



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

August 21, 2017

XXX
XXX
XXX

Ms. Debra Brooks
Director of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #18-001

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 July 6, 2017, 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 City 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 ensure that, when conducting an IDEA evaluation in July 2016, the student was assessed in all areas related to the suspected disability and that assessment tools and strategies were used to provide relevant information in determining the educational needs of the student, in accordance with 34 CFR §300.304.
2. The BCPS did not ensure that prior written notice of the decisions made at a November 2016 IEP team meeting was provided, in accordance with 34 CFR §300.503.
3. The BCPS did not ensure that proper procedures were followed when the Individualized Education Program (IEP) team determined that the student will participate in alternate assessments in November 2016, in accordance with 34 CFR §§300.160, .320, COMAR 13A.03.02.09, and the Maryland Accommodations Manual.

XXX

Ms. Debra Brooks

August 21, 2017

Page 2

4. The BCPS did not follow proper procedures when determining that the student does not require Extended School Year (ESY) services because he receives services through a Head Start Program, in accordance with 34 CFR §300.106, COMAR 13A.05.01.03 and 13A.05.01.08, and MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002).
5. The BCPS did not ensure that the IEP addressed the student's identified fine motor skills needs from April 2017 to July 2017, in accordance with 34 CFR §300.324.

BACKGROUND:

The student is five (5) years old, is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education and related services. At the time the State complaint was filed, the student was attending a Head Start program located at XXXXXXXXXXXXXXXX. On July 24, 2017, the BCPS placed the student at XXXXXXXXXXXXXXXX XXXXX where he will begin attending at the start of the 2017 – 2018 school year.

ALLEGATION #1

PROPER PROCEDURES WHEN CONDUCTING AN IDEA EVALUATION IN JULY 2016

FINDINGS OF FACTS:

1. On July 5, 2016, the complainant referred the student for an IDEA evaluation due to concerns about his speech and language skills. At the time, the student was participating in a preschool program through Head Start.
2. On July 28, 2016, the IEP team convened to consider the referral. The IEP team determined that, "based on parental input and the child's lack of school exposure," the student is not suspected of being a student with a disability under the IDEA, and that no evaluation procedures would be conducted.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #1 and #2, the MSDE finds that the basis for the decision that evaluation procedures would not be conducted is not consistent with the data, in accordance with 34 CFR §§300.301 - .305 and COMAR 13A.05.01..04 – 06. Therefore this office finds a violation occurred.

**ALLEGATION #2 PRIOR WRITTEN NOTICE OF THE DECISIONS MADE
AT THE NOVEMBER 2016 IEP TEAM MEETING**

3. On November 29, 2016, the IEP team convened to review a referral for an IDEA evaluation of the student. The IEP team determined that additional information was required and recommended assessments in the areas of communication and fine motor skills.
4. The assessments recommended at the November 29, 2016 IEP team meeting were conducted in January 2017 and March 2017.
5. On August 10, 2017, the BCPS developed a Prior Written Notice document of the decisions made at the November 29, 2016 IEP team meeting.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #3 - #5, the MSDE finds that the BCPS did not provide written notice of the decisions made at the November 29, 2016 IEP team meeting prior to implementing those decisions, in accordance with 34 CFR §300.503. Therefore, this office finds a violation occurred.

**ALLEGATIONS #3 - #5 PROPER PROCEDURES WHEN DETERMINING THE
STUDENT'S PARTICIPATION IN ALTERNATE
ASSESSMENTS IN NOVEMBER 2016; PROPER
PROCEDURES WHEN DETERMINING THAT THE
STUDENT DOES NOT REQUIRE EXTENDED SCHOOL
YEAR (ESY) SERVICES; AND ENSURING THAT THE IEP
ADDRESSED THE STUDENT'S FINE MOTOR NEEDS
FROM APRIL 2107 TO JULY 2017**

6. There is no documentation that, in November 2016, the IEP team determined that the student will participate in an alternate assessment based on alternate academic achievement standards (Alternate Assessment). However, the IEPs developed by the BCPS on January 24, 2017, and April 21, 2017, document that the IEP team decided that the student will not participate in an Alternate Assessment because he "is "attending [a] Head Start" program, but that he is pursuing a High School Certificate of Program Completion.
7. On January 24, 2017, the IEP team determined that the student was eligible to receive special education services. However, the team also documented that the student is not eligible for ESY services because he is "attending [a] Head Start" program.
8. On April 21, 2017, the IEP team determined that the student requires thirty (30) minutes of occupational therapy services every other week in order to address his fine motor skills. However, the IEP team did not revise the IEP to reflect the decision.

XXX

Ms. Debra Brooks

August 21, 2017

Page 4

9. On July 12, 2017, the IEP team convened to address the concerns expressed by the complainant in the State complaint.
10. At the July 12, 2017 meeting, the IEP team determined that “there is no basis” for documenting that the student will pursue a High School Certificate of Program Completion. The IEP team revised the IEP to reflect the decision that the student is pursuing a Maryland High School Diploma.
11. Also at the July 12, 2017 IEP team meeting, the IEP team determined that the student requires ESY services.
12. In addition, the IEP team determined that the student had not been provided with the occupational therapy services that the IEP team had determined, in April 2017, were required. The IEP team revised the IEP to include information about the student’s present levels of performance in the area of fine motor skills, two (2) goals to address the student’s fine motor skills needs, and to require weekly occupational therapy as a related service.
13. The IEP team determined that Free Appropriate Public Education (FAPE) violations occurred with respect to the decisions regarding ESY services, and pursuit of a High School Certificate of Program Completion, and the lack of the provision of occupational therapy services. The IEP team agreed to provide the student with 175 hours of compensatory services to address the negative impact on the student of the FAPE violations from January 24, 2017 to July 12, 2017.
14. The school system staff have agreed to “conduct a focused review of similarly-situated students at XXXXXXXXXXXXXXXXXXXX with particular focus on the Head Start program.” The review will include the development of a plan of action to address and remediate any findings of noncompliance, including targeted professional development and technical assistance. The school system staff will conduct a subsequent review to determine “full correction” of all identified student-specific areas of noncompliance, and a second review of additional student records in order to determine the effectiveness of the professional development and technical assistance provided.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #6 - #14, the MSDE finds that the BCPS determined that FAPE violations occurred with respect to Allegations # 3 - #5, and that the BCPS has identified the amount of compensatory services to redress the violations, in accordance with 34 CFR §§300. 101, .106, .320 and .324, and COMAR 13A.05.01.03, .08 and .09. The MSDE appreciates the steps that the BCPS has taken and concurs with those findings and determinations.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by November 1, 2017, that the IEP team has developed a plan for the provision of the identified compensatory services within one (1) year of the date of this Letter of Findings.

School-Based

The MSDE requires the BCPS to provide documentation by December 1, 2017, of the completion of the proposed corrective action at XXXXXXXXXXXXXXXX.

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.

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

XXX

Ms. Debra Brooks

August 21, 2017

Page 6

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/ksa

c: Sonja B. Santelises
Sean Conley
Jennifer Dull
Macon Tucker
Darnell Henderson
Diana Wyles
XXXXXX
XXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum