



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

July 19, 2018

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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: #18-108

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.

ALLEGATION:

On March 1, 2018,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 student.

The MSDE investigated the allegation that the BCPS did not follow proper procedures when determining the student’s educational placement for the 2017-2018 school year, in accordance with 34 CFR §§300.114 - .116 and .321.

BACKGROUND:

The student is three (3) years old and is identified, under the IDEA, as a student with an Other Health Impairment, due to a diagnosis of nystagmus, wheezing/asthma, encephalitis, developmental delay,

¹ At the time of the filing of the State complaint, the complainant filed a due process complaint with the Maryland Office of Administrative Hearings (OAH). Therefore, the State complaint was held in abeyance. On May 21, 2018, the MSDE was informed that the due process complaint was dismissed by the OAH. Therefore, the investigation was initiated at that time.

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brain atrophy, seizure activity, and spastic quadriplegia cerebral palsy. He has an IEP that requires the provision of special education and related services. The student is not enrolled at school.

FINDINGS OF FACTS:

February 21, 2018

1. On February 21, 2018, the IEP team met to prepare for the student's transition from early intervention services to preschool services. At the meeting, the IEP team considered data from the Baltimore City Infants and Toddlers Program about the student's functioning, and developed the IEP. The data reflected that the student is able to turn to sounds and seek a preferred speaker, and that therapy has targeted turning his head towards his name.
2. The IEP also documented the clinician report indicating that the student is demonstrating delays with use of sounds and words. The report indicated that he is able to smile and vary his vocalizations based on pleasure and displeasure, that he is able to coo and make vowel sounds but does not coo back to a speaker and he will protest displeasure by crying and stretching his body.
3. The IEP documented the educational progress reports that details how the student will face speakers face as long as the speaker is positioned in front of him. The report indicated that the student makes some cooing sounds while listening to short stories and he cries when he is uncomfortable, and he is startled by loud noises. The report also indicated that the student is working on turning his head toward the sound of a rattle or musical light up toy and he often sits with his head turned towards the left, and he does not follow shiny objects consistently.
4. The IEP also documented the educational progress report indicating that the student is demonstrating skills at the three (3) month level. The report indicated that he has difficulties grasping and holding onto a rattle and objects for long periods of time. The report also indicated that the student has difficulties opening and shutting his hands and he is working on reaching for desired toys.
5. The IEP documented the educational progress report that also indicated the student is demonstrating delays in social emotional skills. He will cry when he is uncomfortable and he will quiet down when he is picked up and held by his caregiver.
6. The IEP documented information from a report from the Wilmer Eye Institute, indicating that the student has been diagnosed with cortical vision impairment and myopia with astigmatism in both eyes. The report indicated that the student displays a preference for reflective and high contrast objects, he can see objects at one (1) to two (2) feet, has an inconsistent blink reflex to threat or touch, and prefers his left visual field.
7. The occupational therapy report indicated that the student is currently tube fed and is functioning at a two (2) months of age level, with inconsistent ability to tolerate passive range of motion. The report indicated that the student is able to tolerate sitting for three (3) to five (5) minutes with moderate support provided to his hips and he is able to tolerate hand over hand guidance to interact

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- with toys. The report stated that the student very inconsistently demonstrates turning his head, smiles, or moves in response to visual and auditory input although he does seem to gravitate towards music and toys that move. The complainant reports that the student will sometimes turn his head in response to her voice. The report stated that the student can maintain his grasp for up to 30 seconds.
8. The physical therapy report indicated that the student presents with increased spasticity and increased muscle tone and his gross motor skill level is three (3) months. The student is able to lift and turn his head and roll from his side to his back and inconsistently initiates rolling from his belly to his back. The report indicated that in a supported sitting position, the student is able to maintain head control and turn his head in both directions although he prefers to look left. The report also indicated that the student is able to prop sit for thirty (30) minutes without signs of intolerance. The report also indicated that the student uses an adaptive stroller for mobility.
 9. The IEP indicated that the student has shown increased tolerance for puree for up to 5-10 tastes per session. He is able to eat one (1) bottle of baby food over a 30 minute session and he eats most when the complainant is feeding him.
 10. The IEP also indicated that the student is a non-ambulatory child with visual limitations. His disability impacts his interactions, access and transitions. The IEP indicated that the student will be impacted based on his decreased motor skills which will impact his fine motor development and mobility.
 11. The IEP indicated that he required a full time nurse to be with him throughout the course of the school day as well as travelling on the bus to and from school.
 12. The IEP also required social/behavioral supports including home/school communication system; sensory inputs, and adaptive equipment.
 13. The IEP required the following personnel/parental supports including physical therapist consult, occupational therapist consult, and vision teacher consult.
 14. The IEP included a goal for the student to identify semantic concepts, to produce sounds/word approximations/words including targeted nouns, verbs and spatial concepts; to increase early readiness skills; increase skills in the area of social emotional behavioral skills; increase tactile, auditory and visual skills; demonstrate improved motor skills for improved ability to purposefully interact with his environment; demonstrate increased gross motor skills in order to increase participation and interaction with his educational setting; and demonstrate improved oral motor skills for improved ability with feeding during meal/snack time.
 15. The IEP included the teacher for the visually impaired to provide services at the rate of two (2) times per month for thirty (30) minutes per session. Occupational therapy services are to be provided thirty (30) minutes per week to address fine motor and self-care skills outside of general education. Physical therapy services are to be provided thirty (30) minutes per week to address gross motor skills outside of general education. The student will receive thirty (30) minutes per

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week of direct speech services outside of general education program. The IEP requires a full-time nurse for the entire day and traveling to and from school. Special education transportation will be provided.

16. The following placement options were considered and rejected: the provision of services in the student's home was rejected since the student's doctor cleared him to attend a community-based program. The provision of itinerant services were rejected because the student has too many goals and objectives to be met in that setting. The provision of an early childhood class for students with and without IEPs was rejected since the student requires a full day program with full time medical intervention. The provision of a separate class with a small teacher student ratio was rejected since this setting may not be able to provide the amount of individualized instruction and nursing care which the student requires.
17. The IEP team determined the student required a public separate day school. The complainant disagreed with the public separate day school location. The basis for the IEP team's determination was due to the student's delays in all areas. The IEP team recommended the services be implemented in a public separate day full day program to address the student's global developmental delays and medical supports.
18. The complainant was in agreement with the goals, and supplementary aids and supports. The discussion ensued about the least restrictive environment options. The complainant did not want to send her child to the XXXXXXXX, which was proposed by the BCPS. Instead, she wanted him to attend the XXXXXXXXXXXX. The IEP team rejected the XXXXXXXXXXXX since it only has a part time program for three (3) year olds. The IEP team decided to order an orientation and mobility assessment and a functional vision/learning media report and convene to review the results which may lend itself to a different placement outcome.
19. On May 16, 2018, an IEP team meeting reconvened to review a functional vision/learning media assessment and an orientation and mobility assessment. The results of the assessments suggested that the student often uses a multi-sensory approach to exploring his world. His auditory skills appeared stronger but he is able to supplement his hearing with tactile and visual stimuli. The student requires full assistance for all of his self-care and mobility tasks and does not demonstrate readiness for direct or consult mobility services at this time. The IEP was revised to include the results of these assessments. However, the assessment results did not change the decision about the student's placement.
20. In response to the IEPs placement determination, the complainant decided not to consent to the initiation of special education and related services.

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DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #20, the MSDE finds that the IEP team considered less restrictive environments with the provision of supplementary aids and services and determined the educational placement consistent with the data, in accordance with 34 CFR §§300.114-.116 and .321. Therefore, this office does not find that a violation occurred.

TIMELINE:

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 be accompanied by a substantial explanation of why it was not provided 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.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's parent 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 and 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF: sf

c: Sonja B. Santelises
Allen Perrigan
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Dori Wilson
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Sharon Floyd