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December 31, 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: #16-045

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 November 9, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, 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 following allegations:

1. The BCPS has not ensured that the student has been consistently provided with the services of an adult assistant to work with him in all of his classes, as required by the IEP, since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not ensured that the student was consistently provided with the accommodations and supplementary aids and services, as required by the Individualized Education Program (IEP), since start of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On November 9, 2015, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On November 12, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On November 13, 18 and 20, 2015, Ms. Austin discussed the allegations with the complainant by telephone. On November 13, 18, 19 and 24, 2015, the complainant provided documentation to the MSDE for consideration in completing the investigation.
4. On November 16, 2015, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
5. On November 17, 2015, and December 2, 2015, the MSDE requested documentation from the BCPS. On December 3, 2015, the BCPS provided the MSDE with documentation for consideration in the investigation.
6. On December 14, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX), and interviewed Mr. XXXXXXXXX, Assistant Principal, XXXXXXXXX, and Ms. XXXXXXXXXXXXXXXX, IEP Chairperson, XXXXXXXXX. 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.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated June 3, 2015, and written summary of the June 3, 2015 IEP team meeting;
 - b. Electronic mail (email) communications between the complainant and the school staff, and between the school staff, September 2015 to December 2015;
 - c. The school staff's charts of accommodations and modifications provided to the student in math, language arts, Spanish, and science classes, from August 2015 to November 2015;

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- d. Samples of class notes provided to the student, dated September 11 and 15, 2015, October 27 - 29, 2015, and November 3, 11, 2015, and sample handouts and worksheets provided to the student, undated;
- e. The student's class schedule; and
- f. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on November 9, 2015.

BACKGROUND:

The student is twelve (12) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with a Visual Impairment under the IDEA, and has an IEP that requires the provision of special education and related services (Doc. a).

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2015 - 2016 school year was developed on June 3, 2015. The IEP reflects that the student has diagnoses of XXXXXXXX¹ and XXXXXXXX, and states that "eye fatigue, near and distance viewing, pictures, glare, lighting, visual clutter/poor contrast, and print size are all issues for [him]." It states that the student requires access to a video magnifier at all times, and that his reading fluency "noticeably decreases with materials that contain less than 26 [twenty-six] point font." While the IEP states that the student "does well" with the use of his residual vision, it states that he is only able to read for a few minutes before experiencing eye fatigue, and that he needs alternative methods of accessing visual materials presented in the classroom. The IEP also reflects that the student has difficulty gathering information from pictures, even when enlarged, and that information in pictures should be explained verbally or through picture captions (Doc. a).
2. The IEP reflects that the student requires accommodations during instruction and assessment, including "personal copies of all information presented at a distance (i.e. PowerPoints, board work, etc.) as well as copies of all pertinent information that is presented auditorally" (Doc. a).
3. The IEP also reflects that the student requires supplementary aids and supports, including "personal copies of all information presented at a distance," and "personal copies of student/teacher notes." While the IEP indicates that these supplementary supports are to be provided daily, the IEP also states that the supports "will be used on an as needed basis in daily instruction" (Doc. a).

¹ XXXXXXXX is an abnormality of the eye that results in blurred vision (See Genetics Home Reference website, Conditions - XXXXXXXX: <http://ghr.nlm.nih.gov/condition/XXXXXX>).

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4. The IEP indicates that the student requires the support of an additional adult to work with him “daily during each class period.” The IEP clarifies that the additional adult is required to copy all class notes, scribe and read as needed to the student, and to upload PowerPoints to a flash drive. The parties report that the adult support is intended to be provided exclusively to the student by an individual other than the classroom teacher (Doc. a and interviews with the parties).
5. In September 2015, the complainant began expressing concern that the student was not consistently receiving support from an additional adult.² In addition, the complainant also expressed her continuing concern, as early as September 2015 and continuing through November 2015, that the student was not consistently receiving copies of class notes, information presented in class at a distance, including instruction and work written on the chalkboard, presentations displayed using an overhead projector, and PowerPoint presentations. The same documentation also reflects that the school staff also had concerns about the implementation of additional adult support, and the provision of copies of teacher notes, to the student (Doc. b).
6. On September 17, 2015 the school staff sent an email to the student’s teachers explaining that the person providing adult support to the student “should be taking notes and writing down assignments and information that is written on the board,” and that the student should be provided “a copy of all PowerPoint presentations and teacher notes” (Doc. b).
7. There is no documentation that, since the start of the 2015 - 2016 school year, the student has been provided with daily adult support in every class period in addition to the classroom teacher. While the school staff report that various school staff have provided support to the student at times during the school year when the student’s regularly assigned adult support provider was not present and when there was no adult assigned to support the student, the school staff report that their on-going efforts to hire an assistant to provide exclusive adult support to the student have been unsuccessful. In addition, the school staff report that the student is currently receiving adult support in addition to the classroom teacher only in his math class (Doc. b and interview with the school system staff).
8. The documentation reflects that the student was occasionally provided with notes and outlines and large print materials in some but not all of his classes, including math class. However, the documentation also reflects that the items provided to the student as “notes” mainly included a record of the student’s homework assignments, notations of upcoming tests and quizzes, and statements of the class “objective” for the given day (Docs. b - e).

² The complainant also expressed concern about the quality of the assistance when it was provided (Doc. b).

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9. There is no documentation that the student has been consistently provided with personal copies of notes and outlines, and personal copies of all information presented at a distance in the classroom including PowerPoint presentations and instruction/work displayed on the chalkboard or overhead display. There is also no documentation that the student has been consistently provided with a scribe in every class (Docs. b - e).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p.12479, March 1999).³

In this case, the complainant asserts that the IEP requires that the student be provided with notes that reflect the instruction covered in his classes and with copies of information presented at a distance each day in every class, and she alleges that this is not being done on a regular basis due to the lack of appropriate support in his classes (Doc. f).

Allegation #1: Provision of Adult Support

Based on the Findings of Facts #1 - #7, the MSDE finds that there is no documentation that, since the start of the 2015-2016 school year, the BCPS has consistently provided the student with the support of an additional adult in addition to the classroom teacher in all of his classes, as required by the IEP. Therefore, the MSDE finds an ongoing violation with regard to this allegation.

Allegation #2: Provision of Copies of Notes and Information Presented at a Distance

Based on the Findings of Facts #1 - #9, the MSDE finds that the IEP is not written clearly with respect to the information to be covered by the notes that are provided to the student and the frequency with which he is to be provided with those notes and with copies of information presented at a distance. Therefore, the MSDE finds that the IEP cannot be implemented consistent with the intent of the IEP team, and that a violation occurred.

³ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the BCPS to provide documentation, by April 1, 2016, that the IEP team has convened and taken the following actions:

1. Reviewed and revised the IEP in order to ensure that it is written clearly with respect to the student's needs for supplementary supports, including copies of teacher notes and material presented at a distance, in order to access classroom instruction and materials.
2. Determined the amount of compensatory services to remediate the violations identified in this Letter of Findings, and developed a plan to provide the compensatory services within one (1) year of the date of this Letter of Findings.

The MSDE also requires the BCPS to provide documentation, by April 1, 2016, that the student is being provided with additional adult support in addition to the classroom teacher and the supplementary aids and supports as required by the IEP.

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. 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.

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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 Free Appropriate Public Education (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
XXXXXXXXXX
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum