



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

August 15, 2019

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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #19-171

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 29, 2019, the MSDE received a complaint from Ms. XXXXXXXX, hereafter, “the complainant,” on behalf of her grandson, 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.

On July 24, 2019, the parties requested and were granted an extension of the State complaint timeline in order for them to attempt to resolve the matter informally. Because the parties were unable to do so, the investigation was completed.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the student’s Individualized Education Program (IEP) was implemented when he transferred from the state of XXXXXXXX at the start of the 2018-2019 school year, in accordance with 34 CFR §300.323.

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2. The BCPS did not ensure that parental consent was obtained on September 4, 2018, prior to conducting a Functional Behavior Assessment (FBA), in accordance with 34 CFR §300.300.
3. The BCPS did not provide prior written notice of the IEP team decisions, which were made at the meetings held on September 5, 2018 and November 1, 2018, in accordance with 34 CFR §300.503.
4. The BCPS has not ensured that the student's IEP addresses his behavioral needs and speech and language needs since November 1, 2018, in accordance with 34 CFR §§300.320 and.324.
5. The BCPS did not ensure that a copy of the draft IEP that the IEP team planned to discuss at the April 18, 2019 IEP team meeting was provided at least five (5) business days before the scheduled meeting, in accordance with COMAR 13A.05.01.07.
6. The BCPS did not ensure that the reports of the student's progress towards achievement of the annual IEP goals were consistent with the data, since the start of the 2018-2019 school year, in accordance with 34 CFR §300.324.
7. The BCPS did not ensure that social work services had been consistently provided as required by the IEP during the 2018-2019 school year, in accordance with 34 CFR §300.101.
8. The BCPS did not ensure that a written invitation to the May 7, 2019 IEP team meeting was provided, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.

BACKGROUND:

The student is eleven (11) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

On August 28, 2018, the student enrolled in the BCPS. Since that time, he has attended XXXXXXXXXXXXXXXXXXXX School. He had previously attended school in XXXXXX, XXXXXX.

FINDINGS OF FACTS:

August 28, 2018 Student Transfer from the state of XXXXXX

1. The IEP in effect at the start of the 2018-2019 school year was developed on April 24, 2018 while the student was attending school in the state of XXXXXX. The student's performance on district-wide assessments and formal assessments indicated that he was working on grade level in reading and math.

2. The IEP from XXXXXX documented that the student demonstrated significant behaviors that impeded his own learning, including self-harm. It also documented that the student demonstrated behaviors that impeded the learning of others, including making inappropriate comments to peers, name calling, and displaying distracting body language.
3. The IEP also documented that the student had medical diagnoses, including Reactive Attachment Disorder, Oppositional Defiant Disorder, and Attention Deficit Disorder, and that he is prescribed daily medication to relieve the symptoms of the disorders. The IEP stated that the student's Emotional Disability adversely impacted his ability to form healthy relationships due to a lack of social and emotional skills.
4. The student's fifth (5th) grade teacher reported that the student was an outstanding reader, applied math concepts readily and demonstrated attainment of lessons "despite apparent disengagement." She reported that the student only completed a small percentage of work, did not employ handwriting, was only mildly interested in typing, and that attempts at providing dictation had failed.
5. The teachers also reported that the student began his fifth (5th) grade year occasionally engaging in self-harming behavior and being resistant to redirections. They reported that he did not engage with his peers for most of the school day. He received the assistance of a one-to-one paraeducator but continued to exhibit off-task behaviors. The teachers reported that the student did not complete any work within the classroom or participate in group activities. He had a history of cutting his clothes and destroying classroom materials. In October 2017, of his fifth (5th) grade year, the one-to-one paraeducator was removed and the teachers reported that the student's behaviors "vastly improved."
6. The IEP required accommodations, including access to text-to-speech technology, access to a word processing device, daily breaks, alternate location for testing, sensory strategies, preferential seating, reduced practice items, and modified expectations for social engagement.
7. The IEP included a goal for the student to use socially appropriate "body control" and a goal for the student to improve self-management by exhibiting on-task behaviors.
8. A report of a Functional Behavior Assessment (FBA), used in the development of the IEP, conducted when the student was in fourth grade, targeted the student's failure to complete assigned academic tasks in the classroom 90% of the time. Even when the assignment expectation was modified for him, the student did not complete the assigned tasks. The teachers reported that the most likely function of the behavior was to avoid or escape the tasks and that he did not consistently respond to praise or show a preference to specific rewards.

9. The report of a speech and language communication assessment considered when developing the IEP stated that the student had a working practical knowledge of social communication skills and had a significant delay in his use of social communication skills. The report also indicated that while in the classroom, the student did not choose to use his skills. The report stated that the student would benefit from a social skills group where he would consistently use his communication skills with peers and adults in a controlled setting. However, the IEP did not address the student's need to improve the use of social communication skills.
10. The IEP required that the student receive special education instruction for forty-five (45) minutes, five (5) times per week, totaling 225 minutes per week within a special education classroom. The goal is to have the student increase his on-task behaviors with decreasing re-directs from the special education teacher. The IEP also required that the student receive special education transportation.

September 5, 2018 IEP Team Meeting

11. The IEP team met on September 5, 2018, to review the student's IEP from XXXXXX. The IEP team documented that they reviewed the IEP goals for social skills and on task behavior, the Functional Behavior Assessment (FBA), the Behavior Intervention Plan (BIP), and special education transportation services.
12. There is documentation that the IEP team agreed to accept the XXXXXX IEP as written.
13. While, the IEP team summary documented that the complainant gave consent for the IEP team to conduct an FBA at the meeting, the consent form is dated September 14, 2018. However, the report of the FBA states that it was conducted on September 4, 2018.

November 1, 2018 IEP Team Meeting

14. The IEP team met to address concerns of the complainant and teachers. At the IEP meeting, the team recommended that the speech and language pathologist conduct a screening to determine the student's current level of language skills since according to his teachers, "the student rarely communicated, orally or in writing."
15. The IEP team added a goal for the student to be able to make a verbal "I" statement when identifying the emotions associated with his decision making that impacted the learning environment, four (4) out of five (5) trials. The IEP team also recommended training for teachers about the student's individualized needs, providing clear instructions for the student's homework assignments, having the student participate in a boy's social skills group, and referring the student for additional assessments to determine the presence of Autism. However, there is no documentation that the additional assessments were conducted and the results considered by the IEP team.

16. The IEP team decreased special education services and changed the location to the general education classroom. The team did not document the basis for the decrease in services and the change in location of services.
17. The IEP team recommended the addition of social work services for two (2) sessions, thirty (30) minutes monthly, totaling one (1) hour per month for the student to improve his social/emotional skills by being able to correlate his emotions to his decision making.
18. The reports of the student's progress towards achievement of the annual IEP goals reflect that the student was making sufficient progress to achieve the goals by April 2019. However, the narrative in the progress reports and documentation of subsequent IEP team meetings reflect that the student required more time to be evaluated on the objectives, and according to teacher reports, he was not on task for the majority of every class period.

December 7, 2018 IEP Team Meeting

19. The IEP team convened on December 7, 2018 to discuss the student's November 26, 2018 hospitalization and safety plan. The student was hospitalized on due to having suicidal thoughts and self-injurious behaviors.
20. The IEP team also discussed the results of an FBA and a Behavior Intervention Plan (BIP). The BCPS FBA and BIP documented the same behaviors as the FBA report from the XXXXXX IEP, but provide no information about the data collected that serves as the basis for the determination.
21. The math teacher reported that the student was capable of completing the math work, however, "he chose not to do the work." She describes him as a student with passive behaviors. All of the student's teachers reported that he is "highly capable" but was not completing work. According to the prior written notice, the IEP team changed the student's math and reading classes to provide him with more academic challenge and also enrolled him into a Spanish class. The team did not document the basis for the change to more academically challenging classes.
22. The IEP team determined that changes were not needed to the student's IEP. Based on the results of the speech and language screening, the IEP team decided that a speech and language assessment would be conducted to determine the student's expressive and receptive language skills levels.
23. The reports of the student's progress towards achievement of the annual IEP goals reflect that the student was making sufficient progress to achieve the goals by April 2019. However, the narrative in the progress reports and documentation of subsequent IEP team meetings reflect that, the student was not generalizing the behavioral skills to the general education classes where he spent the majority of his day, which the goals required.

February 15, 2019 IEP Team Meeting

24. The IEP team convened on February 15, 2019 to review the results of the speech and language assessment. The speech and language pathologist determined that formal testing, an informal observation and teacher reports indicated that the student did not have a language impairment. There is no documentation that the IEP team considered the student's social communication and written language needs, including his refusal to speak or write, which were impacting his education.
25. The complainant requested that the student be permitted to complete classwork at home. There is no documentation that the IEP team addressed the complainant's request.
26. The reports of the student's progress towards achievement of the annual IEP goals reflect that the student was making sufficient progress to achieve the goals by April 2019. However, the narrative in the progress reports reflect that, "the student was not engaged in the learning activities."

April 18, 2019 IEP Team Meeting

27. The IEP team met to conduct the student's annual review. The student's teachers reported that he was failing all of his subjects except social studies, where he earned a grade of "C." The teachers reported that the student did not attempt work and they had no data to support whether he was understanding the instructional concepts. The IEP team determined that additional data was needed, but did not document the type of data to be collected.
28. There is documentation that the IEP team considered a draft IEP at the IEP team meeting. There is no documentation that the draft IEP was provided to the complainant prior to the IEP team meeting.
29. The IEP team did not determine whether the annual goals for the student were achieved and did not address the student's reported lack of sufficient progress on the IEP goal for on task behavior. The complainant expressed concerns about the student's failing grades and needing to reteach concepts at home. The IEP team did not document that the complainant's concerns were addressed.
30. There is no documentation that an IEP team meeting took place in May, 2019.
31. There were no reports of progress on the IEP goals for the fourth quarter of the 2018-2019 school year.

July 31, 2019 IEP Team Meeting

32. On July 31, 2019, the IEP team met to discuss the student's reevaluation and review the IEP. The IEP team recommended that educational, and social history assessments be conducted as well as a FBA. The complainant stated that a neuropsychological assessment would be conducted privately. She also shared that the student was hospitalized from June 5, 2019 to June 17, 2019. Since July 1, 2019, the student has been in intensive outpatient therapy at The Johns Hopkins Hospital. The IEP team acknowledged that the student's academic and functional performance had "deteriorated" and that a more restrictive environment needs to be considered.

IEP Implementation

33. There is no documentation that the student was provided with the amount and nature of services required by the IEP during the 2018-2019 school year.

DISCUSSION/CONCLUSIONS:

Allegation #1: IEP Implementation

Based on the Findings of Facts #1-#12, #16-#18, #21, #23, #26, #27, #29, #31 - #33, the MSDE finds that there is not documentation that the IEP was implemented during 2018-2019. Therefore, this office finds that a violation occurred and that the student was not provided with a Free Appropriate Public Education (FAPE) for the 2018-2019 school year, in accordance with 34 CFR §300.323.

Allegation #2: Parental Consent for an FBA

Based on the Finding of Fact #13, the MSDE finds that the documentation that reflects that the FBA was conducted prior to the date consent was granted, in accordance with 34 CFR §300.300. Therefore, the MSDE finds a violation occurred with respect to this allegation.

Notwithstanding, based on the Finding of Fact #13, the MSDE finds that the complainant did consent to having the FBA conducted and that the violation did not negatively impact the student's ability to benefit from the educational program. Therefore, no student-based corrective action is required to remediate the violation.

Allegation #3: Provision of Prior Written Notice

Based on the Findings of Facts #15-#17, #25, #27, #29 and #33, the MSDE finds that the BCPS did not ensure that the IEP team decisions were implemented. Therefore, this office does not find that they were implemented prior to the provision of notice of the decisions to the complainant, in accordance with 34 CFR §§300.503. Therefore, the MSDE finds no violation occurred with respect to the allegation.

Allegation #4: IEP Addresses Behavioral and Speech and Language Needs

Based on the Findings of Facts #2-#17, #19-#22, #24, #25, #27, #29 and #32, the MSDE finds that the BCPS has not addressed the student's behavioral and speech and language needs since November 1, 2018, in accordance with 34 CFR §§300.320 and .324. Therefore, the MSDE finds a violation occurred and that the student was not provided with a FAPE.

Allegation #5: Provision of the Draft IEP Prior to the Meeting

Based on the Finding of Fact #28, the MSDE finds that the BCPS did not ensure that the complainant was provided with the draft IEP prior to the April 18, 2019 IEP team meeting where it was considered, in accordance with COMAR 13A.05.01.07. Therefore, the MSDE finds a violation occurred with respect to this allegation.

Allegation #6: IEP Progress Reports Consistent with the Data

Based on the Findings of Facts #18, #23, #26, #29 and #31, the MSDE finds that the BCPS did not ensure that the IEP progress reports were consistent with the documented data, in accordance with 34 CFR §300.324. Therefore, the MSDE finds a violation did occur with respect to this allegation.

Allegation #7: Implementation of Social Work Services

Based on the Findings of Facts #15-#17, #29, #31 and #32, the MSDE finds that there is no evidence that the BCPS ensured the amount of counseling services required by the IEP, in accordance with 34 CFR §§300.101. Therefore, the MSDE finds a violation occurred with respect to the allegation and as stated above, that the student was not provided with a FAPE.

Allegation #8: Provision of Notification to the May 7, 2019 IEP Meeting

Based on the Finding of Fact #30, the MSDE finds that there is no documentation that an IEP team meeting occurred in May, 2019, in accordance with 34 CFR §§300.322 and COMAR 13A.05.01.07D. Therefore, the MSDE finds no violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by November 1, 2019 that the IEP team has taken the following actions:

- a. Clarify the student's present levels of academic achievement and functional performance.
- b. Ensure the revision of the IEP to reflect all of the student's needs.

- c. Determined the compensatory services needed to redress the loss of FAPE during the 2018-2019 school year.
- d. Developed a plan for the provision of the compensatory services, which may exceed one (1) year of the date of this Letter of Findings, due to extenuating circumstances.¹

School-Based

The MSDE requires the BCPS to provide documentation by December 1, 2019 of the steps taken to ensure that the violations identified through this investigation do not recur. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur at XXXXXXXXXXXXXXXX School.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS by Dr. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Dr. Birenbaum can be reached 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The complainant 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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

¹ The MSDE recognizes that it may take more than one (1) year to provide compensatory services to remediate the loss of FAPE for an entire year.

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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 and Special Education Services

MEF:sf

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