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May 5, 2017

Ms. Nicole Joseph
Attorney
Disability Rights Maryland
1500 Union Avenue, Suite 2000
Baltimore, Maryland 21211

Mr. Sean L. Conley, Chief Academic Officer
Mr. Macon Tucker III, Manager of Specialized Services
Ms. Jennifer Dull, Director, Strategy and Compliance
Baltimore City Public Schools
200 E. North Avenue
Baltimore, Maryland 21202

RE: XXXXX
Reference: #17-118

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 March 7, 2017, the MSDE received a complaint from Ms. Nicole Joseph, attorney, hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City 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 did not ensure that proper procedures were followed when conducting an initial evaluation under the IDEA on September 16, 2016, in accordance with 34 CFR §§300.301 - .306, COMAR 13A.05.01.06.

INVESTIGATIVE PROCEDURES:

1. On March 8, 2017, the MSDE sent a copy of the complaint, via electronic mail (email) message, to Mr. Sean L. Conley, Chief Academic Officer, BCPS, Mr. Macon Tucker III,

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Manager of Specialized Services, BCPS, Ms. Jennifer Dull, Director, Strategy and Compliance, BCPS, and Mr. Darnell Henderson, Attorney, BCPS.

2. On March 17, 2017, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with the complainant and discussed the allegation being investigated.
3. On March 29, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the revised allegation subject to this investigation.
4. On March 30, 2017, the MSDE notified the BCPS of the allegation and requested that the school system review the alleged violation.
5. On April 25, 2017, the MSDE conducted a file review at the BCPS Central Office.
6. On April 26, 2017, the MSDE received copies of documents from the student's educational record from the BCPS.
7. On April 29, 2017, and May 1 and 2, 2017, the BCPS provided additional documentation to the MSDE to be considered.
8. On May 2, 2017, Ms. Floyd and Ms. Nicole Green, Data Analyst for Mediation and Due Process, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal;
 - b. Ms. XXXXXXXXXXXX, IEP Chairperson;
 - c. Ms. XXXXXXXXXXXX, Lead Professional School Counselor;
 - d. Mr. XXXXXXXX, Biology Teacher; and
 - e. Ms. XXXXXXXXXXXX, English Teacher.

Mr. Henderson, attended 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. The student's transcript for the 2015-2016 school year;
 - b. The BCPS procedures for students with sporadic absences and consecutive absences;
 - c. Report of the Woodcock-Johnson IV Tests of Achievement, dated September 16, 2016;

- d. Correspondence from the BCPS to the student's mother, dated November 28, 2016;
- e. Report of the student's attendance by class period, dated August 29, 2016 through February 16, 2017;
- f. Report of the student's enrollment history, dated July 24, 2003 through February 28, 2017;
- g. Report of Student Support Team (SST) referrals, dated March 1, 2016;
- h. Report of unexcused absences for the 2016-2017 school year;
- i. Report of home visits, dated March 28, 2017;
- j. The student's report card, dated June 21, 2016;
- k. Email correspondence between the BCPS staff, dated September 15, 2016;
- l. Report of the student's behavior for the 2015-2016 and 2016-2017 school years;
- m. Report of the student's daily attendance, dated August 29, 2016 through February 16, 2017;
- n. IEP team notice and consent for assessment, dated March 22, 2017;
- o. Request for the student records from the Baltimore City Juvenile Justice Center, dated April 19, 2017;
- p. Receipt of the parental rights document, dated May 2, 2017;
- q. IEP team summary of the March 22, 2017 IEP team meeting;
- r. Correspondence from the BCPS to the student's mother, dated May 2, 2017;
- s. Correspondence from the BCPS to the student's mother, dated May 1, 2017;
- t. Code of Conduct for the 2016-2017 school year, BCPS; and
- u. Correspondences from the complainant alleging a violation of the IDEA, received by the MSDE on March 8, 2017.

BACKGROUND:

The student is seventeen (17) years old and has not been identified as a student with a disability under the IDEA. He is enrolled at XXXXXXXXXXXXXXXXXXXX (Docs. a, e, f, and q).

FINDINGS OF FACTS:

2015-2016 School Year

- 1. On July 1, 2015, the student entered the 9th grade. On March 1, 2016, a Student Support Team (SST)¹ was conducted to review the student's attendance and progress. The student's report card for the 2015-2016 school year indicates the student was present 33 days, absent 143 days, and did not earn any course credits for that school year (Docs. a, g, and j).

¹ SST meetings are convened to explore barriers to attendance and strategies to support students who have not been identified under the IDEA (Doc. b).

2. The BCPS Code of Conduct,² states that if there is habitual truancy (i.e. unlawfully absent from school for a number of days in excess of 8 days in any quarter, 15 days in any semester, or 20 days in a school year, a “Level 2” response is required, which is intensive support staff and appropriate administration guidance. The Code of Conduct states that “Level 2” response may be appropriate when supports have been put in place in the classroom and/or school community to address attendance behavior, but the attendance behavior has continued to negatively influence the learning of the student (Doc. t).
3. The BCPS requires the schools to send out daily computer generated telephone calls to parents and to contact the parent to inquire about the student’s absences. After 9 days of absences, the BCPS staff is required to initiate a home visit to determine the reason for the student’s absences. There is documentation that these daily computer generated telephone calls were made to the student’s home. However, there is no documentation that a home visit was conducted after the student was absent for 9 days (Docs. b, g, and t).

2016 - 2017 School Year

4. On September 15, 2016, the student and his mother arrived at the school and spoke with the assistant principal about the student’s intent to begin attending school regularly. The assistant principal reviewed the student’s record and determined that assessment data would inform the school staff of the student’s current academic levels and would assist the student in transitioning back into school (Interview with school staff).
5. On November 28, 2016, the BCPS sent a mandatory parent conference notice to the student’s mother to discuss the student’s progress and strategies to ensure promotion (Doc. d).
6. The BCPS requires the school staff to mail letters to the student’s home after 10 and 20 absences to remind the family of the attendance policy and request that families return a statement indicating they have read and understood the policy. After 11 absences, the BCPS is required to connect with the BCPS family preservation specialist and the SST and IEP teams for outreach strategies. There is no documentation that the letters were sent at these intervals or that the SST and IEP teams were contacted to provide outreach strategies (Doc. b).

² The BCPS Code of Conduct, written in accordance with the policies of the Board was developed to redirect behavior, teach students appropriate responses and behaviors, and explain disciplinary consequences (bcps.code of conduct_16-17(1).pdf).

7. When a student is absent more than 21 days, the student is considered to be chronically absent and the BCPS is required to “flag the student for SST or IEP team, as appropriate, for review of interventions and goals.” However, there is no documentation that this occurred (Doc. b).
8. On March 22, 2107, an IEP team meeting was held in response to this State complaint. The IEP team proposed that cognitive, social and emotional, and educational testing be administered to the student to determine the student’s present levels of academic performance and the presence of a disability. The IEP team summary states that “assessments were recommended in response to the mother’s concerns regarding the student’s lack of academic progress and the complainant’s request” (Doc. q).
9. On March 26, 2017, a home visit was conducted by the BCPS Supports Liaison who reported that the student’s mother informed her that the student was attending Youth Opportunity Baltimore School, an alternative school (Doc. i).
10. On May 1, 2017, the BCPS agreed to provide the student with an Independent Education Evaluation (IEE) at the school system’s expense in response to the student’s mother’s concerns about the educational assessment that was conducted on September 16, 2016 which did not result in the initial evaluation process under the IDEA (Doc. s).
11. On May 2, 2017, school staff conducted a home visit to provide the student’s mother with an explanation of her IDEA procedural rights, the IEP team summary from the March 22, 2017 IEP team meeting and notice of the consent form for assessments recommended at the March 22, 2017 IEP team meeting, and potential dates to conduct the assessments with the student (Doc. r).

DISCUSSION/CONCLUSIONS:

The “Child Find” requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who have disabilities and need special education and related services or who are suspected of having disabilities and being in need of special education and related services. It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. However, the public agency must ensure that this process does not delay or deny a student’s access to special education services under the IDEA (34 CFR §300.111).

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In this case, the complainant alleges that the BCPS suspected or should have suspected that the student is a student with a disability but did not follow proper procedures to conduct an evaluation. Based on the Findings of Facts #2, #3, #6, and #7, the MSDE finds that the school system did not follow the BCPS procedures for students with chronic absenteeism and, as a result did not meet it's obligation to determine if the student has a disability and requires special education under the IDEA. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the start of the 2017-2018 school year, that the IEP team has completed the evaluation and developed an IEP that addresses the student's needs, if the student is identified with a disability under the IDEA.

The MSDE also requires the BCPS to determine compensatory services for the delay in identification under the IDEA.

The BCPS must ensure that the student's mother is provided with written notice of the IEP team's decisions. The student's mother maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Specific

The MSDE requires the BCPS to provide documentation by the start of the 2017-2018 school year, of the steps it has taken to ensure that the XXXXXXXXXXXXXXXX School staff properly implements the requirements for child find procedures under the IDEA. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, 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 student's mother 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 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: Sonja Brookins Santelises
XXXXXXXXXX
Darnell L. Henderson
Dori Wilson
Anita Mandis
Sharon Floyd