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November 14, 2014

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Dr. Kim Hoffman  
Executive Director, Special Education  
Baltimore City Public Schools  
200 East North Avenue, Room 204-B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #15-021

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 28, 2014, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her granddaughter, the above-referenced student.<sup>1</sup> In that correspondence, the complainant alleged that the Baltimore City 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 Individualized Education Program (IEP) addresses the student's expressive language and social, emotional, and behavioral needs since January 13, 2014, in accordance with 34 CFR §300.324).

**INVESTIGATIVE PROCEDURES:**

1. On September 29, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the

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<sup>1</sup> The student lives with the complainant (Doc. q). Therefore, the complainant serves as a parent under the IDEA (34 CFR §300.30).

allegation to be investigated. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Executive Director of Special Education, BCPS; and Mr. Darnell Henderson, Associate Counsel, BCPS.

2. On October 2, 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 Dr. Hoffman of the allegation and requested that her office review the alleged violation.
3. On October 16 and 31, 2014, Dr. Kathleen Aux, State Complaint Investigation Consultant, MSDE, conducted telephone interviews with the complainant.
4. On October 21, 2014, Dr. Aux reviewed the student's educational record with Diana K. Wyles, Esq., Associate Counsel, Office of Legal Counsel, BCPS, at the BCPS Central Office.
5. On October 30, 2014, Dr. Aux and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review documentation and interviewed the following school system staff:
  - a. XXXX, XXXXXXXXXXXX IEP Team Chairperson;
  - b. XXXX, XXXXXXXXXXX kindergarten teacher;
  - c. XXXX, XXXXXXXXXXX IEP Team Chairperson;
  - d. Ms. Donna White, Educational Specialist, BCPS.

Ms. Wyles attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Written referral for evaluation, dated October 13, 2013;
  - b. Notice and Consent for Assessment, dated November 4, 2013;
  - c. Report of a private speech/language assessment, dated November 7, 2013;
  - d. Notice and Consent for Assessment, dated November 18, 2013;
  - e. Evaluation Report, dated November 18, 2013;
  - f. IEP, dated November 18, 2013;
  - g. Written summary of the November 18, 2013 IEP team meeting;
  - h. Report of an educational assessment, dated January 8, 2014;
  - i. Report of a psychological assessment, dated January 13, 2014;
  - j. Report of a psycho-social assessment, dated January 13, 2014;
  - k. IEP, dated January 13, 2014;
  - l. Written summary of the January 13, 2014 IEP team meeting;
  - m. Report of a private psychological assessment, dated June 17, 2014;
  - n. The student's report card for the 2013-2014 school year;

- o. Receipt of Parental Rights Document, dated September 10, 2014;
- p. Written summary of the September 10, 2014 IEP team meeting;
- q. Correspondence containing an allegation of a violation of the IDEA, received by the MSDE on September 29, 2014; and
- r. Invitation to a November 5, 2014 IEP team meeting.

**BACKGROUND:**

The student is six (6) years old, is identified as a student with a Speech/Language Impairment under the IDEA, and has an IEP that requires the provision of special education instruction and related services (Docs. k and q).

The student attended kindergarten at the XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) until December 13, 2013, when she was transferred to XXXXXXXXXXXXXXXX (XXXXXXXXXXXX). The student started first (1st) grade at the XXXXXXXX at the start of the 2014-2015 school year, but was withdrawn by the complainant on September 16, 2014, and is currently receiving home instruction (Docs. p, q, and interview with the complainant).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with notice of the procedural safeguards (Doc. o).

**FINDINGS OF FACTS:**

- 1. On November 4, 2013, the IEP team began an evaluation in response to a request made by the complainant on October 13, 2013 for instruction in a small group setting with additional adult support in order to address the student's behavioral needs resulting from her XXXXXXXXXXXXXXXX (XXXXXX). At the meeting, the IEP team considered information from the complainant and the student's teacher that the student demonstrated difficulty with speech articulation and recommended that a speech/language assessment be conducted. There is no documentation that the team considered information about the student's functional performance in the area of behavior (Docs. a and b).
- 2. On November 18, 2013, the IEP team reconvened and considered the results of a private speech/language assessment that was provided by the complainant. The data indicates that the student has poor articulation skills, which makes it difficult for her peers and teacher to understand her, which in turn, causes the student to become frustrated and unwilling to work to complete tasks. Based on this information, the IEP team determined that the student meets the criteria for identification as a student with a speech/language impairment under the IDEA (Docs. c and e - g).
- 3. At the November 18, 2013 IEP team meeting, the IEP team also considered information provided by the complainant that the student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and XXXX. The complainant shared that the student receives private therapy to address her extreme anxiety, which causes her

to have difficulty sleeping, and that the student has become "enraged" at home when she experiences difficulty with school work. The complainant expressed concern that these factors may impact the student's ability to access instruction. The school staff reported that they had not observed the same behaviors at school, and that the student was performing at the "kindergarten academic level." Based on the information, the IEP team recommended that cognitive, educational, and psycho-social assessments be conducted. However, the IEP team also referred the student to the Student Support Team to determine whether a Functional Behavioral Assessment (FBA) was required (Docs. d and g).

4. On November 18, 2013, an IEP was developed that includes annual goals for the student to improve her speech articulation. The team decided that the student could participate in a regular kindergarten program without the provision of supplementary aids and services, and that she would be provided with speech/language therapy in a separate special education classroom in order to assist her with achieving the goals (Doc. f).
5. There is no documentation that a FBA was conducted or that a Behavioral Intervention Plan (BIP) was developed or that the IEP team has considered the need for an FBA and BIP (Review of the student's educational record and interviews with the school staff).
6. On January 13, 2014, the IEP team reconvened and considered the results of cognitive, educational, and psycho-social assessments that had been conducted. The assessment data indicated that the student scored in the "average range" of cognitive functioning and oral language performance, but that she continues to demonstrate an articulation/phonological disorder, which impacts her ability to access instruction. The data also reflects that, while the complainant reports that the student demonstrates temper tantrums, elopement, aggression, and "relentless crying" at home, the school staff report that she does not display "ungovernable behavior to the degree that she [is] out of control" in the school setting. The team also considered information from the school staff that the student was "working at the late pre-k to the early kindergarten level" and that "she is able to learn new things and retain the information" (Docs. k - l).
7. On January 13, 2014, the IEP was revised to reflect updated information about the student's levels of performance, and the team decided to closely monitor the student's progress to determine whether any behaviors were interfering with her academic skills (Doc. k).
8. On September 10, 2014, the IEP team convened and considered information from the report of a private psychological evaluation that was obtained by the complainant. This document reflects that the complainant reported her continued concern that the student has behavioral needs at school as a result of her XXXXXX, and that based on this information, it was recommended that support be provided to assist the student with maintaining calm and focus in order to allow her to attend to academic work (Docs. m and p).

9. At the September 10, 2014 IEP team meeting, the team also considered information about the student's classroom performance from her kindergarten teacher at XXXXXXXXXXXX. The teacher reported that the student had been performing at grade level in math, and at the "borderline" grade level in language arts. However, the student's report card for the 2013-2014 school year reflects that the student demonstrated "unsatisfactory" effort in science for the second and fourth quarters, "unsatisfactory" ability to remain on task during the third quarter, "unsatisfactory" effort in language arts during the second and third quarters, and "unsatisfactory" effort in math for the second, third, and fourth quarters (Docs. n and p).
10. At the September 10, 2014 IEP team meeting, the team recommended that a social, emotional, and behavioral assessment be conducted and decided that an adult would be assigned to work with the student on a one-on-one basis if she returned to school pending the review of the assessment data<sup>2</sup> (Doc. p).
11. The IEP team was scheduled to meet on November 5, 2014 to review the assessment data, but there is no documentation of the results of that meeting (Doc. r and review of the student's educational record).

### **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 addresses all of the needs that arise out of the student's disability that are identified in the evaluation data (34 CFR §§300.101, .320, and .324). Therefore, the public agency must ensure that the evaluation and any subsequent reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR §§300.304 and .306).

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, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student's whose behavior impacts the student's or other students' access to instruction, the IEP team must consider positive behavioral interventions and supports to address the behavior (34 CFR §§300.101, .320, and .324).

### **Expressive Language Needs**

Based on the Findings of Facts #1, #2, #4, #6, and #7, the MSDE finds that the IEP has addressed the student's needs consistent with the data, which indicates that she needs to improve speech articulation in order to increase her expressive language skills. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

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<sup>2</sup> The student was receiving home instruction at that time (Doc. p).

### **Social, Emotional, Behavioral Needs**

Based on the Findings of Facts #1 and #3, the MSDE finds that, despite information during the initial evaluation from the complainant, the student's teachers, and assessment data indicating that the student becomes frustrated and unwilling to complete tasks, the IEP team deferred to the Student Support Team to determine whether a FBA needed to be conducted and a BIP developed. Therefore, the MSDE finds that the evaluation was not sufficiently comprehensive to identify all of the student's needs, and that a violation occurred.

Based on the Findings of Facts #1, #3, and #5 - #11, the MSDE further finds that, although there was information throughout the 2013-2014 school year from the student's teachers that she was demonstrating inattention and lack of effort, and information from the complainant that this was the result of anxiety, the IEP team took no steps to consider positive behavioral interventions to address the behavior until September 10, 2014 because the student's behavior was not disruptive to the class and because the student was working on or around the level of same-aged peers. Therefore, this office finds that a violation occurred with respect to this aspect of the allegation from November 18, 2013 until September 10, 2014.

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

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by January 1, 2015 that the IEP team has taken the following action:

1. Reviewed and revised the IEP, as appropriate, consistent with the data, including the results of assessments that were recommended on September 10, 2014; and
2. Determined the services to compensate the student for the violations identified during this investigation, to be provided within one (1) year of the date of this Letter of Findings, if the student returns to a school-based program. The determination must be based upon the difference between 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.

#### **School-Based**

The MSDE requires the BCPS to provide documentation by April 1, 2015 of the steps taken to determine whether the violation related to the comprehensiveness of the evaluation is unique to this case or constitutes a pattern of noncompliance at XXXXXXXXXXXX.

The MSDE also requires the BCPS to provide documentation by April 1, 2015 of the steps taken to determine whether the violation related to addressing the student's social, emotional, and behavioral needs is unique to this case or constitutes a pattern of noncompliance at XXXXXXXXXXXXXXXX.

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Specifically, a review of student records, data, or other relevant information must be conducted at both schools 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 by contacting Ms. Bonnie Preis of the Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

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.

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, 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 due process.

Sincerely,

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

MEF:am

c: Gregory E. Thornton  
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