



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

May 29, 2018

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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: #18-135

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 March 30, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 that the BCPS has not ensured that the student has been offered a program and placement that addresses all of her social, emotional and behavioral needs, since January 2018, in accordance with 34 CFR §§300.101, .320 and .324.

BACKGROUND:

The student is ten (10) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education and related services. The student attends XXXXXXXXXXXXXXXXXXXXXXX.

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FINDINGS OF FACTS:

1. The IEP in effect in January 2018, the start of the investigation period, identifies that the student's primary disability of Autism affects her in the areas of communication, fine motor, writing, math calculation, and social, emotional, and behavioral skills.
2. The IEP documents the following about the student's performance and needs:
 - In the area of communication, the student has difficulty with pragmatic language skills and has limited expressive language. She needs to increase her participation with peers in various settings, and to increase her social interactions, including greetings and social comments, with peers and adults in various settings.
 - In the area of social, emotional, and behavior skills, the student engages in "maladaptive vocal behavior" that includes growling and hissing, and "maladaptive physical behavior." She also has difficulty managing her emotions, accepting limits, initiating tasks, and developing positive interactions with peers. She is "inconsistently able to identify self-regulation strategies" to help her cope in various emotional states, when given direct instruction and prompting.
 - Her writing and math calculation skills are at the third (3rd) grade level, two (2) years below her grade level.
3. The IEP requires accommodations for instruction and testing, which include frequent breaks, reduced distractions to others, small group testing, and extended time. The IEP also requires supplementary supports, including the daily provision of manipulatives and organizational aids, access to a computer for written assignments, small group instruction and reteaching as needed, modified homework, use of positive/concrete reinforcers, sensory activities to promote listening, focusing, and to improve self-regulation, and preferential seating. Social skills training and behavior support is required periodically, and "all staff working with the student" are required to receive yearly training in working with students with Autism and selective mutism.
4. The IEP also documents that the student requires additional adult support throughout the school day to support her communication, sensory needs, behavioral needs, attention to instruction, and to assist with reducing anxiety.
5. The IEP reflects that the student requires a Behavior Intervention Plan (BIP) that targets "maladaptive vocal behavior," defined as vocal behavior that is not functional to communicate messages to others, and "maladaptive physical behavior," defined as physical behavior that invades others' person space or causes audible disruption to the environment. The BIP includes preventative and response strategies, as well as teaching and reinforcement to address the interfering behaviors. These include providing the student with choices, visual supports, breaks, praise and encouragement, social stories, advanced notice of schedule changes, schedule of rewards and reinforcers, and reminders of expected behavior and coping strategies.

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6. The IEP includes three (3) communication goals and one (1) goal in each of the areas of math, written language, and fine motor. It also includes two (2) behavioral goals to address self-regulation skills and maladaptive behaviors.
7. The IEP requires thirty (30) minutes per day of specialized instruction in each of math and English language arts, to be provided in a separate special education classroom. In addition, seven (7) hours and thirty (30) minutes of specialized instruction is required each week, to support the student in math, English language arts, science, social studies, and health classes in a general education classroom.
8. The IEP reflects that the student requires counseling once a week to address managing emotions and social skills training, speech therapy twice a week in a small group or individual basis, and occupational therapy twice a month to address strategies for sensory regulation. Each of these related services are required to be provided in a separate special education classroom.
9. The second (2nd) quarter of the 2017 - 2018 school year ended on January 19, 2018. The student earned grades in the core academic courses consisting of one (1) B, two (2) Cs and one (1) D. The student was reported to be “developing,” but not yet “meeting,” the indicators for classroom conduct, work completion, and working with adults and students. The school staff documented that in English language arts class, the student met the standards with prompting to continue working and reminders of next steps, and that she participated “at times” in whole group instruction. In math, the student needed prompting to initiate a task and continue working, and did “well” when putting forth her best effort. In social studies, the student “struggled a bit” and was “often reluctant” to initiate tasks.
10. The progress reports developed after the second (2nd) quarter of the 2017 - 2018 school year document that the student was making sufficient progress towards mastery of the IEP goals.
11. The behavior data from the second (2nd) quarter of the 2017 - 2018 school year documents that, on average, the student made nine (9) maladaptive vocalizations per day and two (2) maladaptive physical behaviors per day.
12. On February 12, 2018, the school staff documented that adjustments were needed in the student’s reinforcement system because it was “not working.”
13. On February 14, 2018, the IEP team convened at the request of the complainant. The team discussed concerns by all teachers with the student’s “attention, participation, following directions, completing work, independent work, motivation, behavior in unstructured and structured settings, [and] interactions with peers and adults.” The school staff reported that “recently, she is consistently refusing to complete work,” does not respond to redirection by the aide, has stopped responding to teachers, and is “resistant” to discussing her feelings and practicing coping strategies during counseling sessions. The school staff also reported new interfering behaviors of ripping paper, then eating and

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throwing it, and banging her desk against the floor and pushing it others. Additionally, the team discussed the student's increased frequency of making unkind and threatening comments to peers and her aide.

14. The IEP team made revisions to the BIP, including requiring removals from class to work in another location when the student's disruptive behavior exceeds two (2) minutes, and identifying "maladaptive" comments as an additional target behavior to decrease. They also decided to reduce the intervals for the aide to check in with the student from every ten (10) minutes to every five (5) minutes, to inform her of the appropriateness of her behavior, and to reduce the time between reinforcers from every fifty (50) minutes to every ten (10) minutes. Additional strategies were also added to the BIP, including noncontingent breaks, the use of a visual schedule, sensory items, and a writing journal.
15. The emails exchanged between the school staff and the complaint on March 7, 2018, document that, while the student is removed from the general education classroom for disruptive behavior, she has "never" been removed from the separate special education classroom due to behaviors. The emails also reflect that, in the separate special education classroom, the student's behaviors are less disruptive, and the aide is usually able to work through them with the student.
16. On March 16, 2018, the IEP team convened. The school staff reported that, while the student has had more "positive days" since the February 2018 team meeting, she is still disruptive in class causing her removal to another room, refusing to do work "on most days," and continues to struggle with work refusal, work completion, peer interactions and following directions. The school staff also reported that recently, the student is having difficulty with transitions that can take up to forty (40) minutes. The team discussed that the student was on grade level in all of the core academic courses and making progress on all of the IEP goals, but that her performance is inconsistent and dependent on her motivation.
17. The IEP team discussed that the student's vocal behaviors decreased in frequency, but increased in intensity. The speech/language pathologist (SLP) reported that therapy sessions with the student focus on pragmatic language skills and rules of social conversation, but that the student's performance has been "inconsistent." The complainant noted that the student's inappropriate comments are related to her Autism and anxiety. The school staff documented that physical behaviors increased by 44%, but noted a decrease since modifying the reinforcement system and using removals from class.
18. The IEP team reviewed the report of a private neuropsychological evaluation obtained by the complainant. The report documents that, while the student has "strong" academic skills, she struggles to apply those skills in the areas of reading comprehension, math problem solving, and written expression. The evaluator also noted that, while the student's receptive knowledge of social communication was "well developed," she has difficulty applying the knowledge to express social communication skills. Both the complainant and the school staff reported "significant externalizing problems" and

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“milder internalizing problems.” The student’s ratings represent a “lower than average self-concept” but did not establish elevated symptoms of depression or anger. The evaluator concluded that the student meets the criteria for Autism, Attention Deficit Hyperactivity Disorder (ADHD), and an unspecified anxiety disorder.

19. At the complainant’s request, the IEP was revised to require note taking, a reader, and a scribe as additional supports, and social skills instruction in a small group for the student to practice the skills. The IEP team agreed to the complainant’s request for a new Functional Behavior Assessment (FBA) to determine the current functions of the behaviors. Following the meeting, the complainant provided written consent for the FBA to be conducted by a Board Certified Behavior Analyst (BCBA).
20. During the March 2018 IEP team meeting, the complainant expressed concern about the student’s readiness, transition, and placement for middle school. The IEP team decided to defer these concerns until the middle school articulation process and the student’s annual review meeting. The school staff agreed to work with the middle school team to develop a transition plan for the student.
21. On March 27, 2018, the complainant sent an email to the school staff concerning the continuation of daily charts “complaining” about the student’s inappropriate behavior. The complainant explained that the student is not a “typical” student, the behaviors of concern are part of her Autism, she cannot always respond appropriately and needs to be taught appropriate behavior and responses, and should not be punished for behavior over which she has no control. The complainant requested all school staff and outside adult support working with the student receive further training in Autism.
22. On March 29, 2018, the third (3rd) quarter of the 2017 -2018 school year ended. The student’s grades in the core academic classes for the third (3rd) quarter consisted of Cs in English language arts and social studies classes, and Ds in math and science classes, representing a decline in the student’s performance. In all of these classes, the teachers documented that the student was making “insufficient progress” in the areas of classroom conduct, work completion, and working with adults and students. This indicates a decline in the student’s skills and conduct when compared with the second (2nd) quarter teacher reports that she was “developing” in these same areas.
23. The student’s third (3rd) quarter report card also documents the following information by the school staff:
 - While the student met the reading and writing standards in language arts class, “she was frequently unavailable for learning this marking period due to an increase in unexpected and disruptive behaviors.”
 - While the student “worked hard” in social studies class, she “was often unavailable for learning due to increased disruptive behaviors in the classroom.”
 - In math, while the student “has the ability to be successful” with the accommodations, there has been an increase in her disruptive behavior, and her grade “is a result of her refusal to complete her work.”

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- In science, the student had difficulty with meeting the expected outcomes “because she refused to complete much of the work.”
24. The behavior data for the third (3rd) quarter of the 2017 - 2018 school year documents that, on average, the student engaged in seven (7) maladaptive vocalizations per day, six (6) socially incompatible physical behaviors per day, and seventeen (17) socially incompatible comments per day.
 25. The behavior data from April 3 to 20, 2018, documents that, on average, the student engaged in thirty-nine (39) socially incompatible vocal behaviors per day, and twenty-one (21) socially incompatible physical behaviors per day.
 26. On April 24, 2018, the IEP team convened. The team discussed that the student was making sufficient progress towards mastery of the IEP goals, and had achieved the fine motor goal. The school staff reported a decrease in the student’s inappropriate vocal behavior, averaging twenty-five (25) per day, initiation of tasks with one (1) prompt with 85% accuracy, and acceptance of requests and limits from adults with 85% accuracy. This data was obtained based on the student’s performance on days when she was “available for learning and is not struggling with behaviors.”
 27. The complainant expressed concern that the student was receiving specialized instruction from the aide rather than a special educator. The school staff described the delivery of specialized instruction in a general education classroom for behavioral and academic support in math, reading, written language, science and social studies, and in a separate special education classroom for additional academic and behavioral support in math and English language arts. The school staff documented that the student had been making progress “up until recently.”
 28. The IEP team considered whether the student requires additional services to address the recent increased behaviors. The Prior Written Notice document states that “overall, the team acknowledged that [the student] has made tremendous progress.” It also states that the IEP team discussed that the student’s progress is inconsistent, with times when her progress is “phenomenal,” and times when her behaviors require “a lot of intervention.”
 29. The IEP team discussed multiple options within the continuum of service delivery models. The team agreed to bring in a different BCBA as a behavior coach to provide assistance to the school staff and the aide on how best to support the student in the current environment. The team agreed to reconvene in two (2) weeks to review the data and determine whether the student requires a change in placement.

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30. The IEP team revised the IEP to include a reading comprehension goal to address inferential comprehension.
31. There is documentation that, between January 2018 and May 2018, the BCBA observed the student and provided consultations with the school staff approximately seven (7) times.
32. There is documentation that the school system staff received training on the topics of Autism and selective mutism during the 2017 -2018 school year.
33. On May 7, 2018, the BCBA documented that the student was “doing awesome” and working hard.

DISCUSSION/CONCLUSION:

Based on the Findings of Facts #1 - #33, the MSDE finds that, while the student continues to demonstrate behaviors related to her disability that interfere with her availability for instruction, the IEP team has convened three (3) meetings since January 2018, to address the ongoing behavioral difficulties and continues to revise the IEP, including the BIP, consistent with the data.

Based on the Findings of Facts #9, #10, #16, #26, #28 and #31, the MSDE finds that there is documentation that the student has made progress, including making sufficient progress towards mastery of the IEP goals. Therefore, the MSDE finds that the student has been offered a program and placement that addresses her needs, and therefore does not find a violation.

TIMELINE:

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.

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.

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 Free Appropriate Public Education (FAPE) for the student, including issues subject to this State

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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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