



Karen B. Salmon, Ph.D.
State Superintendent of Schools

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

October 13, 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: #18-013

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 August 17, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXX, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) addresses the student’s reading needs since the 2016-2017 school year, in accordance with 34 CFR §§300.320 and .324.

XXX

Ms. Debra Brooks

October 13, 2017

Page 2

2. The BCPS did not ensure that proper procedures were followed when determining the Extended School Year (ESY) services to be provided for the summer of 2017, 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).
3. The BCPS did not ensure that the IEP was implemented while the student participated in the ESY services program during the summer of 2017, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is 13 years old, is identified as a student with Multiple Disabilities under the IDEA, including a Specific Learning Disability and a Visual Impairment, and has an IEP that requires the provision of special education instruction and related services. The student is in the seventh (7th) grade and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards.

ALLEGATION #1

IEP THAT ADDRESSES READING NEEDS

FINDING OF FACT:

1. The IEPs in effect since the start of the 2016-2017 school year which reflect that the student is pursuing a Maryland High School Diploma include goals to improve reading vocabulary and reading comprehension. However, those goals are not aligned with the state's academic content standards for the grade in which the student has been enrolled. From the start of the 2016-2017 school year until September 26, 2017, the goals have been aligned with the first (1st) grade curriculum despite the fact that the student is enrolled in the seventh (7th) grade. On September 26, 2017, the goals were revised to align with the third (3rd) grade curriculum.

DISCUSSION/CONCLUSIONS:

The IDEA requires that a student's IEP include measurable annual goals that are designed to both: (a) meet the needs that arise out of the student's disability; and (b) enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students (34 CFR §300.320).

The United States Department of Education (USDOE) has explained that the annual goals must be aligned with the State's academic content standards for the grade in which the student is

enrolled, and take into account a student's present levels of academic achievement and functional performance.

In a situation in which a student is performing significantly below the level of the grade in which the student is enrolled, the USDOE explained that the IEP team should determine annual goals that are ambitious but achievable, and ensure that the IEP includes "specially designed instruction," which the USDOE defines as an "element of special education instruction," that includes the following:

Adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

The student who is seeking a high school diploma must demonstrate mastery of the general curriculum, or the course content that is required for all students, and participate in assessments on that curriculum. In order for the annual goals to be aligned with that curriculum, they must measure the student's progress on that curriculum, and not the student's progress on instructional level activities.

However, the short-term objectives within the goal must be based on the student's present levels of performance and designed to assist the student with making progress towards achieving the goal. As the student achieves the short-term objectives, it is expected that they will be revised to move the student closer to achieving the goal to master the college and career ready standards around which the general curriculum is designed (34 CFR §300.39 and *USDOE Dear Colleague Letter*, dated November 16, 2015 and *Analysis of Comments and Changes to the IDEA, Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

Based on the Finding of Fact #1, the MSDE finds that the reading goals have not been aligned with the grade level curriculum and thus have not been designed to enable the student to progress through the general education curriculum. Therefore, this office finds that a violation occurred and that the student has not been provided with a Free Appropriate Public Education (FAPE), in accordance with 34 CFR §§300.101 and .320.

ALLEGATIONS #2 AND #3

DETERMINATION AND PROVISION OF EXTENDED SCHOOL YEAR (ESY) SERVICES

FINDINGS OF FACTS:

2. On May 9, 2017, the IEP team determined the student would be provided with special education instruction on all his academic goals through the provision of Extended Year Services (ESY) for the 2016-2017 school year.

XXX

Ms. Debra Brooks

October 13, 2017

Page 4

3. Reports of the student's progress towards achievement of the IEP goals documents that the goals were addressed and the IEP was implemented during the provision of ESY services.

DISCUSSION/CONCLUSIONS:

Extended school year (ESY) services are an individualized extension of specific services beyond the regular school year designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether ESY services are required in order to ensure that the student is not deprived of a FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

Allegation #2

Determination of Extended School Year (ESY) Services

Based on the Finding of Fact #2, the MSDE finds that the documentation does not support the allegation that the IEP team did not determine the goals to be addressed through ESY services, in accordance with 34 CFR §300.106, COMAR 13A.05.01.08., and *MM v. School District of Greenville Co. (S.C.)*, 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002). Therefore, this office finds no violation.

Allegation #3

Implementation of ESY Services

Based on the Finding of Fact #3, the MSDE finds that the documentation does not support the allegation that the IEP was not implemented during the provision of ESY services, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds no violation.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the BCPS to provide documentation by December 1, 2017, that the IEP has been reviewed and revised to include goals that are aligned with grade level curriculum and that the IEP team has determined the amount and nature of compensatory services or other remedy to redress the FAPE violation, and developed a plan for the provision of those services within a 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 complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the BCPS to provide documentation by February 1, 2018 of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the FAPE violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination on non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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 Ms. Bonnie Preis, Compliance Consultant, 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.

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 parents 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

XXX

Ms. Debra Brooks

October 13, 2017

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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:sf

c: Sonja Brookins Santelises

Darnell L. Henderson

XXXXXXXXXX

Dori Wilson

Anita Mandis

Bonnie Preis

Sharon Floyd