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Interim State Superintendent of Schools

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December 23, 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: 16-040

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 October 28, 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 allegation that the BCPS has not developed and implemented an Individualized Education Program (IEP) that addresses the student’s social, emotional and behavioral needs since the start of the 2015-2016 school year, in accordance with 34 CFR §300.101 and .324.

XXX

Ms. Rebecca Rider

December 23, 2015

Page 2

INVESTIGATIVE PROCEDURES:

1. On October 29, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On November 2, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated and to request documentation.
3. On November 4, 2015, Ms. Austin communicated with the complainant through electronic mail messages.
4. On November 5, 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.
5. On November 6, 2015, Ms. Austin discussed the allegation with the complainant by telephone. On the same date, the MSDE received documentation from the complainant.
6. On November 18, 2015, Ms. Austin conducted a review of the student's educational record at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) with Ms. Valerie Lewis, Assistant Principal, XXXXXXXXXXXX, and Ms. Conya Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS. On the same date, the BCPS provided documents to the MSDE for consideration.
7. On November 23, 2015 and December 4 and 21, 2015, the MSDE received additional documentation from the BCPS for consideration.
8. On December 4, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXX and interviewed Ms. XXXXXXXXXXXX, Behavior Interventionist; Ms. XXXXXXXXXXXX, Assistant Principal; and Ms. XXXXXX, General Educator.

Ms. Kathryn MacDonald, Resource Teacher, 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. IEP, dated April 15, 2015, and written summary of the April 15, 2015 IEP team meeting;

XXX

Ms. Rebecca Rider

December 23, 2015

Page 3

- b. The student's attendance record for August 2015 - November 2015, and correspondence from the school staff to the complainant concerning "excessive" absences, dated December 2, 2015;
- c. Electronic mail (email) communications between the school system staff, dated August 2015 - November 2015;
- d. Response to Intervention Document developed by the school staff in September 2015;
- e. Notice of an IEP team meeting scheduled for October 22, 2015 and documents provided for review at the October 22, 2015 IEP team meeting;
- f. Written summary of the October 22, 2015 IEP team meeting, and Amended IEP, dated October 22, 2015;
- g. The reports of the school staff describing the student's behavior on October 26, 2015, and documenting the support provided by the school staff to the student;
- h. The school staff's notes of parent conferences with the complainant on November 3 and 13, 2015;
- i. Written summary of the November 16, 2015 IEP team meeting;
- j. Notice of the IEP team meeting held on December 2, 2015, and written summary of the December 2, 2015 IEP team meeting;
- k. The school staff's request for permission for assessment, dated December 2, 2015;
- l. The school staff's journal and calendar charts of the student's performance in the classroom in October 2015 and November 2015;
- m. The November 2015 data collection charts of the student's goals to remain safe and comply with directions;
- n. The October 2015 and November 2015 reports of the student's progress towards achievement of the annual IEP goals; and
- o. Correspondence from the complainant containing allegations of violations of the IDEA, dated October 28, 2015.

BACKGROUND:

The student is four (4) years old and attends a half-day pre-kindergarten program at XXXXX XXXXXXXXXXXXXXX. He is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education and related services (Docs. a and f).

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 (Doc. f).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2015-2016 school year was developed on April 15, 2015, and amended on August 24, 2015. The IEP states that the student's "delays in communication, pre-academic and social and motor skills impact his ability to

XXX

Ms. Rebecca Rider

December 23, 2015

Page 4

- actively participate in group learning and to interact in play situations.” It also states that he “easily becomes upset and acts out with a tantrum” when he has to wait or it is not his turn to participate in a task. The IEP identifies that the student has needs related to increasing attention, play skills and participation in adult-led tasks, initiating interactions with peers and adults, and taking turns. It also indicates that the student’s attendance is not consistent, and that when he misses multiple days from school, he has difficulty with transitioning, following routines and participating when he returns, and demonstrates a regression of skills (Doc. a).
2. The IEP includes an annual goal for the student to improve his personal social skills in the area of interactive play by cooperative play with peers and interaction with adults. It also includes a goal for the student to improve his personal social skills in the areas of attention and participation by participating in classroom routines, circle time activities and interactive games. It requires the provision of specialized instruction in a general education classroom, as well as speech and language services and occupational therapy to assist the student with achieving the goals. The IEP also requires strategies to help the student initiate and sustain attention during structured and individual activities, including prompting, preferential seating, frequent changes in activities, and a picture schedule or other visuals during instruction. In addition, the IEP requires “direct teaching” of social skills in the classroom to promote the student’s interactions with peers (Doc. a).
 3. While the student previously participated in an early childhood program that is designed for students with disabilities, the complainant requested that the student be provided with the opportunity to receive special education instruction in a general education classroom, and the IEP team agreed (Docs. a and c).
 4. The student did not begin attending school until one week after the 2015 - 2016 school year started as a result of the complainant’s difficulty arranging for after school care for the student (Doc. b and interview with the school staff).
 5. While the student was originally placed in the afternoon session of the preschool program, on September 16, 2015, the complainant requested that the student be transferred to the morning session. In response to the complainant’s request, the school staff placed the student in the morning session on September 21, 2015 (Doc. c).
 6. The IEP requires the provision of transportation services. While there is documentation that the student has been transported by school bus, there is also evidence that the complainant has chosen to transport the student on some days and that she has requested several changes in drop-off and pick-up locations during this school year. The school staff report that such changes in the student’s routine result in an increase in his anxiety and difficulty focusing on instruction (Doc. c and interview with the school staff).

7. Since the start of the 2015-2016 school year, he has been absent fifteen (15) days, and has been tardy to school ten (10) days. The student's attendance record reflects that when he is tardy, he arrives between 8:59 a.m. and 10:20 a.m., missing approximately thirty (30) minutes or more of the instructional day.¹ The school staff report that, when he arrives late, the student has increased anxiety and difficulty with transitions because he expects instruction to begin at the start of the daily schedule, rather than having to join the classroom schedule that has already begun (Doc. b and interview with the school staff).

8. In mid-September 2015, the school staff documented that the student's behaviors were interfering with his instruction in the classroom and that he was struggling with communication. Outside of an IEP team meeting, the school staff unilaterally identified specific problem-solving strategies and interventions to implement with the student in order to address his interfering behaviors and communication needs. The interventions included adult support, reduced work, sensory breaks, seating options (choice between a bean bag, carpet or a chair), "fidgets," repeated directions, speech and language supports, visual cues, social stories, advance warning for transitions, using soft voices prior to giving instructions, and having a special educator present during center times. Dimming of lights was also included as an intervention to use in order to help calm the student. The school staff documented the various interventions to be used by the staff in a Response to Intervention Document. The school system staff report that the Response to Intervention Document is an "internal document" maintained by the school system (Docs. c and d, and interview with the school system staff).

9. There is also documentation that, in October 2015 and November 2015, the student frequently displayed the following interfering behaviors:
 - Difficulty with transitions between activities and tasks;
 - Eloping from the classroom, and occasionally from the school building;
 - Refusing to participate in instruction and center rotations;
 - Refusing to follow directions, and classroom routines;
 - Running around the classroom, and climbing on furniture;
 - Throwing and knocking over items in the classroom and in therapy sessions;
 - Breaking items in the classroom;
 - Throwing himself to the ground, screaming, crying, and kicking;
 - Removing and sometimes kicking his shoes;
 - Difficulty interacting and sharing with peers; and
 - Dismantling the play area in the classroom (Docs. l and m).

¹ The instructional day begins at 8:20 a.m. The school staff report that the morning pre-kindergarten instructional program is two and a half (2-1/2) hours and ends at 10:50 a.m. (XXXXXX Elementary School website and interview with the school staff).

XXX

Ms. Rebecca Rider

December 23, 2015

Page 6

10. On October 22, 2015, the IEP team convened. The complainant participated in a portion of the October 22, 2015 IEP team meeting.² The complainant reported that the student has “less tantrums,” is talking and interacting more, and seems more independent. She reported that the student is “hyperactive” and “sometimes tries to regress to get attention.” She expressed her desire for the student to display more age-appropriate behaviors (Docs. e and f).
11. At the October 22, 2015 IEP team meeting, the IEP team discussed that the student’s inconsistent attendance due to frequent absences is “negatively impacting his behavior.” The IEP team considered information that the student has also struggled with the classroom routines and procedures as a result of several changes in transportation, and his change from the afternoon session to the morning session of the pre-kindergarten program (Doc. f).
12. The IEP team considered that, although the student “is very loving and sweet,” he can be “very non-compliant” as demonstrated by refusing to participate in group instruction, running in the hallway, refusing to enter the classroom, hitting staff, and throwing items. The IEP team documented that the student is easily distracted by other children and when participating in groups in the classroom, and that he “may only spend 5% - 10% of the 2.5 hours on task with his peers” (Doc. f).
13. The IEP team documented that the student is not making progress towards achieving any of the IEP goals, while noting that his behavior and inconsistent attendance make it difficult to determine his academic performance and accurately assess whether he is making progress. The speech and language therapist reported that, due to his frequent absences, the student has only received two (2) sessions of therapy rather than the two (2) per week that are required by the IEP. The occupational therapist reported that the student has only received three (3) of the six (6) scheduled sessions of therapy due to his inconsistent school attendance (Doc. f).
14. The IEP team also discussed several supports and strategies that the school staff had determined unilaterally to use with the student, including a movable picture schedule, sensory items, picture social stories of expectations, seating options, and frequent breaks. The IEP team also considered that the student is also provided extra time in play centers with no work demands to provide him with the opportunity to observe other students at play in order to promote his engagement, communication and social interaction with peers (Doc. f).

² While the complainant indicated that she would participate by telephone, the school staff was unable to reach her by phone at the start of the IEP team meeting. The complainant subsequently called the school and was able to participate in the last half of the meeting (Doc. f).

XXX

Ms. Rebecca Rider

December 23, 2015

Page 7

15. The IEP team revised the student's IEP to reflect an increase occupational therapy services to three (3) thirty (30) minute sessions per month.³ However, there is no documentation that the IEP team determined whether the supports and strategies that the school staff identified outside of an IEP team meeting, and being used informally by the school staff, were appropriate to address the student's needs (Doc. f).
16. On October 26, 2015, the student exhibited disruptive and unsafe behaviors in the classroom after he was requested to transition to the carpet for instruction. There is documentation that the student verbally objected to the transition, and then ran to the kitchen and housekeeping center areas where he pulled items onto himself, threw items at other students including toys, scissors and pencils, knocked over items including a desk, and attempted to elope from the classroom. With the support of the behavior specialist, the school staff attempted strategies to address the student's behavior and return the student to instruction. The documentation reflects that the student refused to return to the carpet for instruction, was screaming, crying and dropping to the floor to avoid returning to instruction (Doc. g).
17. Due to the disruption that the student caused in the classroom and the possibility of injury to other students as a result of the student's unsafe behaviors, the school staff directed the student to an empty music classroom in order to redirect him and give him the opportunity to calm down. While the florescent lights in the classroom were not turned on in order to provide the student with a more calming environment with less stimulation to assist in deescalating his behavior, the classroom was lit by the natural light from the window to the outside and from the window on the door to the hallway. There is documentation that the student continued to demonstrate inappropriate behavior in the music room, including ripping a poster, throwing his shoes, and kicking items. The documentation also reflects that at all times the student was supported by at least one member of the school staff during this incident (Doc. g).
18. On November 3 and 13, 2015, at the complainant's request, the school staff held parent conferences with the complainant to discuss concerns about the student's behavior. The school staff and the complainant agreed that the music room⁴ will be used when the student demonstrates behaviors that are dangerous to himself or others, a calming protocol will be implemented to help the student de-escalate, and a daily chart of the student's behavior will be developed and shared with the complainant in order to keep her informed. The school staff agreed to schedule an IEP meeting on November 16, 2015 in order to address the complainant's request for a dedicated para-educator to support the student (Docs. c and h).

³ The April 15, 2015 IEP required one (1) fifteen (15) minute session per week of occupational therapy (Doc. a).

⁴ The school staff agreed with the complainant's request that the student will not be in the music room with the lights off, but will notify the complainant if the student has a negative reaction to the light stimulation (Doc. h).

XXX

Ms. Rebecca Rider

December 23, 2015

Page 8

19. On November 16, 2015, the school staff convened for the IEP team meeting. The complainant did not attend, and the school staff did not proceed with the meeting (Doc. i).
20. On December 2, 2015, the IEP team convened to review the student's IEP in order to address the lack of progress towards several of his annual IEP goals, and to conduct a reevaluation of the student. Although the complainant requested to participate in the meeting by telephone, the school staff were unable to reach her at the time of the meeting. The school staff proceeded with the IEP team meeting without the complainant's participation (Docs. j and n).
21. At the December 2, 2015 IEP team meeting, the IEP team discussed that the student's inconsistent attendance due to his frequent absences and late arrivals continues to negatively affect his progress towards mastery of the IEP goals. The IEP team also considered that the inconsistency in the student's schedule negatively impacts his behavior due to the interference with his class routine. The IEP team recommended an updated assessment in order to determine the student's current levels of performance in the area of his fine motor and sensory skills, as well as an assistive technology assessment in order to provide communication support to the student. The team also recommended a Functional Behavior Assessment in order to gather data to develop a Behavior Plan. The school staff requested the complainant's permission for assessments on December 4, 2015; however, there is no documentation that the complainant has provided consent (Docs. j and k).

DISCUSSION/CONCLUSIONS:

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).

Based on the Findings of Facts #1 - #8, the MSDE finds that there is documentation that, beginning in September 2015, the school staff unilaterally identified interventions in response to the school staff's concerns about the student's difficulty with his behavior in the classroom.

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Ms. Rebecca Rider

December 23, 2015

Page 9

Based on the Findings of Facts #9 and #11 - #13, the MSDE finds that the BCPS considered information at the October 22, 2015 IEP team meeting that the student continued to demonstrate interfering behaviors in the classroom, that he was not making progress towards achieving any of the annual IEP goals, and that his inconsistent attendance was negatively impacting his success in the classroom.

However, based on the Findings of Facts #14 and #15, the MSDE finds that there is no documentation that, at the October 22, 2015 IEP team meeting, the BCPS considered whether the supports and interventions being provided informally to the student were appropriate to address his interfering behaviors and lack of progress. Additionally, based on the Findings of Facts #9 - #21, the MSDE finds that the BCPS did not document the steps taken to address the student's interfering behaviors and lack of progress until the December 2, 2015 IEP team meeting when the IEP recommended updated assessments of the student. Therefore, the MSDE finds a violation occurred from October 22, 2015 to December 2, 2015.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation by March 15, 2016, that the BCPS has taken the following action:

1. If, by February 1, 2016, the BCPS has not received the complainant's consent, or refusal of consent, for the assessments recommended by the IEP team on December 2, 2015, the BCPS must proceed to have the assessments conducted without the complainant's consent.
2. If assessments are conducted, they must be completed on an expedited basis. The IEP team must also convene an IEP team meeting by March 15, 2016 in order to review the results of the assessments.
3. If the IEP team revises the student's IEP based on its review of the results of the assessments, the IEP team must determine whether the violation identified in the Letter of Findings related to the delay in addressing the student's behavior and lack of progress had a negative impact on the student's ability to benefit from the educational program. If the team determines that there was a negative impact, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within a year of the date of this Letter of Findings.

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.

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Ms. Rebecca Rider

December 23, 2015

Page 10

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birenbaum, 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 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
Conya Bailey
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Anita Mandis
K. Sabrina Austin
Nancy Birenbaum