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February 23, 2018

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

RE: XXXXX  
Reference: #18-068

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 27, 2017, the MSDE received a complaint from Ms. XXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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) and related State requirements with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s occupational therapy needs, since March 2017, in accordance with 34 CFR §§300.320 and .324.
2. The BCPS has not ensured that prior written notice of the decisions made by the IEP team were provided, since December 2016,<sup>1</sup> in accordance with 34 CFR §300.503.

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<sup>1</sup> The complainant was informed, in writing, that this office can only investigate violations alleged to have occurred within one year of the date the complaint was received (34 CFR §§300.153).

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3. The BCPS has not ensured that the student has been provided with the Assistive Technology services required by the IEP, since December 2016,<sup>1</sup> in accordance with 34 CFR §§300.101 and .323.

**BACKGROUND:**

The student is seventeen (17) years old and attends the XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX (XXXX) Baltimore, nonpublic, separate special education residential school where she was placed by the BCPS. She is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services.

**ALLEGATION #1: ADDRESSING THE STUDENT'S NEEDS**

**FINDINGS OF FACTS:**

1. On March 21, 2017, the IEP team met to review and revise, as appropriate, the student's IEP. The team considered the concerns from the complainant regarding the student's sensory needs. In response, the IEP team recommended that an occupational therapy (OT) assessment be conducted.
2. Following the IEP team meeting, the complainant raised additional concerns, via email to the BCPS staff, about the student's math goals and amount of counseling services required. To date, there is no documentation that the IEP team has considered these concerns.
3. On May 31, 2017, the IEP team reconvened to review the results of the assessment and identify OT needs for the student. Based on the assessment data, observations, and teacher input, the team determined that the student did not exhibit sensory needs. However, the assessment tool used is not valid for the purposes of identifying needs in the student's age group.
4. On January 4, 2018, the complainant requested an Independent Education Evaluation (IEE) to assess the student's sensory needs.
5. On January 19, 2018, the IEP team met to consider the complainant's concerns, and review and revise the student's IEP, as appropriate. The BCPS staff stated that a decision had not yet been made regarding her IEE request, but offered to assess the student with an age appropriate tool by a BCPS practitioner.
6. On January 24, 2018, the BCPS agreed to fund an IEE at public expense to assess the student's sensory needs. The results of the IEE are pending.

**CONCLUSION:**

Based on Findings of Facts #1-#6, the MSDE finds that the BCPS has not ensured that the student's sensory needs have been properly identified, in accordance with 34 CFR §300.324. In addition, based on Finding of Fact #2, the MSDE finds that the BCPS has not ensured that the IEP team has considered the complainant's concerns about the student's need in other areas, as well, in accordance with 34 CFR §300.324. Therefore, the MSDE finds that violations occurred.

**ALLEGATION #2:                   PROVISION OF ASSISTIVE TECHNOLOGY SERVICES**

**FINDINGS OF FACTS:**

7.       On May 31, 2017, the IEP team determined that the student would be provided with one (1) hour of assistive technology services on a quarterly basis during the school year in order to "provide feedback on skills and interventions required for [the student] to be successful in the classroom environment."
8.       While the student received Extended School Year (ESY) services during the summer of 2017, there is no documentation that she was provided with assistive technology services during that time.
9.       There is no documentation that the student was provided with assistive technology services until December 2017.

**CONCLUSION:**

Based on Findings of Facts #7- #9, the MSDE finds that the student has not been provided with the assistive technology services with the frequency required by her IEP, in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #3:                   PRIOR WRITTEN NOTICE**

**FINDING OF FACT:**

10.      There is documentation that prior written notice of the IEP team's decisions were provided to the complainant for meetings held since December 2016.

**CONCLUSION:**

Based on Findings of Fact #10, the MSDE finds that the complainant was provided with prior written notice of IEP team decisions since December 2016, in accordance with 34 CFR §300.153. 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 June 1, 2018 that the IEP team has convened and considered the complainant's concerns regarding the student's counseling needs and math goals. If the IEP requires revision as a result, the team must determine compensatory services to redress the delay in consideration of the complainant's concerns, The IEP must also determine whether the loss of services impacted the student's ability to benefit from the educational program, and if so, the compensatory services needed to remediate.

If the IEP team determines that the student requires services to address sensory needs after considering the results of the IEE, it must also determine compensatory services to redress the delay, since May 31, 2017, in addressing those needs.

The BCPS must provide documentation, within one (1) year of the date of this Letter of Findings, that the student has been provided with the compensatory services or other remedy determined by the IEP team as a result of this investigation, or documentation of parent refusal of such compensatory services or other remedy.

### **School-Based**

The MSDE further requires that the BCPS provide documentation by June 30, 2018 of the steps taken to determine if the procedural violations identified in this Letter of Findings is unique to this case or if it represents a pattern of noncompliance for students placed at XXX by the BCPS.

Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of noncompliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

If it is determined that a pattern of noncompliance exists, the documentation must describe the actions taken to ensure that the staff properly implement the requirements of the IDEA and COMAR, and provide 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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**TECHNICAL ASSISTANCE:**

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

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 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  
Jennie Wu  
Darnell Henderson  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono  
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