



January 12, 2018

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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: #18-041

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 November 16, 2017, 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 ensure that the student was evaluated and identified as a student with a disability between November 2016 and November 2017, in accordance with 34 CFR §300.111.
2. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s need for counseling services since November 2017, in accordance with 34 CFR §300.324.

XXX

Ms. Rebecca Rider

January 12, 2018

Page 2

3. The BCPS has not ensured that the IEP team's decision about the amount and frequency of speech/language services to be provided was based on the student's needs and not on administrative convenience, in accordance with 34 CFR §300.324.
4. The BCPS has not ensured that the student's IEP has been implemented in his math class since November 2017, in accordance with 34 CFR 34 CFR §§300.101 and .323.

BACKGROUND:

The student is thirteen (13) years old, 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. He attended XXXXXXXXXXXXXXXXXXXX during the 2015-2016 school year and has attended XXXXXXXXXXXXXXXXXXXX since the start of the 2016-2017 school year.

FINDINGS OF FACTS:

1. The Student Support Team (SST)¹ met during the 2015-2016 school year to discuss the student's slow progression in reading. The SST decided that the student would be provided with small group reading instruction for decoding skills and mentoring opportunities for positive reinforcement to increase his confidence within the general education program. At the end of the 2015-2016 school year, the student's report card indicated that the student made considerable progress in language arts, showed improvements in grade level reading fluency, decoding and made slow but steady progress in math. The teachers indicated that the student's success was due to his work ethic, consistent effort and his oral contributions to group activities. Based on this information, the SST decided that the student was not suspected of being a student with a disability under the IDEA.
2. Since the start of the 2016-2017 school year there is documentation that the student struggled with learning concepts in subject areas containing a strong reading component. He was referred to the SST where his teachers reported on the student's frustration with reading comprehension and lack of completed assignments. The complainant expressed concerns about the student's educational history, and a decision was made to refer the student to the IEP team for evaluation.
3. On April 19, 2017, the IEP team recommended educational and psychological assessments and a classroom observation. The evaluation resulted in the student being identified as a student with a disability under the IDEA and an IEP was developed for implementation at the start of the 2017-2018 school year.

¹ The Student Support Team is a multidisciplinary team of school staff that addresses academic and behavioral issues of students and promotes the provision of early intervention services in the general education program.

4. The initial IEP included goals to improve the student's reading, written language, and math skills. The present levels of performance indicated that the student was reading on a 1.7 grade level, writing on a 3.2 grade level, and solving math problems on a 3.1 grade level. The school psychologist reported that the student presents as a student with "very low" functioning in verbal comprehension, working memory and processing speed. The psychological assessment report indicates that the student has a phonological disorder which impacts his ability to read, decode and comprehend.
5. The supplementary aids and supports to be provided to the student include organizational aids, paraphrasing of information, breaking down information into smaller units, chunking of texts, and checking for his understanding by the teachers. The student is to be provided with counseling services, as needed, in the form of a "Fast Pass"² to seek support from the school counselor to address his anxiety and a daily checklist to be completed by his teachers to assist him with organization and to communicate his assignments and progress with the complainant. The IEP contains goals for reading comprehension, vocabulary, decoding skills, written language, and math problem solving.
6. On August 30, 2017, the complainant signed consent for a speech/language assessment and a classroom observation to be conducted by October 26, 2017. The complainant requested a speech/language assessment to address the student's struggles with receptive and expressive language, retelling a story in sequential order, identifying the main idea, and drawing conclusions.
7. The complainant provided consent for special education services to begin on September 21, 2017.
8. On October 13, 2017, the speech/language pathologist completed a report documenting the results of receptive and expressive language testing. The assessment report indicates that the student's language skills fall in the "very low" range of functioning. The assessment report includes recommendations for the student to use visuals to reinforce orally presented information and to assist with the student's auditory memory. The speech/language pathologist recommended the encouragement of self-advocacy skills for the student, but did not recommend the provision of speech/language services.
9. On November 1 and 22, 2017, the IEP team convened to consider the assessment results and review the IEP. Based on the complainant's concerns that the student be provided with speech/language services to address the weakness in expressive and receptive language, the IEP team decided that a speech/language goal would be developed and that speech/language services would be provided. However, the IEP team did not develop a goal and revise the IEP to require the provision of speech/language services.

² A "Fast Pass" allows the student to take a break from instruction and access the school counselor when feeling anxious.

XXX

Ms. Rebecca Rider

January 12, 2018

Page 4

10. At the IEP team meeting held on November 1 and 22, 2017, the IEP team also considered information from the school counselor that a “Fast Pass” had been provided to the student and that she had established a rapport with him. The school counselor recommended that in addition, counseling services be provided as a related service to address the student’s anxiety. However, the team did not adopt the recommendation and there is no documentation of the basis for that decision.
11. There is no documentation of the student’s progress towards any of the goals on the IEP during the 2016-2017 and 2017-2018 school years.
12. The student’s report card grades since November 2017, indicates below average (D) grades in language arts and world cultures and failing (F) grades in reading and mathematics.
13. There is no documentation of the implementation of the student’s IEP in his math class since November 16, 2017.

DISCUSSION/CONCLUSIONS:

ALLEGATION #1: INITIAL EVALUATION AND IDENTIFICATION

Based on the Finding of Fact #1, the MSDE finds that the documentation indicates that the student made sufficient progress with the general education interventions provided, during the 2015-2016 school year.

Based on the Findings of Facts #2-#4, the MSDE further finds that when the student was unable to make progress with general education supports during the 2016-2017 school year, the SST referred the student to the IEP team for evaluation, in accordance with 34 CFR §300.111. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

ALLEGATION #2: COUNSELING NEEDS

Based on the Finding of Fact #9, the MSDE finds that while the IEP team was provided with information about the student’s need for counseling, as a related service, there is no documentation that the information was considered and that this need has been addressed, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #3: SPEECH/LANGUAGE SERVICES

Based on the Findings of Facts #6-#8, the MSDE finds that, while the IEP team obtained data in order to identify the student’s speech/language needs, it did not ensure that the IEP addresses the identified needs, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #4: IEP IMPLEMENTATION IN MATH CLASS

Based on the Findings of Facts #3-#5, #7, #9, and #11-#13, the MSDE finds that there is no documentation that the student's IEP was implemented in his math class since November 16, 2016, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

As a result of the violations identified through this investigation, the MSDE finds that the student has not been provided with a Free Appropriate Public Education (FAPE) since November 1, 2017.

CORRECTIVE ACTIONS/TIMELINES:

Student Specific

The MSDE requires the BCPS to provide documentation, by March 1, 2018, that the IEP team has reviewed and revised the IEP to ensure it addresses all of the student's needs consistent with the data and has determined the amount and nature of compensatory services to remediate the violations.

The BCPS must also 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 IEP team's decisions.

School Based

The MSDE requires the BCPS to provide documentation by June 1, 2018, of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXXXXX staff properly implements the requirements for the provision of a FAPE. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 be accompanied by a substantial reason why it was not provided during the investigation.

XXX

Ms. Rebecca Rider

January 12, 2018

Page 6

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 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 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

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