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February 17, 2017

Ms. Barbara Johnson, Advocate
Children First Educational Consulting Services
7217 N. Alter Street
Baltimore, Maryland 21207

Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXX
Reference: #17-076

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 December 20, 2016, the MSDE received a complaint from Ms. Barbara Johnson, hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXX. 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 ensure that the student was provided with “word prediction” software, as required by the Individualized Education Program (IEP) between December 22, 2015 and April 11, 2016, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not ensure that the student was provided with the reading intervention required by the IEP during the first quarter of the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323.

3. The BCPS did not ensure that the student was provided with special education instruction required by the IEP on December 13, 2016, in accordance with 34 CFR §§300.101 and .323.
4. The BCPS has not ensured that the student has been provided with a modified spelling and vocabulary list, reduced distractions and preferential seating as required by the IEP, since the start of the 2016-2017 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On December 22, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Denise Mabry, Coordinator of Compliance, Placement, and Birth to Five, BCPS and Ms. Conya Bailey, Supervisor of Compliance, BCPS.
2. On January 11, and 12, 2016, Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
3. On January 11, 12, 13, 18, and 19, 2017, the complainant sent correspondence to Ms. Floyd at the MSDE for consideration.
4. On January 13, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation, notified the BCPS of the allegations, and requested that the BCPS review the alleged violations.
5. On January 20, 2017, Ms. Floyd conducted a record review at XXXXXXXXXXXXXXXX XXXX. Ms. Mabry, Coordinator of Compliance, Placement, and Birth to Five, BCPS, attended the record review to provide information on the school system's policies and procedures, as needed.
6. On January 30, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE and Ms. Floyd, conducted a site visit at XXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Classroom Teacher;
 - b. Ms. XXXXXXXX, Speech/Language Pathologist;
 - c. Ms. XXXXXXXXXXXX, Occupational Therapist;
 - d. Ms. XXXXXXXXXXXX, Special Education Teacher; and
 - e. Ms. XXXXXXXXXXXX, Assistant Principal, IEP Chairperson.

Ms. Conya Bailey, Supervisor of Compliance, BCPS, attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated January 12, 2015;
 - b. IEP, dated January 11, 2016;
 - c. IEP, dated January 23, 2017;
 - d. Written summary of the January 12, 2015 IEP team meeting;
 - e. Written summary of the April 11, 2016 IEP team meeting;
 - f. Written summary of the October 13, 2016 IEP team meeting;
 - g. Written summary of the December 12, 2016 IEP team meeting;
 - h. Electronic mail messages (emails) between the complainant and her client and the school staff, dated September 23, and 28, 2016 and December 13, 2016;
 - i. Notes taken at the IEP team meetings by the advocate, dated April 11, 2016 and December 12, 2016;
 - j. Log of data for using speech to text when writing, dated October 17, 2016 through November 29, 2016;
 - k. Report of grades, first marking period, dated September 4, 2016 through October 13, 2016;
 - l. Report of grades, first marking period, dated November 4, 2016 through January 13, 2016;
 - m. Grade-level spelling lists, dated August 24, 2016 through September 26, 2016;
 - n. Wilson Reading spelling lists, dated September, 2016 through January, 2017;
 - o. Seating charts for the student's classes for the 2016-2017 school year;
 - p. Leveled Literacy Intervention Reading Program;
 - q. Sample special education teacher's substitute plan;
 - r. Email from the student's mother, dated December 13, 2016;
 - s. Report of technology and the student's H: Drive;
 - t. Report of Occupational Therapy Assessment, dated October 17, 31, 2016 and November 14, 2016;
 - u. Receipt of procedural safeguards and parental rights, dated October 13, 2016;
 - v. Log of speech/language services for the 2016-2017 school year; and
 - w. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 20, 2016.

BACKGROUND:

The student is eleven (11) years old and currently attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education and related services (Docs. a, b, and c).

There is documentation that the student's mother was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Doc. t).

FINDINGS OF FACTS:

IEP Requirements - Word Prediction Software

1. The IEPs developed on December 14, 2015, and January 11, 2016 require the student to have access to “word prediction” software and that teachers are taught how to use the software. It was also agreed that the IEP team would reconvene to review data on the student’s progress with the word prediction software (Docs. a, b, d, and e).
2. On April 11, 2016, the IEP team convened and the teacher stated that the student “did not like using the word prediction software and finds a reason not to use it.” The student’s parents shared their concerns about the student’s significant deficits in written language and indicated that the student needed to continue using the “word prediction” software (Doc. e).
3. The teacher’s log indicates that the student used the word prediction software inconsistently between October 17, 2016 to November 29, 2016 (Doc. j).
4. At an IEP team meeting held on December 12, 2016, the occupational therapist (OT) reported on the results of an OT assessment which indicates that the student needs the assistive technology software to improve his motor and written communication skills (Docs. g and s).
5. There is no documentation that teachers were taught to use the software or that data was collected between January 11, 2016 and April 11, 2016 (Interview with school staff).

IEP Requirements - Reading Intervention Program

6. The IEP in effect at the start of the 2016-2017 school year, developed on January 11, 2016, indicates that the student is reading on a second to third grade level, his vocabulary skills on a first grade level, comprehension is on a third grade level, and his word recognition skills are at a first grade level (Doc. b).
7. The student’s reading needs include phonics and vocabulary development. It includes a goal for the student to be able to use a variety of phonetic skills to read unfamiliar words at grade level and he will be able to develop and apply vocabulary through exposure to a variety of texts at grade level. The progress reports indicate that the student is making sufficient progress to meet the reading goal and the teacher reports that the student is good at recognizing and discussing the new vocabulary when it is encountered in texts, conversations and instruction. The IEP requires the student to receive a special education reading intervention in a special education class for phonics, written language and reading due to his need for the intensive small group instruction and to be able acquire and expand his reading skills (Doc. b).

8. At an IEP team meeting held on April 11, 2016, the speech/language teacher stated that the student is gaining confidence because he is making variable progress with the Wilson Reading Program. There is documentation that the student used the Wilson Reading Program for approximately one and one-half years, including Extended School Year (ESY) services during the summer of 2016, because he was making progress, showing a breakthrough and could not afford a lengthy break in instruction during the summer (Docs. b, e, u, and Interview with school staff).
9. At an IEP team meeting held on October 13, 2016, the special education teacher reported that there was a delay in starting the Wilson Reading Program until September 27, 2016 because she did not have a report from the ESY program to indicate where the student should continue in the Wilson Program. The student is to receive a reading intervention program on a daily basis. At the interim of the first marking period for the 2016-2017 school year, the student was achieving a D for cause and effect, an E in spelling and a D in comprehension in Language Arts (Docs. b, f and Interview with school staff).
10. The special education teacher reported that the student received Leveled Literacy Intervention (LLI), a reading intervention program designed for struggling readers until she started the Wilson Reading Program for the student on September 27, 2016. The student received LLI in the classroom with both IEP students and non-IEP students (Docs. b, f, and o).
11. On December 13, 2016, a teacher who is frequently used as a substitute when the special education teacher is absent was substituting in the student's class for the day. While there is no documentation that the student received the Wilson Reading Program, there is documentation that the student was provided with special education reading instruction from the general education teacher, an instructional assistant and the familiar substitute teacher (Docs. g, p, and Interview with staff).
12. There is documentation that the student has been participating in the Wilson Reading intervention program since September 27, 2016. His spelling and vocabulary are correlated to the Wilson Reading Program to meet his individualized needs in reading (Doc. f and Interview with school staff).

IEP Requirements - Accommodations, Supplementary Aids and Supports

13. The IEP in effect at the start of the 2016-2017 school year requires the student be provided with a modified spelling and vocabulary list, reduced distractions and preferential seating, which is defined as having the student sit with his right side near the instruction, due to his moderate hearing loss (Doc. b).
14. At the start of the 2016-2017 school year, the student received grade level spelling lists that were modified with fewer words for the student to study. According to his Language

Arts teacher, the student's spelling and vocabulary scores were poor. The student received spelling and vocabulary lists coordinated with the Wilson Reading Program on September 27, 2016 (Docs. b, k, and l).

15. At the IEP team meeting held on October 13, 2016, the student's mother suggested that the student's grades be adjusted since he didn't receive the Wilson Reading Program. The school based team members agreed to adjust the student's grades (Docs. b, f, k, and l).
16. There is documentation that the student has preferential seating in all classes and reduced distractions during instruction and assessments (Doc. n).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student has not received all of the accommodations indicated on his IEP on a consistent basis. Specifically, she alleges that the IEP requires the provision of word prediction software, the Wilson Reading Intervention Program, modified spelling and vocabulary lists, preferential seating for a student with a moderate hearing loss and special education instruction that was not provided on December 13, 2016 (Doc. v).

Allegation #1 Provision of Word Prediction Software

Based on the Findings of Facts #1 - #5, the MSDE finds that the BCPS did not ensure that the student was consistently provided with the word prediction software, teacher training, and data collection, as required by the IEP, therefore this office finds a violation occurred.

Allegation #2 Provision of a Reading Intervention Program

Based on the Findings of Facts #6 - #10, the MSDE finds that the individualized reading intervention program is not identified as a specific program in the IEP. As a result, the reading intervention program that was being provided at the start of the 2016-2017 school year was provided as required by the IEP, therefore the MSDE finds no violation occurred with respect to that aspect of the violation.

However, based on the Finding of Fact #10, the MSDE finds that there is documentation that the student did not receive the reading intervention in a self-contained small group setting therefore, the MSDE finds a violation occurred.

Allegation #3 Provision of Special Education Instruction

Based on the Finding of Fact #11, the MSDE finds that special education instruction was provided by the general education teacher, the instructional assistant, and the substitute teacher on December 13, 2016. Therefore, this office finds no violation occurred.

Allegation #4 Provision of Accommodations, Supplementary Aids and Supports

Based on the Finding of Fact #15, the MSDE finds that the student is provided with preferential seating and reduced distractions. Based on the Findings of Facts #12 - #14, the MSDE finds that the student was provided with modified spelling and vocabulary lists, as required by the IEP. Therefore, this office finds no violation with this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The BCPS must provide documentation by April 1, 2017 that the student has been provided with the AT software and training determined necessary in order to ensure his ability to utilize it. Further, BCPS must provide the staff training needed to be able assist the student with accessing the software.

The BCPS must provide documentation by the end of the 2016-2017 school year that the IEP team has considered the student's progress with his reading level skills, written communication with the provision of the AT software and the Wilson Reading Program. Based on the data, the IEP team must determine whether additional strategies and supports are required, and if so, revise the IEP, as appropriate, and determine the compensatory services or other remedy to be provided within one year of the date of this Letter of Findings.

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

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

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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.

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 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: S. Dallas Dance
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