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February 5, 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: #18-057

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 December 13, 2017, the MSDE received a complaint from Ms. XXXXXX, hereafter, “the complainant,” on behalf of her son, 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 has not ensured that the student has consistently been provided with the following services and supports required by the Individualized Education Program (IEP) during the 2017-2018 school year, in accordance with 34 CFR §§300.101 and. 323:
 - a. Teacher notes, limited copying from the board, and counseling services;
 - b. English Language Arts (ELA) instruction in the general education classroom; and
 - c. Special education instruction in a separate special education classroom.

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2. The BCPS did not ensure that the IEP team considered the complainant's concerns raised at the IEP team meeting held on November 9, 2017, in accordance with 34 CFR §300.324.
3. The BCPS did not provide the complainant with documents at least five (5) business days prior to the IEP team meeting held on November 9, 2017, in accordance with COMAR 13A.05.01.07.
4. The BCPS has not ensured that reports of the student's progress towards achievement of the annual IEP goals during the 1st quarter of the 2017-2018 school year have been provided based on the data required by the goals, in accordance with 34 CFR §§300.101 and 323.

BACKGROUND:

The student is 11 years old and is identified as a student with a Specific Learning Disability, under the IDEA, that impacts his reading and writing, and results in anxiety. He attends XXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services.

ALLEGATIONS #1 AND #2: THE PROVISION OF SUPPORTS AND SERVICES AND CONSIDERATION OF PARENTAL CONCERNS AT THE NOVEMBER 9, 2017 IEP TEAM MEETING

FINDINGS OF FACTS:

1. The IEP in effect during the 2017-2018 school year requires that the student be provided with the following supports and services:
 - a. A copy of teacher notes or notes from a designated peer;
 - b. Limited amount of work to be copied from the board on a weekly basis;
 - c. Consult to be provided by the guidance counselor to assist the student and teachers with managing his anxiety, and to provide strategies and assistance in navigating negative social situations;
 - d. English Language Art (ELA) support in the general education classroom, five (5) times each week, for thirty (30) minutes each, by a general or special education teacher, or an instructional assistant; and

- e. Reading phonics instruction in a separate special education classroom, two (2) times each week, for thirty (30) minutes each, by the special education teacher or instructional assistant.
2. Some, but not all of the student's teachers maintained an *Instructional Accommodations and Modification Matrix* documenting the supports that are provided to the student each week. The documents that were maintained indicate that the student was not consistently provided with a copy of teacher or student notes or limited copying from the board, in all classes, as required by his IEP.
3. There is no documentation that guidance counseling consultation was provided as required by the IEP.
4. At the November 9, 2017 IEP team meeting, the team met to discuss the student's progress since transitioning to middle school. The audio recording from the meeting reflects that the complainant raised concern about the provision of the student's ELA service and supports in the general education classroom. The school staff stated that the service is provided to the student by the general education teacher in collaboration with the special education teacher and that the service is provided in multiple classes. However, the school staff stated that the service and supports are provided to the student "if he needs them" and that they are not provided if he is performing well. The complainant expressed concern about this and indicated that she expects that supports will be provided in the amount and frequency stated in the IEP. There is no documentation that the team clarified how the amount and frequency of the service would be provided.
5. There is documentation that the student is being provided with special education instruction in reading in a separate special education classroom.

CONCLUSIONS:

Allegation #1:

Provision of Teacher/Student Notes and Limited Copying from the Board

Based on the Findings of Facts #1 and #2, the MSDE finds that the student has not been consistently provided with a copy of teacher or student notes, or limited copying from the board in all classes, as required by the IEP, in accordance with 34 CFR §§300.101 and 323. Therefore, this office find that a violation occurred with respect to this aspect of the allegation.

Provision of Guidance Counseling Services

Based on the Findings of Facts #1 and #3, the MSDE finds that guidance counseling consultation was not provided as required by the IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

Provision of ELA Services in the General Education Classroom

Based on the Findings of Facts #1 and #4, the MSDE finds that the student is not being provided with ELA support services in the general education classroom, in the amount and with the frequency required by the IEP, in accordance with 34 CFR §§300.101, .323 and .324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegations.

Provision of Special Education Instruction

Based on the Findings of Facts #1 and #5, the MSDE finds that the student is being provided with special education instruction in reading, in a separate special education classroom, 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.

Allegation #2:

Consideration of Parental Concerns at the November 9, 2017 IEP Team Meeting

Based on the Finding of Fact #4, the MSDE finds that the IEP team did not respond to the complainant's concern with regard to the implementation of the ELA services, in accordance with 34 CFR §300.324. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #3: PROVISION OF DOCUMENTS PRIOR TO AN IEP TEAM MEETING

FINDINGS OF FACTS:

6. The meeting invitation reflects that the purpose of the IEP team meeting held on November 9, 2017 was to discuss how the student's transition to middle school was progressing and to review and revise the IEP, as appropriate.
7. On November 6, 2017, the complainant requested that the school system staff who conducted a classroom observation develop a report of what was observed for consideration by the IEP team on November 9, 2017. In response, the school staff member developed a written report of those observations and provided it to the complainant on November 6, 2017.

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8. The complainant also requested that a draft IEP be developed that included updated information on the student's present levels of performance for consideration by the team at the November 9, 2017 IEP team meeting. However, the school staff did not develop a draft IEP for review at the November 9, 2017 meeting.

CONCLUSION:

Based on the Findings of Facts #6 and #8, the MSDE finds that the IEP team was not required to develop a draft IEP for consideration by the team at the November 9, 2017 IEP team meeting, in accordance with COMAR 13A.05.01.07. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Further, based on the Finding of Fact #7, the MSDE finds that, at the complainant's request, the school staff developed a written report of the information that was intended to be provided verbally at the November 9, 2017 IEP team meeting. Based on the Finding of Fact #7, the MSDE further finds that the school staff provided the complainant with the report on the same day as the complainant requested that the report be developed. Therefore, this office does not find that a violation of COMAR 13A.05.01.07 occurred with respect to this aspect of the allegation.

ALLEGATION #4: PROGRESS REPORTS BASED ON DATA REQUIRED BY THE IEP

FINDING OF FACT:

9. In November 2017, the progress reported on the student's annual goals state that he is making sufficient progress to achieve the goals. However, the information contained in the reports does not demonstrate that the goals are being measured in the manner required by the IEP.

CONCLUSION:

Based on the Finding of Fact #9, the MSDE finds that the progress reported on the goals is not consistent with the measurement used to determine whether the student is making progress on the goals, in accordance with 34 CFR §§300.101 and .323. Therefore, the MSDE finds that a violation occurred.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation by April 1, 2018 that the IEP team has considered the complainant's concerns about the manner in which ELA support is to be provided in the general education classroom and that it has reviewed and revised the IEP, as appropriate, to ensure that it is written clearly with respect to the provision of ELA support in the general education classroom. The BCPS must also provide documentation that the IEP team has

determined the compensatory services or other remedy to redress the violations identified in this investigation.

The MSDE further requires the BCPS to provide documentation by April 1, 2018 of the following:

- a. That the student is being consistently provided with the services and supports required by the IEP in all classes;
- b. That the guidance counseling consultation services required by the IEP are being provided; and
- c. That the student's progress towards achievement of the annual IEP goals is being measured as stated in the IEP.

The IEP team must develop a plan for the provision of those services within one year of the date of this Letter of Findings.

School-Based

The MSDE requires the BCPS to provide documentation by May 1, 2018, of the steps taken to ensure that the XXXXXXXXXXXXXXXX staff properly understand and implement the following requirements:

- a. The provision of special education instruction in the general education classroom, and supplementary aids and services;
- b. The provision of prior written notice and all the contents required by the IDEA; and
- c. That the reporting of IEP annual goal progress is based on the measurement used to determine whether the student is making progress on the goals.

The documentation must include a description of how the BCPS 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 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.

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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
XXXXXX
Dori Wilson
Anita Mandis
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