



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

July 8, 2019

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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: XXXX
Reference: #19-165

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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 May 9, 2019, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, 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 student.

The MSDE investigated the following allegations:

1. The BCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified needs to progress through the general curriculum since May 2018, in accordance with 34 CFR §§300.320 and 324.
2. The BCPS did not provide prior written notice of the team’s rejection of the request for communication with the student’s teachers about the student’s progress in the form of weekly progress reports, that was made at the IEP team meeting in December 2018, in accordance with 34 CFR §300.503.

3. The BCPS has not ensured that the student was provided with the special education instruction in a special education classroom required by the IEP since May 2018, in accordance with 34 CFR §§ 300.101 and .323.
4. The BCPS did not ensure that the IEP team considered the results of an independent educational evaluation (IEE) obtained at private expense provided in March 2019, in accordance with 34 CFR §300.502.
5. The BCPS has not ensured that the reports of the student's progress toward achieving the annual IEP goals have been provided since May 2018, in accordance with 34 CFR §300.320.

BACKGROUND:

The student is nine (9) years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. She is identified, under the IDEA, as a student with an Other Health Impairment due to Attention Deficit Hyperactivity Disorder (ADHD) and has an IEP that requires the provision of special education and related services.

FINDINGS OF FACTS:

IEP in Effect in May 2018

Reading, Writing and Math Skills

1. The IEP in effect in May 2018 was developed on December 14, 2017, when the student was in the second grade. The IEP identified the student's primary disability of an Other Health Impairment (OHI), "impacted the student's functioning in math calculation, math problem solving, reading comprehension, reading fluency, reading phonics, and written language expression." The IEP documented that the student's "disability impacts her participation in all areas of the general curriculum as she can become easily distracted and daydreams."
2. The report of the psychological assessment considered when developing the IEP states that the student was diagnosed with ADHD and that her executive functioning and memory skills indicate a significant level of inattention. It also states that the student's measured cognitive ability which has been assessed in the "Very Low Range" means that she also will learn at a slower pace and requires multiple exposure to academic materials in order to retain information. The IEP also documented that the impact of the disability limits the student's participation in the general education curriculum even with supports, noting increased frustration with the classroom instruction. The student's teachers indicated on rating scales that the student had difficulty maintaining her attention, remembering, and concentrating. The teacher rating scales indicated that the student also lacked an awareness of her behavior, the ability to adjust to changes, and the ability to absorb and retain information.

3. The IEP documented that the student was functioning at a kindergarten grade level in reading, math problem solving and written language skills. The documentation reflected that the student was performing two grade levels below her age appropriate peers academically.
4. The IEP documented that the student was working on a reading phonics goal to apply decoding when presented with words to the second grade level and a reading comprehension goal to explain and draw inferences of the text at the second grade level.
5. The IEP documented that the student was working on a math calculation goal to be able to add and subtract, and a math problem goal to be able to solve a two-step word problem by determining whether to add or subtract to solve the problem.
6. The IEP did not include a written language goal for the student, and written language skills were not addressed through other goals.
7. The IEP also required that the student be provided with a spell checker, graphic organizers, a calculator, and small groups for instruction, frequent breaks, reduced distractions, monitoring of test responses and extended time to complete assignments. The IEP also required use of a word bank, repeated directions, peer tutoring or a paired work arrangement, paraphrasing of questions and instructions, frequent and/or immediate feedback, checking for understanding, use of organizational aides, use of manipulatives during academic periods, use of highlighters, altered and modified assignments and consultation between the general and special education teachers monthly to determine the student's progress.
8. The IEP also documented that the student was required to receive special education instruction three (3) hours per week in reading and math, in a separate special education classroom.

IEP Progress Reports for January, April and November 2018

9. On January 24, 2018, and April 11, 2018 the IEP progress reports indicated that the student was making sufficient progress to meet the goals in reading phonics, reading comprehension, math problem solving and calculations. The progress reports further indicated that by June 19, 2018, the student had achieved the goals in reading and math problem solving.
10. By November 14, 2018, the IEP progress report indicated that the student was making sufficient progress to meet the goal, by December 2018, in math problem solving even though according to the reporter, "the student had shown regression in this area, being unable to determine which math calculation to use, lacking comprehension of what the math word problem was asking and needing a lot of teacher supports."

On November 14, 2018, the IEP progress report also indicated that the student was making sufficient progress to meet the goal in math calculation by December 2018, even though her calculation skills were not fluent and she was unable to add and subtract with regrouping.

11. On November 14, 2018, the IEP progress report indicated that the student was making sufficient progress to meet the goal in reading comprehension by December 2018, “even though she had shown regression in this area, having a difficult time focusing and being able to remember what was read.”
12. On November 14, 2018, the IEP progress report indicated that the student had achieved the goal for reading phonics.

December 6, 2018 IEP Team Meeting

Reading, Writing, Math, Speech/Language and Occupational Therapy Skills

13. On December 6, 2018, the IEP team met to conduct an annual review of the IEP. At that time the student had not achieved the math calculation, math problem solving and reading comprehension goals. The school staff reported that the student showed increased frustration with the classroom instruction. The complainant expressed her concern that the student was having a lot of difficulty learning, reversing letters, unable to count to one hundred (100), and was unable to identify all the shapes. The complainant shared that the student needed more supports and services due to her lack of progress. The student’s teacher reported that she did not participate or answer questions unless called directly and provided with teacher support. The IEP team recommended that speech and occupational therapy assessments be conducted.
14. The December 6, 2018 IEP documented that the student, who was in the third grade, was functioning at a first grade level in reading phonics and reading comprehension. The student’s math problem solving skills were at the kindergarten level and her math calculation skills were at a first grade level. The student’s written language skills were at the first grade level. The documentation reflected that the student was performing two to three grade levels below her age appropriate peers academically.
15. The IEP team added reading fluency and written language expression goals and revised the math goals to include multiplication and division. The reading fluency, phonics and comprehension goals were revised for the student to achieve them at a fourth (4th) grade level despite the fact that she was in the third (3rd) grade and performing at the first (1st) grade level. The objectives were scaffolded from the first (1st) to the fourth (4th) grade. Based on the present levels of performance and the student’s past rate of progress, the IEP team needed to consider whether the goals and objectives were achievable for the student. The IEP team increased the special education instruction in the special education classroom from three (3) hours per week to five (5) hours per week for reading and math.

There is documentation that on December 24, 2018 and February 1, 2019, the complainant requested that BCPS staff provide a weekly report of the student's progress, increase communication between home and school, and to forward incomplete academic assignments for the student to complete at home. There is no documentation that the complainant made the requests at an IEP team.

IEP Progress Reports for February and March 2019

16. On February 4, 2019, March 6, 2019 and March 12, 2019, the IEP progress reports indicated that the student was making sufficient progress to meet the goal in reading fluency because she was able to self-correct when reading on the first grade level. When given a starter sentence and a graphic organizer, the student was able to develop a topic with some verbal prompting and teacher support. The progress reports further indicated that the student required more assistance with self-correcting when reading on the second and third grade levels.
17. On February 4, 2019 and March 6, 2019 and March 12, 2019, the IEP progress reports indicated that when presented with words on the fourth grade level, the student was making sufficient progress to meet the goal in reading phonics because she was able to self-correct with teacher prompting and was aware of her errors.
18. On February 4, 2019, March 6, and 12, 2019, the IEP progress reports indicated that when given a first grade level text, the student was making sufficient progress to meet the goal in reading comprehension because she was able to determine what the text was stating by making logical inferences with teacher assistance and verbal prompting.
19. On February 4, 2019, March 6, and 12, 2019, the IEP progress reports indicated that the student was making sufficient progress to meet the goal in written language expression because she was able to state her opinion about a topic and was reading multi-syllabic words with teacher assistance.

March 20, 2019 IEP Team Meeting

Speech/Language and Occupational Therapy Skills

20. The report of a speech/language assessment considered at the IEP team meeting on March 20, 2019 stated that the student was referred for a receptive and expressive language assessment due to her difficulty in expressing her thoughts verbally and her inability to answer questions orally in complete sentences that contained details and were syntactically correct. The report stated that the student was unable to understand complex words, word relationships and size concepts. Further, the report indicated that the student was unable to remember sentences of four to six words. Overall, the report stated that the student struggled to express herself clearly. As a result of the student's performance and the assessment results, the IEP team recommended speech/language services for thirty (30) minutes per week to address receptive and expressive language

skills, including following directions and composing sentences about curriculum-based materials.

21. The report of an occupational therapy assessment considered at the IEP team meeting on March 20, 2019 stated that the student was referred to assess her current levels of functioning and to determine if occupational therapy services were needed. The report stated that the student presented with age appropriate coordination and motor planning that were within functional limits. The IEP team determined that occupational therapy services were not necessary to allow the student to perform comparable with her age appropriate peers.
22. At the March 20, 2019 IEP team meeting, the IEP team revised the IEP to include additional instructional and assessment accommodations including text to speech, a human reader for reading and math and the provision of alternative ways to demonstrate learning.
23. On March 20, 2019, the IEP team met to conduct a re-evaluation and review the IEP. According to the documentation, the complainant provided the school staff with copies of private assessments at the IEP team meeting. The IEP team decided that the appropriate school staff would review the private assessments within five (5) days and the IEP team would reconvene to review the private assessments.
24. Based on the *Parent Contact Log*, on June 5, 2019, the complainant was contacted by the school staff to schedule an IEP team meeting. According to the *Notice of an IEP Team Meeting*, an IEP team meeting was scheduled for June 12, 2019 by the BCPS. On June 12, 2019, the complainant wrote a note to the school staff requesting that the meeting be rescheduled. The school staff have not yet rescheduled the IEP team meeting.

IEP Progress Reports for April and June 2019

25. On April 12, 2019, June 5 and 20, 2019, the IEP progress reports indicated that the student was making sufficient progress to meet the goal for math calculation by adding and subtracting with no regrouping and with minimal assistance, however when multiplying or dividing, maximum assistance is needed.
26. On April 12, 2019, June 5 and 20, 2019, the IEP progress reports indicated that the student was making sufficient progress to meet the goal for math problem solving however she was unsure of which calculation to use. She required verbal assistance when reading the problem, encouragement to reread, highlight, visualize then draw the problem. The student's math problem solving achievement levels were documented as the same since December 14, 2017 IEP.

27. On April 12, 2019, June 5 and 20, 2019, the IEP progress reports indicated that the student was making sufficient progress to meet the goal for reading phonics and comprehension by applying grade level phonics skills when decoding. The student is making inferences on the first grade level.
28. On June 18, 2019, the complainant signed a document indicating that on June 5, 2019, she had received the speech/language IEP progress report for the fourth (4th) quarter of the 2018-2019 school year. The IEP requires that the parent be notified of the student's progress toward the IEP goals on a quarterly basis.
29. On June 20, 2019, IEP progress reports were written for reading comprehension, phonics, and fluency, written language expression and math calculation and problem solving in the Maryland Online IEP System.
30. There is no documentation that the IEP progress reports for reading comprehension, phonics, and fluency, written language expression and math calculation and problem solving for the fourth quarter of the 2018-2019 school year, were sent to the complainant.
31. There is no documentation that the student has been provided with the accommodations, supplementary aids and supports consistently since May 2018.
32. There is no documentation that the student has been provided with special education instruction five (5) hours per week for reading and math needs, inside of the special education classroom since December 2018.

DISCUSSION/CONCLUSIONS:

Allegation #1 Addressing Reading, Math, Written Language, Speech and Occupational Therapy Needs

Reading and Math Needs

Based on the Findings of Facts #1-#4, #7-#9, #12, #13, #15, #16, #18-#20, #24, #29, #31, #33 and #34, the MSDE finds that the IEP did identify and address the student's reading and math needs to allow the student to progress through the general curriculum, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #15 and #16, the MSDE finds that the BCPS did not ensure that the reading goals aligned to grade level standards for which specially designed instruction was to be implemented to help the student make progress toward grade level and reduce or close the achievement gap, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Written Language Needs

Based on the Findings of Facts #1-#3, #6, #7, #15, #16, #21, #31 and #33, the MSDE finds that the IEP did not address the student's written language needs from May 2018 to December 2018, in accordance with 34 CFR §§300.320 and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Speech/Language and Occupational Therapy Needs

Based on the Findings of Facts #14, #22, #23, and #30, the MSDE finds that the IEP identified and addressed the student's speech and occupational therapy needs, in accordance with 34 CFR §§300.320 and .324. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #2 Prior Written Notice

In this case, the complainant alleges that she requested more frequent progress reports and increased communication between the home and school but has not received the written basis for refusal of the requests.

Based on the Finding of Fact #17, the MSDE finds that the BCPS did not need to ensure that prior written notice was provided because there is no documentation that the requests were made at an IEP team meeting, in accordance with 34 CFR §300.503. Therefore, this office does not find a violation occurred with respect to this allegation.

Allegation #3 Special Education Instruction in the Special Education Classroom

In this case, the complainant alleges that the student did not receive all the services required by the IEP in a special education class.

Based on the Finding of Fact #34, the MSDE finds that there is no documentation that the BCPS ensured that the student received the required special education instruction within the special education classroom since May 2018, in accordance with 34 CFR §300.101. Therefore, this office finds a violation occurred with respect to this allegation.

Allegation #4 IEP Team Consideration of an Independent Education Evaluation

Based on the Findings of the Facts #25 and #26, the MSDE finds that the IEP team has not considered the IEE, since March 2019, in a timely manner, in accordance with 34 CFR §300.502. Therefore, this office finds a violation occurred with respect to this allegation.

Allegation #5 Provision of IEP Progress Reports

Based on the Finding of the Fact #30, the MSDE finds that the BCPS ensured that the IEP progress report in the area of speech was provided, in accordance with 34 CFR §300.320, therefore, this office does not find a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #31 and #32, the MSDE finds that the BCPS did not ensure that IEP progress reports were provided for reading, math and written language, in accordance with 34 CFR §300.320. Therefore, this office finds a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

By September 1, 2019, the MSDE requires the BCPS to convene an IEP team to do the following:

- a. Consider the results of the private assessments provided by the complainant on March 20, 2019.
- b. Revise the IEP, as appropriate, to ensure that it addresses the student's reading, written language and math needs.
- c. Provide documentation that the IEP team has convened and determined the amount and nature of compensatory services or other remedy to adequately redress the lack of provision of specially designed instruction in the special education classroom and identified and developed a plan for the provision of those services within one year of the date of this Letter of Findings.

School-Based

The MSDE requires the BCPS to provide documentation by November 1, 2019, of the steps it has taken to ensure violations do not recur at XXXXXXXXXXXXXXXXXXXXXXXXXXXX and how the BCPS will monitor to ensure the effectiveness of those steps by doing the following:

- a. Provide services as stated in the IEP;
- b. Follow proper procedures for writing and progress monitoring IEPs and IEP progress reports; and
- c. Ensure that IEP progress reports are provided to the parents.

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.

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 student's mother 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 Early Intervention
and Special Education Services

MEF: sf

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