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April 6, 2017

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Ms. Rebecca Rider
Baltimore County Public Schools
Office of Special Education
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXX
Reference: #17-102

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 February 8, 2017, the MSDE received a complaint from Mrs. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of her grandson, 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 all of the student's special education and related services needs have been identified and addressed since February 2016, in accordance with 34 CFR §§300.304, .320, and. 324; and

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2. The BCPS has not ensured that the Individualized Education Program (IEP) team considered recommended supplementary aids and services so that the student is placed in the Least Restrictive Environment (LRE) in which the IEP can be implemented, in accordance with 34 CFR §§300.114 - .116.

INVESTIGATIVE PROCEDURES:

1. On February 8, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director, Office of Special Education, BCPS.
2. On February 17, 2017, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On February 21, 2017, 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 March 2, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, contacted Ms. Conya J. Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS, to arrange a document review and site visit.
5. On March 2, 2017, the MSDE requested additional documentation from the BCPS staff.
6. On March 3, and March 5, 2017, the MSDE received additional documentation from the the BCPS staff.
7. On March 24, 2017, Mr. Loiacono and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXto review the student's educational record and interviewed Ms. XXXXXXXXX, Principal and Ms. XXXXXXXXX, Assistant Principal. Ms. XXXXXXXXXXXX, Resource Teacher, BCPS, attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Educational Program (IEP), dated October 7, 2015;
 - b. IEP, dated April 6, 2016;
 - c. IEP, dated June 17, 2016;
 - d. IEP, dated November 2, 2016;
 - e. IEP, dated January 18, 2017;
 - f. IEP Team Summary, dated October 7, 2015;
 - g. IEP Team Summary, dated April 6, 2016;
 - h. IEP Team Summary, dated June 17, 2016;

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- i. IEP Team Summary, dated August 23, 2016;
- j. IEP Team Summary, dated November 2, 2016;
- k. IEP Team Summary, dated January 18, 2017;
- l. Private psychological assessment from XXXXXXXXXXXXXXXXXXXXXXXX, dated September 1, 2016;
- m. BCPS educational Assessment, dated January 10, 2017;
- n. BCPS occupational Assessment; dated January 3, 2017;
- o. BCPS speech/language Assessment, dated January 10, 2017;
- p. BCPS behavioral baseline testing report, dated January 9, 2017; and
- q. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on February 8, 2017.

BACKGROUND:

The student is five years old, and is identified as a student with a Autism under the IDEA, and has an IEP that requires the provision of special education instruction and related services. He attends XXXXXXXXXXXXXXXXXXXXXXXX, a public separate special education school. Prior to the 2015-2016 school year, he attended an early learning program at XXXXXXXXXXXXXXXXXXXXXXXX (Doc. b).

FINDINGS OF FACTS:

1. The student's IEP, in effect in February 2016, was developed at an IEP team meeting on October 7, 2015. The team noted that the student was not mastering the objectives of following directions, following rules, taking turns, and paying attention to instruction. At the meeting, the team completed the "Child Outcome Summary" for the student and identified needs in communication, adapting to routines, taking turns, following directions and placing objects in his mouth (Docs. a and f).
2. On October 7, 2015, the team revised goals and objectives in communication, vocabulary, rules and routines, attention and participation consistent with the data. To assist the student the IEP team included supplementary aids and services including social skills training, the use of manipulatives and sensory activities, a visual schedule, a speech language consultation and adult support in the classroom and transitions. The team further determined that the student would receive instruction outside of the general education setting in a half day program for two and a half hours a day, with direct speech language services for a total of 45 minutes a week. The IEP team determined that the IEP could be implemented at the comprehensive school where the student was currently enrolled (Docs. a and f).
3. On June 8, 2016, the IEP team met to review the student's progress. The school staff reported that the student was not making progress on his goals, and was beginning to exhibit aggressive and self-injurious behaviors. The IEP team determined that the student would require an all-day prekindergarten program in order to provide enough time to provide the intensive services necessary to address the student's needs. The IEP team recommended that the student receive instruction outside the general education setting for an average of six hours and twenty minutes a day. The team recommended that the student

- participate in the Functional Academic Learning Support (FALS) program at the public separate special education school for the upcoming school year for which would provide the student with intensive academic and speech language interventions in an all-day program (Docs. c and h).
4. On August 23, 2016, the IEP team at the separate special education school met to conduct an intake for the student. The student's mother provided input on the student's behavior, his routines and his likes and dislikes. The mother also reported that the student was going to undergo private psychological assessment in September 2016. The team agreed to meet again for a review within 90 days to review the student's progress (Doc. i).
 5. On November 9, 2016, the IEP team met for the planned periodic review. Based on input from the school's behavioral specialist, the speech therapist, the occupational therapist and the student's mother, the IEP team decided to conduct an reevaluation for the student. The team recommended assessments in speech and language, occupational therapy, behavior, and academic achievement. The team accepted the recommendations of the private assessment and determined that no additional psychological assessment was necessary to complete the evaluation. In response to a recommendation made in the psychological assessment, the student was moved into a more intensive Applied Behavior Analysis (ABA) classroom. The student's mother provided consent for the additional assessments to be conducted (Docs. d, j and l).
 6. On January 18, 2017, the IEP team met to review assessments, and conduct a reevaluation. The team reviewed the following assessments:
 - An educational assessment that indicated that the student communicated at a 13 month-old level and that his fine motor skills were that of about a two year old. The report further stated that the student had "significant needs" in the areas of affective expression and social reciprocity.
 - A speech/language assessment that indicated that the student's communication skills were "severely below age-appropriate levels," and recommended continued speech /language services.
 - A behavioral assessment that indicated that the student demonstrated "low frequency, but high intensity" aggressive behaviors. The report stated that the student required close supervision in the classroom for his own safety. The report further indicated that the student the student did not respond to instructions to complete tasks without reinforcement, could not respond to instruction to copy motions or tasks, and could not complete motor tasks following instruction.
 - A Functional Behavioral Assessment (FBA) based on data collected on the student's behavior from December 8, 2017 to January 18, 2017. The FBA reported targeted behaviors of aggression and self-injurious behavior. The report stated that on average the student engaged in aggression 8.6 times per day. The assessment report recommended that instruction be provided to the student on how to request items, that

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the student be provided with positive reinforcement, that the school staff provide a system of prompting the student to complete tasks, and a visual routine be developed for the student.

- An occupational therapy assessment that found that the student enjoys puzzles, coloring, cutting and "sensory play". The assessment report recommended that the student be provided with "sensory strategies" to assist the student with developing self-regulating strategies. The report also recommended direct sessions twice a week for fifteen minutes each.
- The private psychological report from XXXXXXXXXXXXXXXXXXXXXXXX that diagnosed the student with Autism and recommended an intensive program with a highly structured ABA environment. The report noted that the student's communication abilities were "extremely low" and recommended that the student receive "the maximum amount of speech/language services possible through his IEP"

Using the information from the assessments, and input from IEP the student's mother and teachers, the team determined that the student continued to be eligible for special education services under the IDEA (Docs. e, k-p).

7. The team considered supplementary aids and services recommended by the assessments. Based on the recommendations, the IEP team added the following supplementary aids and services to the student's IEP:

- Individualized instruction, including visual aids, prompting and direct instruction
- One on one instruction throughout day;
- Movement breaks;
- Fast pace of instruction;
- Frequent reinforcement;
- Crisis intervention;
- Minimization of transitions;
- Daily data collection with frequent review;
- Clear physical boundaries to classroom;
- Monitoring of eating non-edibles;
- Monitoring to reduce self-injurious behavior; and
- Speech/language and occupational therapy consultations (Docs. e, k-p).

8. The IEP team decided that the student should remain in the all-day prekindergarten class at the public separate special education school based on the intensity of services and supplementary aids and services required for the student (Docs. e and k).

DISCUSSION/CONCLUSIONS:

Allegation #1: Addressing the Student's Needs

In order to provide a student with a Free and Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. In developing each student's IEP, the public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. (34 CFR §§300.101 and .320).

The IEP must also include measurable annual goals to enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101 and .320).

In this case, the complainant alleges that the student is not provided with the intensive language services recommended in the private psychological report from XXXXXXXXXXXXXXXXXXXXXXXX.

Based on the Findings of Facts, #1-8, the MSDE finds that the IEP team identified the student's needs in all demonstrated areas and developed an individualized program for the student that met every area of need. In addition, the IEP team met frequently to revise the student's program when the student was not making progress towards IEP goals. Therefore, this office does not find that a violation occurred with respect to this allegation.

Allegation #2: Educating the Student in the Least Restrictive Environment.

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the IDEA least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR §300.116 and COMAR 13A.05.01.10(C)(1)).

Unless the IEP of a student requires some other arrangement, the student is educated in the school setting that the student would attend if not disabled. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability may not be removed from education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum. However, the IEP team may determine that the needs of the student with a disability cannot be met in the regular classroom and shall document supplementary aids and services that have been provided, and the specific behaviors and incidents that support the determination (34 CFR §300.116 and COMAR 13A.05.01.10(C)(1)).

In this case, the complainant alleges that the IEP team did not consider supplementary aids and services that could have been educated in a comprehensive school for prekindergarten. However,

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based on the Finding of Fact #3, the MSDE finds that the IEP team determined that the student's needs required that he receive services and instruction in an all-day program. The MSDE further finds, based on the Findings of Facts #5-8, that the IEP team considered the recommendations made in assessments during the reevaluation of the child and incorporated the recommendations when developing the required supports and services to be provided to the child. The IEP team again determined that the student's needs necessitated placement in a highly specialized all-day program. Therefore, the MSDE does not find that an violation occurred with respect to this allegation.

TIMELINE:

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:	S. Dallas Dance	XXXXXXXX
	Denise Mabry	Dori Wilson
	Conya Bailey	Anita Mandis
	XXXXXXXXXX	Gerald Loiacono
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