



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

October 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, MD 21202

RE: XXXXX
Reference: #19-032

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention/Special Education 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 August 28, 2018, the MSDE received a complaint from Ms. XXXX, 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) with respect to the above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that proper procedures were followed when determining the educational placement in which the student would receive special education instruction for the 2018-2019 school year, in accordance with 34 CFR §§300.114-.116.
2. The BCPS did not follow proper procedures when excusing required members of the Individualized Education Program (IEP) team from the IEP team meeting held on August 2, 2018, in accordance with 34 CFR §300.321.

XXX

Dr. Debra Brooks

October 19, 2018

Page 2

3. The BCPS did not develop an IEP that addresses the student's identified needs for the 2018-2019 school year, accordance with 34 CFR §300.324.

BACKGROUND:

The student is three (3) years old and is identified as a student with Multiple Disabilities under the IDEA, including a speech/language impairment, deafness-blindness, and an other health impairments. She has an IEP that requires the provision of special education instruction and related services, and had an Individualized Family Service Plan (IFSP) prior to the IEP eligibility determination.

FINDINGS OF FACTS:

1. On August 2, 2018, the IEP team convened to develop an initial IEP for the student. The team reviewed assessment results in the areas of speech/language, occupational therapy, vision, medical history, audiology, and physical therapy. The team also reviewed progress reports from the Baltimore City Infants and Toddlers Program (BITP), and input from the complainant and other individuals who have knowledge or special expertise about the student. Based on the results and input, the team identified needs in the areas of language and literacy, receptive and expressive language, cognitive development, social/emotional behavior, health, hearing, vision, fine and gross motor skills, and independent living (feeding).
2. The physical therapist and the teacher for the visually impaired were invited to the IEP team meeting; they both participated and provided input for the team to consider. The team developed goals and supplementary aids and services in each of the identified areas and also determined that a "nursing care plan" would be required, which included accommodations to support the student's feeding and health related needs, and a temperature controlled environment, as recommended by her medical doctors and the complainant. The physical therapist and the teacher for the visually impaired both excused themselves from the meeting after providing input for the team to consider, but the special education teacher remained at the meeting.
3. The team discussed placement after developing the initial IEP. The documentation and audio recording reflects that the team determined that the student required five (5) hours of specialized instruction each day, supports and services to address all identified areas of need, and a temperature controlled environment. The team rejected considerations of home-based services, an Itinerant-based location, regular early childhood inclusive settings, public school settings, public separate-day settings, Maryland School for the Deaf, and Maryland School for the Blind. The team determined that, based on the student's identified health needs, specialized instruction, and supports and services, she required a placement at a non-public school, which would be determined by the BCPS Office of Nonpublic Placement. However, the complainant did not provide consent for the provision of special education services for the student because she disagreed with the determinations made by the team.

4. There is documentation that on October 12, 2018, the complainant provided consent for the provision of special education services for the student and that the BCPS Office of Nonpublic Placement intended to send out referral packets to nonpublic schools for their admission consideration.

CONCLUSIONS:

Allegation #1: Educational Placement Determination

In this case, the complainant alleges that the school-based members of the IEP team predetermined the student's placement by basing their decision that the student required five (5) hours of specialized instruction to accommodate the BCPS pre-school model.

Based on the Findings of Facts #1 - #4, the MSDE finds that the documentation and audio recording do not support the allegation that the BCPS did not follow proper procedures when determining the educational placement in which the student would receive special education instruction for the 2018-2019 school year, in accordance with 34 CFR §§300.114-.116. Therefore, this office does not find that a violation occurred with respect to the allegation.

Allegation #2: Excusal of IEP Meeting Participants

In this case, the complainant alleged that the physical therapist and the teacher for the visually impaired were required members of the IEP team, and excused themselves from the IEP team meeting without permission from the complainant or documentation of excusal.

Based on the Findings of Facts #1 - #4, the MSDE finds that the physical therapist and the teacher for the visually impaired were not required members of the IEP team, in accordance with 34 CFR §300.321. Therefore, the excusal requirements do not apply and this office does not find that a violation occurred with respect to the allegation.

Allegation #3: An IEP that Addresses the Student's Needs

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS developed an IEP that addresses the student's identified needs for the 2018-2019 school year, accordance with 34 CFR §300.324. Therefore, this office does not find that a violation occurred with respect to the allegation.

TIMELINE:

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

XXX

Dr. Debra Brooks

October 19, 2018

Page 4

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 Early Intervention/Special Education Services

MEF:ac

c: Sonja B. Santelises
Gloria Valentine
Allen Perrigan
Dori Wilson
Anita Mandis
Albert Chichester