



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

December 14, 2015

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: #16-051

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 December 1, 2015, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the 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’s progress has been monitoring with the provision of supports described in a Behavior Intervention Plan (BIP), as required by the student’s education program during the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On December 1, 2015, Mr. Kenneth Hudock, Family Support Services Specialist, MSDE contacted the complainant in response to the receipt of correspondence from him on

XXX

Ms. Rebecca Rider
December 14, 2016
Page 2

November 25 and 26, 2015. Mr. Hudock informed the complainant of the need for him to provide additional information in order for a State complaint investigation to be initiated, which was received by the MSDE on the same date.

2. On December 2, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
3. On December 3, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation, notified the BCPS of the allegation, and requested that the BCPS review the alleged violation.
4. On December 3, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE requested documents from the complainant, and received them on the same date.
5. On December 8, 2015, Ms. Mandis requested documents from the BCPS, and received them on the same date.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Behavior Intervention Plan (BIP), dated June 3, 2015;
 - b. Individualized Education Program (IEP), dated November 12, 2015;
 - c. Electronic mail (email) correspondence between the complainant and the school staff, dated November 11 and 13, 2015; and
 - d. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on December 1, 2015.

BACKGROUND:

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

During the period of time addressed by this investigation, the complainant participated in the education decision-making process for the student and was provided with written notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

1. The student's IEP includes a BIP that identifies behaviors such as not turning in classwork and homework, and demonstrating impulsive behaviors, including non-compliance with directions and yelling at others. The BIP describes strategies to be used

XXX

Ms. Rebecca Rider

December 14, 2016

Page 3

by the school staff in order to assist the student with achieving goal behaviors of having no more than 5% of the total assignments missing in each academic class and complying with adult directions without making inappropriate comments (Docs. a and b).

2. The BIP states that the following data will be used to monitor the student's behavior in order to determine the effectiveness of the plan:
 - Record review;
 - Classroom performance; and
 - Office/crisis referrals (Doc. a).
3. On November 11, 2015, the complainant sent email correspondence to the principal indicating that he had requested data from one of the student's teachers on the student's behavior with the use of the BIP strategies. The complainant indicated that because the teacher did not have the specific type of data he expected and because she indicated that she was unsure of what additional data he wanted, this demonstrated that the BIP was not being implemented (Doc. c).
4. In response to the complainant's email, the principal explained that the teacher did not indicate that the BIP was not being implemented, but was requesting clarification of the additional data he expected to be collected to demonstrate the student's progress. The principal requested that the complainant follow up on the matter of data collection with the special education department chairperson (Doc. c).
5. In response to the principal's email, the complainant sent another email to the principal and copying the special education chairperson requesting specific information, including the following:
 - The number of times the student became upset in each class each week;
 - The number of times the student cursed in each class each week;
 - The number of incidents in which the student "lost his cool" in each class each week;
 - The number of times the student asked for a "flash pass" appropriately after each incident; and
 - The number of times the teacher reminded the student to use a "flash pass" after each incident.

The complainant indicated that if this data was not already being collected, then the BIP was not being implemented and that the student had been denied a Free Appropriate Public Education (FAPE) (Doc. c).

6. In response to the complainant's email, the special education department chairperson sent an email to the complainant explaining how data was being collected and providing him

XXX

Ms. Rebecca Rider

December 14, 2016

Page 4

with a sample data collection sheet, which had been shared with him at the last IEP team meeting. The sample data collection sheet includes the following information:

- The number of times the student asks to use a “flash pass” without adult prompt;
- The number of times the student is prompted to use a “flash pass;”
- The number of times the student cursed; and
- The number of times the student refrained from cursing.

The special education department chairperson offered to modify the data collection sheet to include the complainant’s suggestions (Doc. c).

7. In response to the special education department chairperson’s email, the complainant indicated that while the IEP team had discussed the collection of data to be used to monitor the student’s progress with the BIP supports at the November 5, 2015 IEP team meeting, he wanted the following data from August 2015 until November 5, 2015:

- The percentage of assignments missing per class in the first quarter;
- The percentage of assignments handed in late per class;
- The number of adult directions given to the student in each class; and
- The number of times the student complied with adult directions in each class.

The complainant also asked why he was not provided with the data prior to the November 5, 2015 IEP team meeting (Doc. c).

8. On November 13, 2015, the special education department chairperson sent the complainant an email indicating that the complainant had been provided with a log of the student’s behaviors for the November 5, 2015 IEP team meeting. The special education department chairperson also indicated that the data could not have been provided any sooner because the complainant did not request it until the day before the November 5, 2015 IEP team meeting. The special education department chairperson provided information on the percentages of assignments that were missing and handed in late and the number and percentage of student and teacher office/crisis referrals during September 2015 and October 2015. The special education department chairperson reiterated that the complainant’s input would be considered in the collection of the data (Doc. c).

9. On November 13, 2015, the complainant sent email correspondence to the school staff expressing appreciation for the data provided and the telephone call to discuss the data. At that time, the complainant requested additional information to include the following:

- What constitutes “adult direction;”
- How many adult directions were given and how many the student complied with;

XXX

Ms. Rebecca Rider

December 14, 2016

Page 5

- What constitutes an “inappropriate comment;”
- How many times the student made an inappropriate comment and how many times he refrained from doing so;
- Whether the percentage of times the student complied with directions increased or decreased; and
- Whether the percentage of times the student made an inappropriate comment increased or decreased (Doc. c).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students are provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). In this case, the complainant alleges that the BIP, which is part of the IEP, requires that the student’s progress with the provision of behavior interventions, be monitored, and that the BCPS has not ensured that this has been implemented (Doc. d).

Based on the Findings of Facts #1 - #9, the MSDE finds that there is documentation that the BIP is being implemented. Based on those Findings of Facts, the MSDE finds that the BIP does not require that data be collected in the manner in which the complainant asserts. Further, based on those Findings of Facts, the MSDE finds that the school staff are appropriately working with the complainant to ensure that data is collected in an appropriate manner. Therefore, this office does not find that a violation occurred.

TIMELINE:

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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant and the school system 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 for the student, including issues

XXX

Ms. Rebecca Rider
December 14, 2016
Page 6

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

MEF/am

c: S. Dallas Dance
Conya Bailey
XXXXXXXXXXXXX
Dori Wilson
Anita Mandis