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January 30, 2018

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

RE: XXXXXXXXXXXXXXXX
and Similarly-Situated Students
Reference: #18-050

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.

ALLEGATIONS:

On December 6, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX (the complainant), on behalf of her daughter (the named student), and similarly situated students. 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 student and similarly situated students.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student and similarly-situated students have consistently been provided with transportation to school prior to the start of the school day during the 2017-2018 school year, as required by their Individualized Education Programs (IEPs), in accordance with 34 CFR §§300.101 and .323.

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2. The BCPS has not ensured that an IEP team has considered the impact of the length of time involved in transportation on the educational placement for the student and similarly-situated students during the 2017-2018 school year, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.10.
3. The BCPS has not ensured that the student has been provided with transportation that does not exceed the amount of time specified in the IEP, since the start of the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323.

BACKGROUND:

The student is five years old and attends an Early Learning Program at XXXXXXXXXXXXXXXX XXXX. She is identified, under the IDEA, as a student with an Other Health Impairment, related to Down Syndrome, and has an IEP that requires the provision of special education and related services.

FINDINGS OF FACTS:

1. The student's IEP, developed on June 6, 2017, requires that the student be provided with the related service of transportation prior to the start of the school day, and at the conclusion of the school day.
2. There no documentation that the BCPS has ensured that the student and other BCPS students have consistently been provided with transportation to school prior to the start of the school day, and at conclusion of the school day, during the 2017-2018 school year. The MSDE has developed a Corrective Action Plan (CAP) as a result of the identification of these violations prior to the filing of this State complaint. To ensure future compliance, the MSDE is providing technical assistance to the BCPS with the support of a national transportation expert.
3. In the section of the IEP for documenting the team's decision about the educational placement for the named student, it states that the student "will travel no longer than 30 minutes each way daily." A review of other students' IEPs reveals a similar pattern of documenting the impact of the length of transportation on placement decisions.
4. The BCPS staff report that this language was intended to document the IEP teams' consideration of the effect of the length of the bus ride when determining the students' educational placements. However, the complainant reports that, for the named student, it was intended to document the IEP team's decision that the student could not be transported in excess of the stated amount of time.
5. A review of the educational record for the named student and other BCPS students reflects that there is not documentation that IEP teams have consistently considered the effect that transportation may have on the student when making placement decisions.

6. The named student is being transported in excess of 30 minutes each way to and from school.
7. There is no documentation that the IEP team has reconvened during the 2017-2018 school year to consider the concerns of the complainant with regard to length of the bus ride and the effect the transportation may have on the named student.

CONCLUSIONS:

Allegation #1

Based on Findings of Facts #1 and #2, the MSDE finds that the BCPS has not ensured that the student and other BCPS students have consistently been provided with transportation to school prior to the start of the school day during the 2017-2018 school year, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #2, the MSDE finds that the BCPS is being required to take system-based corrective action. Therefore, no additional system-based action is required.

Allegation #2

Based on the Findings of Facts #3-#7, the MSDE finds that the BCPS has not ensured that the IEP teams have consistently considered the effect transportation may have on students when making placement decisions, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.10. Therefore, this office finds that a violation occurred with respect to this allegation.

Allegation #3

Based on the Findings of Facts #3-#7, the MSDE finds that the BCPS has not ensured that the named student's IEP is written clearly with respect to her transportation needs, and therefore, has not ensured that the IEP is being implemented as determined by the IEP team, in accordance with 34 CFR §§300.101 and .323. 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 March 1, 2018 that the student is being transported in order to arrive to school prior to the start of the school day.

The MSDE requires the BCPS to provide documentation by April 1, 2018 that the IEP team has convened and done the following:

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- a. Considered the effect transportation may have on the student in relation to her age and disability, specialized equipment needs, personnel need to assist with transportation, amount of time involved in transporting the student, and the distance the student will be transported;
- b. Determined an educational placement that is as close as possible to the student's home after consideration of the above factors;
- c. Reviewed and revised, as appropriate, the IEP to clearly reflect any required restrictions on the amount of time that the student can be transported; and
- d. Determined whether the violations identified through this investigation had a negative impact on the student's ability to benefit from the education program, and if so, the compensatory services or other remedy to remediate the violations.

System-Based

The MSDE requires the BCPS to provide documentation within one (1) year of the date of this Letter of Findings that IEP teams are properly considering the effect transportation may have on students who cannot be educated in the school or typical early childhood setting they would attend if not disabled.

TECHNICAL ASSISTANCE:

Technical assistance is available to the complainant and the BCPS by Bonnie Pries, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE. Ms. Pries can be reached 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.

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Questions regarding the findings and conclusions 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 Free and 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:gl

c: Sonja Brookins Santelises
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