



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

July 20, 2018

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Dr. Debra Brooks
Director of Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #18-188

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 June 27, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City 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 proper procedures were followed when determining that the student does not require Extended School Year (ESY) services during the summer of 2018, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.
2. The BCPS did not ensure that proper procedures were followed when determining the student’s educational placement for the 2018-2019 school year, in accordance with 34 CFR §§300.114 - .116, .504, and COMAR 13A.05.01.10.

BACKGROUND:

The student is six (6) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

ALLEGATION #1 ESY DETERMINATION

FINDINGS OF FACTS:

1. On February 1, 2018 and April 19, 2018, the IEP team convened and documented that the student demonstrates “maladaptive and dangerous behaviors to self and others” requiring the services of adult support throughout the school day to provide supervision and “crisis intervention as needed.” The IEP team documented that the student has been responding to the structure of the program and additional adult support being provided. However, it also documented that the student had been demonstrating “additional dangerous and maladaptive behaviors that are of greater concern,” which required a Functional Behavioral Assessment (FBA) and updated Behavioral Intervention Plan (BIP).
2. At both the February 1, 2018 and April 19, 2018 IEP team meetings, the IEP team decided that the student’s IEP does not include annual goals related to critical life skills, that there is no presence of emerging skills or breakthrough opportunities, that the student does not demonstrate significant interfering behaviors, that the nature and severity of the student’s disability does not warrant the provision of ESY services, and that there are no special circumstances to consider.
3. At both the February 1, 2018 and April 19, 2018 IEP team meetings, the IEP team documented that the benefits the student receives from his education program during the regular school year will not be significantly jeopardized if the student is not provided with ESY services, and that the basis for the decision was that the student’s IEP does not include annual goals related to critical life skills.
4. The 2016-2017 IEP included goals that addressed the same skills as the 2017-2018 IEP. During the 2016-2017 school year, the IEP team determined that the goals in the areas of academics and communication addressed critical life skills, and that the student required ESY services for the summer of 2017.
5. On July 11, 2018, the IEP team reconvened to address the complainant’s concern that the student no longer requires ESY services. At that time, the team added information that the student made sufficient progress with supports during the regular school year and that he did not demonstrate regression of skills. However, the team did not address why the same skills that were addressed during the previous school year are no longer critical life skills for the student.

CONCLUSIONS:

In this case, the complainant expresses concern that the IEP team has decided that the student no longer requires ESY services when the student continues to have the same needs as he had when he had been found to require ESY services the previous summer.

Based on the Findings of Facts #1 - #5, the MSDE finds that the IEP continues to address the same skills as he did when he required ESY services, and that there is no documentation that the IEP team has clarified why these are no longer critical life skills for the student, in accordance with 34 CFR §§300.324 and .503.

In addition, based on the Findings of Facts #1 - #5, the MSDE finds that the IEP team's decision that the student does not demonstrate significant interfering behaviors is not consistent with the data, in accordance with 34 CFR §§300.324. Therefore, this office finds a violation with respect to the allegation.

ALLEGATION #2 PLACEMENT DETERMINATION

FINDINGS OF FACTS:

6. On February 1, 2018, the IEP team considered the student's educational placement and decided that, with the provision of supplementary aids and services, the Least Restrictive Environment (LRE) in which the IEP can be implemented is the separate special education classroom due to the student's need for a highly structured environment with behavioral support in a specialized program that is not available in the school he would attend if not disabled.
7. On April 19, 2018, the IEP team team considered the student's educational placement and decided that, with the provision of supplementary aids and services, the Least Restrictive Environment (LRE) in which the IEP can be implemented continues to be the separate special education classroom due to the student's need for a highly structured environment with behavioral support. However, the team decided that these services are available in the school that the student would attend if not disabled for the first grade for the upcoming 2018-2019 school year and the student does not require placement in a specialized program.
8. On July 11, 2018, the IEP team reconvened to address the complainant's concern that the student requires a specialized program that is not available in the school he would attend if not disabled. At that time, the team documented its determination that, while the student requires behavioral supports, he does not need the supports provided through a specialized program "(physical restraint, crisis intervention)." However, the IEP states that the student requires the services of adult support throughout the school day to provide supervision and "crisis intervention as needed."

DISCUSSION/CONCLUSIONS:

In this case, while the complainant does not dispute the decision about the LRE in which the IEP can be implemented, she expresses concern that the IEP team decided that the student no longer requires placement in a specialized program.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the start of the 2018-2019 school year that the IEP team has reviewed and revised the IEP, as appropriate, to clarify whether the student requires crisis intervention services, and that the student has a placement in which all IEP services can be implemented.

The MSDE requires the BCPS to provide documentation by November 1, 2018 that the IEP team has considered the student's need for ESY services consistent with the data. If the team determines that the IEP does not include annual goals related to critical life skills, it must provide the complainant with proper written notice of why the skills addressed by the goals are no longer critical life skills for the student. If the team determines that the student requires ESY services, it must determine the compensatory services or other remedy to redress the loss of ESY services during the summer of 2018.

School-Based

The MSDE requires the BCPS to provide documentation by November 1, 2018, of the steps it has taken to ensure that the violations identified in this investigation do not recur. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure future compliance.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Pries, Compliance Specialist, MSDE, 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 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:am

c: Sonja Brookins Santelises
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