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State Superintendent of Schools

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November 20, 2014

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

RE: XXX
and Similarly Situated Students
Reference: #15-018

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 September 25, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son and similarly situated Baltimore County Public Schools (BCPS) students who are transported to XXXXXXXXXXXXXXXX. In that correspondence, the complainant alleged that the BCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the students.

The MSDE investigated the allegation that the BCPS has not ensured that the students have been provided with appropriate transportation services since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101, .323, Md. Code Ann., Educ. §8-410 and COMAR 13A.06.07.

INVESTIGATIVE PROCEDURES:

1. On September 29, 2014, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Ryder, Director of Special Education, BCPS.

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2. On October 1, 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 review the alleged violation.
 3. On October 27, 2014 and November 3 and 17, 2014, Ms. Vickie Strange-Moscoco, State Complaint Investigation Consultant, MSDE, requested documents from the BCPS.
 4. On October 30, 2014, Ms. Strange-Moscoco contacted Mr. Leon Langly, Pupil Transportation Office, MSDE, to discuss the allegation.
 5. On November 5, 2014, Ms. Strange-Moscoco and Ms. Nicole Green, Dispute Resolution Data Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the named student's educational record and other documents. The following school and school system staff attended the site visit:
 - a. Ms. Brenda Borisevic, Special Needs Transportation, BCPS;
 - b. Mr. Jim Mitcherling, Director of Transportation, BCPS;
 - c. Mr. Kenny West, Assistant Director of Transportation, BCPS; and
 - d. XXXX, Principal, XXXXXXXXXXXXXXXXXXXX.
- In addition, Ms. Conya Bailey, Supervisor of Compliance, BCPS, attended the site visit as a representative of the BCPS and to provide information about the school system's policies and procedures, as needed.
6. On November 14 and 17, 2014, the BCPS provided the MSDE with documentation to be considered.
 7. On November 14, 2014, Ms. Strange-Moscoco requested information from the complainant, which was provided on the same date.
 8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The IEP for the named student, dated February 18, 2014;
 - b. Bus specifications, including equipped capacity, for the named student's bus;
 - c. The bus schedule for the named student for the 2014-2015 school year;
 - d. The named student's class schedule for the 2014-2015 school year;
 - e. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on September 25, 2014; and
 - f. Electronic mail (email) correspondence from the complainant to the MSDE, dated November 14, 2014.

BACKGROUND:

The named student is ten (10) years old, is identified as a student with an Other Health Impairment under the IDEA related to diagnoses of XXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education and related services. He attends XXXXXXXXXXXXXXXXXXXX (XXXX), a nonpublic separate special education school, where he was placed by the BCPS (Docs. a and e).

During the period of time addressed by this investigation, the complainant participated in the education decision-making process for the named student and was provided with written notice of the procedural safeguards (Doc. a and review of the student's educational record).

FINDINGS OF FACTS:

IEP Requirements

1. The IEP for the named student identifies needs related to behaviors, such as high-pitched vocalizations, hand flapping, frequent movement, hyperactivity, impulsivity, and inattention. It also describes interfering behaviors, such as vomiting, property destruction, aggression, mouthing objects, noncompliance, and taking temper tantrums. The student is further identified with needs related to toileting, grooming, fine and gross motor skills, and peer interactions (Doc. a).
2. The IEP for the named student states that the student is a nonverbal communicator, who uses a speech output device and that he requires "a high level of adult support." It further states that the student requires access to scheduled sensory breaks to help reduce the occurrences of interfering behaviors and requires that a staff member be present with the student at all times to respond to "appropriate communication and/or requests." The IEP states that, in order "to ensure his safety, improve behavior, and provide the necessary attention for his needs," the student requires the services of a "1:1 aide," who must interact with the student "at least once every minute" during periods such as recess (Doc. a).
3. The IEP for the named student requires that the student be provided with transportation services, including specialized equipment to ensure that he is safely secured into his seat and cannot remove himself from the seat during transportation. However, it does not require personnel to provide support to the student during transportation (Doc. a).
4. A review of the IEP for students assigned to the named student's bus reflects that there are other students on the bus who are identified with significant behavioral needs requiring 1:1 adult support in the school. These students are also required to be secured into their seats for their safety, and some of them require "close supervision," and modifications, such as padding on the bus windows. However, none of their IEPs require the provision of 1:1 support during transportation (Review of students' IEPs).

The School System's Transportation Practices

5. The school system has a practice of placing one (1) adult, besides the bus driver, on each bus to support the students during transportation. An additional adult is assigned for each student whose IEP specifically requires the provision of 1:1 adult support during transportation (Interview with the BCPS staff).
6. The school system's transportation staff maintain information about the times that students on each bus are picked up for school in the morning, dropped off after school in the afternoon, and the total time that is calculated for each student's bus ride to and from school. The BCPS transportation staff report that, as a result of recommendations for improving transportation to students in nonpublic schools, which were made by the MSDE in 2013, they hired staff to serve as a "router." If the "router" becomes aware that a student is being transported to or from school for more than ninety (90) minutes, consideration is given to changing the bus route in order to reduce the amount of time the student is required to be transported. The BCPS transportation staff also report that they are investigating the implementation of a computerized routing system (Doc. c and interview with the BCPS staff).

Number of Passengers on the Named Student's Bus

7. The documentation maintained by the BCPS transportation staff since the start of the 2014-2015 school year reflects that the named student has been transported on a bus with between nine (9) to twelve (12) other students, one (1) adult assistant, and one (1) bus driver. There is documentation that the named student's bus has transported students to and from XXXXXXXXXXXX and XXXXXXXX during the 2014-2015 school year (Doc. c).
8. The manufacturer of the named student's bus indicates that the bus has a maximum capacity to carry thirty-three (33) people, including the bus driver (Doc. b).

Length of Time for Transportation

9. The documentation maintained by the BCPS transportation staff reflects that some of the students on the named student's bus have been transported in excess of ninety (90) minutes to and from school between the start of the 2014-2015 school year and October 10, 2014 (Doc. c).

10. The BCPS transportation staff report that they were aware that students were being transported in excess of ninety (90) minutes each way as early as September 3, 2014, but they were unable to address the problem due to a number of staffing vacancies for bus drivers and the complexity of routing numerous buses to many different nonpublic schools. While the BCPS transportation staff report that they obtained some additional buses by contracting for these services since October 10, 2014, the information provided does not suggest that the school system can ensure that it has a sufficient number of buses to meet the reported needs (Interview with the BCPS staff).
11. The documentation reflects that none of the students on the named student's bus have been transported in excess of ninety (90) minutes since October 10, 2014. However, the complainant reports that she has been informed by the BCPS staff that additional students are being assigned to the named student's bus route, which will require the student to be picked up at home in the morning approximately thirty (30) minutes earlier. While an additional thirty (30) minute bus ride would not require the named student to be transported in excess of ninety (90) minutes to or from school, a review of the documentation maintained by the BCPS transportation staff reflects that it is likely that this would result in a bus ride in excess of ninety (90) minutes for other students on the named student's bus (Docs. c, f, and interview with the complainant).

Timeliness of Transportation

12. From the start of the 2014-2015 school year until October 10, 2014, XXXXXXXXXX staff documented student arrival times in the morning. This documentation reflects that the named student and other students on his bus were not consistently transported to school prior to the start of the school day during this time period. This documentation reflects that the students missed an average of fifty (50) minutes per week at the start of the school day. XXXXXXXXXX staff reports that, after October 10, 2014, they discontinued the practice of documenting the time of students' arrival to school in the morning (Doc. d and review of school logs of student arrival times).
13. XXXXXXXXXX staff report that they do not believe that the students were negatively impacted as a result of the lack of timely transportation because the first (1st) period of the day is designed for students to eat breakfast and prepare themselves for the instructional day. However, the class schedule reflects that the first (1st) period is also used for "leisure," "health," and "motor development" (Doc. a, interview with the XXXXXXXXXX staff, and review of students' IEPs).

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DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that students who are placed by the BCPS at XXXX are not being transported to and from school in a timely manner. The complainant further alleges that the students are not provided with sufficient support on the bus and are being required to ensure lengthy bus rides because of overcrowded bus routes (Doc. e). The ALJ concluded that the student's IEP and placement was appropriate and therefore denied parents' request for funding at a nonpublic placement.

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323). Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education (34 CFR §300.34).

In Maryland, each public agency must provide or arrange for the transportation during the regular school year of each student with a disability who is placed by the public agency in a nonpublic separate special education school. There are State regulations designed to ensure the safety of students during transportation that require that school vehicles be routed so that all students are seated and loads do not exceed the manufacture's rated capacity (Md. Code Ann., Educ. §8-410 and COMAR 13A.06.07.13).

Based on the Findings of Facts #2 - #5, #7 and #8, the MSDE finds that there is no documentation to support the allegation of overcrowding on the student's bus.

However, based on the Findings of Facts #1 - #4, #6, #12, and #13, the MSDE finds that the BCPS has not ensured that students who are transported to nonpublic separate special education schools are consistently provided with transportation services to school prior to the start of the school day.

In addition, based on the Findings of Facts #5 and #8 - #11, the MSDE finds that the BCPS has been working on practices to improve transportation for students placed in nonpublic schools, but has not been successful in ensuring that students are transported within what it has established as an appropriate length of time for transportation of students in nonpublic schools. Therefore, this office finds that a violation has occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by April 1, 2015 that students it has placed in nonpublic schools are being transported to school prior to the start of the school day at each nonpublic separate special education school and that none of those students are being transported more than ninety (90) minutes each way.

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The MSDE also requires the BCPS to provide documentation within one (1) year of the date of this Letter of Findings that, at the next annual IEP review for each student who is currently placed in a nonpublic school,¹ the IEP team determines whether the violation identified through this investigation has negatively impacted the student's ability to benefit from his or her educational program, and if so, the services to be provided to compensate the student and when those services will be provided. When determining whether there was a negative impact, the IEP team must document the consideration of the student's current levels of academic and functional performance and those that were expected to be achieved by the date of the IEP team meeting, and the basis for any discrepancy between expected and actual performance.

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 by contacting Ms. Bonnie Preis of the Family Support and Dispute Resolution Branch, MSDE 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.

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

¹ This includes students who are currently placed in a nonpublic school, but whose educational placements are revised prior to their next annual IEP review.

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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/am

c: S. Dallas Dance
Conya Bailey
XXXXXXXX
Dori Wilson
Anita Mandis
Bonnie Preis

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