

October 10, 2016

Ray Carlock, Superintendent
Brookhaven School District (4320)
326 E. Court Street
Brookhaven, MS 39601

Ms. Falana McDaniel, Parent
405 Vivian Merritt
Brookhaven, MS 39601

RE: Complaint No. 08122016-06

Dear Mr. Carlock and Ms. McDaniel:

On August 9, 2016, Ms. Falana McDaniel filed a Complaint against the Brookhaven School District (BSD) on behalf of [REDACTED] her son. As part of the investigation of the Complaint, the Mississippi Department of Education (MDE), Office of Special Education (OSE) Team conducted an on-site investigation on September 6, 2016. The MDE OSE Team also conducted in-person interviews with Ms. Falana McDaniel, parent; Ms. Brandy Myers, BSD Special Education Director; Mr. David Martin, Brookhaven High School (BHS) Principal; Ms. Molly Greer, BHS English I Teacher; Ms. Sylvia Balentine, BSD Special Education Homebound Teacher; BSD Ms. Terri Peeler, Special Education Homebound Teacher; Ms. Deborah Fells, BHS Special Education Teacher; Ms. Kathy Halliwell, BSD Transition Coordinator; Mr. Aaron King, BHS Local Cultural Teacher; and Mr. Richard Balkcom, BSD Behavior Counselor. Furthermore, the MDE OSE Team conducted an informal classroom observation in [REDACTED]'s current general education Local Culture class at BHS.

ALLEGATION(S) ACCORDING TO THE PARENT

- I. The Complaint alleges that the District failed to provide a Free Appropriate Public Education (FAPE) in accordance with 34 C.F.R. §§ 300.17, 300.101; *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, §§ 300.17, 300.101. Specifically:
 - (a) The Complaint alleges that the District failed to consider academic services when determining ESY eligibility, and instead categorically limited [REDACTED]'s eligibility to counseling services in violation of 34 C.F.R. § 300.106(a)(3); *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.106(a)(3);

- (b) The Complaint alleges that the District failed to provide transition services that focused on improving the academic and functional achievement of a student with a disability in accordance with 34 C.F.R. § 300.43; *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19 § 300.43. The Complaint alleges that ██████'s Algebra 1 grade was falsified and that ██████ did not receive credit for his Algebra 1 course because the school modified the course to a Mississippi Occupational Diploma (MOD) Math.
2. The Complaint alleges that the District failed to follow discipline procedures in accordance with 34 C.F.R. §§ 300.530(d)(1), 300.530(e)-(f); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.530(d)(1), 300.530(e)-(f). Specifically, the Complaint alleges that the District failed to provide ██████ with an appropriate functional behavioral assessment (FBA) and behavioral intervention services and modifications that are designed to address behavior violations in order to prevent recurrence. The Complaint alleges that the District targeted ██████ and did not consider his behavior a manifestation of his disability.
3. The Complaint alleges that the BSD Special Education Director informed Ms. McDaniel, ██████'s mother, that the District could no longer service ██████ following a behavior incident on the bus on October 29, 2014. The Complaint alleges that as a result, the District made arrangements for ██████'s admission to the day treatment program at Millcreek (Meadville). According to the Complaint, as a result of the change in placement, on November 7, 2014, an IEP meeting was held where ██████'s exit option was "switched to MOD and a counselor was not present."

Pursuant to 34 C.F.R. § 300.153(c); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, § 300.153(c), a complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the MDE OSE. This alleged incident occurred in October and November 2014. Therefore, the MDE OSE cannot investigate this allegation because it is outside of the timeframe provided.

ISSUE(S)

Whether the District complied with the Individuals with Disabilities Education Act (IDEA) and IDEA's implementing regulations regarding the provision of Free and Appropriate Public Education (FAPE) in Extended School Year (ESY) and transition services pursuant to 34 C.F.R. §§ 300.17, 300.43 300.101, 300.106(a)(3); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.17, 300.43, 300.101, 300.106(a)(3).

Whether the District complied with the IDEA and IDEA's implementing regulations regarding the implementation of discipline practices pursuant to 34 C.F.R. §§ 300.530(d)(1), 300.530(e)-(f); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.530(d)(1), 300.530(e)-(f).

FINDING(S) FOR ALLEGATION(S)

FINDING(S) FOR ALLEGATION #1:

Based on the documentation and evidence, the MDE OSE Team determines there is evidence to indicate the District failed to comply with 34 C.F.R. §§ 300.17, 300.101; *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.17, 300.101.

(a) Extended School Year (ESY)

The MDE OSE Team determined that the District complied with 34 C.F.R. § 300.106(a)(3); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, § 300.106(a)(3). The District considered academic services when determining ESY eligibility.

However, the MDE OSE Team's findings indicate that the District failed to comply with 34 C.F.R. § 300.106(b)(2); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, § 300.106(b)(2), as the District did not follow ESY guidelines. During her interview with the MDE OSE Team, Mrs. Brandy Myers, BSD Special Education Director, explained that [REDACTED] was enrolled in Algebra I, but that his Algebra I course was modified for the "MOD standards." During the interview, Ms. Myers recognized that ESY services were not contingent on [REDACTED] passing Algebra I MOD credit, nonetheless, the IEP Committee considered using extenuating circumstances for the Algebra I MOD credit that [REDACTED] needed for promotion to the 11th grade. Mrs. Myers reported that the IEP Committee discussed [REDACTED]'s academic achievement and whether [REDACTED] qualified for extenuating circumstances.

On April 13, 2016, the IEP Committee, which included Ms. Myers, held a meeting with all required participants, including the parent via telephone, to discuss [REDACTED]'s ESY eligibility. The District's written documentation reported that [REDACTED] qualified for ESY for counseling services.¹ At that time, the Committee determined that [REDACTED] did not qualify for academic ESY services because he was on track to pass Algebra I and receive the MOD credit. During her interview with the MDE OSE Team, Ms. Myers surmised that if [REDACTED] received the Algebra I MOD credit, he could be promoted to the 11th grade. However, if he did not receive his Algebra I MOD credit, [REDACTED] would be retained in the 10th grade. Notably, during the MDE OSE's interview with Ms. McDaniel, Ms. McDaniel reported that she was not aware that [REDACTED] qualified for ESY counseling services until she received a text message on June 6, 2016. As she was unaware, [REDACTED] was out of town and did not attend ESY.

¹ Although the District provided documentation regarding the criteria for ESY, the regression/recoupment objectives on the form are blank with N/A listed, i.e., the form does not include "yes or no" responses. There is only one (1) form in the file to indicate determination of Critical Point of Instruction (CPI); therefore, it is unclear whether CPI 1 or CPI 2 was used to make the determination for counseling.

On May 18, 2016, another IEP meeting was held to conduct a manifestation determination as a result of a disciplinary referral. The *Invitation to Committee Meeting* dated May 13, 2016 indicated only that the purpose of the meeting was “To conduct a manifestation determination.” The District reported that ESY was discussed at this meeting, and specifically whether [REDACTED] was still on track to pass Algebra I and to receive the MOD credit. The District asserted that the Committee determined that no revision to ESY services was necessary. Furthermore, [REDACTED]’s special education teacher assured the Committee that [REDACTED] would pass Algebra 1 “per MOD standards” if he completed missing assignments. The District could not produce any documentation to indicate ESY services were discussed at the May 18, 2016 IEP Committee meeting, however the District did consider academic services at the April 13, 2016 meeting.

During Ms. Myer’s interview, Ms. Myer reported that, due to personnel issues, BSD Special Education District staff were not aware that M.M. did not pass his Algebra 1 class in order to receive his MOD credit until Ms. McDaniel informed staff by email in July 25, 2016. According to Ms. Myers, “in an effort to rectify the failing grade, that teacher has been required to provide Credit Recovery for the student.” The interview confirms that [REDACTED] finished the requirements for MOD per Credit Recovery, having been pulled during P.E. and resource class times to complete the work for Credit Recovery. Additionally, [REDACTED] earned a grade of 74, notably in violation of BSD’s handbook policy, which states in part on page 27: “A grade of 65 will be assigned to any course completed via credit recovery.”

Therefore, the MDE OSE finds that the District is compliant with the IDEA and the IDEA’s implementing regulations, and State Board Policy 34 C.F.R. § 300.106(a)(3); *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.106(a)(3). The IEP Committee did consider providing ESY academic services. However, the MDE OSE finds that the District failed to comply with IDEA and the IDEA’s implementing regulation, and State Board Policy State Board Policy 34 C.F.R. § 300.106(b)(2); *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.106(b)(2), as the District failed to meet the standards of the State Board of Education’s ESY Handbook. ESY services are not provided to ensure that a student passes a class, nor should services be used to determine promotion or retention.

(b) Transition Services

The MDE OSE Team determined there is evidence to indicate the District was not compliant in providing [REDACTED] a Free Appropriate Public Education (FAPE) regarding transition services that focused on improving the academic and functional achievement as a student with a disability as indicated by 34 C.F.R. § 300.43, *Miss. Admin. Code* 7-3:74.19, State Board Policy Chapter 74, Rule 74.19, § 300.43.

The Complaint alleges that the BSD falsified [REDACTED]’s Algebra I credit. On May 18, 2016, an IEP meeting was held to conduct a manifestation determination as a result of a disciplinary referral. The *Invitation to Committee Meeting* dated May 13, 2016 indicated only that the purpose of the meeting was “To conduct a manifestation determination.” The District reported that ESY was discussed at this meeting, and specifically whether [REDACTED] was still on track to pass Algebra I and to receive the MOD credit. According to Ms. McDaniel, in the May 18, 2016 IEP meeting, the

special education teacher stated that [REDACTED] was going to pass Algebra I. A discussion followed and Ms. Myers and BHS counselor, Mrs. Stephenesia Butler, disagreed on how the Algebra I class should be listed on the transcript. According to Ms. McDaniel, this is the first time that she was told that the course was modified and a MOD credit would be given in place of a Carnegie Unit.

During her interview with the MDE OSE Team, Ms. Myers stated that the Algebra I class was modified for the "MOD standards." The MDE MOD Portfolio provides a curriculum for students on the MOD graduation track, however there are no Algebra I MOD standards. An IEP committee can decide to modify the general education curriculum. However, on M.M.'s IEP provided by the District, no program modifications, math goals, or math objectives are listed.

Therefore, the MDE OSE finds that the District failed to comply with the IDEA and the IDEA's implementing regulations, and State Board Policy 34 C.F.R. § 300.43, *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19 § 300.43 as the IDEA requires the District to provide [REDACTED] with appropriate transition services that focus on improving his academic and functional achievement.

Furthermore, a review of [REDACTED]'s transition sections on his 2015-2016 and 2016-2017 IEPs show that [REDACTED]'s postsecondary goals are not measurable in the areas of training/education, employment, and appropriate independent living skills. Following a review of the IEPs, the MDE OSE Team completed *Indicator 13 Checklist Form A*, and determined that seven (7) of eight (8) indicators received a rating of "No." Thus, the IEP did not meet the requirements of *Indicator 13*. Specifically:

- Postsecondary goals did not appear to be updated annually as the wording was exactly the same for the aforementioned school years. The goals listed for Education/Training, Employment after high school, and Independent Living are not measurable.
- Present Levels of Academic Achievement and Functional Performance (PLAAFP) statements of the IEP do not reference the student's preferences and interests related to postsecondary expectations (education, employment/training, and daily living). Postsecondary goals are listed, but these goals are not stated in measurable terms.
- There is documentation to suggest at least one (1) age-appropriate assessment was conducted for [REDACTED]; however, the actual assessment is not dated. The dates on the IEPs for 2015-2016 and 2016-2017 are exactly the same, as in "Date Conducted" (all areas – 08.13.15).
- The courses of study on the IEP are not aligned with [REDACTED]'s postsecondary goals, and those goals are exactly the same as the previous year with no current math course or projected math courses listed.

FINDING(S) FOR ALLEGATION #2:

Based on the documentation and evidence, the MDE OSE Team determines there is evidence to indicate the District failed to comply with the Individuals with Disability Education Act (IDEA) and IDEA's implementing regulations regarding the implementation of discipline practices found in 34 C.F.R. §§ 300.530(d)(1), 300.530(e)-(f); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.530(d)(1), 300.530(e)-(f).

On September 30, 2015, the IEP Committee met to revise ██████'s IEP. The Summary of Revision points were:

- (1) Discussed manifestation determination (NO) i.e., the behavior determined not to be a manifestation of the student's disability;
- (2) Discussed placement – Determined to gather more private placement options – meet again in one (1) week.

On October 7, 2015, the IEP Committee reconvened to revise the IEP, agreeing that ██████ will attend Millcreek but will continue to receive homebound services through Brookhaven High School special services.

On October 29, 2015, another IEP Committee meeting was held, but the District failed to indicate the specific "IEP Action." This section of the IEP is blank. The District's Summary of Revision points were:

- (1) Continue services through alternative placement;
- (2) Refer to acute care; and
- (3) Review report upon discharge for possible other placements. According to the educational records, the only revision to the IEP that addressed/discussed the behavior plan was on March 11, 2016.

The IEP lists two (2) goals as "Social and Emotional," but no behavior goals are checked in the Present Levels of Functional Performance Summary.

Although ██████ has a functional behavior assessment (FBA) and a behavior intervention plan (BIP), the MDE OSE Team determined that these documents do not contain all of the required components as outlined in *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.530(d)(1), 300.530(e)-(f), and thus are not appropriately designed to address ██████'s behavior. Additionally, there is no evidence these documents were directly linked to ██████'s IEP goals, no evidence that classroom observations were conducted during the development of the FBA or after its development, and no evidence that progress monitoring was used to make data-based decisions regarding ██████'s progress and support needs.

In separate interviews, when asked about the development and implementation of the FBA and BIP, both Ms. Halliwell, BSD Transition Coordinator and previous Behavior Specialist, and Mr. Balkcom, BSD Behavior Counselor:

- were unable to describe specifics of the documents;
- failed to provide descriptions of how behavioral support was systematically administered to address ██████'s specific needs;
- could not provide information regarding progress monitoring validity;
- did not appropriately identify the same target behaviors; and
- could not agree on who actually developed the documents or oversees the implementation of the BIP.

Therefore, the MDE OSE finds that the District failed to comply with the IDEA and the IDEA's implementing regulations, and State Board Policy 34 C.F.R. §§ 300.530(d)(1), 300.530(e)-(f); *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, §§ 300.530(d)(1), 300.530(e)-(f) as the District has not established a nexus between the M.M.'s disability and his misconduct.

ADDITIONAL FINDING(S)

Based on the documentation and evidence, the MDE OSE Team determined there is evidence that the District failed to comply with the IDEA and IDEA's implementing regulations regarding the development, review, and revision of the IEP as required by 34 C.F.R. § 300.320; *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, § 300.320.

The MDE OSE Team's review of ██████'s IEP indicated that the annual goals were not stated in measurable terms, specifically, an absence of the condition and behavior. ██████'s current IEP's Present Levels of Academic Achievement and Functional Performance (PLAAFP) did not provide a detailed target summary of current daily academic, behavioral, and functional performances, including baseline data provided for developing measurable annual goals. Although the PLAAFP references weaknesses in math, there are no math goals for the previous or current school year. The IEP did not include documentation or data to support why the IEP was not revised when ██████ did not make sufficient progress toward the goal. The Individual Transition Plan did not adequately address postsecondary goals, and the goals were not stated in measurable terms.

Therefore, the MDE OSE finds that the District failed to comply with the IDEA and the IDEA's implementing regulations, and State Board Policy 34 C.F.R. § 300.320 *Miss. Admin. Code 7-3:74.19*, State Board Policy Chapter 74, Rule 74.19, § 300.320 as ██████'s IEP is insufficient or missing required components.

CORRECTIVE ACTION:

Within thirty (30) days, the District shall provide training to all staff on all components of the development, implementation, and progress monitoring of Functional Behavior Assessments and Behavior Intervention Plans.

As soon as possible, but no case later than sixty (60) days, the District shall conduct a Functional Behavioral Assessment (FBA) for [REDACTED] and shall develop a Behavioral Intervention Plan (BIP) that addresses [REDACTED]'s academic and behavior needs.

Within sixty (60) days, the District shall provide training to all staff on all components of the development of a Standards-based IEP, and then reconvene an IEP Committee meeting for [REDACTED] to address the required components including revising the Individual Transition Plan with up-to-date/current age-appropriate transition assessment(s).

Within sixty (60) days, the District shall provide training to all staff on Extended School Year (ESY) Services to ensure that staff appropriately uses all four (4) criteria in the decision-making process that is driven by data.

**SUBMISSION OF CORRECTIVE ACTION PLAN
TO THE MISSISSIPPI DEPARTMENT OF EDUCATION**

The Brookhaven School District has thirty (30) days from the date of this letter to submit a Corrective Action Plan outlining the actions the District will implement in order to achieve compliance. These actions must be designed to ensure that the District corrects findings of noncompliance.

We appreciate your cooperation in our investigation and resolution of the Complaint. For your convenience, the MDE OSE will contact you within fourteen (14) days to schedule technical assistance. Should you require the MDE OSE's support in developing a Corrective Action Plan, please contact me or Ginger Koestler at (601) 359-3498.

Sincerely,



Armerita D. Tell, Ph.D.
Bureau Director, Office of Special Education

c: Kim S. Benton, Ed.D., Chief Academic Officer
Gretchen K. Cagle, M.Ed., State Director
Brandy Myers, Director, Special Education