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April 21, 2017

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Mr. Sean Conley, Chief Academic Officer  
Ms. Jennifer Dull, Director, Strategy and Compliance  
Mr. Macon Tucker, Manager of Specialized Services  
Baltimore City Public Schools  
200 East North Avenue, Room 204 B  
Baltimore, Maryland 21230

RE: XXXXX  
Reference: #17-109

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 23, 2017, 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 following allegations:

1. The BCPS did not ensure that prior written notice of the decisions made by the Individualized Education Program (IEP) team meetings were provided since August 2016, in accordance with 34 CFR §300.503.
2. The BCPS did not ensure that reports of the student’s progress towards achievement of the annual IEP goals have been made since August 2016, in accordance with 34 CFR §§300.101, .320 and .323.

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3. The BCPS did not ensure that copies of documents the IEP team intended to consider at IEP team meetings were provided at least five days in advance of the meetings held since August 2016, in accordance with COMAR 13A.05.01.07D(3).
4. The BCPS did not provide a written invitation at least ten (10) days in advance of the IEP team meetings held since August 2016, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07D.
5. The BCPS did not ensure that the IEP team meetings convened since August 2016 included the required participants, in accordance with 34 CFR §300.321.
6. The BCPS has not ensured that the IEP addresses the student's academic and behavioral needs, since August 2016, in accordance with 34 CFR §§300.320 and .324.
7. The BCPS has not ensured that the student was provided with the accommodations, supports, and services required by the IEP since August 2016, in accordance with 34 CFR § 300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. On February 24, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, former Director of Special Education, BCPS.
2. On February 27, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On February 28, 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 1, 2017, Mr. Loiacono contacted Mr. Darnell Henderson, Associate Counsel, BCPS, to arrange a document review and site visit.
5. On March 8, 2017, Mr. Loiacono reviewed the student's educational record at XXXXXXXXXXXXXXXXXXXX.
6. On March 23, 2017, Mr. Loiacono and Ms. Sharon Floyd, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed Ms. XXXXXXXXX, Educational Associate and Ms. XXXXXXXX, Principal. Mr. Henderson and Mr. Donnae Bushrod, Educational Specialist, 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.

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Individualized Educational Program (IEP), dated February 19, 2016;
  - b. IEP, dated April 19, 2016;
  - c. IEP, dated August 9, 2016;
  - d. Prior Written Notice (PWN), dated February 19, 2016;
  - e. PWN, dated April 19, 2016;
  - f. PWN, dated August 9, 2016;
  - g. Behavior Intervention Plan, dated February 19, 2015;
  - h. BIP, dated August 9, 2016;
  - i. Email from BCPS Central Office Staff to the complainant's former attorney, dated September 23, 2016;
  - j. Assistive Technology Assessment, dated July 13, 2016; and
  - k. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on February 23, 2017.

**BACKGROUND:**

The student is 17 years old and attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Prior to the 2016-2017 school year, he attended XXXXXXXXXXXX. He is identified as a student with a Emotional Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. a).

**FINDINGS OF FACTS:**

1. The student's IEP, in effect in August 2016, was developed in February 2016, at the Knowledge and Success Academy. The IEP identifies areas of need in reading comprehension, math problem solving, written language expression, and development of social emotional/behavioral, and social interaction skills. The team developed IEP goals in the areas of reading comprehension, math problem solving, social emotional/behavioral skills related to responding to frustrating situations, anger management, and social interaction. The IEP does not include a goal for the student to improve written language skills and the team did not document its decision not to develop a written language expression goal for the student. To assist the student in making progress on his goals, the team determined that he would receive five hours of instruction outside of general education and a half an hour of psychological services per week. The team further recommended that the student be provided with the following supplementary aids and services:

On a daily basis:

- Visual checklists for on-task behaviors;
- Frequent feedback;
- Repetition and paraphrasing of information;
- Monitoring of independent work;
- Repetition of instructions;
- Frequent eye contact;
- Check-ins at the beginning and end of the school day;
- Frequent reminder of the rules;
- Strategies to sustain attention;
- Reinforcement of appropriate behavior; and
- Preferential seating.

On a weekly basis:

- Assistance with organization and home school communication.

On a Monthly basis:

- Psychological consultation and classroom instructional consult (Docs. a and d).

2. In April 2016, the IEP team met and added a goal for self-management, and increased the amount of outside general education instruction to seven and one half hours per week. The IEP team additionally recommended that the student be provided with visual cues to alert his teachers when he needs academic support (Doc. b and f).
3. On August 9, 2016, the IEP team met and discussed the results of an Assistive Technology (AT) assessment recommended to determine the student's need for the use of a dedicated device for reading. The team determined that the student does not require AT services, but recommended that the student be provided with chunking of text, auditory strategies and access to a computer. The team added updated information to the student's present levels of performance in reading and math, and behavioral areas. However, they did not update information in written expression, nor did they revise the student's goals or document their decision that they remained appropriate (Docs. c, f and j).
4. The team noted in the prior written notice that the student's Behavior Intervention Plan (BIP), developed in February 2015, would be amended to include addressing interfering behaviors related to skipping class. The team also decided that "peer aggression" was no longer an interfering behavior to be addressed by the BIP. However, the references to peer aggression were not removed from the BIP. The team did not, however, revise the BIP beyond a revision from "[the student] tends to leave assigned area (leaves classroom, roams hallways)" to "[the student] tends to leave assigned area (leaves classroom, roams hallways) or to not be in assigned areas at designated times (i.e. class cutting)" Although

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the team discussed that the student continued to skip class, the team did not discuss supports to address this behavior, which was already targeted in the BIP (Docs. c, and g-h).

5. The parties report that the school staff, the BCPS Central Office staff, and the complainant have met following the August 2016 IEP team meeting. However, these meetings were not treated as IEP team meetings by the school staff, and were not documented. Therefore, there is no documentation that the student's IEP has been reviewed and revised since February 2016 (Docs. a-c, and i).
6. The student's IEP requires that progress reports are to be made on a quarterly basis during the school year. While there is some documentation that the complainant was provided with some of the progress reports required by the student's IEP, there is no documentation that they were consistently prepared or provided to the complainant. The progress reports completed for the student in January 2017 state that the student "has the ability but chooses not to complete assigned tasks" in academic areas. The student did not receive progress reports for one of his social emotional, social interaction and self-management goals. For the remaining goal, first developed in April 2016, the progress report indicated in January of 2017 that it was a newly introduced skill. The report also stated that the student "will not talk unless directly asked a question by the psychologist" (Docs. a-c, review of student's record).
7. There is no documentation that the student was provided with the accommodations supports and services required by his IEP since the start of the 2016-2017 school year (Review of student's record)
8. The school staff report that the student was not provided with psychological services consistently throughout the 2016-2017 school year because a service provider was unavailable at the school (Interview with school staff).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Prior Written Notice**

The public agency is required to provide the parent of a student with a disability with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. This notice includes a description of the action proposed or refused, and an explanation of the action (34 CFR §300.503).

Based on Finding of Fact #5, the MSDE finds that there is no documentation that an IEP team meeting was held after August 9, 2016. Therefore this office does not find that a violation occurred with respect to this allegation.

**Allegation #2: Progress Reports**

The public agency must ensure that each student is provided with the special education instruction and supplementary aids and services required by the student's IEP (34 CFR §300.101 and .323).

Based on Finding of Fact #5-6, the MSDE finds that there is no documentation that the complainant was provided with periodic reports of the student's progress for all IEP goals since August 2016. Therefore this office finds that a violation occurred with respect to this allegation.

**Allegation #3: Documents To Be Discussed At IEP Team Meetings**

At least five (5) business days before a scheduled IEP team meeting, the student's parent must receive an accessible copy of each assessment, report, data chart, draft IEP, if applicable, or other document the team plans to discuss at the meeting (COMAR 13A.05.01.07)

Based on Finding of Fact #5, the MSDE finds that there is no documentation that an IEP team meeting was held after August 9, 2016. Therefore this office does not find that a violation occurred with respect to this allegation.

**Allegation #4: IEP Team Meeting Invitations**

The public agency is required to take steps to ensure that a parent has the opportunity to participate in IEP team meetings. To ensure that parents are afforded with this opportunity, a written invitation must be sent to the parent at least ten (10) days in advance of the meeting, unless an expedited meeting is being conducted to address urgent needs of the student to ensure the provision of a Free Appropriate Public Education (FAPE) (34 CFR §300.322 and COMAR 13A.05.01.07D).

Based on Finding of Fact #5, the MSDE finds that there is no documentation that an IEP team meeting was held after August 9, 2016. Therefore this office does not find that a violation occurred with respect to this allegation.

**Allegation #5: IEP Team Participation**

The IEP team must include the student's parent, at least one regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

Based on Finding of Fact #5, the MSDE finds that there is no documentation that an IEP team meeting was held after August 9, 2016. Therefore this office does not find that a violation occurred with respect to this allegation.

**Allegation #6: Addressing the Student's Needs**

The public agency must offer each student with a disability a FAPE through an IEP that includes special education and related services that address the student's identified needs. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. 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, .320 and .324).

The public agency must ensure that the IEP team reviews the IEP at least annually in order to determine the student's progress towards achievement of the annual IEP goals (34 CFR §300.324).

Based on the Findings of Facts, #5-10, the MSDE finds that the BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the IEP at least annually. Furthermore, based on those same Findings of Facts, the MSDE finds that the IEP team has not considered positive behavior interventions to address the student's continuing interfering behaviors. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

**Allegation #7: Implementation of the IEP**

As stated above, the public agency must ensure that each student is provided with the special education instruction, supports and supplementary aids and services required by the student's IEP (34 CFR §300.101).

Based on the Findings of Facts #7-8 the MSDE finds that there is no documentation that the services and supports required by the student's IEP have been provided since August 2016. Therefore this office finds that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the BCPS to provide documentation by May 15, 2017 of the following:

- The supplementary aides and services required by the student's IEP are being consistently provided to the student, in accordance with his IEP, since the date of this Letter of Findings;

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- The psychological services required by the student's IEP are being consistently provided to the student, in accordance with his IEP since the date of this Letter of Findings;
- The complainant has been provided with copies of the prior written notice of the IEP team's decisions since August 2016; and
- The complainant has been provided with updates of the student's progress on IEP goals.

The MSDE further requires that the BCPS to provide documentation by June 15, 2017 of the following:

- The IEP team has reviewed and revised the student's IEP, as appropriate, to ensure that it addresses the student's needs, including behavioral needs; and
- The IEP team has determined the compensatory services to remediate the violations identified through this investigation.

### **School-Based**

The MSDE requires the PGCPS to provide documentation by July 1, 2017 of the steps it has taken to ensure that XXXXXXXXXXXXX staff properly implement IDEA and COMAR requirements, including the following:

- Providing prior written notice of the decisions made by IEP teams;
- Providing reports, as required, to parents of students' progress towards all IEP goals on a periodic basis to parents;
- Providing documents five days in advance of IEP team meetings;
- Developing IEPs to address the behavioral and academic needs of a student;
- Implementing IEPs including behavioral supports, instruction outside of the general education setting and Behavior Intervention Plans; and
- Conducting IEP team meetings with the required IEP team members.

### **Similarly Situated Students**

The MSDE requires the BCPS to provide documentation by the end of the 2016-2017 school year that it has identified all students who were not provided with the required amount of psychological services as a result of the lack of a psychological services provider during the 2016-2017 school year. Further, for each student identified, the BCPS must provide documentation that services are being provided, and that compensatory services have been offered.

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.



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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Pries, 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  
Darnell Henderson  
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