



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

February 6, 2020

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

RE: XXXXX
Reference: #20-075

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education Services (MSDE), 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 December 11, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 did not conduct a reevaluation of the student within the required timelines, in accordance with 34 CFR §§300.303 - .311.

2. The BCPS did not ensure that the student has been provided with the amount of reading and math services required by the Individualized Education Program (IEP) since December 11, 2018,¹ in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the student was provided with preferential seating, pre-teaching of new concepts, and a participation/work completion chart required by the IEP, since December 11, 2018, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is ten (10) years old and is identified as a student with an Other Health Impairment under the IDEA, related to Attention Deficit-Hyperactivity Disorder. She attends XXXXXX XXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1: REEVALUATION TIMELINE

FINDINGS OF FACTS:

1. The student was initially identified as a student with a disability under the IDEA on January 8, 2016. The BCPS did not initiate the reevaluation process for the student until an IEP team meeting was held on September 12, 2019.
2. On September 12, 2019, the IEP team convened for a reevaluation of the student. The team reviewed the student's IEP, general and special educator's reports, an independent neuropsychological assessment, parental report, classroom observations, informal assessments, and work samples. Based on the data reviewed, the team determined that updated assessments in the areas of academic, adaptive, and social-emotional functioning were required for the student. The complainant provided consent for assessments at the meeting.
3. On December 6, 2019 and January 9, 2020, the IEP team convened to review the student's assessment results. Based on the results, the IEP team determined that the student continued to be eligible for special education services under the IDEA. The IEP was revised to include updated present level of performances, goals and objectives, accommodations, service hours, and supplementary aids and services. However, the complainant disagreed with the results of the BCPS psychological assessment, and indicated that she would contact the BCPS Central Office staff regarding her procedural safeguards.
4. At the same IEP team meeting, the complainant raised concern about the student's speech/language deficits based on the independent evaluation she provided to the team at the September 12, 2019 IEP meeting. The speech/language therapist explained that the student's overall scores in the independent neuropsychological assessment, specifically

¹ In her correspondence, the complainant indicated that the violations have occurred since August 2018. However, she was informed, in writing, that only allegations of violations that occurred within one year of the filing of a State complaint can be addressed through State complaint investigation procedure (34 CFR §300.153).

in language, are commensurate with her full-scale IQ score of 69, and that the deficits would be better addressed by additional supplementary aids and services rather than language services, as the student's cognitive abilities are affecting her language skills. The team determined that no additional assessments were required for the student.

CONCLUSION:

Based on the Findings of Facts #1 - #4, the MSDE finds that, although the reevaluation process has now been completed, the BCPS did not conduct the reevaluation of the student within the required timeline of at least once every three (3) years, in accordance with 34 CFR §§300.303 - .311. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #2: AMOUNT OF READING AND MATH SERVICES

FINDINGS OF FACTS:

5. The IEP requires that the student be provided with reading and math in a separate special education classroom, for five (5) hours and twenty (20) minutes a week, by a special education teacher.
6. The BCPS acknowledges that there is no documentation that reflects that the student was provided with the amount of reading and math services required by the IEP since December 11, 2018.

CONCLUSION:

Based on the Findings of Facts #5 and #6, the MSDE concurs with the finding that a violation has occurred since December 11, 2018, and appreciates the BCPS acknowledgement.

ALLEGATION #3: PROVISION OF ACCOMMODATIONS

FINDINGS OF FACTS:

7. The IEP requires that the student be provided with preferential seating, pre-teaching of new concepts, and a participation/work completion chart.
8. The BCPS acknowledges that there is not sufficient documentation that reflects that the student was provided with preferential seating, pre-teaching of new concepts, and a participation/work completion chart since December 11, 2018.

CONCLUSION:

Based on the Findings of Facts #7 and #8, the MSDE concurs with the finding that a violation has occurred, and appreciates the BCPS acknowledgement.

CORRECTIVE ACTIONS/TIMELINES:

The IDEA requires that State complaint procedures include those for effective implementation of the decisions made as a result of a State complaint investigation, including technical assistance activities, negotiations, and corrective actions to achieve compliance (34 CFR §300.152). Accordingly, the MSDE requires the public agency to provide documentation of the completion of the corrective actions listed below.

The MSDE has established reasonable time frames below to ensure that noncompliance is corrected in a timely manner.² This office will follow up with the public agency to ensure that it completes the required actions consistent with the MSDE Special Education State Complaint Resolution Procedures.

If the public agency anticipates that any of the time frames below may not be met, or if either party seeks technical assistance, they should contact Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, to ensure the effective implementation of the action.³ Dr. Birenbaum can be reached at (410) 767-7770.

Student-Specific

The MSDE requires the BCPS to provide documentation by April 1, 2020 that the student's IEP is consistently being implemented.

The MSDE also requires the BCPS to provide documentation by April 1, 2020 that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress the violations related to the delay in conducting an IDEA reevaluation, the lack of the provision of math and reading services, and the lack of the provision of accommodations. The IEP team must develop 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 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 May 1, 2020 of the steps taken to ensure that the violations do not recur at XXXXXXXXXXXXXXXXXXXX, and to monitor the effectiveness of those steps.

² The United States Department of Education, Office of Special Education Programs (OSEP) states that the public agency correct noncompliance in a timely manner, which is as soon as possible, but not later than one (1) year from the date of identification of the noncompliance. The OSEP has indicated that, in some circumstances, providing the remedy could take more than one (1) year to complete. If noncompliance is not corrected in a timely manner, the MSDE is required to provide technical assistance to the public agency, and take tiered enforcement action, involving progressive steps that could result in the redirecting, targeting, or withholding of funds, as appropriate.

³ The MSDE will notify the public agency's Director of Special Education of any corrective action that has not been completed within the established timeframe.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

The parties 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 Early Intervention/Special Education Services

MEF:ac

c: Sonja B. Santelises
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