summary;

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- d. Behavior Intervention Plan, revised October 27, 2015;
- e. IEP, dated November 19, 2014 and the IEP team meeting summary;
- f. Student's class schedules for grades 9 and 10;
- g. IEP team meeting summary for IEP team held on October 26, 2015;
- h. IEP team meeting summary for IEP team held on September 22, 2014;
- i. Student report cards for grades 9 and 10, dated February 20, 2015;
- j. Log of accommodations, dated November 6-20, 2015;
- k. Additional adult support schedule for the 2014-2015 school year;
- l. Correspondence containing allegations of violations of the IDEA, received by the MSDE on October 9, 2015;
- m. Special education teacher schedules for the 2015-2016 school year;
- n. Electronic mail (email) correspondence between the complainant and the school staff, dated August 2014 through October 2015;
- o. Email correspondence between the complainant and the MSDE for consideration, dated August 2015 through October 2015;
- p. Reports of educational, psychological, and classroom observation assessments dated March and April 2013; and
- q. Determination of student eligibility forms for special education services.

BACKGROUND:

The student is fifteen (15) years old and attends XXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education services and related services (Docs. c, d and p).

During the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Docs. a, c, and e).

ALLEGATION #1: IEP IMPLEMENTATION

FINDINGS OF FACTS:

IEP Accommodations

- 1. The IEP requires the provision of accommodations, including the use of a scribe, word processor, monitoring of test responses, and a calculator. The IEP also requires that the student be provided with extended time to complete class assignments and tests, multiple or frequent breaks during the day, and reduced distractions to the student (Docs. c and d).

2. There is no documentation that the accommodations were provided to the student on a consistent basis, as required by the IEP (Docs. b, j, n, p and interviews with school staff).

IEP Supplementary Aids and Services – Additional Adult Assistance

3. The IEP requires that the student receive “additional adult assistance” throughout the day including during related arts classes such as art, music, and physical education and transition periods to “help maintain his focus and to provide necessary accommodations to complete written assignments. The IEP indicates that the assistance can be provided in the classroom by the classroom teacher, instructional assistant, and/or an additional adult assistant” (Docs. c, d, f and k).
4. There is no documentation that the additional adult assistance was provided on a consistent basis throughout the student’s school day (Docs. c, d, e, j, l and interviews with school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education services, accommodations, and supplementary aids and services, are provided in accordance with each student’s IEP (34 CFR §300.101).

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS did not ensure that the required accommodations and supplementary aids and services have been provided consistently since October 2014. Therefore, this office finds that a violation has occurred.

ALLEGATION #2: RESPONSE TO A REQUEST FOR AN IEP TEAM MEETING

FINDINGS OF FACTS:

5. On November 19, 2014 and March 25, 2015, IEP team meetings were held in response to the complainant’s request for a team meeting to discuss the student’s transition into ninth grade at the start of the 2015-2016 school year (Docs. g, h and n).
6. On August 26, 2015, the complainant requested an IEP team meeting by email correspondence to the school’s IEP chairperson to review the student’s IEP and discuss the student’s schedule. On the same date, the school guidance counselor and the special education department chairperson responded to the student’s mother about maintaining the student’s schedule and putting an adult in all of the student’s classes (Docs. g, h, n, and o).

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7. On September 24, 2015, the complainant made a second request for an IEP team meeting by email correspondence to both the IEP special education department chairperson, responsible for instructional practices, and the school's IEP chairperson, responsible for facilitating IEP teams and compliance procedures, to review the student's lack of progress on the interim grades. The student's mother suggested implementing "a buddy system" to support the student if adult assistance was unavailable (Docs. g, h, n and o).
8. On October 9, 2015, the complainant requested an IEP team meeting by email correspondence to both the special education IEP chairperson and department chairperson identifying three (3) dates she was available for an IEP team meeting to discuss the student's lack of progress, schedule and class assignments (Docs. g, h, n and o).
9. On October 15, 2015, the special education IEP chairperson responded to the complainant by email stating that an IEP team meeting was scheduled for October 26, 2015 (Docs. g, h and n).
10. On October 26, 2015, an IEP team meeting was held to determine whether there was a relationship between the student's recent disciplinary suspension and his disability. Based upon their review, the IEP team determined that the student's behavior was the direct result of the school not implementing the student's IEP and BIP during the time of the incident (Docs. d, e, g and m).
11. On November 2, 2015, the IEP team met again to review the student's IEP and address the complainant's concerns. The IEP team determined a daily progress reporting system would be implemented documenting when the student turned in home assignments, classwork completion, missing assignments, behavior, and acceptance of assistance with accommodations (Docs. d, g, h and x).

DISCUSSION/CONCLUSION:

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of a Free Appropriate Public Education (34 CFR §§300.324 and 503).

Based on the Finding of Fact #5, there is no documentation to support the allegation that school staff did not follow proper procedures when responding to a request for an IEP team meeting from October 2015 to August 2015.

Based on the Findings of Facts #6 - #11, the MSDE finds that the BCPS did not follow proper procedures when responding to the complainant's request for an IEP team meeting in August 2015. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the BCPS to provide documentation by February 1, 2016, that the daily progress reporting system, which will document the implementation of the IEP, is being fully utilized.

The BCPS must also provide documentation that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the lack of consistent provision of supports required by the IEP, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

School Based

The MSDE requires the BCPS to provide documentation by March 1, 2016 of the steps taken to determine whether the violation is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXX High 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 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 from Dr. Nancy Birenbaum, Compliance Specialist, MSDE at (410) 767-7770.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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.

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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 within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF: sf

c: S. Dallas Dance
Conya Bailey
XXXXXXXXXX
Dori Wilson
Anita Mandis
Bonnie Preis
Sharon Floyd