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March 10, 2017

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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: #17-083

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 January 9, 2017, the MSDE received a complaint from Ms. XXXXXXXX and Mr. XXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants 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 has not developed an Individualized Education Program (IEP) that addresses the student’s identified academic needs since January 2016,¹ in accordance with 34 CFR §300.324.
2. The BCPS has not ensured that the student has been provided with the accommodations, supports, and services required by the IEP since January 2016¹, in accordance with 34 CFR §§ 300.101 and .323.

¹ While the complainants alleged that the violation has occurred for a longer period of time, they were informed, in writing, that only those violations of the IDEA that are alleged to have occurred

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within one year of the filing of a State complaint could be addressed through the State complaint process (34 CFR §300.153).

INVESTIGATIVE PROCEDURES:

1. On January 9, 2017, the MSDE received the State complaint and documentation to be considered.
2. On January 18, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
3. On January 20, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the student's mother to discuss the allegations.
4. On January 24, 2017, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Rider of the allegations to be investigated and requested that her office review the alleged violations.
5. On February 28, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, and Mr. Loiacono, conducted a site visit to the XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed Ms. XXXXXXXXXXXX, Special Education XXXXXXXXXXXX, BCPS, and Mr. XXXXXXXXXXXX, Special Education teacher, BCPS. Ms. Gloria Cooper-Blue, Resource Teacher, Office of Special Education, BCPS, attended the site visit as a representative and to provide information on the school system's policies and procedures, as needed.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated January 4, 2016;
 - b. IEP, dated December 19, 2016;
 - c. IEP meeting summary, dated January 4, 2016;
 - d. IEP meeting summary, dated December 19, 2016;
 - e. Progress reports, dated February 2016, April 2016, June 2016, November 2016, and January 2017;
 - f. Educational assessment report, dated November 25, 2015; and
 - g. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on January 9, 2017.

BACKGROUND:

The student is 13 years old and is identified as a student with a Specific Learning Disability, under the IDEA. She attends XXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

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During the time period covered by this investigation, the complainants were provided with written notice of the procedural safeguards (Docs. a and b).

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S ACADEMIC NEEDS

FINDINGS OF FACTS:

1. On January 4, 2016, when the student was in 7th grade, the IEP team convened and considered the results of the assessment data. The educational assessment report states that the student's overall reading skills are in the "low range," and identifies weaknesses in reading comprehension and fluency. The report states that the student's overall math skills are in the "very low range," and identifies weaknesses in solving word problems and math computations. The report states that the student's overall writing skills are in the "low range," and identifies weaknesses in paragraph organization. The IEP reflects that the team determined that the student was performing at the following instructional grade levels: reading 3.4, mathematics 2.0, and writing 3.7 (Docs. a and f).
2. The IEP goals were developed for the student to improve her reading vocabulary by defining words at 75% accuracy, her reading comprehension by reading passages with 60% accuracy, her math problem solving by solving math problems with 50% percent accuracy, and written language skills by composing oral, written, and visual presentations at sixty percent accuracy (Doc. a).
3. The IEP does not include a goal for the student to improve her reading fluency, but requires that the student be provided with extended time to complete tasks. The team did not document the basis for the decision to not work on improving the student's reading fluency skills (Docs. a - d).
4. The IEP states that the student's use of a calculator device for math computations with both a strength and weakness, without further explanation. While it requires that the student be provided with the use of a calculator, the IEP does not include a goal for the student to improve math computation. The team did not document the basis for the decision to not work on improving the student's math computation skills (Docs. a - d).
5. Reports were made from February 2016 to November 2016, which state that the student was making sufficient progress to achieve the annual IEP goals. The reports reflect the following performance:
 - a. Reading vocabulary:

February 5, 2016: defining words at 40% accuracy; the target accuracy is 75%;
April 13, 2016: defining words at 50% accuracy; the target accuracy is 75%;
June 8, 2016: defining words at 60% accuracy; the target accuracy is 75%; and
November 8, 2016: defining words at 50% accuracy; the target accuracy is 75%.

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b. Reading comprehension:

February 5, 2016: comprehension at 50 % accuracy; the target accuracy is 60%;
April 13, 2016: comprehension at 52% accuracy; the target accuracy is 60%;
June 8, 2016: comprehension at 60% accuracy; the target accuracy is 60%; and
November 8, 2016: comprehension at 40% accuracy; the target accuracy is 60%.

c. Mathematical processes:

February 5, 2016: solving with 42 % accuracy;the target accuracy is 50%;
April 13, 2016: solving with 50% accuracy; the target accuracy is 50%;
June 8, 2016: solving with 66% accuracy; the target accuracy is 50%; and
November 8, 2016: solving with 35% accuracy; the target accuracy is 50%.

d. Writing:

February 5, 2016: writing with 52 % accuracy; the target accuracy is 60%;
April 13, 2016: writing with 55% accuracy; the target accuracy is 60%;
June 8, 2016: writing with 60% accuracy; the target accuracy is 60%; and
November 9, 2016: progress not indicated; the target accuracy is 60%
(Docs. a and e).

6. On December 19, 2016, when the student was in the 8th grade, the IEP team convened and determined that the student was more than three grade levels below in reading, writing, and math. The IEP was revised to reflect that the student was performing at the following instructional grade levels: reading 2.0-3.0, math 2.0, and writing 3.0-4.0. The IEP team decided to continue to address the same skills through the IEP goals, but decreased the target accuracy for her performance in reading in order to demonstrate achievement of the goals. The IEP team also decided that special education instruction in math and English would be provided in a separate special education classroom in order to provide her with additional supports (Docs. b, d, e, and g).

7. Reports were made during the second quarter of the 2016-2017 school year, which state that the student was making sufficient progress to achieve the annual IEP goals. The reports reflect the following performance:

a. Reading vocabulary:

January 30, 2017: defining words at 40% accuracy; the target accuracy of 50%.

b. Reading comprehension:

January 30, 2017: comprehension at 35% accuracy; the target accuracy is 45%.

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c. Mathematical processes:

January 30, 2017: solving with 60% accuracy; the target accuracy is 70%.

d. Writing:

January 30, 2017: writing with 40% accuracy; the target accuracy is 65% (Doc. e).

DISCUSSION/CONCLUSIONS:

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that address 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 it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum (34 CFR §300.320).

The IEP must also include measurable annual goals that are designed to both meet the needs that arise out of the student's disability, and enable the student to be involved in and make progress in the general curriculum, which is defined as the same curriculum used for nondisabled students (34 CFR §300.320).

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 §300.324).

The United States Department of Education (USDOE) has explained that the annual goals must be aligned with the State's academic content standards for the grade in which the student is enrolled, and take into account a student's present levels of academic achievement and functional performance. In a situation in which a student is performing significantly below the level of the grade in which the student is enrolled, the USDOE explained that the IEP team should determine annual goals that are ambitious but achievable, and ensure that the IEP includes "specially designed instruction," which the USDOE defines as an "element of special education instruction," that includes the following:

Adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children [Emphasis added] (34 CFR §300.39 and *USDOE Dear Colleague Letter*, dated November 16, 2015 and Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, August 14, 2006, p. 46662).

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Based on the Findings of Facts #3 - #5, and #7, the MSDE finds that there is no documentation that the IEP has addressed the areas of reading fluency and math computation, where needs have been identified and goals have not been developed for the student to improve these skills.

Further, based on the Findings of Facts #1 - #7, the MSDE finds that, while the student has made progress towards achievement of the annual goals, that progress has not resulted in an improvement of the student's skills in the areas addressed by the goals. Therefore, this office finds that the goals are not designed to assist the student in progressing through the general curriculum. For these reasons, the MSDE finds that a violation occurred with respect to the allegation.

ALLEGATION #2: THE PROVISION OF ACCOMMODATIONS

FINDINGS OF FACTS:

8. The student's IEP requires the following:

Instructional and Testing Accommodations:

- Human reader or audio recording of selected sections of test;
- Scribe;
- Mathematical tools and calculation devices;
- Extended time: time and a half; and
- Reduce distractions to the student.

Supplementary Aids, Services, Program Modification and Supports:

- Allow use of organizational aids, periodically;
- Limit amount to be copied from board, periodically;
- Student repeat and /or paraphrase information, periodically;
- Altered/modified assignments, periodically;
- Breakdown assignments into smaller units, periodically;
- Chunking of texts, periodically;
- Encourage student to ask for assistance when needed, daily;
- Preferential seating, daily; and
- Adult support, periodically (Docs. a, b, and a review of the student's record).

9. While there is documentation that the accommodations and supports required by the student's IEP were at times made available since January 2016, there is no documentation that the accommodations were consistently provided with the frequency required by the IEP (Docs. a, b, g, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §§300.101 and .323).

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Based on the Findings of Facts #8 and #9, the MSDE finds that there is no documentation that the services and supports were consistently provided to the student with the frequency required by the IEP. Therefore, this office finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by April 30, 2017, that the supplementary aids and services required by the student's IEP are being consistently provided, in accordance with the IEP.

The MSDE also requires the BCPS to provide documentation, by May 30, 2017, that the IEP team has taken the following action:

- a. Determined the student's present levels of performance in all academic areas; and
- b. Determined the compensatory services needed to accelerate the narrowing of the gap between the student's present levels of performance and grade level expectations within one year of the date of this Letter of Findings.

The BCPS must provide documentation that the compensatory services have been provided within one year of the date of this Letter of Findings.

The BCPS must ensure that the complainants are provided with written notice of the team's decisions. The complainants maintain 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 June 30, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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

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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.

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
Denise Mabry
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