



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

August 16, 2019

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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: XXXXXXXXX and
Similarly Situated Students
Reference: #19-176

Dear Parties:

The Maryland State Department of Education, Division of Early Intervention and Special Education 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 June 17, 2019, the MSDE received a complaint from Mr. XXXX, XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced students. 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 students.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that proper procedures were followed when determining the students’ educational placements, in accordance with 34 CFR §§300.114 - .116, .321, .324, and COMAR 13A.05.01.10.

2. The BCPS did not ensure that Prior Written Notice (PWN) was provided of the proposed educational placements, in accordance with 34 CFR §300.503.

BACKGROUND:

The named student is fourteen (14) years old and is identified as a student with an Emotional Disability under the IDEA. The named student and similarly situated students have Individualized Education Programs (IEPs) that require the provision of special education and related services.

The named student and similarly-situated students attended XXXXXXXX School during the 2018-2019 school year, and are assigned to XXXXXXXX School for the 2019-2020 school year.

FINDINGS OF FACTS:

General

1. The students are currently placed by the local Departments of Social Services at the XXXXXXXXXXXX, a residential treatment center. The complainant serves as the educational advocate for students placed at the XXXXXXXXXXXX.
2. When a student transitions from middle school to high school within the BCPS, the IEP team convenes with participation by staff from the high school to which the student is assigned, which is called a “progression meeting.” The purpose of the meeting is to review the IEP with the high school staff to ensure that the IEP can be implemented at the high school. If it is determined that it cannot be implemented in that school, the IEP team considers making a change to the student’s placement.
3. When a change in placement is being considered by the IEP team, the team sends a report to the BCPS Central Office through the electronic Student Planning System (SPS), which is called a “placement document.” This document describes the placement options being considered by the team and the basis for them. The BCPS Central Office staff review the placement document and the student’s educational record in order to provide feedback regarding whether there is sufficient data to support placement options being considered and whether any other options are available for the IEP team’s consideration.
4. The BCPS offers various service delivery models within its schools, which are designed to address specific student needs. At many schools, including XXXXXXXX School, there is a service delivery model called Social Emotional Learning (SEL), which is available for students who have significant social and emotional difficulties that adversely impact school success. This service delivery model offers a supportive and structured learning environment, a behavior management system, social skills instruction,

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counseling, conflict resolution, restorative practices, and crisis prevention and intervention.

5. The BCPS also provides some of its schools with more intensive social, emotional, and behavioral supports through the Social Emotional Learning Support Regional Program service delivery model (Regional SEL Program). Many of the students who receive instruction through the Regional SEL Program at the secondary school level have previously received instruction using the SEL service delivery model, but did not meet with success. The Regional SEL model provides a highly structured environment with consistent and intensive behavior management and modifications to maximize the student's learning availability and achievement. The students receive integrated social, emotional/mental health supports and services in both the general and special education classrooms depending on their educational placement, and progress is reviewed continually to maximize access with non-disabled students.
6. There is documentation that the BCPS Central Office staff have met with the XXXX XXXXXXXXXXXX staff to begin implementation of a Regional SEL service delivery model in that school, and that additional staffing is being provided to the school for the 2019-2020 school year to support its implementation. The documentation states that the BCPS Central Office will collaborate with the school administration to support a successful transition for students, to include leading and facilitating faculty meetings, scheduling visits for the school staff to visit the programs already being implemented in other schools, and providing Applied Behavior Analysis training for school staff.
7. There is documentation that the XXXXXX School staff visited XXXXX School on April 18, 2019 to observe its Regional SEL service delivery model at that school.
8. There is documentation of the ongoing training conducted by the BCPS Central Office for teachers, support staff, and administrators using the Regional SEL service delivery model.

The Named Student

9. When the named student began attending XXXXXXXXXXXXXXXXXXXX on May 9, 2019, she had an IEP from the Baltimore City Public Schools that required five (5) hours per week of special education instruction in the general education classroom and one (1) hour per month of social work services.
10. On May 23, 2019, the IEP team at XXXXXXXXXXXXXXXXXXXX convened and considered information that the student was not attending school regularly, and that when she did attend, she refused to go to her classes. The IEP team decided that the annual goals remained appropriate, but that the student required fifteen (15) hours of special education

instruction per week in a separate special education classroom, as well as thirty (30) minutes of counseling services per week in order to achieve them.

11. On June 17, 2019, the IEP team reconvened and documented that it considered information that the student continued to not attend school regularly, that she has a history of “severe trauma” that has resulted in very low frustration tolerance, poor impulse control, increased aggressiveness, and a poor self image. The team also documented that it considered that the student had numerous psychiatric hospitalizations due to suicidal ideation and attempts.
12. The written summary of the June 17, 2019 meeting states “The team put in a placement document for [the student] and recommended a more supportive placement.” It also states that the BCPS Central Office staff reviewed the placement document and “recommended the Regional Social Emotional Support class at XXXXXXXXXXXXXXXXXXXX, according to [XXXXXXXXXXXXXXXXXXXX staff].” The team documented that at that time, the complainant expressed concern that the BCPS Central Office staff, who was not a member of the IEP team, had appeared to have made the educational placement determination prior to the IEP team meeting.
13. A review of the electronic SPS placement document reflects that, on June 14, 2019, the XXXXXXXXXXXXXXXXXXXX staff submitted information to the BCPS Central Office staff that the school-based members of the IEP team would like for the team to consider placement in a Regional SEL Program. The submission reflects the same information about the student that the IEP team documented that it considered at the June 17, 2019 IEP team meeting.
14. At the June 17, 2019 IEP team meeting, the team documented that it also considered a nonpublic school placement at the complainant’s request, but decided that the Least Restrictive Environment (LRE) is a separate special education classroom where instruction is providing using the Regional SEL service delivery model. The IEP team documented that it decided that “there was not enough data to support [a nonpublic placement] so the plan is to have [the student] attend the program at XXXXXXXXXXXX and give the team an opportunity to collect that data to make an informed decision on [the student’s] placement.” The IEP team agreed to review the student’s progress and to consider a more restrictive placement after the student had the opportunity to receive additional supports in that placement.
15. On June 27, 2019, the IEP team for the named student reconvened in order to address the concerns raised in the State complaint. At that meeting, the team discussed the process of having school-based members of IEP teams consult with the BCPS Central Office staff about the services that are available within specific schools, and clarified that the IEP team determines the educational placement. The IEP team documented that “potential sites of services are provided by [the BCPS Central Office staff].”

16. At the June 27, 2019 IEP team meeting, the complainant expressed concern about the placement decision because the student was unable to attend school regularly when placed at XXXXXXXXXXXXXXXXXXXX in a separate special education classroom, and he questioned the additional supports that will be available at XXXXXXXXXXXXXXXXXXXX. Because the IEP team did not include staff who could address the complainant's questions about services at XXXXXXXXXXXXXXXXXXXX, the team agreed to reconvene with staff from XXXXXXXXXXXXXXXXXXXX. The team also recommended that a Functional Behavioral Assessment (FBA) be conducted.
17. On July 15, 2019, the IEP team reconvened with participation by staff from XXXXXXXX XXXXXXXXXXXX staff. The team documented its discussion that the student had not been available to complete the FBA recommended on June 27, 2019, but that continued efforts would be made to do so during the provision of Extended School Year (ESY) services.
18. The documentation of the July 15, 2019 IEP team meeting reflects that the team updated the student's present levels of performance with the data provided by the complainant and the school staff, and decided that the student will be provided with additional adult support in a highly structured program to address her social, emotional, and academic needs. The complainant expressed concern that the student requires additional special education instruction in a smaller school environment due to her past trauma. The team documented that it decided that the student's needs in this area can be addressed through use of alternate lunchroom options to reduce transitions. The team also increased the amount of social work services to be provided to the student.
19. At the July 15, 2019 IEP team meeting, the team documented that it decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented continues to be a separate special education classroom, but that she requires the social, emotional supports that are available through instruction provided using a Regional SEL service delivery model. The team documented that this will provide her with more intensive services from staff with expertise and training in evidence-based behavioral practices, a low student to teacher ratio, increased supervision, integrated social skills instruction, and access to crisis intervention.
20. The IEP team documented that at the July 15, 2019 IEP team meeting, the XXXXXXXX XXXXXXXXXXXX staff answered the complainant's questions about the supports that will be available at the school. The team again considered the complainant's request for a separate nonpublic special education school placement, and rejected it based on the reports of the school-based members of the team that the additional supports available at XXXXXXXX XXXXXXXXXXXX should be attempted before transitioning to a more restrictive environment.

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21. The IEP states that the student was to be provided with ESY services to support academic and emotional functioning from July 8, 2019 until August 2, 2019. However, the revisions to the IEP from the July 15, 2019 IEP team meeting were not finalized and written notice of the decisions made by the IEP team on July 15, 2019 was not mailed to the parent until August 9, 2019. The BCPS staff report that the delay was the result of the school staff not obtaining appropriate authorization to close the electronic documents in a timely manner.

Student XXX

22. When XXX. began attending XXXXXXXXXXXXXXXXXXXX on May 14, 2019, he had an IEP from the Cecil County Public Schools (CCPS) that required one (1) hour and twenty (20) minutes of special education instruction per week in the general education classroom, forty-five (45) minutes of special education instruction per week in a separate special education classroom, and two (2) hours and thirty (30) minutes of speech/language services per week.
23. On May 23, 2019, the IEP team at XXXXXXXXXXXXXXXXXXXX convened and considered information about the student's progress. At the meeting, the team discussed that staff from the XXXXXXXXXXXX was providing the student with one-on-one support while at school at the request of staff from the Cecil County Department of Social Services (CCDSS). The team also discussed that the student's schedule was modified to ensure that he had no unstructured time at the request of the CCDSS, and that the CCDSS stated that these supports were needed to ensure the safety of the student and other students. The team further discussed that the student was receiving instruction using the SEL service delivery model, and that he was making "steady progress."
24. Based on the reports of the student's progress, the IEP team revised the goals and decided that the student requires twenty-two and one-half (22.5) hours of special education instruction per week in a separate special education classroom, and related speech/language, social work, and occupational therapy services. At the meeting, the complainant reported that a progression meeting was being scheduled with XXXXXXXX XXXXX.
25. On June 5, 2019, the IEP team held a progression meeting with representation from XXXXXXXXXXXXXXXX staff. At the meeting, the XXXXXXXXXXXXXXXX staff reported that they did not have the same level of supports that were being provided through the SEL service delivery model at XXXXXXXXXXXXXXXX, and that they did not believe that they could implement the IEP. The complainant indicated that he would be seeking a change in educational placement.
26. On June 17, 2019, the IEP team XXXXXXXXXXXXXXXX convened. At the meeting, the complainant requested a nonpublic separate special education school, which the team denied because it did not have data that the IEP could not be implemented with the additional supports available in the separate special education classroom using a Regional

SEL service delivery model. A school-based member of the team reported that the BCPS Central Office staff informed him that the Regional SEL service delivery model was available XXXXXXXXXXXXXXXXXXXX. The team documented that at that time, the complainant expressed concern that the BCPS Central Office staff, who was not a member of the IEP team, had appeared to have made the educational placement determination prior to the IEP team meeting.

27. On July 17, 2019, the IEP team reconvened with participation by staff from XXXXXXXX XXXXXXXX. The IEP team documented that it considered additional information from the complainant about the student's needs and discussed the revisions to be made to the IEP to address these needs.
28. The team documented that it considered the complainant's concern that the student experienced continued difficulty at XXXXXXXXXXXXXXXXXXXX even with the use of the SEL service delivery model and that he believes that the supports of the Regional SEL service delivery model at XXXXXXXXXXXXXXXXXXXX will not be sufficient. The school-based members of the team responded that the student will have staff with social, emotional learning training, that he can be provided with a private bathroom, as appropriate, that adjustments can be made to his seat in the cafeteria, and that he will be provided with small group instruction. Based on the information from the school staff, the team decided that the student would be placed at XXXXXXXXXXXXXXXXXXXX, where instruction would be provided through the Regional SEL service delivery model. The team also documented its agreement to reconvene to consider the student's progress in that placement within thirty (30) days from the start of the 2019-2020 school year.
29. The IEP states that the student was to be provided with ESY services to support academic and emotional functioning from July 8, 2019 until August 2, 2019. However, written notice of the decisions made by the IEP team on July 17, 2019 was not mailed to the parent until August 13, 2019. The BCPS staff report that the delay was the result of the school staff not obtaining appropriate authorization to close the electronic documents in a timely manner.

DISCUSSION/CONCLUSIONS:

Allegation #1 Educational Placement Determination

In this case, the complainant alleges that the initial placement decisions made in June 2019 were unilaterally made by the BCPS Central Office staff and not the IEP team.

Based on the Findings of Facts #1 - #14 and #22 - #26, the MSDE finds that, while the written summaries of the initial IEP team meetings did not clarify the school system's process with respect to how the educational placements were determined, there is other evidence that the decisions were made by the IEP teams, in consultation with staff from the BCPS Central Office,

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in accordance with 34 CFR §§300.114 - .116, .321, .324, and COMAR 13A.05.01.10. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In this case, the complainant also alleges that the subsequent decisions made about the educational placements were made prior to the completion of the students' IEPs and were not supported by the data.

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program and placement under IDEA, the State Educational Agency (SEA) must review the procedures used by a school system to reach determinations about the program. Additionally, the SEA must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

The SEA may not, however, overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on the Findings of Facts #15 - #20, and #27 and #28, the MSDE finds that the documentation of the IEP team meetings reflects that, while the IEP teams are continuing to review and revise the students' IEPs as they obtain additional data, the decisions regarding placement were made based on the information about the student and the program in effect at each meeting, in accordance with 34 CFR §§300.114 - .116, .321, .324, and COMAR 13A.05.01.10. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

In addition, the complainant alleges that the IEP teams could not place the students at XXXXX XXXXXXXXXXXX because the school does not yet have the supports of a Regional SEL Program available.

Based on the Findings of Facts #4 - #8, the MSDE finds that there is documentation that the BCPS is taking steps to ensure that there are trained staff available at the XXXXXXXXXXXX XXXX to provide special education instruction using a Regional SEL service delivery model, in

accordance with with 34 CFR §§300.101 and .323. Therefore, this office does not find a violation with respect to this aspect of the allegation.

Allegation #2 Prior Written Notice (PWN)

In this case, the complainant alleges that BCPS did not ensure that PWN was provided to parents of the change in educational placement that was made unilaterally by the school system staff.

As stated above, this office finds that the placement decisions were not made unilaterally by the school system staff, and therefore, PWN was not required to be provided as a result of the consultation between the school staff and the BCPS Central Office staff, in accordance with 34 CFR §300.503.

However, based on the Findings of Facts #21 and #29, the MSDE finds that there was a delay in in providing PWN of the IEP teams' July 2019 decisions, in accordance with with 34 CFR §§300.503. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violations, based on the Findings of Facts #21 and #29, the MSDE finds that written notice has now been provided. Therefore, no student-based corrective action is required.

ADDITIONAL DISCUSSION:

During the investigation, the complainant did not have access to the documentation of all of the IEP team decisions, and questioned the accuracy of the documents submitted to the MSDE by the BCPS. The complainant is reminded that if the parent believes that information in the student's educational record is inaccurate and misleading, the parent maintains the right under the IDEA and the Family Educational Rights and Privacy Act (FERPA) to request that the BCPS amend the documents that are believed to be inaccurate or misleading.

If the BCPS refuses to do so, it must advise the parent of that decision and provide her with the opportunity to request a hearing to challenge the content of the student's educational record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22). However, this office does not have authority to review any decision made regarding whether or not to amend the student's record.

CORRECTIVE ACTION/TIMELINE:

The MSDE requires the BCPS to provide documentation by November 1, 2019 of the steps taken to ensure that the violation identified through this investigation does not recur.

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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 Dr. Nancy Birenbaum, 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parent and the school system 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 Early Intervention and
Special Education Services

MEF:aam

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