



November 14, 2014

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Ms. Rebecca Rider  
Director of Special Education  
Baltimore County Public Schools  
The Jefferson Building  
105 West Chesapeake Avenue  
6901 Charles Street  
Towson, Maryland 21204

RE: XXX  
Reference: #15-017

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 September 16, 2014, the MSDE received a complaint from Ms. XXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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 allegations listed below.

1. The BCPS has not convened an Individualized Education Program (IEP) team meeting since September 16, 2013,<sup>1</sup> in accordance with 34 CFR §§300.321 and .324.
2. The BCPS has not ensured that the student’s IEP addresses his academic and behavioral needs, in accordance with 34 CFR §300.324.

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<sup>1</sup> This office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint. While the allegation was initially identified as beginning at the start of the 2013-2014 school year, the time period for this investigation begins on September 16, 2013 (34 CFR §300.153).

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3. The BCPS has not provided the student with the supplementary aides and services and social work services required by the IEP, in accordance with 34 CFR§300.101.c

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 25, 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 22, 2014, Ms. Dori Wilson, Branch Chief, Family Support and Dispute Resolution Branch, MSDE conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On September 25, 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.
5. On October 17, 2014, Ms. Moyo and Ms. Nicole Green, Dispute Resolution Data Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX XXX to review the student's educational record, and interviewed XXXXXXXXXXXXX, Special Education Department Chairperson; and XXXXXXXXXXXXX, IEP Chairperson. Ms. Conya Bailey, Compliance Supervisor, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On October 27, 2014, the BCPS staff provided the MSDE staff with documentation from the student's educational record related to the allegations being investigated, via email.
7. On November 6 and 7, 2014, the BCPS staff provided the MSDE staff with documentation from the student's educational record related to the allegations being investigated, via email.
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 September 15, 2014;
  - b. IEP, May 30, 2013;
  - c. Student's report card from the 2013-2014 school year;
  - d. BCPS staff acknowledgement of receipt of the IEP, dated August 20, 2013;
  - e. BCPS staff acknowledgement of receipt of the IEP, dated August 22, 2014;
  - f. IEP, dated September 5, 2014;

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- g. Student's attendance record from September 16, 2013 until November 5, 2014;
- h. Student's disciplinary record since the start of the 2013-2014 school year;
- i. Student's class schedules for the 2013-2014 and 2014-2015 school year; and
- j. Teachers' daily logs of the provision of supports to the student maintained since the start of the 2014-2015 school year.

### **BACKGROUND:**

The student is twelve (12) years old and he attends XXXXXXXXXXXXXXXXXXXX (XXXXXXX). He is identified as a student with a Specific Learning Disability under the IDEA and has an IEP which requires the provision of special education and related services. During the period of time being addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a – g and j).

### **FINDINGS OF FACTS:**

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

1. The IEP in effect on at the start of the 2013-2014 school year was dated May 30, 2013. The IEP indicates that classroom assessments, classroom observations, and reports from the teachers indicate that the student has needs in the areas of reading, written language, and behavior (Doc. b).
2. On August 20, 2013, the student's teachers signed a form acknowledging their receipt of the IEP, indicating that they had been made aware of the special education instruction and the supports for which each was responsible. However, there is no documentation that the school social worker, who was responsible for the provision of counseling services, received the IEP (Doc. d and review of the educational record).
3. The present levels of academic achievement and functional performance document that the student has difficulty inferring and drawing conclusions and decoding multi-syllabic words when reading. The IEP indicates that when completing writing activities the student has difficulty responding to texts in written form. The IEP also indicates that the student's "behavior is below grade level expectations" and he is easily distracted and has difficulty focusing and maintaining attention during class (Doc. a).
4. The IEP requires that the student be provided with special education instruction in the general education classroom and counseling services to address his behaviors. The IEP includes an annual goal in reading to assist the student with "demonstrating understanding of the texts" by inferring meaning, drawing conclusions, and answering simple questions about the texts. The IEP also includes an annual writing goal to "compose oral, written, and visual presentations that express personal ideas, inform and persuade" using prompts and graphic organizer to write responses to texts (Doc. a).

5. The IEP includes a behavior goal for the student to “use management and coping strategies” to control his emotions by developing a “personal bank of coping strategies” to use when he experiences feelings of anxiety, frustration, stress, or anger. However, the present levels of performance did not include information indicating that the student has emotional issues (Doc. a).
6. The IEP requires that the student be provided with accommodations, including the use of a “human reader,” audio recording, and scribe during testing, as well as extended time to complete responses, and reduced distractions during instruction and while being tested. The IEP includes supports, such as additional time to orally process information, repetition, re-direction, checks for clarity, and preferential seating which are to be provided “as needed per unit of study.” The IEP also requires provision of behavioral supports, including frequent movement breaks, verbal and visual cues to remain on task, and preferential seating, on a daily basis (Doc. a).
7. There is documentation that during the 2013-2014 school year the student exhibited disruptive behaviors, defiance, disrespect, and noncompliance with directives from school staff. The documentation also indicates that he used inappropriate language and was physically aggressive at times. There is also documentation indicating that the student “demonstrated poor judgment” by leaving during class and roaming the hallways “when he did not get his way.” There is documentation indicating that this behavior negatively impacted the development of his reading skills (Docs. b and h).
8. There is documentation that the school staff discussed the student’s behaviors with him, contacted the complainant, by telephone, and disciplinarily removed the student from school. The student’s attendance and discipline records indicate that he was disciplinarily removed from school for six (6) days during the 2013-2014 school year for disruptive behaviors (Docs. g and h).
9. There is documentation that during the second quarter of the 2013-2014 school year the student seemed to improve his coping skills and decreased the amount of times that he left the classroom without permission. However, reports of the student’s progress completed in March 2014 indicated that the student’s began leaving the classroom without permission again which caused him to “miss out on instruction” (Doc. b).
10. The school staff acknowledge that no IEP team meetings were convened during the 2013-2014 school year to address the student’s escalating behavior and to determine whether he required additional supports or other changes in his IEP to address his behavior (Review of the education record and interview with school staff).
11. While there is documentation that the student made progress toward achieving the annual goals in reading and writing during the 2013-2014 school year, there is no documentation of the consistent provision of academic supports while receiving instruction. There is also no documentation that the school social worker provided the student with counseling services required by the IEP during the 2013-2014 school year (Docs. b, d, and review of the educational record).

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### 2014-2015 School Year

12. On August 22, 2014, the student's teachers signed another receipt of May 30, 2013 IEP indicating that they had access to the student's IEP for the 2014-2015 school year and had been made aware of the instruction and services that must be provided to the student (Doc. e).
13. On September 5, 2014, an IEP team meeting was convened to review the student's May 30, 2013 IEP. However, the meeting consisted of only the complainant, additional family members, the IEP case manager, and the special education department chairperson. The meeting did not include any of the student's teachers or the school social worker. During the meeting, the complainant indicated that she believes the student can only make progress in school with the provision of supports in his classes (Doc. f).
14. At the September 5, 2014 meeting, the IEP was revised to require the provision of additional academic supports to the student, including the use of organizational aids, repetition and paraphrasing information, copies of class notes, and chunking of assignments into smaller units. However, there is no documentation indicating that the student's behavioral needs were discussed during this meeting (Docs. b, f, and review of the education record).
15. There is documentation that at the start of the 2014-2015 school year each of the student's teachers were provided with a daily chart listing the accommodations and supports that must be provided to the student. The chart allows the teachers to provide information about which supports are being used with the student each day during their class. However, the charts do not document the consistent provision of the supports in his classes (Doc. j and interview with school staff).
16. The student's discipline record documents that the student has displayed defiance, disrespect, and non-compliance while at school and that school staff has contacted the complainant regarding his behaviors. However, there is no documentation that an IEP team meeting has been convened to address the student's continued behavioral issues (Doc. h and review of the education record).
17. There is no documentation that since the start of the 2014-2015 school year, the school social worker has been providing the student with counseling services, as required by the IEP (Review of the education record).

### DISCUSSION/CONCLUSIONS:

#### **Allegations #1 and #2: Convening IEP Team Meetings and Addressing the Student's Identified Needs**

In order to provide a student with a Free Appropriate Public Education (FAPE), the IEP team must review the IEP periodically, but not less than annually, to determine whether the annual

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goals are being achieved. The IEP team must also meet to review and revise the IEP, if necessary, to address any lack of expected progress towards achieving the goals, to reflect information about the student provided to or by the student's parent, or to address the student's needs (34 CFR §300.324).

The public agency must ensure that the IEP that is developed addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. Further, in the case of a student whose behavior impedes the student's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324). In this case, the complainant alleges that the IEP team did not meet during the 2013-2014 school year to review and revise the IEP to ensure that the student has an appropriate IEP to assist him with addressing his interfering behaviors and achieving the annual IEP goals.

Based on the Findings of Facts #1 - #10, #13, #14, and #16, the MSDE finds that the BCPS has not ensured that the IEP team has convened to review the student's IEP, to consider additional strategies and supports to assist the student with improving his behavior, and ensure that he has an appropriate IEP that addresses his identified needs. Therefore, the MSDE finds that violations have occurred with respect to these allegations.

### **Allegation #3: Provision of Supports and Counseling Services**

The public agency must ensure that a student with an IEP is provided with the special education and related services required by the IEP (34 CFR §§300.101, and .323).

In this case, the complainant alleges that the student has not been provided with the supports and counseling services required by the IEP to address his behavior since September 2013 and as a result, he has continued to struggle in school. Based on the Findings of Facts #1, #2, #4, #6, #11, #12, #14, #15, and #17, the MSDE finds that the BCPS has not ensured that the student has been provided with the supports and services required by the IEP to address his behavior needs. Therefore, the MSDE finds that a violation has occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific:**

The MSDE requires the BCPS to immediately ensure that the student is provided with related services and supports, as required by the IEP until an IEP team meeting is convened to review the student's program. The MSDE requires the BCPS to provide documentation by February 1, 2015 that the IEP team, including all the proper participants, has convened to review the student's IEP, and revise it, as necessary to address the student's identified needs.

At the meeting, the IEP team must also determine the amount and nature of services necessary to compensate the student for the loss of services resulting from the violations that have been identified. The BCPS must provide to the MSDE, by February 1, 2015 documentation that the

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above actions have been taken and that that the IEP team has determined the services to be provided to the student to remediate the loss of services as a result of the violations identified within one (1) year of the date of this Letter of Findings.

The BCPS must ensure that the complainant is provided with proper written notice of the IEP team's decisions, including the basis for those decisions, and a description of the data and the options considered, as required by 34 CFR §300.503. If the complainant 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.

**School-Based:**

The MSDE requires that BCPS provide documentation by March 1, 2015 of the steps taken to determine whether the violations identified in this investigation are specific to the student or whether they constitute pattern of noncompliance at XXXXXXXXXXXXXXXX.

If the school system determines that the regulatory requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date of its determination.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch, Accountability and Monitoring Section, for its consideration during present or future monitoring of the BCPS.

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 Ms. Bonnie Preis, Dispute Resolution Consultant, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, 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 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.

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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 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: S. Dallas Dance  
Denise Mabry  
Stephen Cowles  
Conya Bailey  
XXXXXX  
Dori Wilson  
Anita Mandis  
Koliwe Moyo  
Bonnie Preis



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