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September 11, 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: #17-157

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:**

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 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 did not develop an Individualized Education Program (IEP) that addresses the student’s social, emotional, behavioral, sensory, reading, written language, and transportation needs during the 2016-2017 school year, in accordance with 34 CFR §300.324.

XXX

Ms. Rebecca Rider  
September 11, 2017  
Page 2

2. The BCPS did not follow proper procedures when the IEP team determined the placement in which the student would receive special education instruction during the 2016-2017 school year, in accordance with 34 CFR §§300.114 and .116.
3. The BCPS did not provide access to the student's educational record, in accordance with 34 CFR §§300.501 and .613.
4. The BCPS has not ensured that the student was provided with the accommodations required by the IEP since April 20, 2017, in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is fourteen (14) 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.

During the time period covered by this investigation, the student attended XXXXXXXXXXXXXXXX XXXXXX. He is assigned to XXXXXXXXXXXXXXXX for the 2017-2018 school year.

**ALLEGATIONS #1 AND #2: IEP DEVELOPMENT AND EDUCATIONAL PLACEMENT**

**FINDINGS OF FACTS:**

1. The student has not been identified with sensory needs.
2. The IEP identifies behavioral needs including the use of social thinking strategies to demonstrate expected behaviors, increasing on-task behaviors, "persevering" through less preferred activities, and coping in situations involving social interactions. The IEP requires that the student be provided with consistent encouragement, motivation, and reminders to remain focused, including graphic organizers and frequent breaks in all of his classes. The student's teachers report, based on daily behavioral data collected, an improvement in the student's behavior, indicating the student is demonstrating expected behaviors and using the social thinking strategies 92% - 98% of the time.
3. The IEP identifies the student's reading needs in the areas of decoding, vocabulary development, reading fluency and comprehension. The student achieved his goals in reading decoding and reading comprehension. The teachers report that on the reading assessment, the student is able to decode on an upper middle school (8<sup>th</sup> grade) level which is one year's growth in one year. The student's reading comprehension skills also improved from a 6<sup>th</sup> grade to a 7<sup>th</sup> grade level during the 2016-2017 school year. The student is able to comprehend 8<sup>th</sup> grade level material using accommodations with 80% accuracy. According to the IEP progress reports, the student is making sufficient progress to meet the reading goals on his IEP.

XXX

Ms. Rebecca Rider

September 11, 2017

Page 3

4. The IEP reflects the student's writing needs for increasing spelling, writing fluency, using text-based evidence, relevant details, reasoning, supporting details, and increasing the length of written assignments. The student is writing on a 4.5 grade level. The IEP indicates the student has made a year's growth in his writing skills since the previous IEP. When provided with accommodations, he is able to write on an 8<sup>th</sup> grade level with 77% accuracy. According to the IEP progress reports, the student is making sufficient progress to meet his writing goal.
5. There is documentation that the student's IEP included transportation services when the student began attending XXXXXXXXXXXXXXXXXXXX because the student required an educational placement that was not the school he would attend if not disabled. There is also documentation that the complainant has been and intends to continue to provide transportation for the student, and does not intend for him to use the transportation services offered by the BCPS. Therefore, transportation services have been removed from the IEP. There is documentation that the complainant has expressed a desire for the service to be added to the IEP in case he decides to use it in the future, and that he has been informed by the school staff that it will be added to the IEP when the complainant indicates that he will no longer be providing transportation.
6. On September 30, 2015, the IEP team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented with the provision of supplementary aids and services is a combination of general and separate special education classrooms due to the student's need for academic and behavioral support. The parties agreed that the student needs to attend a school that is not the school he would attend if not disabled due to his social, emotional and behavioral needs.
7. On March 25, 2016, an Administrative Law Judge (ALJ) ruled that the student's educational placement was appropriate after the complainant filed a due process hearing request seeking a nonpublic, separate, special education school placement.
8. On May 23, 2016, the IEP team conducted an annual IEP review and determined that the educational placement remained appropriate. There is no documentation that the student's needs changed since the March 25, 2016 ALJ determination.
9. On April 20, 2017, the IEP team reviewed the IEP in preparation for the student's transition to high school for the 2017-2018 school year. At the meeting, the IEP team determined that the educational placement remained appropriate and that the student continued to require a school location other than the school he would attend if not disabled for high school. There is no documentation that the student's needs changed since the March 25, 2016 due process hearing decision.

**DISCUSSION/CONCLUSIONS:**

**Allegation #1: IEP Development**

In this case, the complainant alleges that the student is not achieving and mastering academic skills and is regressing because he continues to exhibit behavioral problems.

Based on the Findings of Facts #1 - #5, the MSDE finds that the BCPS ensured that all of the required data was considered by the IEP team and that the IEP addresses the areas of identified needs consistent with the data, in accordance with 34 CFR §300.324. Therefore, this office does not find a violation occurred with respect to this allegation.

**Allegation #2: Educational Placement**

Based on the Findings of Facts #6 - #9, the MSDE finds that the facts do not support the allegation that proper procedures were not followed when determining the educational placement, in accordance with 34 CFR §§300.114 and .116. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #3: ACCESS TO THE EDUCATIONAL RECORD**

**FINDINGS OF FACTS:**

10. On March 22, 2017, the complainant requested copies of the results of the standardized tests administered to the student. The complainant was provided with access to the records maintained by the teacher to whom the request was made, and was directed to request the remainder of the records from the school guidance counselor. There is no documentation that the complainant made a request to the school guidance counselor for additional information.
11. On June 7 and 8, 2017, the complainant requested access to the student's work samples and behavioral point sheets. He was provided with access to those documents from one of the student's teachers who maintained those records. However, the remaining teachers did not maintain such records.
12. On September 1, 2017, in response to the State complaint, the BCPS Central Office staff informed the complainant that there are no more documents to provide to him, but invited him to review the entire educational record on September 6, 7 or 8, 2017.

**DISCUSSION/CONCLUSIONS:**

In this case, the complainant alleges that he requested the student's school work folders, and results of standardized testing and received it from only one teacher.

XXX

Ms. Rebecca Rider  
September 11, 2017  
Page 5

Based on the Findings of Facts # 10 and #11, the MSDE finds that the complainant was provided with results of standardized tests in response to his request to one of the student's teachers, and there is no evidence that he requested the remainder of the records from the school staff to whom he was directed.

Based on the Finding of Fact #11, the MSDE finds that the complainant was previously provided with the work samples that were maintained by one of the student's teachers. Because work samples and logs of student behavior are not required to be maintained under 34CFR §§300.610 - .627, COMAR 13A.08.02.01 and the Maryland Student Records System Manual, this office does not find that a violation occurred with respect to the requests made for those records from other teachers. Therefore, this office does not find that a violation occurred with respect to this allegation.

#### **ALLEGATION #4 PROVISION OF ACCOMMODATIONS SINCE APRIL 20, 2017**

##### **FINDINGS OF FACTS:**

13. The accommodations required by the IEP, dated April 20, 2017 include:
  - Provision of a human reader or audio recording of selected sections;
  - Provision of text to speech software for selected sections;
  - Monitoring of the test responses;
  - Extended time;
  - Provision of reduced distractions to the student; and
  - Provision of reduced distractions to other students.
14. On August 24, 2016, all of the student's teachers and support staff were provided with the student's IEP, including accommodations and an explanation detailing their responsibility for implementing the student's IEP.
15. There is inconsistent and insufficient documentation of the school staff's provision of the accommodations as required on the student's IEP from April 20, 2017 through the end of the 2016-2017 school year.

##### **DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #13 - #15, the MSDE finds that there is inconsistent and insufficient documentation that the IEP accommodations have been provided as required by 34 CFR §§300.101 and .32. Therefore, this office finds a violation occurred with respect to this allegation.

**CORRECTIVE ACTION/TIMELINES:**

**Student-Specific**

The MSDE requires the BCPS to provide documentation, by November 1, 2017, that the student is being provided with the accommodations required by the IEP and that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the lack of provision of accommodations since April 20, 2017, and a plan for the provision of those services within one year of the date of this Letter of Findings.

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

**School-Based**

The MSDE requires the BCPS to provide documentation by December 1, 2017, of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXX staff properly implements the requirements for the documentation of the implementation of IEP accommodations. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violation does not recur.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the BCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached 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

XXX

Ms. Rebecca Rider  
September 11, 2017  
Page 7

request for reconsideration, the school system must implement any corrective actions within the timelines 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 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 (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/sf

c: Verletta White  
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