



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

July 6, 2018

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Disability Rights Maryland
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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Bldg. 4th Floor
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #18-155

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.

ALLEGATION:

On May 11, 2018, the MSDE received a complaint from Leslie Seid Margolis, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Mr. XXXXXXXXXXXX and Ms. XXXXXXXXXXXX. 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 allegation that the BCPS has not ensured that the student has consistently been provided with the nursing services required by the Individualized Education Program (IEP) since the start of the 2017-2018 school year, in accordance with 34 CFR §§300.101, .320, and .323.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with Multiple Disabilities under the IDEA, including a Traumatic Brain Injury, an Intellectual Disability, and Other Health

Impairment related to an intractable seizure disorder. He attends the XXXXXXXXXXXX, a public separate special education school.

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with the services of a “private duty nurse trained and qualified to provide physician-ordered emergency seizure management on the bus ride to and from school.” The IEP states that the “school nurse will assist the private duty nurse as needed and collaborate with the private duty nurse to provide training for school staff, including school bus driver, attendant and classroom staff, regarding [the student’s] health care plan for seizure management, including the use of the vagal nerve stimulator magnet.” It further states that the student’s parents will provide the private duty nurse with the student’s medication and the vagal nerve stimulator magnet in the morning and that the private duty nurse is to return them to the parents at the end of the day. In addition, the IEP states, “The staff member will also assist [the student] with utilizing the bathroom facilities a minimum of four times daily.”
2. The BCPS reports that they have made attempts to obtain consent from the parents to obtain additional information from the private physician who issued the order for the services in order to clarify the manner in which the services can be effectively provided, but that they have refused to provide consent.
3. The parties report that, although the BCPS has entered into contracts with different nursing services agencies, the services have not been provided on a consistent basis during the 2016-2017 and 2017-2018 school years, and that the student has not attended school when the services would not be provided. The parties further report they have attempted unsuccessfully to resolve the matter to ensure the future provision of appropriate services to the student, and there is documentation that the IEP team met on January 11, 2018 and March 28, 2018.
4. The complainant reports that that the BCPS offered the student compensatory services for the loss of services during the 2016-2017 school year, and that the problem can be resolved by the BCPS contracting with additional nursing services agencies and providing compensatory services for the 2017-2018 school year as well.
5. One (1) of the companies that has contracted with the BCPS as a provider of the nursing services reports that, on October 16, 2017, the student’s mother “removed the full time nurse from the case.”¹ There is documentation that hundreds of nurses have been contacted, including nurses who contract with other nursing services agencies, but that a permanent replacement has not been obtained since October 2017.

¹ The school system staff report that the student’s mother was dissatisfied with the services being provided and “fired” the nurse.

6. While twelve (12) different nurses provided coverage since October 16, 2017, the coverage has not been consistent. The nursing services contractor reports that, on several dates, the substitute nurse arrived too late for the student to board the bus to school and the parents decided not to accept the offer to transport by taxicab or to have the bus return to the home. The contractor further reports that on several occasions, the assigned substitute nurse did not show up for duty and did not provide notice in order to obtain another nurse. The contractor also reports that on several occasions, the student's mother "cancelled" the services because she believed that the student should only be sent to school with a nurse with whom he is familiar.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts above, the MSDE finds that the BCPS has not ensured the consistent provision of private duty nursing services required by the IEP during the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323.

Based on those Findings of Facts, the MSDE further finds that the use of contractors to provide private duty nursing services has not been effective in addressing the student's need to access instruction, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the BCPS provide documentation by the start of the 2018-2019 school year that it has sought consent from the student's parents to consult with the private physician who issued the medical orders for the purpose of clarifying the manner in which the services must be provided. If consent is denied, the BCPS must provide documentation that it has sought consent from the student's parents for a medical evaluation to be obtained by the school system. If the parents refuse consent for that action, no further corrective action is required.²

If consent is obtained to either consult with the private physician who issued the medical orders or to conduct a medical evaluation, the BCPS must provide documentation by November 1, 2018 that the IEP team has determined the specific services needed to address the student's seizure disorder and the staff needed to provide those services, both during transportation and at school, and that the school system has assigned BCPS staff to provide those services.

If it is necessary for the BCPS to hire additional school system staff to provide the services, it must provide documentation that appropriate steps are being taken to recruit such staff, and must provide documentation of continued efforts each month thereafter until staff is hired.

² An award of compensatory services will not remediate the violation since the documentation reflects that the student will not be able to consistently access instruction with the continued use of contracted nursing services.

Leslie Seid Margolis, Esq.
Ms. Rebecca Rider
July 6, 2018
Page 4

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 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 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 Special Education/Early Intervention Services

MEF:aam

c: XXXXXXXXXXXX and XXXXXXXXXXXX
 Verletta White
 Conya Bailey
 XXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 Nancy Birenbaum