



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

April 4, 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: #18-051

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.

On December 7, 2017, 2017, the MSDE received a complaint from Ms. XXXXXXXXX, 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 student.

At the time MSDE received the complaint, the complainant had filed a request for a due process hearing with the Maryland Office of Administrative Hearings (OAH) on the same issues raised in the complaint. On December 12, 2017, the MSDE sent correspondence to the complainant identifying the allegations for investigation, should a State complaint investigation be initiated. That correspondence informed the complainant that, in accordance with the IDEA, the complaint would be held in abeyance until the conclusion of the due process hearing.

On February 14, 2018, the MSDE received correspondence from the OAH indicating that the complainant had withdrawn her due process hearing request. On February 23, 2018, the MSDE sent correspondence to notify the complainant that, because the due process hearing would not proceed, the State complaint investigation was initiated.

ALLEGATIONS:

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student's teachers meet the State requirements for certification as instructors of special education, since the student began attending XXXXXXXXXXXXXXXXXXXXXXXX during the 2017 – 2018 school year, in accordance with 34 CFR §300.156.
2. The BCPS has not ensured that the student's Individualized Education Program (IEP) has been implemented, since the student began attending XXXXXXXXXXXXXXXXXXXXXXXX XXXX during the 2017 – 2018 school year, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS has not ensured that the student's IEP has included a statement of the student's present levels of academic achievement and functional performance and measurable annual goals designed to enable him to make progress in the general curriculum, since the student began attending XXXXXXXXXXXXXXXXXXXXXXXX during the 2017 – 2018 school year, in accordance with 34 CFR §300.320.

BACKGROUND:

The student is fourteen (14) years old and is identified as a student with an Intellectual Disability under the IDEA. He has an IEP that requires the provision of special education and related services and attends XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). Prior to enrolling in the BCPS at the end of the 2016 - 2017 school year, the student was enrolled in the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX.

XXXXXXXXXXXXX is the third (3rd) BCPS school that the student has attended since the start of the 2017 - 2018 school year. At the start of the 2017 - 2018 school year, the student attended XXXXXXXXXXXXXXXXXXXXXXXX. On September 19, 2017, the student was placed/transferred to XXXXX XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX), at the complainant's request. He remained at XXXXXXX XXX until he was placed/transferred to XXXXXXXXXXXXXXXX on November 10, 2017. This transfer was also made at the request of the complainant.

**ALLEGATION #1 CERTIFICATION OF THE STUDENT'S SPECIAL
EDUCATION TEACHER**

FINDING OF FACT:

1. The student's special education teacher has held a Maryland Educator Certificate documenting that she meets the State requirements for certification in special education since the time the student enrolled at XXXXXXXXXXXXXXXX.

CONCLUSION:

Based on the Finding of Fact #1, the MSDE does not find a violation of this allegation.

ALLEGATIONS #2 AND #3

**IMPLEMENTATION OF THE XXXXX IEP
AND DEVELOPMENT OF BCPS IEP**

FINDINGS OF FACTS:

2. The student began attending XXXXXXXXXXXX on November 10, 2017. At the time, he had an IEP developed more than one (1) year earlier in XXXXX that requires the provision of special education and services, which is dated October 26, 2016 (XXXXX IEP).
3. On November 10, 2017, the XXX IEP was provided to the special education teacher assigned to the student's core academic courses.
4. On November 13, 2017, the complainant requested an IEP meeting to review the XXXX IEP. The school staff scheduled an IEP team meeting to convene on December 8, 2017.
5. The complainant came to the December 8, 2017 IEP team meeting but requested that it be rescheduled.¹ The school system staff explained that it was necessary for the meeting to continue for the purpose of reviewing the XXXX IEP and ensuring the development of an appropriate BCPS IEP for the student.
6. The IEP team meeting was held without the participation of the complainant. The school staff documented that the complainant "remain[ed] in the building during the duration of the meeting."
7. The IEP team reviewed the XX IEP. The XXX IEP reflects data obtained more than one (1) year prior to the student's enrollment in XXXXXXXXXXXX, indicating that he has needs in the areas of reading, written expression, math, and difficulty with completing assignments and remaining on task.
8. The IEP team also discussed the student's inconsistent attendance. At the time of the meeting, the student's attendance record documents that was absent on six (6) of seventeen (17) school days since he enrolled in XXXXXXXXXXXX. The school staff documented that the team had "limited" information about the student's performance and progress due to his "limited enrollment history."
9. The IEP team adopted the XXX IEP, but decided that additional information was needed to identify accurate levels of the student's academic achievement and functional

¹ The complainant requested that the IEP meeting not take place until the issuance of a hearing decision on a due process complaint that was pending, which the complainant subsequently withdrew.

performance in order to ensure the development of appropriate goals to assist the student with accessing the general education curriculum. The IEP team recommended an

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academic assessment, assessments of the student's cognitive and social, emotional, and behavioral skills, as well as a functional behavior assessment, and prepared a notice to obtain the complainant's consent.

10. On December 18, 2017, the complainant stopped sending the student to school.
11. Since January 10, 2018, there have been several unsuccessful efforts by the school staff to convince the complainant to provide consent for assessments.
12. There is documentation that the school system staff, including staff in the Office of Enrollment, Choice, and Transfers, have been in, and are continuing discussions with the complainant to identify another school location for the student in order to convince her to return the student to school. If a transfer is authorized, it will be the fourth (4th) BCPS school that the student has attended since the start of the 2017 - 2018 school year.

DISCUSSION/CONCLUSIONS:

Allegation #1: Implementation of the XXXXX IEP

Based on the Findings of Facts #2 - #12, the MSDE finds that the student has not attended school on a consistent basis since he enrolled at XXXXXXXXXXXX in early November 2017, and has not attended school at all since late December 2017. Therefore, while this office finds that the student has not been receiving special education and related services, it does not find that a violation has occurred.

Allegation #2: Development of an Appropriate IEP

In this case, the complainant asserts that the IEP does not include updated information about the student's current performance levels and goals based on curriculum at the seventh (7th) grade level, the level at which she believes he should be receiving instruction.

Based on the Findings of Facts #2 - #10, the MSDE finds that the BCPS has made repeated attempts to obtain consent to conduct formal assessments to obtain information about the student's present levels of academic, cognitive, and behavioral functioning. While the IEP team determined that these assessments are necessary to develop goals that will enable the student to progress through the general education curriculum, the complainant has not provided consent for testing.

Based on the Findings of Facts #2, #8 and #11, the MSDE further finds that the student's lack of attendance has not allowed for the school staff to identify any informal levels of the student's performance and functioning. Therefore, while this office finds that the BCPS does not have

current information about the student's present levels of performance to ensure that the IEP is appropriate, it does not find that a violation occurred with regard to this allegation.

ADDITIONAL DISCUSSION:

In order for a student to receive a Free Appropriate Public Education (FAPE), the public agency must ensure that the student is provided with an IEP that addresses his identified needs (34 CFR §§300.101, .320 and .324).

While the parents are equal participants in the IEP process, and are to be afforded the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement, and a FAPE to a student, the school system has the ultimate responsibility for ensuring the provision of a FAPE to the student (*Letter to Simon*, 211 IDELR 436, United States Department of Education, Office of Special Education Programs, 1987).

Based on the above Findings of Facts, the MSDE finds that the complainant's refusal to provide consent for assessments, and the student's lack of attendance, have resulted in a delay in identifying the student's current needs to ensure the development and implementation of an IEP that offers the student a FAPE. The complainant is urged to work cooperatively with the school system, and the school system is reminded of the requirements of Maryland law with respect to compulsory attendance.

TIMELINE:

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.

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

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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: Sonja B. Santelises
Darnell Henderson
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