



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

December 12, 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: #19-047

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Early Intervention and Special Education Services, 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.

ALLEGATION:

On October 15, 2018, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter “the complainant,” on behalf of 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.

The MSDE investigated the allegation that the BCPS has not ensured that proper procedures have been followed to fulfill its Child Find obligation to identify the student as a student with a disability under the IDEA, since the start of the 2018 – 2019 school year, in accordance with 34 CFR §§300.8, .111 and .112.

BACKGROUND:

The student is four (4) years old and attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). The student was identified as a student with a disability under the IDEA by the Harford County Public Schools (HCPS) and has an Extended Individualized Family Service Plan (IFSP).

FINDINGS OF FACTS:

1. On July 12, 2017, while the student was receiving early intervention services through the Harford County Infants and Toddlers Program (HCITP), the HCPS identified the student as a student with a disability under Part B of the IDEA and an Extended IFSP was developed.
2. In March 2018, the complainant enrolled the student in the Baltimore City Infants and Toddlers Program (BCITP) after moving to Baltimore City.
3. On April 24, 2018, the BCITP referred the student to the BCPS for an evaluation under Part B of the IDEA. The referral form documents that the complainant informed the BCITP that the student had been receiving services through the HCITP. However, there is no indication that the BCITP was aware that the HCPS had already identified the student as a student with a disability under Part B of the IDEA.
4. On June 26, 2018, without taking proper steps to ensure that the complainant had the opportunity to participate¹ and without attempting to obtain the record from the HCITP and the HCPS, the BCPS convened an IEP team meeting and conducted an evaluation. Although the student had already been identified as a student with a disability under the IDEA by the HCPS, the BCPS determined that the student did not meet the criteria for identification as a student with a disability under the IDEA. The student was referred to the the Student Support Team² (SST) to consider the provision of interventions in the general education program to address behaviors including noncompliance and inattention that were identified in the data.
5. On September 4, 2018, the complainant completed the Student Registration Form to enroll the student at XXXXXXXXX. While the complainant did not check the box on the form to indicate that she has an IEP or IFSP, the complainant checked other boxes on the form indicating that the student has Attention Deficit Hyperactivity Disorder (ADHD), has/had a serious injury or trauma exposure, and has/is receiving occupational therapy.
6. September 13, 2018 was the student's first day of attendance at XXXXXXXXX. On the same date, the student's teacher documented that the student's behavior was inappropriate and that her speech "sounds appear to be distorted." The teacher submitted a written request to the school staff for informal observation and screening.

¹ While there is documentation that the school system staff sent written correspondence to the complainant, and attempted to contact the complainant by telephone, there is no documentation of visits by the school system staff to the complainant's home or place of employment to convince her to attend the IEP team meeting in order to ensure her opportunity to participate in the meeting, in accordance with 34 CFR §300.322.

² The BCPS has procedures in place to address the academic and behavioral needs of students who are not suspected of having a disability, including convening a Student Support Team (SST) to consider interventions that can be provided in the general education program.

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7. Also on September 13, 2018, the complainant completed a written request for a “Child Find” evaluation of the student.
8. On September 17, 2018 the school system staff observed the student in the classroom and documented her display of interfering behavior, including yelling, noncompliance, pushing peers, crying, as well as articulation errors and difficulty with peer interaction. The school system staff observed classroom interventions, including repetition of directions, modeling, frequent praise for on-task behavior, preferential seating, and frequent reminders of classroom rules. The school system staff recommended that the IEP team convene in order to determine whether a disability is suspected.
9. On September 20, 2018, the student’s teacher completed a “Child Find Referral” form indicating student concerns in the areas of articulation, expressive language, motor skills and social, emotional and behavioral skills. The referral reflects that the student leaves the classroom and playground, has difficulty interacting with peers and school staff, screams, and knocks over chairs and materials, and notes, per parent report, that the student has been diagnosed with ADHD and trauma. It also documents the use of a schedule and a reward system as interventions being used with the student.
10. On September 25, 2018, the school staff sent the complainant a written invitation notice for an IEP team meeting scheduled on October 30, 2018.
11. On October 30, 2018, the IEP team convened. The IEP team discussed that the student is demonstrating difficulty with transitions, inattentiveness, noncompliance with directions, eloping, screaming, crying, throwing her shoes, calling out and difficulty with peer interactions. The complainant explained that the student has had “several” daycare placements since age one (1) to one and a half (1.5) years old, and that the student’s inappropriate behaviors of aggression, crying, screaming, throwing objects and hitting adults have contributed to the moves. The complainant also reported that the student attends Johns Hopkins Bayview Center on a weekly basis for assistance with pre-academic and behavior related skills.
12. The IEP team determined that additional data is needed to determine the student’s present levels of academic achievement, developmental needs, strengths and weaknesses. The IEP team recommended educational, cognitive, and speech/language assessments, as well as an observation of the student’s social, emotional and behavioral skills. The complaint provided written consent.
13. The IEP team agreed to collect daily data on the student’s behavior and continued use of interventions to support the student in the classroom.
14. The IEP team is scheduled to convene on December 12, 2018 to review the results of the assessments and observation, and to determine the student’s eligibility for special education services.

CONCLUSION:

Based on the Findings of Facts #1 - #14, the MSDE finds that the BCPS did not take appropriate steps to obtain the student's educational record or to ensure parent participation in the evaluation process, in accordance with 34 CFR §§300.305, .322, .323 and .324, COMAR 13A.08.02, and the *Maryland Student Records System Manual*. As a result, this office finds that there has been a delay by the BCPS in its implementation and review of the Extended IFSP, or the development of an IEP, for the student who is already identified as a student with a disability under Part B of the IDEA. Therefore, this office finds that a violation occurred.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by February 1, 2019, that the IEP team has convened and taken the following actions:

1. Taken appropriate steps to obtain the complainant's consent to obtain the student's educational records from the HCPS, and taken all steps necessary to ensure that all of the student's educational records have been obtained from the HCPS;
2. Informed the complainant of her program options, including an explanation of the differences between early intervention services through an Extended IFSP and special education services through an IEP;
2. Reviewed and revised, as appropriate, the Extended IFSP, or developed an IEP that addresses the student's identified needs if the complainant chooses to have services provided through an IEP; and
3. Determined the amount and nature of compensatory services to the student for the loss of services since April 2018, and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

Systemic

The MSDE requires the BCPS to provide documentation by March 1, 2019, of the steps taken to ensure that all educational records of students who are referred by the BCITP are obtained. 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 reoccur. Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Early Intervention and Special Education Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, 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.

The complainant maintains 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 Early Intervention and Special Education Services

MEF/ksa

c: Sonja Santelises
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