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October 27, 2017

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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: #18-018

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 September 7, 2017, the MSDE received a complaint from Ms. XXXXXXXXX, 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.

The MSDE investigated the following allegations:

1. The BCPS has not ensured the opportunity for parent participation in Individualized Education Program (IEP) meetings held since August 25, 2017, in accordance with 34 CFR §300.322 and COMAR 13A.05.0107.
2. The BCPS did not ensure that decisions made by the IEP team since August 25, 2017 were designed to address the student’s educational needs, in accordance with 34 CFR §300.324.

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3. The BCPS has not ensured that proper procedures were followed in determining the student's educational placement since August 25, 2017, in accordance with 34 CFR §§300.114 - .116.
4. The BCPS has not ensured that the student's educational record has been maintained in order to ensure the implementation of the IEP since August 27, 2017, in accordance with 34 CFR §§300.323, .610 - .627, COMAR 13A.08.02 and *The Maryland Student Records Manual*.
5. The BCPS has not ensured that the student has been provided with appropriate transportation services as required by the IEP since August 25, 2017, in accordance with 34 CFR 34 CFR §§300.101 and .323.

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. He is attending XXXXXXXXXXXX (XXXXXX MS).

During the 2016 – 2017 school year, the student received Home and Hospital Teaching (HHT) services from November 2016 through the end of the school year.

ALLEGATIONS #1 - #3

IEP DEVELOPMENT

FINDINGS OF FACTS:

1. The student was enrolled at XXXXXXXXXXXXXXXXXXXXXXXX as a fifth (5th) grade student for the 2016 - 2017 school year but received HHT services. At the end of the 2016 - 2017 school year, he was promoted to the sixth (6th) grade. However, the IEP team did not develop a plan for the student's return to a school-based program and transition to middle school for the 2017 - 2018 school year.
2. On August 18, 2017, eighteen (18) days before the start of the 2017 - 2018 school year, the school system staff sent an electronic mail message (email) to each of two (2) different email addresses of the complainant, identifying four (4) possible dates to convene an IEP team meeting to discuss the student's transition to middle school. The emails document the school system staff's intent to be flexible with the meeting date given the complainant's schedule, and requests that the complainant contact the school system staff to identify a date on which the complainant would be available to attend. The school staff also attempted to contact the complainant by telephone, but were unsuccessful. They left a voicemail message requesting the complainant to contact the school system staff regarding scheduling of an IEP team meeting.

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3. On August 21, 2017, via email correspondence, the school system staff sent the complainant a written invitation to an “emergency” IEP team meeting scheduled for August 30, 2017, nine (9) days later, to address the “urgent” need to determine the student’s middle school placement for the 2017 - 2018 school year and to ensure that he is provided with a Free and Appropriate Public Education (FAPE). The written invitation notice also identified August 31, 2017 as another option, ten (10) days later, for scheduling the meeting. The notice states that the meeting will proceed on August 30, 2017 unless the school system staff receive a response from the complainant about her availability prior to August 25, 2017.
4. On August 24 and 25, 2017, the school system staff were unsuccessful in their attempts to contact the complainant by telephone to convince her to attend the meeting scheduled for August 30, 2017.
5. On August 28, 2017, two (2) days prior to the meeting, the complainant responded to the school system’s scheduling of the August 30, 2017 “emergency” meeting. She requested that the “be cancelled” because she was seeking “assistance” to discuss an unrelated issue concerning compensatory services for the student. She requested other possible dates to hold the meeting.
6. On the same date, the school system staff informed the complainant that the IEP team meeting would proceed due to the need to determine the student’s middle school placement for the start of the 2017 - 2018 school year, to begin eight (8) days later.
7. On August 30, 2017, six (6) days prior to the start of the 2017 - 2018 school year, the IEP team convened without the participation of the complainant in order to determine the student’s middle school placement. At this time, the student was not enrolled in a middle school.
8. At the August 30, 2017 “emergency” meeting, the IEP team discussed the student’s progress during the eight (8) month period of the 2016 - 2017 school year, from November 2016 to June 2017, when he was receiving HHT services. The HHT instructor reported that the student was able to develop a good rapport him, and that he was cooperative, pleasant and eager to learn, willingly accepted assistance, and did not exhibit difficulty with concentration. The IEP team discussed the HHT instructor’s report that the student responded well to firm direction and positive reinforcement strategies, and that choices and clear consequences were effective to encourage the student to comply with non-preferred tasks. Although the HHT instructor noted that the student was observed to demonstrate behaviors triggered by external factors, such as having difficulty attending and completing tasks if he was recently awakened, the student did not exhibit any anxiety while being provided with HHT services. The team also discussed that the student made progress towards the IEP goals, and achieved final grades of As and Bs in all of his academic courses.

9. The IEP team documented that there was a “lack of quantifiable data” about the student’s present levels of performance and recommended that informal assessments be conducted.
10. The IEP team discussed the possible supports that the student may need while transitioning back into a school-based program, including small group instruction and access to behavioral support to assist with behavior management.
11. The IEP team discussed the benefits of the student attending XXXXXX MS, the school that he would attend if not disabled, with supports and services provided in a combination of a general education classroom and in a separate special education classroom. They discussed that, while XXXXXXXXXXXX MS includes the support of a behavior interventionist, and that there are opportunities for small group instruction, XXXXXX MS does not have a separate special education classroom that addresses behavioral needs.
12. The team also discussed the benefits of the student attending XXXXXXXXXXXXXXXX (XXXXXX MS) which offers daily emotional and behavioral supports to students in a separate special education classroom through a behavior and learning support regional program. They discussed that XXXXXX MS also offers a weekly social skills class taught by a behavior interventionist that provides students with supports needed to identify and manage their emotions within the school setting, and includes an “application portion” for students to practice social skills with peers in a safe environment, with prompting and modeling from the school staff as needed. They also discussed the positive behavior and reinforcement system that is embedded in the school day at XXXXXX MS.
13. The IEP team determined that the student requires access to crisis intervention and other emotional and behavioral supports in a separate special education classroom through a behavior and learning support regional program to address his behavior management and to assist with his return to a school setting. They also determined that he requires direct social skills instruction by a behavior interventionist.
14. The IEP team revised the IEP to reflect that the student requires an increased amount of specialized instruction in a separate special education classroom, from 3 hours per week to 20 hours and 42 minutes per week, to address his behavior and math needs and to provide direct social skills instruction by a behavior interventionist.
15. The IEP team determined that XXXXXXXX MS is the appropriate placement to meet the student’s identified needs and revised the IEP to document the decision.
16. While the school system staff report that an IEP meeting was scheduled on October 19, 2017, to review the student’s progress, the results of informal assessments of his academic levels of performance, and his Behavior Intervention Plan (BIP), there is no documentation that the meeting has taken place.

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19. There is documentation that, on September 5, 2017, the first day of the 2017 - 2018 school year, the student's general and special education teachers, other service providers, and related service providers at XXXXXXXX MS were provided with access to the student's IEP, including the BIP, and informed of their responsibilities for implementing the IEP and of the accommodation, modifications and supports of the IEP.
20. The August 30, 2017 IEP includes five (5) annual IEP goals to address the student's behavior and math needs. In order to assist the student with mastery of the goals, the IEP requires that the student be provided with 20 hours and 45 minutes per week of specialized instruction in a separate special education classroom that addresses behavioral management as well as math needs. It also requires that the student receive social skills instruction in a separate special education classroom taught by a behavior interventionist with the support of a social worker.
21. There is no documentation that, at XXXXXXXX MS, the student has been provided with the required amount of special education services in a separate special education classroom that addresses behavior management as required by the August 30, 2017 IEP. There is also no documentation that the student has been provided with direct social skills instruction by a behavior interventionist, as required by the August 30, 2017 IEP.
22. On September 5, 2017, the XXXXXXXX MS staff submitted a request for the student to receive special transportation services to XXXXXXXX MS. However, on September 7, 2017, the student was transported to XXXXXX MS, the placement identified in the IEP. The BCPS staff report that they have agreed to permit the student to attend XXXXXXX MS on a trial basis, and there is documentation that the XXXXXXX MS staff and the school system transportation staff finalized transportation services for the student to XXXXXX MS on September 14, 2017.

CONCLUSIONS:

Allegation #4

Maintenance of the Educational Record

In this case, the complainant alleges that the BCPS has not ensured that the student's educational record has been provided to the student's school in order to ensure the implementation of the IEP.

Based on the Findings of Facts #17 - #19, the MSDE finds that there is documentation that the XXXXXXXX MS staff had access to the student's IEP on the first day of school in order to ensure that the IEP was implemented in a timely manner, in accordance with 34 CFR §§300.323, .610 - .627, COMAR 13A.08.02 and *The Maryland Student Records Manual*. Therefore, this office does not find that a violation occurred.

Allegation #5 Provision of Transportation Services

In this case, the complainant alleges that the student has not been provided with transportation services required by the IEP.

Based on the Findings of Facts #17 and #22, the MSDE finds that the BCPS provided the student with the transportation services to Parkville MS, the school placement required by the IEP. Based on the Findings of Facts 17, #18 and #22, the MSDE finds, following the student's enrollment at XXXXXX MS, the BCPS has ensured that transportation services were changed to provide him with transportation to the school that he is attending, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation, by December 15, 2017, that the IEP team has convened and reviewed the additional information that the IEP team decided, on August 30, 2017, was necessary to ensure that the IEP is designed to address the student's needs. If the IEP is revised based on a review of this data, the IEP team must also have determined compensatory services or other remedy for the delay in the provision of services, and developed a plan for the provision of those services within one (1) year of this Letter of Findings.

School-Based

The MSDE requires that the BCPS provide documentation by January 1, 2018, of the steps it has taken, including training, to ensure that XXXXXXXXXXXXXXXXXXXX staff comply with the IDEA and related State requirements relating to the violation identified in this Letter of Findings.

Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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.

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

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Findings. The submission of additional documentation must be accompanied by a substantial reason why the documentation was not provided to this office during the complaint.

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 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. 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/ksa

c: Verletta White
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