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October 17, 2016

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Ms. Tiffany Clemmons
Executive Director of Specialized Services
Baltimore City Public Schools
200 East North Avenue, Room 204 B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #17-025

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention 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.

ALLEGATION:

On August 18, 2016, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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 above-referenced student.

The MSDE investigated the allegation that the BCPS has not followed proper procedures when disciplinarily removing the student from school, since December 2015, as required by 34 CFR §§300.530, .534 and .536 and COMAR 13A.08.03.

INVESTIGATIVE PROCEDURES:

1. On August 18, 2016, the MSDE received the State complaint and documentation to be considered.
2. On August 19, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS.
3. On August 31, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.

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4. On September 19, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Ms. Clemmons of the allegation to be investigated and requested that her office review the alleged violation.
5. On October 7, 2016, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to the BCPS Central Office to review the student's educational record, and interviewed Ms. Lori Hines, Coordinator of Climate and Suspension, BCPS and Mr. Everett Garnett, Director of Climate and Suspension, BCPS. Ms. Diana Wyles, Legal Counsel, 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.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Individualized Education Program (IEP), dated December, 14, 2015;
 - b. IEP, dated December, 21, 2015;
 - c. IEP, dated March, 16, 2016;
 - d. IEP, dated May 11, 2016;
 - e. IEP, dated June 17, 2016;
 - f. IEP Prior written notice, dated December 14, 2015;
 - g. Manifestation Determination summary, dated December 14, 2015;
 - h. IEP Prior written notice, dated December 21, 2015;
 - i. Manifestation determination summary, dated December 21, 2015;
 - j. IEP Prior written notice, dated May 11, 2016;
 - k. Manifestation determination summary, dated May 11, 2016;
 - l. BCPS alternative education setting (AES) placement notice, dated December 28, 2015;
 - m. BCPS administrative transfer letter, dated March 14, 2015;
 - n. BCPS AES entry/exit ticket; dated March 21, 2016 (faxed);
 - o. The student's incident list, dated between October 9, 2015 and December 15, 2015;
 - p. The student's disciplinary log, dated between October 9, 2015 and December 15, 2015;
 - q. The student's tracking form for extended suspensions and expulsions, dated between December 21, 2015 and March 11, 2016;
 - r. The student's revised Behavior Intervention Plan (BIP), dated December 11, 2015, December 21, 2015; and May 11, 2016;
 - s. *Guidance Concerning State and Local Responsibilities Under the Gun-Free Schools Act*, dated January 2004;
 - t. The student's attendance record, dated between February 2016 and June 2016; and
 - u. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on August 18, 2016.

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BACKGROUND:

The student is 15 years old and is identified as a student with a Specific Learning Disability under the IDEA. He has an IEP that requires the provision of special education instruction and related services (Docs. a - e).

The student attended the XXXXXXXXXXXXXXXXXXXXXXX at the start of the 2015 - 2016 school year until January 4, 2016, when he was to begin attending the Elementary/Middle Alternative Program. On March 14, 2016, the student was transferred to the XXXXXXXXXXXXXXXXXXXXXXX at XXXXXXXXXXXXXXX until May 9, 2016, when he was transferred back to the Elementary/Middle Alternative Program, where he currently attends school (Docs. a – e, m, n, and t).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a - e).

FINDINGS OF FACTS:

1. On November 23, 2015, the student was disciplinarily removed from school for two (2) days for trespassing (Doc. f).
2. On December 14, 2015, the IEP team met to determine whether the student's trespassing offense, which resulted in a disciplinary removal on November 23 and 24, 2015, constituted a pattern of behavior that resulted in a change in educational placement (Docs. f, g, o, and p).
3. The IEP team reviewed the student's discipline record which reflects that he had previously been disciplinarily removed during the 2015 – 2016 school year for the following:
 - a. October 9, 2015 – 2 days removal for a verbal threat;
 - b. October 20, 2015 – 3 days removal for a physical attack; and
 - c. November 9, 2015 – 3 days removal for a physical attack (Docs. a, f, o, p, and u).
4. At the December 14, 2015 IEP team meeting, the team decided while that the student's behavior constituted a pattern of removal, the removal would not constitute a change in educational placement because the series of removals did not total more than ten (10) school days in a school year (Docs. f and g).
5. At the December 14, 2015 IEP team meeting, the complainant expressed her concern that the student's behavior is triggered by the inappropriate behaviors of other students in his science class, which is in a separate special education classroom. In order to address that concern, the IEP team decided that the student would be moved to a general education science class for a trial period in order to determine whether the IEP could be successfully implemented in that setting. The team also reviewed the student's Behavior Intervention Plan (BIP) which identified three target behaviors: eloping from his designated area to

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- avoid work, verbal aggression when redirected by adults, and physical aggression when he perceives that he is being disrespected by peers. The IEP team decided to revise the BIP to include additional strategies to address the behaviors (Docs. a and f).
6. There are inconsistencies between the December 14, 2015 IEP documentation which identifies the disciplinary removal violation on the prior written notice as “verbal and physical aggression”; the disciplinary removal violation identified on the manifestation document is for “trespassing when eloping.” Both documents reflect that the IEP team determined that the behavior was not a manifestation of the student’s disability because the student’s primary disability was a Specific Learning Disability, and that the behaviors described would not arise out of this disability. However, the IEP team did not document that it considered the impact of the disability on the student or that these were the behaviors being addressed through the BIP when they determined that the behavior was not related to the disability (Docs. f, g, and u).
 7. On December 17, 2015, the student was disciplinarily removed from school for possessing a knife while in school (Docs. h and i).
 8. On December 21, 2015, the IEP team convened to determine whether the student’s behavior of bringing a knife to school was a manifestation of his disability. The IEP team decided that the behavior was not a manifestation of the disability. The team again documented that the basis for the decision was that the student’s primary disability was a Specific Learning Disability, and that the behaviors described would not arise out of this disability, without considering the impact of the disability on the student. The IEP team determined that the student would receive an “extended suspension” resulting in a change of placement because the violation of bringing in a knife to school would result in a removal from school for more than ten (10) consecutive school days. The IEP team determined that the student would be removed from the current placement and that he would receive services in an alternative educational setting (AES). The IEP team also revised the BIP to require the student to work with a counselor when becoming aggressive with peers in order to de-escalate his behavior (Docs. b, h, i, and o - q).
 9. On December 28, 2015, the BCPS sent a letter providing information that the location of the AES to which the student was to report was the Elementary/Middle Alternative Program. However, the letter was addressed to an individual who is not the student’s parent and was sent to an address that was not that of the student’s parent (Docs. l, u, and a review of the student’s educational record).
 10. The AES entry/exit ticket reflects that the student was to report to the AES on January 4, 2016. The school’s tracking form reflects that, on January 4, 2016, the school staff made a telephone call to the home of the student’s grandmother and informed the student’s aunt that the student was expected to report to the AES (Docs. n, q, and t).
 11. The student did not report to the AES until February 3, 2016. It is BCPS procedures that, if a student does not present himself or herself for attendance within five (5) days of the proposed entry date at the designated BCPS AES, and efforts have been made to facilitate

the student's entry, the school staff are required to inform the BCPS AES Unit in order to contact the parent. However, there is no documentation that the school staff contacted the AES Unit to report that the student had not attended school, in accordance with the BCPS procedure (Doc. n).

12. The AES entry/exit ticket reflects that the student's last day at the AES was on March 11, 2016. On that same day, the BCPS notified the complainant that the student would be administratively transferred to the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Middle School, which was in effect as of March 14, 2016 (Docs. m, n, and t).
13. On March 14, 2016, the student began attending the XXXXXXXXXXXXXXXXXXXXXXX Middle School (Docs. m, n, and q).
14. On April 6, 2016, the student was disciplinarily removed from school for bringing in a "loaded gun." On that same day, the school staff was unsuccessful in their attempt to contact the complainant by telephone to inform her of the incident because the telephone numbers in the student's file were non-operable. The following efforts were made to meet with the complainant:
 - On April 13, 2016, school police went to the student's home address to deliver a conference request form for a meeting on April 14, 2016. The student's father signed the conference request form on behalf of the complainant, provided an alternative telephone number to contact her, and indicated that she would attend.
 - On April 14, 2016, the complainant did not attend the meeting and the telephone number provided by the student's father was non-operable.
 - On April 19, 2016, the complainant contacted the school staff to reschedule the meeting for April 21, 2016; however, the school staff was unavailable to meet on that date.
 - The meeting was rescheduled for May 5, 2016 and the manifestation determination meeting was scheduled for May 11, 2016 (Docs. d, j, and k).
15. On May 11, 2016, the IEP team at the XXXXXXXXXXXXXXXXXXXXXXX Middle School met to determine whether the student's behavior of bringing a "loaded gun" to school was a manifestation of his disability. The IEP team decided that the behavior was not a manifestation of the disability. The team again documented that the basis for the decision was that the student's primary disability was a Special Learning Disability, and that the behaviors described would not arise out of this disability, without considering the impact of the disability on the student. However, the IEP team also revised the IEP to provide increased academic supports (Docs. d, k, and u).

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16. On May 11, 2016, the IEP team recommended that a psychological assessment be conducted, including cognitive testing, and the complainant provided consent (Docs. d and j).
17. On June 17, 2016, the IEP team reconvened to review assessment data and to revise the student's IEP (Doc. e).
18. The student continues to be placed at the Elementary/Middle Alternative Program where he is currently attending school (Docs. e and s).

DISCUSSION/CONCLUSIONS:

A student with a disability may be disciplinary removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten (10) school days for each incident that results in disciplinary removal. Once a change in educational placement¹ occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of IDEA protections to the student (34 CFR §300.530).

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the IEP team must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the failure to implement the IEP. The conduct must be determined to be a manifestation of the student's disability if the IEP team determines that either condition was met (34 CFR §300.530).

If the student's behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agrees to a change in placement. If the student's behavior is not found to be a manifestation of the disability, the student must be provided with educational services that are determined by the IEP team in another setting,² in order to enable the student to progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

Based on the Findings of Facts #1 - #18, the MSDE finds that the IEP team did not document that it considered the impact of the disability on the individual student when making the determination on December 14, 2015, December 21, 2015, and May 11, 2016, that the behavior did not have a

¹ A disciplinary removal constitutes a change in educational placement if the student is removed for more than ten (10) consecutive school days or ten (10) cumulative school days in a school year, if those removals constitute a pattern of removal of the student (34 CFR §300.536).

² The Guns Free School Act requires public agencies to expel students from school, for a period of not less than one (1) year, who carry a weapon to or possesses a weapon at school. This including students with disabilities under the IDEA, whose behavior is not a manifestation of their disability (Section 4141 of the Elementary and Secondary Education Act of 1965, reauthorized as the Every Student Succeeds Act).

direct and substantial relationship to the disability. Therefore, this office finds that a violation has occurred.

Based on the Findings of Facts #8 - #11, the MSDE finds that the BCPS did not take appropriate steps to ensure that the student was provided with special education services from December 17, 2015 to February 2, 2016. Therefore, this office finds that a violation has occurred with respect to the allegation.

Further, based on the Finding of Fact #14, the MSDE finds that the BCPS did not hold a manifestation meeting within ten (10) days of the April 6, 2016 disciplinary removal. Therefore, this office finds that a violation has occurred.

Notwithstanding the violation, based on the Finding of Fact #14, the MSDE finds that the BCPS did not meet the timeline for holding a manifestation meeting because it was unable to ensure the complainant's participation within that timeline. Therefore, no corrective action is required to remediate the violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the school system to provide documentation by January 1, 2017 that the IEP team has determined the compensatory services to remediate the loss of educational services from January 4, 2016 to February 1, 2016 and to provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

The MSDE requires the BCPS to provide documentation by January 1, 2017 that the IEP team has determined whether the behavior that resulted in the disciplinary removal that began on December 17, 2015 was a manifestation of the student's disability, after considering the impact of the disability on the student.

If the IEP team decides that the behavior was a manifestation of the student's disability, the BCPS must also provide documentation that the student has been returned to his assigned school, that the parent has agreed to continued placement at the alternative educational setting, or that a hearing has been requested to seek a change in the educational placement to an interim alternative educational setting because returning the student is subsequently likely to result in an injury to the student or others.

School/System-Based

The MSDE also requires the BCPS to provide documentation by January 1, 2017 of the steps taken to ensure that the Elementary/Middle Alternative Program staff follow the school system's procedures for providing notification when a student does not report for school so that appropriate education services are provided to student who are disciplinarly removed from school.

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The MSDE further requires the BCPS to provide documentation by May 1, 2017 of the steps taken to ensure that the BCPS school staff follow proper procedures when determining whether a student's behavior is a manifestation of the student's disability.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the BCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts 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 and conclusions contained in this letter should be addressed to this office in writing. The parties 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 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 Special Education/Early Intervention Services

MEF:ac

c:	Sonja Santelises	XXXXXXXX	Anita Mandis
	Diana Wyles	XXXXXX	Albert Chichester
	XXXXXX	Dori Wilson	Nancy Birenbaum