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State Superintendent of Schools

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February 9, 2017

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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: #17-069

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 12, 2016, the MSDE received a complaint from Mark B. Martin, Esq., hereafter, “the complainant,” on behalf of Mr. XXXXXXXX and Mrs. XXXXXXXX and their 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 Individualized Education Program (IEP) team has convened to review and revise the IEP, as appropriate, to address information about the student’s transportation needs provided by the parents, since the start of the 2016 - 2017 school year, in accordance with 34 CFR §§300.34 and .324, and COMAR 13A.05.01.08.

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INVESTIGATIVE PROCEDURES:

1. On December 14, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
2. On January 4, 2017, 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 violations.
3. On January 12, 23 and 31, 2017, and February 2 and 3, 2017, the MSDE requested the BCPS to provide documentation.
4. On January 19, 24, 27 and 31, 2017, the BCPS provided documentation to the MSDE for consideration.
5. On January 25, 2017, Ms. Austin and Dr. Linda Bluth, Transportation Consultant, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX and interviewed the following school system staff:
 - a. Ms. XXXXXX, Assistant Principal, XXXXXXXXXXXXXXXXXXXX;
 - b. Ms. XXXXXX, Special Educator, XXXXXXXXXXXXXXXXXXXX;
 - c. Ms. Rebecca Rider, Director, Office of Special Education, BCPS; and
 - d. Mr. Kenny West, Assistant Director, Office of Transportation, BCPS.

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.
6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEPs, dated May 6, 2015, and June 14, 2016;
 - b. Written summaries of the May 31, 2016 and June 14, 2016 IEP team meetings;
 - c. The student's attendance history reports for the 2015 - 2016 and 2016 - 2017 school years;
 - d. The route sheets for Bus #4863, dated May 11, 2016, September 29, 2016, and January 4, 2017;
 - e. The BCPS Transportation Operating Procedures, undated;
 - f. The MSDE Division of Special Education/Early Intervention Services Technical Assistance Bulletin #16-01, "Frequently Asked Questions About Transportation of Children with Disabilities," dated January 2016; and
 - g. Correspondence from the complainant, alleging a violation of the IDEA, received by the MSDE on December 12, 2016.

BACKGROUND:

The student is eight (8) 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. He attends XXXXXXXXXX (XXXXXXX) (Doc. a).

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

FINDINGS OF FACTS:

1. The XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) is the school that the student would attend if not disabled. However, since the 2015 - 2016 school year, the student's IEP has required that he receive academic and social skills instruction in a separate special education classroom which cannot be provided at XXXXXXXXXXXX. Therefore, the student has been attending XXXXXXXXXX where those services are provided (Doc. a and interview with the school system staff).
2. The student's May 2015 IEP requires that he be provided with transportation, as a related service. The IEP reflects that the student requires specialized equipment due to his size and weight, personnel assistance due to his communication needs, and that the student's age and disability were considered in determining his transportation needs (Doc. a).
3. The route sheet for Bus #4863, the bus to which the student is assigned, documents that the student is scheduled to be transported by the BCPS from his residence to XXXXXXX in the morning, and from XXXXXXX to his residence in the afternoon (Doc. d).
4. On May 31, 2016, the IEP team convened with the participation of school system staff from the BCPS Office of Transportation. The written summary of the meeting reflects that the parents expressed concern that the student's total bus ride each day was "almost three [(3)] hours" due to a recent change in his bus transportation. The IEP team discussed that the student's bus ride was "about" one and one-half (1.5) hours in the morning, and "a little over" one (1) hour in the afternoon (Doc. b).
5. At the time of the May 31, 2016 IEP team meeting, the route sheet in effect for Bus #4863 documents that the student was the first student scheduled to be picked up by the bus in the morning, and that the length of his ride was eighty-eight (88) minutes. It also documents that the student was the last student scheduled to be dropped off by the bus in the afternoon, and that the length of his ride was seventy-five (75) minutes (Doc. d).
6. The written summary of the May 2016 IEP team meeting states that the parents were "concerned about the impact of the trip on [the student]," and reflects that they expressed

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- their belief that the student “needs to have his transportation limited to an hour maximum each way,” but does not include information about the basis for the belief. However, there is no information or documentation of a negative impact of transportation on the student’s education (Doc. b).
7. The school system staff “explained that the transportation department is unable to accommodate a shorter trip at this point.” However, the documentation reflects that, at the parents’ request, the school staff agreed to “look into the plausibility of” an alternative transportation option that would shorten the student’s travel time (Doc. b).
 8. On June 14, 2016, the IEP team convened to conduct the annual review of the student’s IEP. The IEP team documented the student’s “daily enthusiasm when he arrives off of the bus saying, ‘I’m here!’” There is no documentation that the parents expressed concern about the length of the student’s bus at this meeting. The written summary of the meeting documents that the parents “are very happy with [the student’s] educational programming” (Doc. a).
 9. On June 14, 2016, the IEP was revised to require additional personnel assistance to assist in boarding and departing the bus and to secure his child safety seat. A statement was also added that “the student requires access to the shortest route possible” (Doc. a).
 10. There is documentation that, at the start of the 2016 -2017 school year, the student was riding the bus to school and there is no information or documentation that the bus route and length of the bus ride had changed (Review of the school staff’s student arrival log and interview with the school system staff).
 11. According to the complainant, the parents “allowed [the student] to ride the bus for about a week but due to the negative impact it had on [the student] and his availability for learning upon arriving at school, they have since been driving him to school.” However, there is no information or documentation of a negative impact on the student (Doc. g and interview with the complainant).
 12. In October 2016, the BCPS made schedule changes to Bus #4863 that resulted in shorter bus rides for the student to and from school. Specifically, the changes reduced the student’s morning bus ride from eight-eight (88) to eighty (80) minutes, and his afternoon bus ride from seventy-five (75) to twenty-eight (28) minutes¹ (Doc. d).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323). Related services includes transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education (34 CFR §300.34).

¹ The change required the student to be the first student dropped off by the bus in the afternoon (Doc. d).

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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 (34 CFR §§300.101, .320, and .324).

The IDEA does not specifically address an appropriate length of time that a child may spend on a bus while traveling to and from school. However, the public agency must ensure that, if the IEP team determines that a student with a disability cannot be educated in the school that he or she would attend if not disabled, the IEP shall document the specialized transportation needs of the student, including consideration of the effect transportation may have on the student in relation to the student's age and disability, specialized equipment needs of the student, personnel needed to assist the student during transportation, amount of time involved in transporting the student; and distance the student will be transported (COMAR 13A.05.01.10 and MSDE Technical Assistance Bulletin #16-01, January 2016).

In this case, the complainant alleges that the length of the student's bus ride has a "negative impact" on "his availability for learning upon arriving at school," and therefore is a denial of a Free Appropriate Public Education (FAPE) because the IEP does not appropriately address his transportation needs (Doc. g).

Based on the Findings of Facts #1 - #13, the MSDE understands that this issue has been raised at an IEP team meeting, but the MSDE finds that there is no documentation to support the allegation. Therefore, the MSDE does not find that a violation occurred.

TIMELINES:

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.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The student's parents and the BCPS 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

MEF/sa

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