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State Superintendent of Schools

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March 19, 2015

Ms. Melissa Porter  
Case Manager  
Maryland Department of Juvenile Services  
315 High Street, Suite 202  
Chestertown, Maryland 21620

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

RE: XXXXX  
Reference: #15-046

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 January 21, 2015, the MSDE received a complaint from Ms. Melissa Porter, the student's probation officer from the Maryland Department of Juvenile Services, hereafter, "the complainant," on behalf of the above-referenced student. 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.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the Individualized Education Program (IEP) was reviewed at least annually, in accordance with 34 CFR §300.324.

2. The BCPS has not ensured that the IEP addresses the student's social, emotional, and behavioral needs since January 2014,<sup>1</sup> in accordance with 34 CFR §300.324.
3. The BCPS did not ensure that the educational placement decision made by the IEP team during the 2014-2015 school year was based upon the IEP, in accordance with 34 CFR §§300.114-.116.
4. The BCPS did not ensure that documents to be discussed by the IEP team during the 2014-2015 school year were provided at least five (5) business days before each IEP team meeting, in accordance with COMAR 13A.05.01.07.
5. The BCPS did not provide prior written notice of the decisions made by the IEP team during the 2014-2015 school year, in accordance with 34 CFR §300.503.
6. The BCPS has not ensured that the student has been provided with one-to-one adult support as determined by the IEP team during the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.

#### **INVESTIGATIVE PROCEDURES:**

1. On January 28, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Ryder, Director of Special Education, BCPS.
2. On January 30, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, requested documents from the BCPS.
3. On February 2, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
4. On February 3, 2015 and March 6, 2015, Ms. Mandis conducted telephone interviews with the complainant about the allegations being investigated.
5. On February 3, 2015, the complainant provided documents to the MSDE to be considered.
6. On February 12, 2015, Ms. Mandis unsuccessfully attempted to contact Ms. Karen B. Boulden, Program Facilitator of Special Education, Cecil County Public Schools, regarding the allegations.

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<sup>1</sup> Although the complainant indicates that the violation has occurred prior to this date, she was informed, in writing, that this office has authority to address violations that are alleged to have occurred within one (1) year of the date of the receipt of the complaint through the State complaint investigation procedure (34 CFR §300.153).

7. On February 18, 2015, Ms. Mandis conducted a telephone interview with Ms. XXXXXXXXXXX, the student's mother.
8. On February 20, 2015, Ms. Mandis and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXX to review the student's educational record. Mr. XXXXXX, Resource Teacher, Related Service and Compliance, BCPS; Ms. XXXXXXXXXXX, Assistant Principal, XXXXXXXXXXX; and Ms. XXXXXXXXXXX, Special Education Chairperson, XXXXXXXXXXX, were present for the record review.
9. On March 9, 2015, the student's mother provided documentation to the MSDE to be considered.
10. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Court Order committing the student to the custody of the Maryland Department of Juvenile Services, dated July 24, 2013;
  - b. Written summary of the October 31, 2013 IEP team meeting and IEP, dated October 31, 2013;
  - c. Written summary of the November 14, 2014 IEP team meeting and IEP, dated November 14, 2014;
  - d. Written invitation to the November 14, 2014 IEP team meeting and notice of documents provided to the student's mother in advance of the meeting;
  - e. Report of the Functional Behavioral Assessment (FBA), dated January 8, 2015 and Behavioral Intervention Plan (BIP);
  - f. Written summary of the January 9, 2015 IEP team meeting and IEP, dated January 9, 2015;
  - g. Written invitation to the January 9, 2015 IEP team meeting and notice of documents provided to the student's mother in advance of the meeting;
  - h. Electronic mail (email) correspondence from the school system staff, dated January 15, 2015;
  - i. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on January 21, 2015;
  - J. The student's report cards for the 2014-2015 school year;
  - k. The student's attendance record for the 2014-2015 school year;
  - l. Data regarding the student's behavior, which was collected from the student's points sheets during the 2013-2014 and 2014-2015 school years; and
  - m. Reports of the student's progress towards achievement of the annual IEP goals during the 2013-2014 and 2014-2015 school years.

**BACKGROUND:**

The student is seventeen (17) 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 is placed by the Maryland Department of Juvenile Services (DJS) at XXXXXXXXXXXXXXXX, and he attends XXXXXXXXXXXXXXXX (Docs. a and f).

During the period of time addressed by this investigation, the student's mother participated in the education education-making process and was provided with written notice of the procedural safeguards (Docs. b – d, f, and g).

**ALLEGATION #1                      REVIEW OF THE IEP AT LEAST ANNUALLY**

**FINDING OF FACTS:**

1. An annual review of the IEP was conducted on October 31, 2013 (Doc. b).
2. The IEP team conducted its next review of the IEP on November 14, 2014. As a result of that review, a Functional Behavioral Assessment (FBA) was conducted, and the IEP was revised on January 9, 2015 to include crisis intervention services and a Behavioral Intervention Plan (BIP), and to require that special education instruction be provided in a separate special education classroom instead of in the general education classroom (Doc. d).

**DISCUSSION/CONCLUSIONS:**

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. 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).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP was not reviewed at least annually. Therefore, this office finds that a violation occurred with respect to the allegation.

**ALLEGATIONS #2 AND #3**

**IEP THAT ADDRESSES THE STUDENT'S SOCIAL,  
EMOTIONAL, AND BEHAVIORAL NEEDS SINCE  
JANUARY 2014 AND THE EDUCATIONAL  
PLACEMENT DECISION MADE DURING THE 2014-  
2015 SCHOOL YEAR**

**FINDINGS OF FACTS:**

3. The IEP in effect in January 2014 was developed by the IEP team on October 31, 2013. At the meeting, the student was identified with needs related to dealing with his feelings of frustration and anger, as well as compliance with school rules, regular school attendance, and completion of work based on information about his classroom performance. The IEP included annual goals for the student to increase "on task" behavior, use "management/coping strategies," and to follow school and class rules. The IEP required that the student be provided with special education instruction, including instruction on the cause and effect of behavior and strategies that he can use to improve his behavior. The IEP also required the provision of counseling to assist him in achieving the annual IEP goals (Doc. b).
4. The report of the student's progress towards achievement of the annual IEP goals, made on January 22, 2014, reflects that the student was not making sufficient progress towards achievement of the annual goals to improve "on task" behavior and to follow school and class rules. The report states that an IEP team meeting was needed to address insufficient progress (Doc. m).
5. The reports of the student's progress towards achievement of the annual IEP goals, made on April 2, 2014 and June 13, 2014, reflect that the student was not making sufficient progress towards achievement of the annual goal to improve "on task" behavior, and state that an IEP team meeting was needed to address insufficient progress (Doc. m).
6. The reports on the goal to follow school and class rules for April 2, 2014 and June 13, 2014 do not state whether the progress that was made was sufficient to achieve the goal within a year of its development. However, the reports state that the student "has not exhibited involvement in academic instruction at the 70% accuracy level despite instructional supports and counseling," and that the student has "failed almost all of his classes [during the] second quarter" (Doc. m).
7. There is no information or documentation that an IEP team meeting was held to address the student's lack of sufficient progress towards achievement of the annual IEP goals during the 2013-2014 school year (Review of educational record).
8. The student's report card for the first (1<sup>st</sup>) quarter of the 2014-2015 school year states that he has been absent from his last period class on seventeen (17) occasions and that he has arrived late to his first (1<sup>st</sup>) period class on six (6) occasions (Doc. m).

9. The reports of the student's progress towards achievement of the annual IEP goals, made on November 10, 2014, reflect that the student is not making sufficient progress towards achievement of the annual IEP goals (Doc. m).
10. On November 14, 2014, the IEP team conducted a review of the IEP. The written summary of the meeting states that, at the meeting, the educational advocate from the student's residential placement expressed concern about the impact of the student's lack of regular attendance on his school success. The IEP team reviewed the student's progress towards achievement of the annual goals and decided that his progress was insufficient because he is "skipping classes or not attending school." The annual goals were revised to decrease the percentage of accuracy with which the student is required to demonstrate in order to achieve the goals. The goal for the student to follow school and class rules was discontinued, and there is no documentation that the team considered positive behavioral interventions to address the student's interfering behavior of not attending school and his classes regularly (Doc. c).
11. At the November 14, 2014 IEP team meeting, the student's mother expressed concern for the student's safety as a result of his increasing elopement behaviors, and requested an educational placement in a nonpublic separate special education school. The team recommended that a Functional Behavioral Assessment (FBA) be conducted in order to determine whether the student's behaviors can be addressed in the current placement, and the student's mother provided written consent (Doc. c).
12. On January 9, 2015, the IEP team reviewed the results of the FBA and developed a BIP with positive behavioral interventions and strategies to address the lack of completion of class work and the lack of class attendance. These include the use of a point sheet to be used for the student to earn rewards for positive behavior in these areas. Crisis intervention services were also added to the IEP (Docs. f and e).
13. At the January 9, 2015 IEP team meeting, the student's mother reiterated her request for a nonpublic separate special education school placement, but the team decided that "other interventions needed to be tried first." The team revised the educational placement to require the student to receive instruction in English, algebra, and American government in separate special education classrooms. The school staff report that the hope was that because these classrooms were in close proximity to one another, the student would be more likely to attend to each class and not be tempted to skip a class while traveling through the hallways from one class to another (Doc. f and interviews with the school staff).
14. The data on the student's performance since January 9, 2015 reflects that he has not attended classes consistently, even with the change in placement made on January 9, 2015 (Docs. k and l).

Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 7

15. At the January 9, 2015 IEP team meeting, the team decided to reconvene in forty-five (45) days to review the student's progress. An IEP team meeting was scheduled for February 17, 2015 and again for March 5, 2015, but the team was unable to meet due to inclement weather, and the meeting is again being rescheduled (Docs. j -1 and interview with the complainant).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #2                      Addressing the Student's 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. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team is required to consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320, and .324).

The public agency must also ensure that the IEP is reviewed at least annually to determine whether the annual goals are being achieved. In addition, the public agency must ensure that the team revises the IEP, as appropriate, to address any lack of expected progress towards achievement of the goals (34 CFR §300.324).

In this case, the complainant alleges that, while the student does not attend classes on a regular basis and leaves school before the end of the school day, which interferes with his learning, the IEP team has not addressed these interfering behaviors (Doc. i).

Based on the Finding of Fact #3, the MSDE finds that the IEP included goals for the student to improve the behaviors that were interfering with the student's learning. However, based on the Findings of Facts #4- #6 and #14, the MSDE finds that since January 2014, the student has not been making insufficient progress towards achievement of the annual IEP goals. Based on the Findings of Facts #7- #12, the MSDE finds that the IEP team did not address the lack of expected progress and consider positive behavioral interventions to address this interfering behavior until January 9, 2015.

However, based on the Findings of Facts #13 and #15, the MSDE finds that, since January 9, 2015, the IEP team has attempted interventions to address the student's interfering behaviors, and continues to meet to address the lack of sufficient progress. Therefore, this office finds that a violation occurred with respect to the allegation from January 2014 until January 9, 2015.

Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 8

**Allegation #3                      Determining the Student's Educational Placement  
During the 2014-2015 School Year**

In determining the educational placement of a student with a disability, the public agency must ensure that the IEP team makes the decision based on the student's education program. Unless the IEP requires another arrangement, the public agency must ensure that the student is educated in the school the student would attend if not disabled (34 CFR §300.116).

In this case, the complainant alleges that, during an annual review of the IEP, but prior to the completion of the review of the program, the IEP team considered a request made by the student's mother for a change in educational placement. Therefore, the complainant believes that the educational placement decision was not based upon the education program (Doc. i).

Based on the Findings of Facts #11 and #13, the MSDE finds that the student's mother requested that the IEP team determine that the student requires a nonpublic school placement prior to the completion of its review of the education program. However, based on those Findings of Facts, the MSDE finds that the IEP team decided not to consider such a placement until supports can be attempted in a less restrictive placement. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #4                      PROVISION OF DOCUMENTS PRIOR TO  
IEP TEAM MEETINGS**

**FINDINGS OF FACTS:**

16. The student's educational record contains documentation that, on October 27, 2014, a draft IEP, which was to be reviewed at an IEP team meeting on November 14, 2014, was sent to the student's mother (Doc. d).
17. The student's educational record contains documentation that, on December 23, 2014, a draft IEP, the results of a FBA, and a proposed BIP which were to be reviewed at an IEP team meeting on January 9, 2015, was sent to the student's mother (Doc. g).
18. The school staff report that no documents were provided to the complainant prior to the IEP team meetings because she does not serve as the student's parent under the IDEA. However, at the start of the January 9, 2015 meeting, the IEP was sent by facsimile to the complainant, who participated in the meeting by telephone. Inadvertently, the IEP that was sent to those participating by telephone was not the same version of the draft IEP that was provided to the student's mother prior to the meeting. The school system staff acknowledge that this caused confusion when conducting the IEP review. In order to ensure more smoothly run IEP team meetings in the future, the school system staff report that they intend to provide copies of documents that are submitted to the student's mother to the DJS staff as well (Doc. i and interview with the school system staff).



Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 9

### **DISCUSSION/CONCLUSIONS:**

The public agency must take steps to ensure that the student's parents are afforded the opportunity to participate in the IEP team meeting (34 CFR §300.322 and COMAR 13A.05.01.07). In order to do so, the public agency must ensure that parents are provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at an IEP team meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07).

In this case, the complainant alleges that, on January 9, 2015, the IEP team considered the results of a FBA and a draft BIP, but did not provide team members with copies of the documents prior to the meeting. The complainant further alleges that the parent and other members of the IEP team were provided with different versions of a draft IEP than the draft IEP that was considered by the IEP team (Doc. i).

Based on the Finding of Fact #18, the MSDE finds that while documents were not provided to the complainant prior to the IEP team meetings, neither the IDEA nor the COMAR require the school system to do so. Furthermore, based on the Findings of Facts #16 and #17, the MSDE finds that documents were provided to the student's mother at least five (5) business days prior to the IEP team meetings in which they were reviewed. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **ALLEGATION #5                      PROVISION OF PRIOR WRITTEN NOTICE OF DECISIONS MADE BY THE IEP TEAM**

### **FINDING OF FACTS:**

18. The student's educational record includes documents that state that written summaries of IEP team meetings held on November 14, 2015 and January 9, 2015 were given to the student's mother on the dates of the respective meetings (Docs. c and f).
19. There is no documentation that the written summaries of the IEP team meetings were sent to the complainant. However, subsequent to the filing of the State complaint, the complainant reported that she had been provided with documentation of the team's decisions (Review of the educational record and interview with the complainant).

### **DISCUSSION/CONCLUSIONS:**

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiation or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students (34 CFR §300.503).

In this case, the complainant alleged that at the time she filed the State complaint on January 21, 2015, prior written notice of the decisions made by the IEP team on January 9, 2015

Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 10

had not been provided and that she was unable to obtain assurances from the school staff that this notice would be provided (Doc. i).

Based on the Finding of Fact #20, the MSDE finds that, while written notice of the team's decisions were not provided to the complainant until after the State complaint was filed, neither the IDEA nor the COMAR require the school system to do so. Furthermore, based on the Finding of Fact #19, the MSDE finds that there is documentation that written notice of the team's decisions were provided to the student's mother following each IEP team meeting. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **ALLEGATION #6                      PROVISION OF ADDITIONAL ADULT SUPPORT**

#### **FINDINGS OF FACTS:**

21. The written summary of the January 9, 2015 IEP team meeting reflects that, at the meeting, the team considered how to address the student's interfering behavior of not attending school and class regularly. The written summary states that the educational advocate from the student's residential placement reported that he had discussed with the BCPS Central Office staff the possibility of obtaining additional adult support for the student to ensure that he does not skip classes (Doc. f).
22. The parties agree that a member of the school system staff indicated that funding could be obtained for additional adult support, and the written summary of the January 9, 2015 IEP team meeting states that the school system staff would "look into the possibility" of obtaining additional adult support for the student. While the school system staff report that they intended to consult with the BCPS Central Office staff about the supports that are available before making recommendations, the complainant and the student's mother had the impression that the team decided that the support was to be provided (Doc. i and interviews with the complainant and the school system staff).
23. The written summary of the January 9, 2015 IEP team meeting states that the team "discussed other possible alternatives to assist [the student] in accessing his education," added crisis intervention services and a BIP to the IEP, and decided to change the educational placement. The IEP team also decided to reconvene in forty-five (45) days to review the student's progress with these revisions (Doc. f).
24. On January 15, 2015, the complainant was informed by the school staff that the BCPS Office of Special Education had not "approved" of the provision of additional adult support

Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 11

for the student. The school system staff report that they consulted with the BCPS Office of Special Education staff about the types of supports that the IEP team should be considering and were informed that the team needs to consider whether the alternative supports and the change in the educational placement were effective before considering the support of additional adult support (Doc. h and interview with the school system staff).

26. The IEP team was scheduled to reconvene on February 17, 2015 and on March 5, 2015, but was unable to do so due to inclement weather. The IEP team meeting is being rescheduled (Interview with the complainant).

#### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that each student is provided with the special education and related services determined necessary by the IEP team (34 CFR §§300.101, .320, and .323).

In this case, the complainant alleges that the BCPS Office of Special Education unilaterally decided that additional adult support would not be provided after the IEP team recommended the support (Doc. i).

Based on the Findings of Facts #21 - #26, the MSDE finds that, while the IEP team discussed the possibility of adding adult support to the IEP, giving the complainant and the student's mother the impression that it was recommending this support, there is no documentation that a final decision has been made by the IEP team that it should be provided.

Based on the Findings of Facts #21 - #26, the MSDE finds that while there is documentation that the school staff have consulted with the Central Office staff about the appropriateness of adding adult support to the IEP, there is also documentation that the IEP team intends to reconvene to consider the student's progress and the need for additional supports. Therefore, this office does not find that a violation occurred with respect to the allegation.

#### **CORRECTIVE ACTIONSTIMELINES:**

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

The MSDE requires the BCPS to provide documentation by the end of the 2014-2015 school year that the IEP team has determined the amount and nature of services to compensate the student for the violations identified in this investigation, to be provided to the student within one (1) year of the date of this Letter of Findings.

Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 12

### **School-Based**

The MSDE requires the BCPS to provide documentation by the start of the 2015-2016 school year of the steps taken to determine whether the violations are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX.

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.

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 Dr. Kathy Aux, Compliance Specialist, MSDE, at (410) 767-7770.

Please be advised of 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 there is disagree by the parties to the State complaint 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 student's mother 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

Ms. Melissa Porter  
Ms. Rebecca Ryder  
March 19, 2015  
Page 13

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.

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

MEF/am

c:     XXXXX  
       S. Dallas Dance  
       Conya Bailey  
       XXXXX  
       D'Ette W. Devine  
       Sarah J. Farr  
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