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February 8, 2017

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Ms. Tiffany Clemons  
Executive Director of Specialized Services  
Baltimore City Public Schools  
200 East North Avenue, Room 204 B  
Baltimore, Maryland, 21225

RE: XXXXX  
Reference: #17-071

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.

**ALLEGATIONS:**

On December 14, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City 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 did not ensure that proper procedures were followed in conducting an initial evaluation under the IDEA, in November 2016, in accordance with 34 CFR §§300.301 - .306, and COMAR 13A.05.01.04 - .06.
2. The BCPS did not ensure that prior written notice was provided of the decisions made by the Individualized Education Program (IEP) team at the November 28, 2016 meeting, in accordance with 34 CFR §300.503.

**INVESTIGATIVE PROCEDURES:**

1. On December 14, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemons, Executive Director of Specialized Services, BCPS.
2. On December 15, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On December 16, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the school system review the alleged violations.
4. On December 20, 2016, Mr. Loiacono contacted Mr. Darnell Henderson, Associate Counsel, BCPS, to arrange a document review and site visit.
5. On January 6, 2017, Mr. Loiacono and Ms. K. Sabrina Austin, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX School to review the student's educational record, and interviewed Ms. XXXXXXXXXX, IEP Chairperson and Ms. XXXXXXXXXXXX, General Education Teacher.

Mr. Henderson and Ms. LeShawn Davis, Educational Specialist, BCPS, attended the site visit as representatives of the BCPS and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Electronic mail (email), from the complainant to the school staff, dated November 1, 2016;
  - b. Email from the school staff to the complainant, dated November 3, 2016;
  - c. Prior Written Notice, dated November 28, 2016;
  - d. Email from the school staff to the BCPS staff, dated January 4, 2017; and
  - e. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on December 14, 2016.

**BACKGROUND:**

The student is seven years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. He is not identified as a student with a disability under the IDEA (Doc. c).

### **FINDINGS OF FACTS:**

1. On November 1, 2016, the complainant sent an email to the school staff and requested that an IDEA evaluation be conducted for her son. She noted a "gap growing between his language arts and math skills," and that he "struggles with decoding, written expression, memory and impulse control" (Doc. a).
2. On November 3, 2016, the school staff responded to the complainant that an IEP team meeting would be scheduled (Doc. b).
3. On November 28, 2016, the IEP team met. The team documented its consideration of teacher input that the student performs on grade level and completes assignments and its decision that no educational impact was present. However, it did not document that it decided whether there was an underlying disability (Doc. c).
4. On December 22, 2016, the school staff provided the complainant with written notice of the IEP team's decisions at the November 28, 2016 IEP team meeting (Doc. d).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: Evaluation Procedures**

Upon receipt of a written referral for evaluation, the public agency must determine whether it suspects the student of having a disability, and if so, promptly request parental consent to assess the student in all areas related to the suspected disability (COMAR 13A.05.01.04 and .05). As part of an initial IDEA evaluation, the public agency must ensure that the IEP team reviews existing data, including assessment data and information from the child's teachers and parents. Based on that data, the public agency must identify what additional data, if any, is needed to determine the student's eligibility and educational needs (34 CFR §300.305 and COMAR 13A.05.01.06).

A student with a disability under the IDEA means a student with one of an enumerated list of disabilities including a Specific Learning Disability, and who, by reason thereof, requires special education and related services (34 CFR §300.8).

A Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations (34 CFR §300.8).

The IEP team may determine that a student has a Specific Learning Disability if the student does not achieve adequately for the student's age or to meet State-approved grade-level standards when provided with learning experiences and instruction appropriate for the student's age or State-approved grade level standards or when using a process based on the student's response to scientific research-based interventions. A student may also be found to have a Specific Learning Disability if the student exhibits a pattern of strengths and weaknesses in performance,

achievement, or both relative to age, State-approved grade level standards, or intellectual development using appropriate assessments (34 CFR §300.309).

Based on the Finding of Facts #1 - #3, the MSDE finds that while the IEP team decided that there was not an “educational impact,” it did not document that it determined whether there was an underlying disability involving a psychological processing disorder that could be impacting the student’s education. Therefore, this office finds that a violation occurred with respect to the allegation.

### **Allegation #2: Written Notice of the IEP Team’s Decisions**

The public agency must provide the student’s parent with written notice if a decision is made that no additional assessment data is needed to conduct an IDEA evaluation or that the student is not suspected of being a student with a disability. This notice includes a statement of the decision, the basis for the decision, the options considered and reasons for rejection of options, a description of any other factors relevant to the determination, and notice of the Maryland Procedural Safeguards (34 CFR §300.503 and COMAR 13A.05.01.04 and .12).

Based on Finding of Fact #4, the MSDE finds the complainant received written notice of the IEP team’s decisions at the November 28, 2016 IEP team meeting on December 22, 2016. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by April 1, 2017 that an evaluation has been conducted for a Specific Learning Disability under the IDEA following proper procedures, and that an eligibility determination has been made consistent with the data. This includes documentation that the IEP team has determined whether the student has a psychological processing disorder needed to find a Specific Learning Disability and if so, whether special education and related services are needed as a result.

If the IEP team identifies the student with a disability under the IDEA, it must also determine the compensatory services to be provided for the delay in identification and the provision of a Free and Appropriate Public Education (FAPE). These services must be provided to the student within one year of the date of this Letter of Findings.

#### **School-Based**

The MSDE requires the BCPS to provide documentation by May 1, 2017 of the steps it has taken to ensure that XXXXXXXXXXXXXXXX School staff properly implements the requirements for conducting initial evaluations when a Specific Learning Disability may be suspected. 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.

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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 Special Education/Early Intervention 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.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact 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. 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, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant 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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:gl

c:	Sonja Brookins Santelises	Dori Wilson
	Darnell Henderson	Anita Mandis
	Diana K. Wyles	Gerald Loiacono
	XXXXXXXXXXXXXX	Bonnie Preis