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July 6, 2018

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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: #18-152

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.

ALLEGATIONS:

On May 9, 2018, 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 above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the results of a Functional Behavioral Assessment (FBA) that was recommended in July 2017 were considered by the IEP team within the required timelines, in accordance with COMAR 13A.05.01.06.
2. The BCPS did not ensure that the student has been provided with a “one-to-one (1:1) assistant”¹ and extra time to complete classwork, as required by the Individualized Education Program (IEP), between September 2017 and March 2018, in accordance with 34 CFR §§300.101 and .323.

¹ The IEP refers to this as additional “adult support.”

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BACKGROUND:

The student is 14 years old and is identified as a student with an Other Health Impairment under the IDEA, as a result of his Attention Deficit Hyperactivity Disorder (ADHD). He attends XXXXXXXXXXXX (XXXXXX) and has an IEP that requires the provision of special education instruction and related services.

During the 2016-2017 school year, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXXX). At the beginning of the 2017-2018 school year, the student attended XXXXXXXXXXXX (XXXXXXXXXX) during the 2017-2018 school year, before moving and transferring to XXXXXXXX on April 11, 2018.

ALLEGATION #1: REEVALUATION PROCEDURES

Findings of Facts

1. On April 4, 2017, the XXXXXXXX IEP team convened to review the student's IEP. The team reported that the student was demonstrating disruptive behaviors that were affecting his ability to participate during the school day. The team recommended that a FBA be conducted and a Behavior Intervention Plan (BIP) be developed, as appropriate. Although the complainant provided consent for the assessment, it was not conducted.
2. On December 11, 2017, the XXXXXXXX IEP team convened for an annual review. The teacher reports indicate that the student is inattentive and has disruptive behaviors which continued to affect his ability to participate during the school day. The team again recommended that a FBA be conducted and a BIP be developed, as appropriate. The complainant provided consent for the assessment at the meeting.
3. On February 16, 2018, the XXXXXXXX IEP team re-convened to discuss the results from the assessment. The team determined that a BIP was required to address the student's behavior and developed it at the meeting.

CONCLUSION:

Based on the Findings of Facts #1 - #3, the MSDE finds that there was a delay in conducting an FBA and developing a BIP, as appropriate, from the start of the 2017-2018 school year until February 16, 2018, in accordance with COMAR 13A.05.01.06. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

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ALLEGATION #2: PROVISION OF SUPPORTS

Findings of Facts

Additional Adult Support

4. The IEP requires that the student be provided with additional adult support in all academic settings and non-structured activities to support him with his “work habits, peer interactions, self-management and pro-social skills.”
5. There is documentation that, from the start of the 2017-2018 through March 2018, the student was provided with additional adult support in all academic classes, as required by the IEP.

Provision of Extended Time

6. On December 11, 2017, the IEP team convened for an annual review. The school staff reported that the student often times did not complete his class assignments because of tardiness, inattentiveness, or disruptive behaviors. The Prior Written Notice (PWN) of the meeting states that the team decided that the additional adult support staff would provide the case manager with the information regarding the student’s incomplete assignments on a “daily” basis, who would then share with the complainant in order for the student to complete at home. The revised IEP includes additional language that incomplete assignments “do not include computer-based assignments, or assignments that “can only be completed in class.”
7. On February 16, 2018, the IEP team convened and documented that there was disagreement between the complainant and the school-based members of the team with respect to how the extra time to complete assignments was to be implemented. Further, there is no documentation that the incomplete assignments were being provided on a daily basis. The school-based members of the team reported that it was their understanding that only those assignments that the student attempted to complete in class would be sent home for him to complete, which is not reflected in either the PWN or the IEP. The complainant reported that it was her understanding that *all* incomplete assignments would be sent home on daily basis. The IEP team did not clarify how the support was to be provided.
8. On April 18, 2018, the Franklin HS IEP team revised the IEP to clarify that the additional adult support staff would “assist the student with the use of a folder to organize his incomplete work that needs to go home for completion and submission.”

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CONCLUSIONS:

Additional Adult Support

Based on the Findings of Facts #4 and #5, the MSDE finds that there is documentation that the student was provided with additional adult support from the start of the 2017-2018 through March 2018, in accordance with 34 CFR §§300.101 and .323. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Provision of Extended Time

In this case, the complainant alleged that the school staff did not provide her with all the student's incomplete assignments as determined by the IEP team at the December 11, 2017 IEP team meeting.

Based on the Findings of Facts #6 - #8, the MSDE finds that the IEP was not written clearly with respect to the provision of extended time to complete assignments, until April 18, 2018, and that it was not provided consistently, in accordance with 34 CFR §§300.101, .320 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the school system to provide documentation by November 1, 2018 that the IEP team has determined the compensatory services or other remedy to remediate the violations identified through this investigation and developed a plan for the implementation of the services within one year of the date of this Letter of Findings.

The BCPS must provide documentation, within one (1) year of the date of this Letter of Findings that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2018-2019 school year of the steps taken to ensure that the XXXXXX and the XXXXXXXXXX staff make sure that re-evaluations are completed within the required timelines.

Further, the MSDE required the BCPS to provide documentation by the start of the 2018-2019 school year of the steps taken to ensure that the XXX staff make sure that each IEP is written clearly with respect to the services to be provided and is implemented consistent with the documentation of the IEP teams' decisions.

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The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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.

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 Free Appropriate Public Education (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: Verletta White
Conya Bailey
XXXXXXXXXX

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Dori Wilson
Anita Mandis

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