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State Superintendent of Schools

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July 7, 2014

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Ms. Debra Y. Brooks  
Executive Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
Fourth Floor  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: # 14-091

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.

**ALLEGATION:**

On May 8, 2014, the MSDE received a complaint from Mr. XXXXXXXXX, hereafter, “the complainant,” on behalf his daughter, 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 allegation that the BCPS has not ensured that the student’s social/emotional and transportation needs have been identified and addressed in the Individualized Education Program (IEP) since March 2013, in accordance with 34 CFR §300.324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to investigate the complaint.

XXX

Ms. Debra Y. Brooks

July 7, 2014

Page 2

2. On May 12, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Denise Mabry, Coordinator, Compliance and Related Services, BCPS, and Mr. J. Stephen Cowles, Associate General Counsel, BCPS.
3. On May 15, 2014, Ms. Williams spoke with the complainant by telephone to clarify the allegation being investigated.
4. On May 22, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the BCPS office review the alleged violation.
5. On June 9, 12, 16, and 19, 2014, the BCPS sent documentation for the MSDE to consider during the State complaint investigation.
6. On June 13, 2014, Ms. Williams and Ms. Memuna Bangura, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXXXX) and XXXXXXXXXXXXXXXX (XXXXXXXX) to review the student's educational record, and interviewed the school staff listed below.
  - a. Ms. XXXXXXXXX, Special Education Department Chairperson, XXXXXXXXX;
  - b. Ms. XXXXXXXXXXXX, School Counselor Department Chairperson, XXXXXXXXXXXX;
  - c. Ms. XXXXXXXXX, Assistant Principal, XXXXXXXXX;
  - d. Ms. XXXXXXXX, Principal, XXXXXXXXX; and
  - e. Ms. XXXXXXXX, Special Education Department Chairperson, XXXXXXXX, XX.

Ms. Mabry and Ms. Maureen Hartlieb, Compliance Resource Teacher, Department of Compliance, Office of Special Education, BCPS attended the site visit as representatives of the BCPS and to provide information on the BCPS 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. Correspondence and attachments from the complainant to the MSDE, received on May 8, 2014;
  - b. BCPS Student Discipline History, dated January 16, 2013 through June 3, 2013;
  - c. BCPS Student Enrollment History, dated July 1, 2013 through present;
  - d. IEP, dated February 6, 2013;
  - e. Written summary of the IEP team's decisions, dated February 6, 2013;
  - f. Written summary of Parent Conference, dated August 13, 2013;
  - g. BCPS Student Attendance History, dated August 28, 2013 through October 28, 2013;
  - h. IEP Team meeting notice to schedule reevaluation planning, dated September 30, 2013;
  - i. Email correspondence among the BCPS staff, dated October 3, 2013;

XXX

Ms. Debra Y. Brooks

July 7, 2014

Page 3

- j. BCPS XXXXXXXXXXXX teacher reports of the student's work quality, classroom behavior, attendance, and accommodations, undated;
- k. Written summary of the IEP team's decisions, dated October 10, 2013;
- l. Application for an administrative transfer, dated October 14, 2013;
- m. Email correspondence among the BCPS staff, regarding the student's behaviors and pending school transfer request, dated October 16, 2013;
- n. Court petition for an emergency evaluation, dated October 28, 2013;
- o. Report of the student's medical, family, social, and educational history from the XXXXXXXXXXXXXXXX, dated October 28, 2013;
- p. Request for an appeal of the denial of an administrative transfer, dated October 29, 2013;
- q. Written summary of a meeting between the student's parents and XXXXXXXXXXXXXXXX staff that was held during the 2013-2014 school year;
- r. Email correspondence among the BCPS staff regarding the request for an administrative transfer, dated November 4, 2013;
- s. Form withdrawing the student from XXXXXXXXXXXX, dated November 6, 2013;
- t. Written summary of a meeting between the student's parents and XXXXXXXXXXXXXXXX staff that was held on November 8, 2013;
- u. Written summary of the IEP team's decisions, dated December 5, 2013;
- v. Correspondence from the student's medical team to the student's school team, dated December 18, 2013;
- w. BCPS correspondence to the complainant regarding the Home and Hospital Teaching Services, dated January 9, 2014;
- x. BCPS procedures for obtaining an administrative transfer, dated January 14, 2014;
- y. BCPS Educational Assessment, dated February 4, 2014;
- z. BCPS Classroom Observation, dated March 4, 2014;
- aa. BCPS Psychological Assessment; dated March 5, 2014;
- bb. BCPS Reevaluation Report, dated March 14, 2014;
- cc. BCPS request for transportation services, dated May 20, 2014;
- dd. IEP, dated March 14, 2014, and amended May 20, 2014; and
- ee. Email correspondence among the BCPS school staff, dated May 22, 2014.

### **BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with an Emotional Disability under the IDEA. The student has an IEP that requires the provision of special education instruction and related services.

During the 2012-2013 school year and at the beginning of the 2013-2014 school year, the student attended XXXXXXXXXXXXXXXX (XXXXXXXXXX), the school she would attend if not disabled.

From November 6, 2013 through December 11, 2013, the student attended XXXXXXXXXXXX XXXXXXXX (XXXXXXXXXX) as a result of an administrative transfer that was requested by the complainant.

XXX

Ms. Debra Y. Brooks

July 7, 2014

Page 4

From December 11, 2013 until December 18, 2013, the student was provided with Home and Hospital Teaching (HHT) services, when she became unable to attend school due to an emotional crisis. The student has since returned to XXXXXXXX.

During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the IEP team decisions and notice of the procedural safeguards (Docs. e, k, u, bb, and interview with the complainant).

### **FINDINGS OF FACTS:**

#### **2012-2013 School Year**

XXXXXXXXXX

1. The IEP in effect in March 2013, was developed on February 6, 2013, at XXXXXXXX. The written summary of the February 6, 2013 IEP team meeting indicates that the school staff reported that the student exhibited interfering behaviors that included inconsistent school attendance, difficulty maintaining attention to tasks, negatively responding to redirection, difficulty with peer interactions, and avoiding work by crying and asking to leave class. The student's IEP reflects needs related to work refusal and the need to remain focused on work, but it does not identify needs related to peer interaction and consistent school attendance (Docs. d and e).
2. The IEP team developed a behavior goal for the student to increase her ability to remain on task and decided the student would be encouraged to ask for assistance. However, there is no documentation that the IEP team considered the provision of positive behavior interventions to address the behavior related to difficulty with peer interactions and inconsistent school attendance (Docs. d and e).
3. The February 6, 2013 IEP reflects that the student was placed at the school she would attend if not disabled, and that the IEP team determined that she did not require transportation as a related service (Docs. d and e).

#### **2013-2014 School Year**

4. At the beginning of the 2013 - 2014 school year, the school staff conducted conferences with the complainant to discuss the student's inconsistent school attendance and difficulty with peer interactions. The summaries of those meetings indicate that the student's problems with peer interactions were "two sided and [the student was] not being held responsible for learning skills that are needed to cope with conflict and conflict resolution." The summaries also indicate that the student would receive therapy through school-based mental health services. The summaries document that the school staff discussed having an adult escort the student during transitions between classes and recommended that if the student uses the school bus available in her neighborhood, she

- should sit at the front of the school bus to avoid negative peer interactions (Docs. a - c, f, and q).
5. On October 10, 2013, an IEP team convened to begin a reevaluation. The documentation of the meeting indicates that the teachers reported that the student “harasses” and argues with peers, throws objects at others, and walks out of class when she becomes angry. The documentation also indicates that the teachers reported that the student “does not turn in work and at times refuses to complete work,” does not participate in class, lacks focus on independent work, and does not attempt to complete work when support is offered. The IEP team recommended a psychological assessment to determine the student’s level of cognitive functioning and social/emotional functioning, an educational assessment, and a classroom observation to assess the student’s work habits and her ability to organize (Docs. h - k).
  6. At the meeting, the IEP team discussed that the student’s parents were now walking her to school instead of having the student ride the bus and that she was chronically late for school. In order to address the matter, school based members of the IEP team suggested that the student’s parents start walking the student to school a half-hour earlier. There is no documentation that IEP team considered any positive behavior interventions to address the student’s behaviors that were interfering with her ability to be transported to school on the bus (Docs. g, k, and interview with the complainant).
  7. On October 14, 2013, the complainant completed an application to transfer the student from XXXXXXXXXX to XXXXXX. The complaint indicated that the reason for the transfer request was that the student had been “bullied” since she started school at XXXXXXXXXX (Doc. l).
  8. On October 16, 2013, school staff at XXXXXXXXXX provided information to be considered when deciding whether to grant the transfer request. The school staff indicated that the student has been demonstrating disruptive behaviors that include refusing to follow directions, arguing with teachers and administrators when asked about disciplinary incidents, refusing to complete assignments, and engaging in negative verbal and physical interactions with peers. On the same date, school staff documented that the transfer request was denied because it was not made between April 1<sup>st</sup> and June 1<sup>st</sup> of the preceding school year for which the transfer was requested and application did not reflect that there was an unforeseen emergency to justify the transfer, as required by the BCPS policies and procedures (Docs. m and x).
  9. On October 28, 2013, the school social worker completed a Court petition to request an emergency evaluation, based on a report by the student’s therapist that the student “verbalized suicidal ideation” and displayed “suicidal behavior” at school. That same day, the complainant admitted the student to the XXXXXXXXXXXX for a psychiatric evaluation (Docs. n and o).

XXX

Ms. Debra Y. Brooks

July 7, 2014

Page 6

10. On October 30, 2013, the complainant appealed the denial of his request for a transfer to XXXXXXMS, citing the student's behaviors at XXXXXXXX that required her hospitalization (Doc. p).

#### XXXXXXXX MS

11. Following consultation with the Coordinator of Psychological Services, on November 4, 2013, the BCPS granted the complainant's request for a transfer to XXXXXXXX, based on "medical/student adjustment need." However, the approval does not reflect the finding of an unforeseen emergency, as required by the BCPS policy/procedure when an application for the transfer is not made between April 1<sup>st</sup> and June 1<sup>st</sup> of the preceding school year for which the transfer is requested (Docs. r and x).
12. On November 6, 2013, the student was withdrawn from XXXXXXXX and transferred to XXXXXX. On the same day, the student was discharged from the hospital (Docs. s and t).
13. On November 8, 2013, a staff meeting was convened at XXXXXXXX, and the staff discussed strategies to promote the student's success at the school, including the provision of counseling services and an escort for the student during transitions between classes and lunch (Doc. t).
14. On November 11, 2013, the student began attending XXXXXXXX (Doc. t and interview with the complainant).

#### December 5, 2013 IEP Team Meeting

15. On December 5, 2013, the IEP team convened to consider the complainant's request for transportation services. The IEP team documented that the request was denied because the student's parents "signed that they understood they would need to provide transportation as a part of the special permission application and that transportation is not provided by [the BCPS]." The IEP team also documented that the basis for the denial was that the IEP from XXXXXXXX did not include transportation as a related service, and that the complainant's concern with the student's "emotional status and issues of bullying...will be addressed by the parents providing transportation." Finally, the IEP team documented its decision that "[a]ny issues of bullying with other students will be handled by [the student] riding in her parent's car" (Doc. u).
16. There is no documentation that the team considered the student's social/emotional needs that impacted peer interactions at XXXXXXXX, which was the basis for the request for an administrative transfer, and which were continuing to impact her peer relations at XXXXXX (Docs. u and aa).
17. On December 11, 2013, an application for HHT services was approved after receipt of verification that the student was unable to attend school due to an emotional condition (Doc. w).

18. From December 13, 2013 until December 18, 2013, the student was hospitalized to address her psychiatric needs. There is documentation that following her hospitalization, the hospital treatment team provided the school staff with information that the student was at risk for “continued psychological, social, and academic decomposition,” and a recommended that intensive supports be provided at school to address her needs. However, there is no documentation that the IEP team considered this information, developed a plan for the student to return to a school-based program, or considered her educational placement upon her return to school in January 2014 (Doc. v and interview with the complainant).

March 14, 2014 IEP Team Meeting

19. On March 14, 2014, the IEP team met to complete the reevaluation and considered the data listed below.
  - a. The report of the classroom observation, which indicates that the student displayed significant difficulty with social interaction, avoided group interaction and work, lacked motivation, and did not participate in class.
  - b. The report of the psychological assessment, which states that the student exhibited a “lack of participation in her classes and often did not complete assignments despite prompts or support offered” and that she experienced “frequent difficulty with peers.” The report also states that the student had engaged in “self-injurious behaviors in school” due to “what she perceived as bullying from peers.”
  - c. The report of the educational assessment, which indicates that the student had difficulty with focusing, completing assignments, and seeking assistance. The report states that the student “seems to get lost in thought and falls behind during class discussion and that she misses a lot of information and assignments due to missing class (absences from school).”
  - d. Teacher reports that the student did not appear to be focused, that she had incomplete assignments due to absences, and that she refuses to complete work or accept assistance (Docs. y, z, aa, and bb).
20. Based on the data, the IEP team determined that the student meets the criteria for identification as a student with an Emotional Disability, which impacts her ability to control her impulses and manage frustration. The IEP team documented that the student’s disability also impacts her ability to remain on task, follow directions, complete work, and persevere in order to understand complex concepts (Doc. bb).
21. The IEP team developed behavioral goals for the student to manage her emotions and improve her work habits. The goal to manage emotions states that the student “will use management/coping strategies” to reduce anxiety, frustration, stress or anger, and express emotions with non-aggressive words rather than acting out verbally or physically. The

XXX

Ms. Debra Y. Brooks

July 7, 2014

Page 8

goal to improve work habits states that the student will increase her “on task” behavior through the use of reminders, the provision of instruction, and the use of proximity control (Doc. dd).

22. At the meeting, the IEP team determined that school staff would work with the student to develop a daily point sheet to monitor her ability to focus and complete work. The IEP team also decided that the student would be provided with the support of an adult to monitor her behavior and provide instructional assistance in math (Doc. bb).
23. At the meeting, the complainant again requested that the student be provided with transportation to school. Despite the team’s identification of previously unaddressed social/emotional needs based on behaviors that had been demonstrated at both XXXXXXXXXX and XXXXXXX, it denied the request, finding that her needs could have been met at XXXXXXXXXX. The team again documented that the denial was based on the fact that the school system does not provide transportation when students receive an administrative transfer at parent request. However, there is no documentation that the team considered that the request for the transfer was made and granted because the student’s social/emotional needs were not being addressed at XXXXXXXXXX. There is also no documentation that the team considered whether the student required transportation services to address her inconsistent school attendance (Doc. bb).

#### May 20, 2014 IEP Team Meeting

24. On May 20, 2014, the IEP team reconvened to again, consider the complainant’s request for transportation services. At this meeting, the team decided that the transportation services are required to ensure the student’s consistent school attendance (Docs. cc and dd).
25. The complainant reports that transportation services began on May 26, 2014 (Doc. ee and interview with the complainant).

#### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student’s present levels of academic achievement and functional performance, including how the disability affects the student’s progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student’s disability, and the special education instruction and related services required to assist the student in achieving the goals. If the IEP team determines the need for additional data in order to determine present levels of performance, the results of assessment procedures must be used by the IEP team in reviewing, and as appropriate, revising the IEP, within 90 days of the recommendation to obtain the data (34 CFR §§300.101 and .320 and COMAR 13A.05.01.06).

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,



XXX

Ms. Debra Y. Brooks

July 7, 2014

Page 9

the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to ensure that the program and placement remain appropriate. In addition, the IEP team must review and revise, as appropriate, the IEP to address any lack of expected progress toward achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, and to address the student's anticipated needs (34 CFR §300.324).

Furthermore, if a student with a disability is unable to participate in the student's school of enrollment and is provided instruction at home because of a physical or an emotional condition, the IEP team must meet to determine the instructional services to be provided to the student as long as the medical restrictions apply and develop a plan for returning the student to a school-based program. When the period of treatment or convalescence ends, the IEP team must meet again to review the IEP to ensure that the program and placement remain appropriate (COMAR 13A.05.01.10).

Based on the Findings of Facts #1, #2, and #4 - #16, the MSDE finds that there is data that the student had social/emotional needs that were impacting her relationships with peers, and that she was not attending school consistently since March 2013. Based on the Findings of Facts #3 and #4, the MSDE finds that there is documentation that by the start of the 2013-2014 school year, the student's social/emotional needs were also impacting her ability to access transportation services. Based on the Findings of Facts #1 - #16, the MSDE finds that there is no documentation that the IEP team considered addressing the student's needs in these areas. Based on the Findings of Facts #17 and #18, the MSDE finds that when the student became unable to attend school due to an emotional condition, the BCPS did not ensure that the IEP team met to determine the instructional services to be provided or to develop a plan for returning her to a school-based program.

Based on the Findings of Facts #5 and #19 - #23, the MSDE finds that while the IEP team decided on October 10, 2013 that additional data was needed to appropriately identify and address the student's social/emotional needs, the BCPS did not ensure that the data was obtained and considered by the team within the required timelines. As a result, the MSDE finds that the IEP did not address the student's social/emotional needs related to peer relationships from March 2013 until March 14, 2014. In addition, based on the Findings of Facts #23 - #25, the MSDE finds that the IEP team did not address the student's need for transportation services to ensure consistent school attendance until May 26, 2014. Therefore, the MSDE finds that violations occurred with respect to the allegation.

## **CORRECTIVE ACTIONS/TIMELINE:**

### **Student-Specific**

The MSDE requires the BCPS to provide documentation by the start of the 2014-2015 school year that the IEP team has determined the amount and nature of compensatory services or other remedy for the loss of appropriate services from March 2013 through the 2013-2014 school year. When making the determination, the team must document its consideration of the student's current levels of academic and functional performance and the levels of academic and functional performance that were expected to have been achieved from March 2013 until the date of the meeting. The BCPS must also provide documentation of the IEP team's development of a plan for how and when the services are to be provided within one year of the date of this Letter of Findings.

### **School-Based/Systemic**

The MSDE requires the BCPS to provide documentation by the start of the 2014-2015 school year of the steps taken to ensure the future compliance with the requirements related to addressing the social/emotional and transportation needs of students with disabilities at both XXXXXXXXXXXX and XXXXXXXX. The documentation must include a description of how the school system will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

The MSDE requires the BCPS to provide documentation by the start of the 2014-2015 school year of the steps taken to determine whether the identified violations are specific to XXXXX and XXXXXX or whether they constitute a pattern of noncompliance within the school system. 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 non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through the Family Support and Dispute Resolution Branch, MSDE, at (410) 767-7770.

Please be advised the complainant and the school system 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 consistent with the timeline requirements as 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 a 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

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