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State Superintendent of Schools

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January 20, 2015

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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: XXXXX
Reference: #15-034

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.

ALLEGATIONS:

On December 2, 2014, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her grandson, the above-referenced student.¹ In that correspondence, the complainant alleged that the BCPS violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

¹ Because the student resides with the complainant, the complainant serves as the parent under the IDEA (34 CFR §300.30).

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 2

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's math, organizational skills, and social, emotional, and behavioral needs since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.320 and .324.
2. The BCPS has not ensured that proper procedures have been followed as a result of the excessive use of exclusion with the student since the start of the 2014-2015 school year, in accordance with COMAR 13A.08.03 and .04.
3. The BCPS has not ensured that the student has been provided with the supports and services required by the IEP since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323. These services include the following:
 - a. Consistent support of a dedicated 1:1 assistant throughout the school day;
 - b. Assistance at the end of the day with organizing homework to be completed;
 - c. Behavioral Intervention Plan supports and strategies;
 - d. weekly social skills training;
 - e. monthly social work services; and
 - f. advanced notice of changes, including the assignment of a new teacher.
4. The BCPS has not ensured that the student is provided with the required disciplinary protections by documenting each incidence of disciplinary removal during the 2014-2015 school year, in accordance with 34 CFR §§300.229, .530, .626, COMAR 13A.08.02.09, and the Maryland Student Records System Manual.
5. The BCPS did not ensure that the complainant was provided with a copy of the current IEP within five (5) business days of its development, in accordance with COMAR 13A.05.01.07.
6. The BCPS did not ensure that parental consent was obtained before disclosing personally-identifiable information about the student during the 2014-2015 school year, in accordance with 34 CFR §300.622.

INVESTIGATIVE PROCEDURES:

1. On December 3, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, contacted the complainant and clarified the allegations and the remedy being requested. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Ryder, Director of Special Education, BCPS.

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 3

2. On December 5, 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 December 12, 2014, Ms. Mandis, requested documents from the BCPS.
4. On January 7, 2015, Ms. Mandis and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX and reviewed the student's educational record and other documents with Ms. XXXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXXXXXXXXXXX, who serves as the IEP Team Chairperson. 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.
5. On January 9, 2015, the BCPS submitted additional documentation to the MSDE to be considered.
6. On January 14, 2015, Ms. Mandis and Ms. Austin conducted a telephone interview with the complainant about the allegations.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The Behavior and Learning Support Program (BLS) Handbook;
 - b. The BCPS Additional Adult Assistant Handbook;
 - c. Behavior Intervention Plan (BIP), dated December 18, 2014;
 - d. Report of the results of classroom-based assessments of the student's reading and math performance during the spring and fall of 2014;
 - e. The student's report card for the 2013-2014 school year;
 - f. IEP, developed on March 18, 2014, and written summary of the March 18, 2014 IEP team meeting;
 - g. Electronic mail (email) correspondence from the complainant to the school staff, dated September 25, 2014;
 - h. Email correspondence from the complainant to the school staff, dated October 2, 2014;
 - i. Email correspondence between the complainant and the school staff, dated October 31, 2014, November 10, 24, and 26, 2014, and December 1, 2014;
 - j. School staff's reports of the use of physical restraint on November 26, 2014 and December 1, 2014;
 - k. The student's daily points sheets from the 2014-2015 school year;
 - l. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on December 2, 2014;

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 4

- m. IEP, dated December 11, 2014, and written summary of the December 11, 2014 IEP team meeting;
- n. Written consent for assessments to be conducted, dated December 11, 2014;
- o. Written consent for the release of information and records to the student's private therapists, dated December 11, 2014;
- p. Email correspondence from the complainant to the school staff, dated December 12, 2014;
- q. The student's attendance record for the 2014-2015 school year;
- r. Log of the use of behavior interventions with the student during the 2014-2015 school year;
- s. Log of school social worker services provided to the student during the 2014-2015 school year; and
- t. Electronic version of the IEP provided to the complainant in November 2014.

BACKGROUND:

The student is ten (10) years old, is identified as a student with an Emotional Disability under the IDEA, and has an IEP that requires the provision of special education and related services. He attends XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). However, the complainant did not send the student to school from December 2, 2014 until January 6, 2015 due to her concerns about whether the student's social, emotional, and behavioral needs were being addressed at the school (Docs. k, m, and p).

During the period of time addressed by this investigation, the complainant participated in the education decision-making process for the student and was provided with written notice of the procedural safeguards (Docs. f and m).

ALLEGATIONS #1 - #4 IEP THAT ADDRESSES THE STUDENT'S MATH, ORGANIZATIONAL, AND SOCIAL, EMOTIONAL, AND BEHAVIOR NEEDS; EXCESSIVE USE OF EXCLUSION; IEP IMPLEMENTATION; AND DISCIPLINARY PROCEDURES SINCE THE START OF THE 2014-2015 SCHOOL YEAR

FINDINGS OF FACTS:

IEP Requirements

1. The IEP in effect at the start of the 2014-2015 school year was developed on March 18, 2014. The IEP states that "in the past [the student's] disability significantly limited his participation in academic and nonacademic activities due to extreme reactions and the anxiety that he exhibited," but that he had "shown considerable improvement." It identifies needs related to increasing coping skills and peer relationships, and includes

- goals for the student to improve peer relationships and “pro-social interaction” in order to complete assigned tasks (Doc. f).
2. The data used in developing the IEP, including the student’s grades and results of classroom-based assessments, indicates that the student was “performing on grade level in all academic areas” with the supports he was receiving in the Behavior and Learning Support (BLS) Program.² The student’s teacher reported that the student “is very respectful, has good self-control, and always completes his homework” (Docs. d - f).
 3. The IEP requires that the student be provided with special education instruction and three (3) monthly sessions of social work services in order to assist him in achieving the annual goals. It requires that the student receive special education instruction in a separate special education classroom (BLS Program) for all academic classes except for math. The IEP team documented that, at the time of the development of March 18, 2014 IEP, the student was complying with adult directions and following classroom rules, and was being placed in the general education classroom for math in order to practice his social skills in that setting (Docs. f and m).
 4. The IEP indicates that the team decided that special education instruction can be provided to the student in a combination of general and separate special education classrooms with the provision of the supplementary aids and services listed below.
 - a. Crisis intervention services (with use of “passive restraint” limited to instances of immediate physical danger as restraint exacerbates the student’s anxiety);
 - b. Daily behavior point sheet with positive reinforcement;
 - c. Advance warning of schedule changes;
 - d. Weekly social skills training from a special education teacher, an instructional assistant, or other special education staff;
 - e. “Adult support for behavior management and academic tasks in all classes, and during transition periods, to reduce anxiety and monitor frustration;” and
 - f. A “low distraction environment to facilitate focusing and task completion, as well as extended time to complete assignments and tests and frequent breaks in order to accommodate “difficulty with attention and manage task-related anxiety” (Docs. f and m).
 5. The IEP states that the student requires the support of a Behavioral Intervention Plan (BIP) to address interfering behaviors, but that the BIP, which was developed on December 18, 2012, was not reviewed. The BIP includes strategies to address interfering behaviors of noncompliance and elopement from the classroom (Docs. c and f).

² This program is designed to provide students with special education instruction in a separate special education classroom, helping them to work through crises in a safe and supportive environment. The special education instruction provided in the program includes the use of constructive and effective strategies to assist student in learning how to deal with stressful situations and negative feelings (Doc. a).

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 6

6. The reports of the student's progress towards achieving the annual IEP goals, which were made in April 2014 and June 2014, reflect that the student was making sufficient progress and that he was demonstrating "positive peer interactions in social skills groups" (Doc. f).
7. The progress report made in June 2014 indicates that the student was not "reacting externally" towards his peers when he became frustrated towards them. However, progress report made in November 2014 indicates that, during the 2014-2015 school year, the student began demonstrating such behavior, which required adult intervention (Doc. f).
8. The electronic mail (email) correspondence between the complainant and the school staff reflect that, at the end of September 2014, the complainant expressed concern about whether results of a classroom test taken by the student indicated that he requires additional instructional assistance in math (Doc. g).
9. The daily point sheets used to document the student's behavior reflect that, by October 2014, the student was again demonstrating work refusal and disruptive behavior, that he was not responding to redirection in both the general and separate special education classrooms, and that he was not consistently turning in completed homework assignments. The complainant returned the daily point sheets to the school staff with notations indicating that she did not believe that the IEP supports were being provided to the student (Doc. k).
10. The email correspondence between the complainant and the school staff during October 2014 documents that the complainant also indicated to the school staff that the student's behavioral problems may be related to a change in the student's teacher, which occurred at the beginning of the school year as a result of the resignation of the student's teacher (Docs. h and i).
11. The daily point sheets and email correspondence from the complainant to the school staff during November 2014 reflect that the complainant expressed concern during the 2014-2015 school year that the student appeared disorganized and needed assistance with ensuring that he had all of the materials needed to complete homework assignments. These documents reflect that, while the school staff indicated to the complainant that the student would be provided with assistance with organizing materials at the end of the day, the complainant did not believe that the assistance was being provided (Docs. i and k).
12. The email correspondence between the complainant and the school staff during November 2014 documents that the parties discussed arranging for an IEP team meeting to address concerns about the student's performance. The correspondence indicates that the complainant wanted to have the student's private therapist participate in the meeting, and that she requested that it be scheduled in mid to late January 2015. However, on December 1, 2014, after the school staff were unable to address the student's behavior and Baltimore County police officers were called to the school to assist, the complainant requested that the IEP team meeting be scheduled immediately (Doc. i).

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 7

13. On December 11, 2014, an IEP team meeting was held. At the meeting, the IEP team discussed that the student had not returned to school following the December 1, 2014 incident, and considered information from the complainant that the student was afraid to return to the school after having had interaction with police officers. The team considered information from the school staff that the same behavioral supports that had previously been provided had been utilized this school year, but that the student was not responding in the same manner this year. The team discussed that changes in staffing this year could be upsetting to the student. Updated assessments were recommended and the complainant provided written consent for them to be conducted. The complainant also provided written consent for information to be shared between the school staff and the student's private therapist and educational advocate. The team discussed that, when the assessment data is obtained and the IEP reviewed, specific goals will be developed for each academic area in addition to the behavioral goals that are designed to improve behaviors that impact all areas of academics (Docs. m - o).
14. At the December 11, 2014 IEP team meeting, the BIP was reviewed, and the team decided that it will include the use of a "flash pass," which will allow the student to leave the classroom to obtain additional assistance with calming down when he is feeling upset. The school-based members of the team indicated that the student would be consulted about the most effective rewards and incentives that can be used as positive behavioral interventions. The team decided that the behavior intervention specialist, who has a good relationship with the student, would meet with the student in order to assist him with transitioning back to school (Doc. m).
15. At the December 11, 2014 IEP team meeting, the team also considered the complainant's concerns about the student's organizational needs, and decided that he will be provided with assistance preparing for both instruction and homework at the beginning of the day, the middle of the day, and at the end of the day. The team also decided that information would be obtained from the student about how best to assist him with his organizational skills (Doc. m).

Use of Exclusion

16. The BLS Handbook indicates that students participating in the Program are referred to the Children's Alternative Resource Environment (CARE Room) when their classroom behavior is disruptive and it is unlikely that self control can be regained without adult intervention. It further indicates that students are escorted to the CARE Room by a staff member, and that the student is required to demonstrate self control by sitting quietly for at least five (5) minutes. It states that once seated quietly for between five (5) to ten (10) minutes, a behavior intervention specialist will provide the student with the behavior support needed to return to the classroom. If this support is not successful, the student

may require the use of seclusion or physical restraint. The BLS Handbook states that parents are notified each time these interventions are utilized (Doc. a).

17. The school system staff report that they do not use the behavior intervention of exclusion. However, the Behavior Intervention Log for the student indicates that he spent time in the CARE Room on fifteen (15) occasions during the month of October 2014 as a result of his inappropriate behavior, with ten (10) of those incidents being documented as the use of exclusion. The Behavior Intervention Log for the student indicates that he spent time in the CARE Room on twenty-one (21) occasions during the month of November 2014 as a result of his inappropriate behavior, with seventeen (17) of those incidents being documented as exclusion (Doc. r and interview with the school system staff).
18. The Behavior Intervention Log for the student documents that the student has been permitted to refer himself to the CARE Room (Doc. r).

IEP Implementation

19. The log of behavior interventions used with the student during the 2014-2015 school year, daily point sheets, school staff's documentation of the December 1, 2014 incident, and the written summary of the December 11, 2014 IEP team meeting, document the implementation of the BIP since the start of the school year (Docs. j, k, m, and r).
20. The BLS Handbook and reports of the student's progress towards achievement of the annual IEP goals reflects that the student receives social skills training as part of the special education instruction that is provided through the BLS Program. Logs of school social work services document that the student receives three (3) sessions of social work services per month (Docs. a, f, and s).
21. The student's teacher resigned on September 30, 2014 without advanced notice and a substitute teacher was provided for eleven (11) days until she could be replaced. The complainant was immediately notified that there was a change in staffing, but the notice could not be provided prior to the change having occurred (Docs. h, m, and interview with the school staff).
22. A review of the school's staffing assignments reflects that, in addition to the teachers assigned to classes in the BLS Program, there are instructional assistants assigned to each classroom. The school also has adult assistants who provide additional assistance, as needed. The Additional Adult Assistant Handbook states that the adult assistants are not to intervene in a crisis situation, but are to seek assistance from the teacher or instructional assistant, and that they are not permitted to be in the CARE Room³ (Doc. b and review of staffing information).

³ The adult assistants are not trained in the use of behavior interventions that are used, and therefore, are not permitted to be involved in the implementation of those interventions (COMAR 13A.08.02).

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 9

23. One (1) of the school's adult assistants retired during the 2014-2015 school year. The school staff reports of the December 1, 2014 incident that resulted in the use of physical restraint with the student document that the student had been receiving support from another adult assistant in his math class. The reports reflect that, on that date, this adult assistant obtained behavioral support for the student from an instructional assistant (Docs. j and m).
24. There is documentation of one (1) other incident of physical restraint that was used with the student during the 2014-2015 school year. This incident occurred on November 26, 2014, while the student was in the CARE Room with an instructional assistant and the behavior intervention specialist (Doc. j).

Disciplinary Procedures

25. The school staff reports that they have a practice of not disciplinarily removing students participating in the BLS Program from school since it is understood that the behaviors that are exhibited arise from the disability. While the school staff reports that they do not consider the December 1, 2014 incident a disciplinary removal and denies that the student was required to leave school early that day, they acknowledge that they were unable to address the student's behavior on that date (Interviews with the school staff).
26. A review of the student's record indicates that information about the December 1, 2014 incident and of the other incident that resulted in the use of physical restraint in November 2014, are being maintained in the record in order to document when the student's behavior could not be addressed sufficiently for him to access instruction. There is no other documentation of the student leaving school before the end of the school day due to his behavior (Interviews with the school staff and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Allegation #1 Addressing the Student's Math, Organizational, and Social, Emotional, and Behavioral Needs

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. 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 (34 CFR §§300.101, .320, and .324).

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals.

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 9

In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress, information from the student's parents, and the student's anticipated needs (34 CFR §300.324).

In this case, the complainant alleges that the student has needs related to improving his math and organizational skills, which have not been addressed by the IEP. The complainant also alleges that the IEP has not sufficiently addressed the student's social, emotional, and behavioral needs because the student is removed from the classroom on a consistent basis as a result of his behavior, which has resulted in his not accessing special education instruction (Doc. 1).

Math Needs

Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that the student has needs in the area of math that are in addition to those that result from the student's interfering behavior. However, based on the Findings of Facts #8, #12, and #13, this office finds that the IEP team is conducting a re-evaluation to ensure that all of the student's needs in this area have been identified in response to the complainant's concerns. Therefore, no violation is found with respect to this aspect of the allegation.

Organizational Skills Needs

Based on the Findings of Facts #2, #11, and #15, the MSDE finds that supports have been added to the IEP in response to the complainant's concerns about the student's organizational skills needs that arose during the 2014-2015 school year. Therefore, no violation is found with respect to this aspect of the allegation.

Social, Emotional, and Behavioral Needs

Based on the Findings of Facts #1 - #4, #6, #7, and #9 - #13, the MSDE finds that the IEP has included goals and services to address the student's identified social, emotional, and behavioral needs, and that the IEP team is conducting a re-evaluation to address more intensive interfering behaviors being demonstrated by the student during the 2014-2015 school year. However, based on the Findings of Facts #5 and #14, this office finds that the BIP in effect between the start of the 2014-2015 school year and December 11, 2014, which is part of the IEP, had not been reviewed at least annually to ensure that it remained appropriate. Therefore, a violation is found with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Findings of Facts #14 and #18, the MSDE finds that the behavioral strategy that was added to the BIP when it was reviewed on December 11, 2014 was utilized with the student prior to the revision of the BIP. Therefore, no student-specific corrective action is required to remediate the violation.

Allegation #2 Use of Exclusion

Exclusion is defined as the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is *not* receiving instruction including special education, related services, or support. The public agency must ensure that a student with a disability who has experienced an excessive period of exclusion that may result in a change of educational placement is provided with the IDEA disciplinary protections (COMAR 13A.05.01.04).

In this case, the complainant alleges that the student has not had access to special education instruction due to excessive exclusion from the classroom and that the IEP team has not considered whether the program and placement remain appropriate to address his social, emotional, and behavioral needs (Doc. 1).

Based on the Finding of Fact #16, the MSDE finds that because no instruction or supports are provided to students in the first five (5) to ten (10) minutes in the CARE Room, this period of time is considered exclusion under the State regulations. Based on the Findings of Facts #16 and #17, the MSDE finds that the Behavior Intervention Log documents that exclusion was used frequently with the student in October 2014 and November 2014.

However, based on the Findings of Facts #6, #7, #9, #12, and #13, the MSDE finds that, in response to the escalating use of exclusion with the student, steps have been taken by the complainant and the school staff to conduct a re-evaluation to address the student's increasing interfering behavior. Therefore, this office finds that proper procedures have been followed in response to the frequent use of exclusion with the student, and does not find that a violation occurred with respect to the allegation.

Allegation #3 IEP Implementation

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).

- A. In this case, the complainant alleges that the IEP requires the provision of an adult assistant who is dedicated to work on a one-to-one basis solely with the student to assist him with his behavior in order to ensure his access to special education instruction, and that this has not consistently been provided (Doc. 1).

Based on the Finding of Fact #4, the MSDE finds that while the IEP requires adult support for both behavior management and academics, the IEP does not require that the student be provided with one-to-one support from an adult who is dedicated to work solely with the student.

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 12

Based on the Findings of Facts #6, #13, #19, #20, and #22 - #24, the MSDE finds that there is documentation that the student is provided with both instructional and behavioral support from various adults in the BLS Program. Therefore, no violation is found with respect to this aspect of the allegation.

- B. In this case, the complainant asserts that the IEP has required that the student be provided with assistance at the end of the day with organizing his homework, and alleges that this assistance was not provided (Doc. 1).

Based on the Findings of Facts #4, #11, and #15, the MSDE finds that, while there was discussion between the complainant and the school staff about assisting the student with organizing his work at the end of the day, the IEP did not require the provision of this support until it was revised on December 11, 2014. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

- C. In this case, the complainant alleges that the student has not been provided with the interventions and supports required by the BIP in order to assist him with accessing special education instruction (Doc. 1).

Based on the Findings of Facts #5, #6, #9, #10, #12, #13, and #19, the MSDE finds that there is documentation of implementation of the BIP. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

- D/E. In this case, the complainant alleges that the school staff are not providing the student with the supplementary aids and services of weekly social skills training in addition to the monthly related social work services that is required by the IEP (Doc. 1).

Based on the Findings of Facts #4, #6, #13, and #20, the MSDE finds that there is documentation of the provision of social skills training through the special education instruction and related services, as required by the IEP. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

- F. In this case, the complainant asserts that the student was assigned to a different teacher, and alleges that the student was not provided with advanced notice of this change to his schedule (Doc. 1).

Based on the Findings of Facts #4 and #21, the MSDE finds that, while advance notice of such changes are required by the IEP, the school staff did not have advanced notice of the resignation of the student's teacher, and therefore, could not have provided such notice to the complainant and the student. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #4 Disciplinary Procedures

The IDEA and COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. These protections include reviewing the IEP to ensure that it is appropriate to address the student's behavioral needs (34 CFR §300.530).

In order to ensure that students are provided with these protections, each public agency must accurately record information, including student attendance and disciplinary removals, as specified in the Maryland Student Records System Manual (34 CFR §300.626 and COMAR 13A.08.02.04).

In this case, the complainant alleges that the school staff have not properly documented the amount of time that the student has been removed from school in order to ensure that he receives the appropriate IDEA protections if he is removed from school in excess of ten (10) days during the school year (Doc. l).

Based on the Findings of Facts #25 and #26, the MSDE finds that the school staff are maintaining documentation of when the student's behavior cannot be sufficiently addressed by the school staff to enable the student to access instruction.

Based on the Finding of Fact #26, the MSDE further finds that there is no documentation that the student has been disciplinarily removed from school in excess of ten (10) days during the school year, and therefore, the disciplinary protections do not apply. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #5 PROVISION OF THE MARCH 18, 2014 IEP TO THE
COMPLAINANT**

FINDINGS OF FACTS:

27. The written summary of the March 18, 2014 IEP meeting states that a copy of the IEP was provided to the complainant at the meeting (Doc. f).
28. The email correspondence between the complainant and the school system staff reflects that, in November 2014, the complainant indicated that she could not locate her copy of the IEP and requested another copy. That correspondence reflects that, after the school staff sent her the IEP, she expressed concern that the IEP that was sent to her appeared to include information that was not previously included on the IEP. That correspondence also reflects that the school staff explained that this was because additional data that was collected since the IEP team meeting, such as the student's progress towards achievement of the IEP goals, was added to the document (Doc. i).

XXX

Ms. Rebecca Ryder

January 20, 2015

Page 14

29. A comparison of the IEP signed by the IEP team at the March 18, 2014 IEP team meeting and the IEP sent to the complainant in November 2014 reflects that, instead of copying the IEP signed by the IEP team at the March 18, 2014 meeting, the complainant was provided with an electronic copy of the document. The electronic copy contains reports of the student's progress towards achievement of the annual goals since the March 18, 2014 IEP team meeting. The information on both IEP documents about the student's program and placement is identical (Docs. f and t).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that parents are provided a copy of the student's IEP within five (5) business days of the IEP team meeting at which the program was reviewed. If the IEP is not completed, the parents must be provided with the draft copy of the IEP (COMAR 13A.05.01.07D).

Based on the Findings of Facts #27 - #29, the MSDE finds that there is documentation that the complainant was provided with a copy of the IEP within the required timelines. Therefore, this office finds no violation with respect to the allegation.

ALLEGATION #6 DISCLOSURE OF THE STUDENT'S PERSONALLY-IDENTIFIABLE INFORMATION WITHOUT PARENTAL CONSENT

FINDINGS OF FACTS:

30. The IEP states that the student requires specialized transportation services to include adult assistance on the bus (Doc. f).
31. The email correspondence between the complainant and the school staff, dated November 26, 2014, document that the complainant expressed concerns to the school staff that unsealed copies of the student's daily point sheets were provided to the staff responsible for the provision of specialized transportation to the student without her consent. The correspondence reflects that the transportation staff provided the documents to the student's after school care provider to deliver to the complainant. It also documents that the school staff indicated that the documents would be sent directly to the complainant electronically each day in the future in order to avoid the possibility of other individuals having access to the information (Doc. i).

DISCUSSION/CONCLUSIONS:

Parental consent must be obtained before personally identifiable information is disclosed to parties, unless the information is contained in education records and the disclosure is authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.30). Pursuant to FERPA, prior consent is not required to disclose information under several specific circumstances, which, among others, include disclosure to other school officials, including teachers,

within the agency or institution whom the agency or institution has determined to have legitimate educational interests (34 CFR §99.31).

The IDEA requires that all school staff with responsibility for implementation of the IEP be made aware of the requirements of the student's education program in order to ensure that the IEP services are provided (34 CFR §300.323).

In this case, the complainant alleges that neither the transportation staff nor the student's after school care provider should have been provided with information about the student's behavioral performance without her consent (Doc. 1).

Based on Finding of Fact #30, the MSDE finds that the school system was required to ensure that the transportation staff had access to information about the student's education program since they have responsibility for the implementation of that program. Therefore, the BCPS was not required to obtain parental consent in order to share information with the transportation staff about the student's performance utilizing the supports required by the program.

However, based on the Finding of Fact #31, the MSDE finds that the sharing of information about the student's educational program with the after school care provider required the provision of parental consent, which had not been given. Therefore, this office finds that a violation occurred with respect to the allegation.

Notwithstanding the violation, based on the Finding of Fact #31, the MSDE finds that the school staff have taken steps to ensure that the violation does not recur. Therefore, no student-specific corrective is required.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by April 1, 2015 of the steps taken to determine whether the violations related to review of the BIP, as part of the IEP, at least annually and maintenance of the confidentiality of the student's educational record are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

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.

XXX
Ms. Rebecca Ryder
January 20, 2015
Page 16

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 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/am

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