



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

September 12, 2018

XXX
XXX
XXX

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: #19-012

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 July 19, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of her 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 allegation that the BCPS has not developed and implemented an Individualized Education Program (IEP) that addresses the student’s academic and behavioral needs since the start of the 2017-2018 school year, in accordance with 34 CFR §§300.101, .323, and .324.

BACKGROUND:

The student is thirteen (13) years old and is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD).

XXX

Ms. Rebecca Rider

September 12, 2018

Page 2

The student attends XXXXXXXXXXXXXXXX. During the 2017-2018 school year, he attended XXXXXXXX. During the 2016-2017 school year, he attended XXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2017-2018 school year was the student's initial IEP and was developed on February 21, 2017 at XXXXXXXXXXXXXXXX. Prior to being identified as a student with a disability under the IDEA, the student had an Accommodations Plan as a student identified with a disability under Section 504 of the Rehabilitation Act of 1973.
2. The student's educational record includes a report of the results of a private psychological assessment that was conducted in 2012. The report states that the student's "reading ability is significantly below his current grade placement," and that "this will likely impact his ability to perform in multiple areas." The report contains recommendations for a highly structured classroom setting with a small student to teacher ratio, interventions to address organizational skills, extra time to complete assignments, prompts to remain on task-specific directions with clear and concrete expectations, modifications to the amount of classwork and homework to be completed, and other accommodations to assist him with reading and motivation.
3. The documentation of the IDEA evaluation that was completed on January 25, 2017 reflects that the student's parent and the school staff reported that the student does not read social situations correctly and has difficulty with peers. It states that the student is "restless and overactive" and has difficulty controlling his impulses, that he "engages in a high number of behaviors that are adversely affecting other children in the classroom," including being "argumentative or defiant" and engaging in "rule-breaking behavior." It also states that the student has "significant difficulty maintaining attention at school and that this is likely interfering with his academic performance, including his ability to comprehend and complete school work, as well as functioning in other areas." It further states that the student experiences difficulty adapting to changing situations, and "takes much longer to recover from difficult situations than most others his age."
4. The report of a psychological assessment, dated January 24, 2017, states that the student's teachers reported that the student benefits from positive reinforcement, extended time, preferential seating, cues to task, chunking of directions and the provision of copies of notes. The assessment report recommends that these accommodations be provided, as well as multiple or frequent breaks and an area to work with reduced distractions. It also contains recommendations for counseling services to develop appropriate coping skills and instruction on development of social skills and strategies for fostering healthy peer relationships.

XXX

Ms. Rebecca Rider

September 12, 2018

Page 3

5. A Functional Behavioral Assessment (FBA) conducted in January 2017 states that the student exhibits noncompliance by refusing to move or respond to staff directions, staring at peers, yelling, threatening, and throwing objects, which requires quick intervention of school staff. It states that these behaviors occur when the student is being corrected, when he perceives an injustice, and when there is peer conflict, and that he exhibits these behaviors to obtain control, power, and social interaction.
6. The documentation of the educational assessment conducted as part of the IDEA evaluation states that the student was “performing approximately two years below in reading,” that he was “performing approximately six years below in written language,” and “four years below in math.” The assessment report reflects that the student scored in the “low average” range in letter word identification, and in the “average” range for decoding, sentence reading fluency, and passage comprehension. The student scored in the “low” range in math calculation and fluency and the “low average” range for applied problems. He scored in the “very low” range in spelling, the “low average” range in writing samples, and the “average” range in sentence writing fluency.
7. The assessment report contained recommendations for the following supports:
 - a. seating in front of the teacher, away from high travel areas;
 - b. repetition and clarification of directions;
 - c. modeled expectations;
 - d. modified instructional program to move from concrete to representational to abstract when teaching concepts, provide reference sheets, set limits on language input/output required, use of alternate assessments such as comic strips and power points, and chunk presentation of instruction;
 - e. immediate positive feedback;
 - f. highly structured classroom environment, including clear behavioral expectation, consequences, and rewards;
 - g. calculator; and
 - h. opportunities for small group instruction.
8. The February 21, 2017 IEP states that the student’s disability is based on “behaviors consistent with ADHD, predominately inattentive type,” and that the condition “impacts him educationally with his ability to sustain and maintain attention, short-term memory and math skills.” However, the IEP contains a statement of present levels of performance only in behavior and math, and there is no documented explanation for why the disability has no impact on other academic areas in which the data identified weaknesses.
9. The IEP includes goals for the student to improve his math problem solving using equations or visual models and to use coping strategies during stressful situations in order to manage anxiety, frustration, stress and anger.

XXX

Ms. Rebecca Rider

September 12, 2018

Page 4

10. The IEP requires the provision of two and one-half hours of special education instruction in math and one-half hour of counseling services per week to assist him in achieving the goals. It also requires the implementation of a "Behavior Support Plan" that requires that the student be provided with a behavior checklist in order to earn points for appropriate behavior that can be traded in for rewards. The "Behavior Support Plan" further requires that at the early onset of disruption, the student be provided with gentle redirection, and that if disruption continues, that he be offered a brief break. The "Behavior Support Plan" requires that data be collected on any incident of concern and that behavior checklists be maintained for the purpose of data analysis.
11. The February 21, 2017 IEP also requires the following:
 - a. calculation device;
 - b. extended time;
 - c. small group testing outside of the classroom;
 - d. use of manipulatives;
 - e. chunking of assignments into smaller units;
 - f. modification of assignments; and
 - g. preferential seating.

There is no documentation of the student's progress towards achievement of the annual IEP goals at the end of the first quarter of the 2017-2018 school year.

12. On January 25, 2018, the student was reported to be making sufficient progress on the behavior goals, but insufficient progress on the math goals.
13. On January 29, 2018, the IEP team at XXXXXXXXXXXXXXXXXXXX met and considered information that the student was "off task which disrupts what he should be doing in class" and that he was failing math. The documentation of the meeting states that a special education teacher reported that he "often sits next to [the student] in class to keep him on track." It further states that the IEP team "reviewed his discipline history and Behavior Intervention Plan (BIP)" and decided that the current BIP would continue to be implemented.
14. On January 29, 2018, the math and behavior goals were revised, and a new goal was developed for the student to comply with adult directions. However, the IEP was not revised to reflect information about the student's present levels of performance other than that it was "below grade level."
15. Although the goals were revised to state that they are to be achieved by January, 2019, the math goals contain short-term objectives that go only to September 2018, and the goal to improve self-control contains short-term objectives that go only to February 2018. One of the math goals states that achievement of the goal requires that the student will demonstrate

XXX

Ms. Rebecca Rider

September 12, 2018

Page 5

specific skills with seventy-five percent accuracy in one place in the goal description and with sixty percent accuracy in another place in the goal description.

16. The student's discipline history reflects that at the time of the January 29, 2018 IEP team meeting, there were sixteen incidents of disciplinary action taken with respect to the student for behaviors that included disruption, defiance, disrespect, noncompliance, inappropriate language, refusal to cooperate with school rules, and tardiness. Eight of these actions were taken by the Spanish teacher, three were taken by the art teacher, and two were taken by the math teacher. In addition, at the January 29, 2018 IEP team meeting, the student's science teacher reported that he "is extremely capable of doing well in class," but that he "will often call out during instruction with unrelated topics" and was earning a "D" in the class.
17. On January 29, 2018, the IEP was revised to require additional special education instruction in the general education classroom in the areas of science, social studies and English/language arts, but does not include a statement of the student's present levels of performance in these areas or indicate the goals for which the services were designed to assist the student to achieve.
18. Reports of the student's progress towards achievement of the goals, which were made on April 10, 2018 and June 13, 2018, demonstrate that special education instruction was provided in the areas of math and behavior.
19. On April 17, 2018, the IEP team at XXXXXXXXXXXXXXXX convened in response to the parent's request. The documentation of the meeting reflects that the parent expressed concern about the student's academic progress. While the April 10, 2018 goal reports state that the student was making sufficient progress towards achievement of the annual goals, at the April 17, 2018 IEP team meeting, the student's teacher reported that the student "has difficulties keeping up with the pace" of the math class even with the provision of supports because he does not use the supports and gives up easily. The teacher further reported that the student continues to remain off task and that his "off task conversations" with peers in class "interferes with his learning and the learning of others." The student's theatre teacher reported that the student "has a difficult time focusing in class to complete assignments" and that he is "just easily distracted by peers." The student's Spanish teacher report that the student does not complete assignments and was failing the class. There is no documentation that any of the concerns raised were addressed.
20. The interim report for the marking period ending June 15, 2018 reflects that the student was failing math, Spanish, and health classes, and was earning a "D" in science, theatre arts, and language arts.
21. There is no documentation that data was collected using behavior checklists to support the IEP team's decisions, as required by the "Behavior Support Plan."

22. There is no documentation that counseling services were provided as required by the IEP.

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #1 - #11, the MSDE finds that, while the the IEP in effect at the start of the 2017-2018 school year addressed the student's identified behavioral and math needs, the BCPS did not ensure that it addressed his weaknesses in reading and written language, in accordance with 34 CFR §§300.320 and .324.

Based on the Findings of Facts #12 - #17, the MSDE finds that, although the IEP was revised during the 2017-2018 school year in response to reports of insufficient progress, the BCPS did not ensure that the IEP included a statement of the student's present levels of performance, and measurable, annual goals to address the identified areas of need, in accordance with 34 CFR §§300.320 and .324. In addition, based on the Findings of Facts #12 and #16, the MSDE finds that the decisions made about the student's progress on the behavior goal was not consistent with the data, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #16, #19, and #20, the MSDE further finds that, while the IEP team convened on April 17, 2018 to address he complainant's concerns about the student's behavioral functioning, it did not consider positive behavioral interventions to address his continuing interfering behavior, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #11 - #13, #18, #21, and #22, the MSDE finds that, while there is some documentation that the IEP was implemented, it does not provide evidence of consistent implementation during the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that violations occurred.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the BCPS provide documentation by November 1, 2018 that the IEP team has reviewed and revised, as appropriate, the IEP to ensure that it addresses the student's academic and social, emotional, and behavioral needs, and has determined the compensatory services to be provided to remediate the violations identified in this investigation.

The MSDE requires that the BCPS provide documentation by December 1, 2018 that the services required by the IEP are being provided.

The MSDE requires that the BCPS provide documentation by January 1, 2019 of the steps taken to ensure that the XXXXXXXX and XXXXXXXXXXXXXXXXXXXX staff follow proper procedures when developing each student's IEP and that the XXXXXXXXXXXXXXXXXXXX staff ensure that each student's IEP is implemented. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

XXX
Ms. Rebecca Rider
September 12, 2018
Page 7

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

As of the date of this correspondence, this Letter of Findings is considered final. This office will not reconsider the conclusions reached in this Letter of Findings unless new, previously unavailable documentation is submitted and received by this office within fifteen (15) days of the date of this correspondence. The new documentation must support a written request for reconsideration, and the written request must include a compelling reason for why the documentation was not made available during the investigation. Pending this office's decision on a request for reconsideration, the public agency must implement any corrective actions within the timelines reported in this Letter of Findings.

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: Verletta White
Conya Bailey
XXXXXXXXXX
XXXXXXXXXX
Dori Wilson
Anita Mandis
Janet Zimmerman
Nancy Birenbaum