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State Superintendent of Schools

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October 14, 2014

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Ms. Rebecca Rider
Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
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RE: XXXX
Reference: #15-009

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 reports the final results of the investigation.

ALLEGATIONS:

On August 15, 2014, the MSDE received a complaint from Maureen van Stone, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and her mother, Ms. XXXXXXXX. 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 allegations listed below.

1. The BCPS did not ensure that the psychological and speech/language assessments which were conducted during the 2013-2014 school year were administered in the student’s “native language”, in accordance with 34 CFR §§300.303 - .305.

2. The BCPS did not ensure that the student's Individualized Education Program (IEP) was implemented, as required following her transfer to the BCPS during the 2013-2014 school year, in accordance with 34 CFR §§ 300.101 and .323.
3. The BCPS did not ensure that the student was provided with the transportation services required by the IEP following IEP team meeting held on February 26, 2014, in accordance with 34 CFR §§ 300.34, .101, and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 18, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Current Executive Director of Student Services, BCPS; Mr. Stephen Cowles, Associate General Counsel, Special Education Compliance, BCPS; and Ms. Denise Mabry, Coordinator of Compliance and Related Services, BCPS.
3. On September 12, 2014, 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 BCPS review the alleged violations.
4. On September 17, 2014, Ms. Moyo conducted a telephone interview with the complainant regarding the allegations being investigated.
5. On September, 2014, the BCPS provided the MSDE with documentation related to the allegations being investigated, via email.
6. On September 22, 2014, Ms. Moyo and Ms. Sandi Marx, Consultant, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXX, Special Education Compliance Department Chairperson;
 - b. Ms. XXXXXXXX, Speech/Language Pathologist; and
 - c. Ms. XXXXXXXX, General Education Teacher;
 - d. Mr. XXXXXXXX, School Psychologist; and
 - e. Ms. XXXXXXXX, ESOL Family School Liaison.

Ms. Conya Bailey, Compliance Supervisor, BCPS and Ms. Brenda Borisevic, Assistant Special Needs Transportation, BCPS attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

7. On October 1, 3, and 9, 2014, the BCPS provided the MSDE with documentation related to the allegations being investigated.

8. 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 August 15, 2014;
 - b. Transfer Request (XXXXXXX), dated June 4, 2013;
 - c. Enrollment documentation completed for the 2013-2014 school year;
 - d. IEP from XXXXXXXX (not translated), signed on May 13, 2013;
 - e. IEP Team Meeting Summary, dated August 21, 2013;
 - f. IEP and Meeting Summary, dated August 28, 2013;
 - g. English For Speakers of Other Languages (ESOL) Services Invoice from September 9, 2013 to October 2, 2013;
 - h. Speech/Language assessment report, dated September 27, 2013;
 - i. Psychological assessment report, dated October 28, 2013;
 - j. IEP team meeting notice, dated October 31, 2013;
 - k. Educational Assessment report, dated November 4, 2013;
 - l. Case manager report of progress, dated November 11, 2013;
 - m. Notice of Documents to be Reviewed, dated November 11, 2013;
 - n. Occupational Therapy assessment report, dated November 11, 2013;
 - o. IEP team meeting summary, dated November 19, 2013;
 - p. IEP, dated December 6, 2013;
 - q. IEP team meeting summary, dated February 26, 2014;
 - r. Pupil personnel service referral for attendance, dated February 19, 2014;
 - s. Consent for assessment, dated February 26, 2014;
 - t. Speech/Language Pathologist report narrative report of progress, dated February 26, 2014;
 - u. Consent for assessment, signed March 18, 2014;
 - v. Assistive technology screening report conducted during the 2013-2013 school year;
 - w. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX assessment report, dated February 6, 2014 and March 27, 2014;
 - x. Transportation services request, dated March 27, 2014;
 - y. IEP, dated March 27, 2014;
 - z. Daily behavior log and behavior notes, maintained from February 2, 2014 to May 2, 2014;
 - aa. Taxicab transportation receipts, from March 7, 2014 to June 11, 2014;
 - bb. Student's class schedule, report card and attendance record for the 2013-2014;
 - cc. BCPS Office of World Languages ESOL Program Information; and
 - dd. Snapshots of visual aids used with the student during the 2013-2014 school year.

BACKGROUND:

The student is fifteen (15) years old. She is identified as a student with an Intellectual Disability under the IDEA and has an IEP which requires the provision of special education and related services. During the summer of 2013, the student moved to Baltimore County, Maryland from XXXXXXXX, where she attended school.

Since the start of the 2013-2014 school year, the student has attended XXXXXXXXXXXXXXXX. During the period of time being addressed by this investigation, the student's mother was provided with written notice of the procedural safeguards (Docs. a – g, j, m, o – q, s, u, y, bb, and cc).

ALLEGATION #1: **PROPER PROCEDURES WHEN CONDUCTING A**
REEVALUATION

Findings of Facts:

1. When the student enrolled in school for the 2013-2014 school year, her mother provided school staff with an IEP that was written in Spanish. The school staff contacted the BCPS Office of World Languages and a Spanish translator met with the student and her mother to informally assess the student's English language proficiency. The school staff report that the student was raised in XXXXXXXX and Spanish was spoken in the home. However, while the student speaks Spanish and has a limited knowledge of English, the student's mother speaks both English and Spanish fluently, and does not require the use of a translator (Docs. b, c, e, f, and interview with the school staff).
2. The student's IEP was translated into English by staff from the BCPS Office of World Languages and the student was placed in the Functional Academic Learning Support (FALS) program¹ (Docs. a and d - f).
3. On August 28, 2013, the IEP team convened and considered information from the student's mother that the student has difficulty learning, needs support, and that she was previously placed in a class focused on teaching "functional skills". She further reported that the student has difficulty communicating, in both Spanish and English. The student's teacher reported that she is able to write the first letter of her name, but not her whole name. The team noted that although the student has "limited cognitive abilities" and difficulties with the use of language, she was "participating and actively engaging in classroom learning activities" (Docs. e and f).
4. Based on this review, the team determined that additional data was needed to update the student's present levels of academic and functional performance in the IEP. The team decided that the student would be assessed with the use of a translator, and determined that psychological and speech/language therapy assessments would be conducted (Doc. f).
5. The BCPS Pupil Services Manual indicates that students with cultural or linguistic differences are assessed by the "home school" psychologist with consultation from school psychologists who work with the BCPS Office of World Languages Bilingual

¹ The FALS program provides functional academic learning support and a life skills curriculum for students who demonstrate significant delays in measured intelligence, adaptive functioning, communication, and academic functioning (www.bcps.org)

Resource Team. The manual further indicates that the assessments must be conducted in the student's "dominant language" with the use of an interpreter, if necessary (www.bcps.org).

6. On November 19, 2014, the IEP team reconvened to complete the reevaluation and reviewed the assessment results. The psychological assessment report indicates that the assessment was administered to the student in English by the school psychologist with a Spanish interpreter present. The school staff report that the questions were posed to the student in English and if the student did not seem to understand the question, it was then presented in Spanish. The tester also used hand gestures during the assessment when trying to communicate with the student (Docs. h, i, m - o, and interviews with school staff).
7. The speech/language assessment report indicates that the assessment was conducted to determine the student's speech/language skills and that the test was administered in English. The assessment report indicates that a Spanish translator was used while the assessment was administered with the student (Doc. h).
8. There is no documentation indicating that the BCPS identified Spanish as the student's "native language" or provided information that it was not feasible to assess the student in her "native language" (Review of the student's educational record).
9. Based on its review of all of the assessments, the team determined that the student continues to be a student with an intellectual disability under the IDEA requiring the provision of special education instruction and related services. The team developed goals and included accommodations and supports to assist the student with making progress toward achieving the goals (Doc. p).

Discussion/Conclusions:

The purpose of a reevaluation is to determine whether a student continues to meet the criteria for identification as a student with a disability requiring the provision of special education services (34 CFR §§300.303 - .306). A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team with determining the content of the student's IEP. The public agency must ensure that the assessments that are selected and administered are not racially or culturally discriminatory (34 CFR §300.304).

The public agency must also ensure that the assessments are provided and administered in the student's "native language" or other mode of communication and in the form most likely to yield accurate information on what the student knows academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer. The public agency must also ensure that the assessments are used for the purpose intended and are reliable, valid, and properly administered by trained personnel (34 CFR §300.304).

The definition of “native language” ensures that the full range of needs of student with disabilities whose “native language” is other than English is appropriately addressed. The definition clarifies that in all direct contact with the student, including an evaluation of the student, “native language” means the language normally used by the student and not that of the parents, if there is a difference between the two. The definition also clarifies that for individuals with deafness or blindness, or for individuals with no written language, the “native language” is the mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication (34 CFR §300.29 and COMAR 13A.05.01.03B(45)).

Based on the Findings of Facts #1 and #3, the MSDE finds that the student’s mother informed the school staff that the student’s “native language” is Spanish. Based on the Findings of Facts #2 and #4 - #9, the MSDE finds that the BCPS did not administer the assessments in the student’s “native language” or provide information indicating that it was not feasible to administer the assessments using the student’s “native language” during the reevaluation.

Based on the same Findings of Facts, the MSDE finds that the BCPS did not ensure that proper procedures were followed when the assessments were administered to the student and, therefore, cannot ensure that accurate and valid information was obtained during the reevaluation to identify her needs. As a result, the MSDE finds that a violation occurred with respect to this allegation.

**ALLEGATION #2: IMPLEMENTATION OF THE IEP DURING THE
2013-2014 SCHOOL YEAR**

Findings of Facts:

10. During the IEP team meetings held throughout the 2013-2014 school year, the IEP team determined the special education services required to be provided to the student.² Specifically, the team determined that the student would be provided with special education instruction in a separate special education classroom, in the FALS¹ program, and with speech/language therapy, as a related service (Docs. e, f, o - q, and y).
11. The IEP requires that the student be provided with accommodations and supports, on a daily basis, including the use of a human reader during testing, “simplified” language on assignments, visual supports, altered assignments and a picture schedule on a daily basis. The IEP requires the provision of pictures to support reading passages, chunking of texts, a timer to indicate breaks, positive reinforcement, home school communication system, and gestures, manipulatives, or words to indicate “stop” when the student becomes frustrated. The IEP also includes supports, such as an agenda book and/or progress report to monitor the student’s behavior, reduced distractions, and preparation for schedule changes. The IEP further requires that the student be provided with additional adult support in school to “facilitate her communication and participation” during class, and sensory breaks with access to a quiet area where she can go to take breaks (Docs. f, p, and y).

² During the 2013-2014 school year, the IEP team met on August 28, 2013, November 19, 2013, December 6, 2013, February 26, 2014, and March 27, 2014 (Docs.).

12. There is documentation that the student received two (2) speech/language therapy sessions between December 6, 2013 and February 26, 2014. However, there is no documentation of the provision of speech/language services after February 26, 2014 (Doc. t and review of the student's educational record).
13. There is documentation that from February 3, 2014 to May 2, 2014 daily reports of the student's behavior were completed and maintained by the student's adult assistant and includes information about the supports that were provided to the student by the assistant (Doc. z).
14. The reports of progress towards achieving the annual goals document that during the third and fourth quarters of the 2013-2014 the student was provided with supports including prompts, adult support, and the use of a "communication device and/or picture board,"³ during the school day. However, there is no documentation indicating that the supports were provided on a daily basis as required by the IEP (Doc. z and review of the student's educational record).

Discussion/Conclusions:

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP. Based on the Findings of Facts #10 - #14, the MSDE finds that there is not documentation that the student was consistently provided with all of the services and supports required by the IEP during the 2013-2014 school year. Therefore, the MSDE finds that a violation occurred with regard to this allegation.

ALLEGATION #3: PROVISION OF TRANSPORTATION SERVICE AS REQUIRED BY THE IEP

Findings of Facts:

15. On February 26, 2014, the IEP team convened to review to discuss the student's frequent absences from school. At the meeting, the student's mother reported that the student refused to get on the bus and did not want to come to school. In response, the IEP team agreed to develop strategies to assist the student with improving her attendance (Docs. r and q).
16. The BCPS staff agreed that the student would be transported using "door-to-door" taxicab services and that the student's mother would accompany her in the taxicab in order to improve her school attendance. Further, it was agreed that the student's mother would be transported back home by the taxicab once the student arrived at school.

³ The communication board is a "low-tech" assistive technology device used to provide the student with a method of nonverbal and visual communication. The board was created by the Speech/Language pathologist and includes pictures labeled in English to assist the student with improving her language and communication skills (Doc. dd and interview with school staff).

During the meeting, the BCPS contacted the transportation services office to confirm that transportation services could be provided as discussed (Doc. r and interviews with school system staff).

17. On March 5, 2014, the BCPS transportation office staff sent a “cab request” to the taxicab company indicating that transportation services were needed for the student “until further notice” The request included the student’s address and indicated that the student would need to be taken to and from school each day (Review of transportation documentation).
18. On March 7, 2014, the student began receiving transportation services by taxicab and the student’s mother rode with the student to school. However, there is no documentation that the student’s mother was provided with taxi transportation home (Doc. aa and review of the student’s educational and transportation records).
19. There is documentation indicating that following the changes to the student’s transportation services, she remained listed as a student requiring transport on the bus route (Review of bus route documentation).
20. There is documentation that in the morning of March 21, 2014, the student was transported to school via taxicab. However, there is also documentation that the student was transported home, in the afternoon, on the school bus (Docs. z and aa).
21. The IEP has not included a statement of the “service delivery including a description of transportation services” to be provided to the student since start of the 2013-2014 school year. The IEP states only that the student will be provided with “special transportation” services, but it does not document the method of transport required to get the student to and from school each day (Docs. f, p, y, and review of the student’s educational record).

Discussion/Conclusions:

The public agency is required to ensure students are provided with the special education instruction, related services and accommodations, including transportation services, required by the IEP (34 CFR §300.101 and .323). In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).

Based on the Findings of Facts #15 - #20, the MSDE finds that there is documentation that the student was provided with transportation services using both a school bus and taxicab during the 2013-2014 school year. However, based on the Finding of Fact #21, the MSDE finds that the IEP is not written clearly with respect to the method of transportation required to be used when transporting the student to and from school. Therefore, the MSDE finds that the IEP has not been written clearly with regard to the method that will be utilized when providing the student with transportation services and, as a result finds a violation has occurred with regard to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires that the BCPS convene an IEP team meeting to complete the following actions:

- Determine whether additional assessments are required and if so, ensure they are conducted using the student's "native language," review the data, and revise the IEP based on the data, if necessary;
- Clarify the transportation services to be provided to the student and revise the IEP to include a description of the method and delivery of the transportation services to be provided; and
- Determine the amount and nature of services necessary to compensate the student for the loss of services resulting from the violations identified in this complaint.

The MSDE further requires that the BCPS:

- Ensure the provision of the related services, accommodations, supports, and transportation to the student, as required by the IEP; and
- Reimburse the student's mother for any transportation costs incurred as a result of not providing her with transportation home, as agreed to by the IEP team.

The BCPS must provide to the MSDE with documentation by January 5, 2015 that the above actions have been taken and of the compensatory services required, including a plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings.

The BCPS must provide the student's mother with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the student's mother disagrees with the IEP team's determinations, she maintains the right to request mediation or to file a due process complaint, in accordance with the IDEA.

Documentation of all corrective actions 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) 767-0255.

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

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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 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 Free Appropriate Public Education (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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF/km

cc: XXXXXXXX
S. Dallas Dance
Debra Y. Brooks
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