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February 9, 2018

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

RE: XXXXX
Reference: #18-054

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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 12, and 20, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX 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) and related State requirements with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s academic and vision needs, since December 2016,¹ in accordance with 34 CFR §§300.320 and .324;

¹ The complainant alleged that the violations have occurred for multiple years. She was notified, in writing, that this office only has the authority to investigate violations dating back to one year from the date the complaint was received (42 CFR §300.153).

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2. The BCPS did not provide the complainant with the opportunity to participate in the IEP team meetings convened since September 2017, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07. Specifically, the BCPS did not ensure that written notice of the meeting participants was provided.
3. The BCPS has not ensured that the student has been provided with the supplementary aides, supports and services required by the IEP since December 2016¹, in accordance with 34 CFR §§300.101 and .323.
4. The BCPS did not ensure that prior written notice of the decisions made by the IEP team meetings were provided since September 2017, in accordance with 34 CFR §300.503.
5. The BCPS did not ensure that copies of documents the IEP team intended to consider at IEP team meetings were provided at least five (5) days in advance of the meetings held since September 2017, in accordance with COMAR 13A.05.01.07D(3).
6. The BCPS did not ensure that the IEP team meetings convened since September 2017 included the required participants, in accordance with 34 CFR §300.321.
7. The BCPS has not ensured that consent was obtained before conducting an educational assessment prior to the September 2017 IEP team meeting, in accordance with 34 CFR §300.300.

BACKGROUND:

The student is twelve years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. She is identified as a student with a Vision Impairment and Other Health Impairment, under the IDEA, related to XXXXXXXXXX Type 1, and has an IEP that requires the provision of special education and related services.

ALLEGATION #1: ADDRESSING THE STUDENT'S NEEDS

FINDINGS OF FACTS:

1. On October 26, 2016, the IEP team met to conduct an annual of the student's IEP. The IEP team determined that the student had academic needs in the areas of math calculation and reading comprehension. The team also identified areas of need related to her school attendance, vision, self-management and hearing.
2. The IEP team determined that the student, at the start of her seventh grade year, was functioning at a middle sixth grade level in reading comprehension and math calculation. The IEP team developed goals for the student and determined that the student would receive special education instruction in the general education classroom for two (2) hours each week.

3. The IEP team noted that the student had struggled in some of her academic classes because she had missed more than fifty (50) days of school during the 2015-2016 school year. However, the student had only missed five (5) days of school since the start of the 2016-2017 school year.
4. The IEP team also discussed the need for the student to receive large print materials in her academic classes in order to address her vision issues. The team recommended that the student be provided with large print materials and had used *iPad* device and a “Ruby” handheld device to magnify text on demand. However, the student had misplaced both devices in the past, and did not consistently have access to these devices. The team discussed the student’s need to use eyeglasses and developed a goal for the student related to managing and securing these devices and her eyeglasses.
5. The complainant requested that the student’s placement be changed to the XXXXXXXXXXXXXXXXXXXX. The team determined that, based on the orientation and mobility assessment, her current less restrictive placement could meet her needs.
6. The team determined that instruction in braille would not be provided to the student because the student “uses her vision to access the curriculum, to complete classroom tasks, navigate from setting to setting and interact with peers within her academic setting,” and, instead, determined that she would receive thirty (30) minutes of instruction weekly from a teacher for the visually impaired.
7. The progress reports for the student completed in November 2016 indicated that the student was not wearing her glasses, but was otherwise managing her vision devices. The progress reports and other documentation reflect that during the remainder of the 2016-2017 school year and in the beginning of the 2017-2018 school year, the student was not always wearing her glasses, but that she had acquired an additional pair of glasses and was generally wearing them.
8. On February 14, 2017, the IEP team met for the purposes of reviewing and revising, as appropriate, the student’s IEP, to consider Extended School Year (ESY) services, and to address the complainant’s concerns regarding bullying. There is no documentation that the IEP team considered ESY services for the student or the complainant’s bullying concerns.
9. On February 14, March 9, April 20, and September 7, 2017, the IEP team met as part of a series of continued meeting to review and revise, as appropriate, the student’s IEP. The IEP team determined that the student had made some progress on her academic goals but also recommended an educational assessment in order to better identify the student’s academic needs. In addition to the educational assessment, the team requested additional assessments in vision, behavior and orientation and mobility, to better assess the student’s current needs.
10. While the IEP team noted that additional assessment data was needed, it again recommended that instruction in braille would not be appropriate for the student. It did not, however document its basis for its decision.

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11. On November 30, and December 13, 2017, the IEP team met to review assessment data for the student and review and revise, as appropriate, the student's IEP. The team reviewed the educational assessment and determined that the student was performing at the late sixth grade level in reading comprehension and the mid-sixth grade level in math calculation. The assessment found that she was at or above grade level in other academic areas.
12. The vision assessment completed for the student noted that the student's vision had worsened since the last assessment and recommended that the student be provided with enlarged materials, devices to magnify text, and that the student always wear her glasses.
13. The IEP team determined that instruction in braille would be provided to the student. The team noted that the student is a visual learner, and does read print materials, but that due to "strong parental concerns" instruction in pre-braille and braille would be provided to the student. The team determined that the teacher for the visually impaired would provide thirty (30) minutes of braille instruction and fifteen (15) minutes of assistance in the classroom each week for the student.
14. The complainant again requested placement in the XXXXXXXXXXXXXXXXXXXX. The IEP team determined that student's needs could be addressed in the student's current school, which remains a less restrictive environment.

CONCLUSIONS:

Vision Needs

Based on Findings of Facts #4-#7, #9 and #10 and #11-#14, the MSDE finds that, prior to December 13, 2017, the IEP team did not make a determination regarding braille instruction for the student, in accordance with 34 CFR 300.324(a)(2)(iii). Specifically, this regulation requires that a student with a vision impairment be provided with braille instruction unless the IEP team finds that the provision of this instruction would not be appropriate.

Further, the MSDE finds that the student did not consistently have access to eyeglasses needed for her vision between December 2016 and January 2017, in accordance with 34 CFR §300.324. Therefore this office finds that violations occurred with respect to this aspect of the violation.

Academic Needs

Based on Findings of Facts #1-#3 and #9, the MSDE finds that the IEP team reviewed the data and determined the student's needs and the services required to address those needs. Further, based on those same Findings of Facts, the MSDE finds that the IEP team developed goals to measure her progress in areas of need, and reported that progress to the complainant, in accordance with 34 CFR §300.324.

However, based on Finding of Fact # 8, the MSDE finds that the IEP team did not determine the student's need for ESY services or respond to the complainants concerns to determine if her

concerns regarding bullying impacted the student's access to a Free and Appropriate Education (FAPE). Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #2: PARENT PARTICIPATION

FINDING OF FACT:

15. There is documentation that the complainant did not receive accurate notice of the members of the IEP team who would be participating in the IEP team meetings conducted or continued in September 2017, November 2017, and December 2017.

CONCLUSION:

Based on Finding of Fact #15, the MSDE finds that the complainant did not receive proper notice of all the proposed meeting participants of IEP team meetings, in accordance with 34 CFR §300.322. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #3: PROVISION OF SUPPORTS

FINDINGS OF FACTS:

16. The student's IEP, developed in October 2016, requires that the student be provided with enlarged print, limited copying from the board, and high contrast paper.
17. There is documentation that required supports were provided to the student, including the use of magnification devices to enlarge assignments on demand, in accordance with the student's IEP.

CONCLUSION:

Based on Findings of Facts #16 and #17, the MSDE finds that the student was provided with the supports required by her IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #4: PRIOR WRITTEN NOTICE

FINDING OF FACT:

18. There is documentation that prior written notice was generated for the IEP team meetings held since September 2017. However, there is not documentation there the complainant was provided with this notice.

CONCLUSION:

Based on Findings of Fact #18, the MSDE finds that the BCPS did not ensure that the complainant was provided with prior written notice of IEP team decisions since September 2017,

in accordance with 34 CFR §300.153. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #5: DOCUMENTS IN ADVANCE OF IEP TEAM MEETINGS

FINDING OF FACT:

19. There is no documentation that, since September 2017, the complainant was provided with the documents the IEP team intended to consider at least five (5) days prior to IEP team meetings.

CONCLUSION:

Based on Finding of Fact #19, the MSDE finds that the BCPS did not ensure that the complainant was provided with documents to be discussed at IEP team meetings at least five (5) days in advance of those meetings, in accordance with COMAR 13A.05.01.07D(3). Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #6: REQUIRED MEETING PARTICIPANTS

FINDING OF FACT:

20. There is documentation that each IEP team meeting convened, since September 2017, included the required meeting participants.

CONCLUSION:

Based on Finding of Fact #20, the MSDE finds that each IEP team meeting convened for the student included the required participants, in accordance with 34 CFR 300.321. Therefore, this office does not find that a violation occurred with respect to this allegation.

ALLEGATION #7 CONSENT FOR ASSESSMENTS

FINDING OF FACT:

21. There is no documentation that the school staff obtained or received the complainant's consent prior to conducting an education assessment for the student in September 2017.

CONCLUSION:

Based on Finding of Fact #21, the MSDE finds that the school staff did not obtain written consent prior to conducting the assessment, in accordance with 34 CFR §300.300. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by March 15, 2018, that it has provided the complainant with the prior written notice of IEP team decisions from IEP team meetings convened since September 2017.

The MSDE further requires the BCPS to provide documentation by April 15, 2018 that the IEP team has convened and determined the compensatory services necessary to remedy the violations identified in this Letter of Finding, including the delay in addressing the student's vision needs related to the provision of braille instruction between December 2016 and December 2017, and the lack of access to eyeglasses between December 2016 and January 2017.

The BCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

School-Based

The MSDE requires the BCPS to provide documentation by April 15, 2018 that staff at XXXXXX XXXXXXXXXXXXXXX properly implement the requirements related to the following:

- Providing IEP documents to parents in advance of IEP team meetings;
- Providing prior written notice of IEP team's decisions to parents following IEP team meetings;
- Providing proper notice of IEP team meeting participants to parents; and
- Obtaining parental consent prior to conducting assessments.

System-Based

The MSDE further requires that the BCPS provide documentation by May 15, 2018 of the steps taken to determine if the violations related to the provision of braille instruction identified in this Letter of Findings is unique to this case or if it represents a pattern of noncompliance in the BCPS.

If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that the staff properly implement the requirements of the IDEA and COMAR, and provide a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS by Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Ms. Preis 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 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 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:gl

c: Sonja Brookins Santelises
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