



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

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

August 2, 2016

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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: #16-140

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 June 3, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXX, hereafter, “the complainant,” on behalf of 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 her son, the above-referenced student.

The MSDE investigated the allegation that the BCPS has not ensured that the student has been provided with modified work or daily notes, since the start of the 2015-2016 school year, as required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.

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INVESTIGATIVE PROCEDURES:

1. On June 3, 2016, the MSDE received the State complaint and documentation to be considered from the complainant.
2. On June 6, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
3. On June 15, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
4. On June 21, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Ms. Rider of the allegation to be investigated and requested that her office review the alleged violation.
5. On July 15, 2016, Mr. Chichester and Ms. Sharon Floyd, Complaint Investigator, MSDE, reviewed the student's educational record.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Review of the student's educational record;
 - b. Meeting summary, dated March 3, 2016;
 - c. Meeting summary, dated June 8, 2016; and
 - d. Correspondence, dated between January 7, 2016 and June 7, 2016, among the complainant and the school staff;
 - e. Worksheets and modified test examples, not identified by name or date; and
 - f. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on June 3, 2016.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA, related to Attention Deficit Hyperactive Disorder (ADHD). He attends XXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Doc. a).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Doc. a).

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with modified assignments “daily as needed” and that student or teacher notes are to be provided, “daily as needed,” for appropriate support in the resource room or for homework. These supports are to be provided to assist the student with a goal to improve his “work habits and on-task” behavior (Doc. a).
2. There is no documentation that supports are being provided as required by the IEP (Docs. e, f, and a review of the educational record).
3. On March 3, 2016, the IEP team convened and reviewed the student’s IEP. The school-based members of the team indicated that the student was not making academic progress because he does not complete his work. In response, the complainant expressed concern that the student’s lack of academic progress was due to the fact that he was not being provided with the supports as required by the IEP. There is no documentation that the team addressed the complainant’s concern (Docs. a, b, d, and f).
4. On June 8, 2016, the IEP team convened. At the meeting, the teachers reported that the student continues to demonstrate inattentive behavior and is not making sufficient progress in his classes. The complainant reiterated her concern that the lack of progress was due to the fact that the student was not being provided with the supports required by the IEP. The team documented that there may be some disagreement about how the supports are to be provided and decided to reconvene after the start of the 2016-2017 school year to review and revise the IEP in order to clarify what is required (Docs. a, c, d, and f).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education services, accommodations, and supplementary aids and services, are provided in accordance with each student’s IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 and #2, the MSDE finds that the student was not provided with modified assignments or notes, as required by the IEP. Therefore, this office finds that a violation has occurred with respect to the allegation.

ADDITIONAL VIOLATION

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student’s disability that are identified in the evaluation data. In developing each student’s IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320, and .324).

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At the beginning of each school year, each public agency must have in effect, for each student with a disability within its jurisdiction, an appropriate IEP that is written in a manner that can be clearly understood by those individuals responsible for the development and implementation of the IEP (34 CFR §300.323).

Based on the Findings of Facts #1 - #4, the MSDE finds that the BCPS has not ensured that the IEP has addressed the complainant's concerns about the IEP or that it is written clearly in order to ensure implementation at the start of the school year. Therefore, this office finds that a violation has occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the beginning of the 2016-2017 school year that the IEP team has considered the complainant's concerns and reviewed and revised the student's IEP, as appropriate, to ensure that the IEP is written clearly with respect to how the supplementary aids are to be provided. The MSDE also requires the BCPS to provide documentation that the IEP team has determined the compensatory services or other remedy for the violations identified through this investigation.

The BCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the BCPS to provide documentation by November 30, 2016 of the steps it has taken to ensure that the XXXXXXXXXXXXX staff complies with the requirements to ensure that IEP teams consider parent's concerns and that the IEP is written clearly with respect to the services to be provided.

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.

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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 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:ac

c: S. Dallas Dance
Conya Bailey
XXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum