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State Superintendent of Schools

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July 10, 2015

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

RE: XXXXX  
Reference: #15-081

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 May 26, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student has been consistently provided with the services of a dedicated assistant to work with him on a one-on-one basis, as required by the Individualized Education Program (IEP) since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS has not ensured that the Behavior Intervention Plan (BIP) has been implemented, since the start of the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. On May 19, 2015, the complainant provided correspondence to the MSDE in which concerns were raised about the provision of special education services to the student.
2. On May 21, 2015, Mr. Kenneth Hudock, Family Support Services Specialist, MSDE, conducted a telephone interview with the complainant about the concerns raised in the correspondence and requested additional information necessary to initiate a State complaint investigation.
3. On May 26, 2015, the complainant provided the MSDE with the additional information needed to initiate a State complaint investigation. On the same date, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director of Special Education, BCPS.
4. On May 27, 2015, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
5. On June 9, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations.
6. On June 15 and 16, 2015, the complainant provided the MSDE with additional documentation and information to be considered.
7. On June 17, 2015, Ms. Mandis and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXX, Assistant Principal;
  - b. Ms. XXXXXXXX, One-to-One Assistant and
  - c. Ms. XXXXXXXXX, Instructional Assistant.

Ms. Conya Bailey, Compliance Supervisor, Department of Student Services, Office of Special Education, BCPS, participated in the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.
8. On June 17, 2015, the MSDE requested additional documentation from the complainant.
9. On June 18, 2015, the BCPS provided the MSDE with documentation to be considered.
10. On June 26, 2015, the MSDE requested additional information and documentation from the BCPS.

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11. On July 1 and 6, 2015, the BCPS provided the MSDE with additional information and documentation.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Behavior Intervention Plan (BIP), dated February 26, 2014;
  - b. IEP, dated June 11, 2014;
  - c. IEP, dated October 16, 2014;
  - d. Electronic mail (email) correspondence from the complainant to the school staff, dated October 1, 2014;
  - e. Student Independence Plan, dated November 7, 2014;
  - f. Email correspondence between the complainant and the school staff, dated November 17, 2014, January 5, 2015,
  - g. Written summary of an IEP team meeting held on January 15, 2015;
  - h. Written summary of an IEP team meeting held on February 5, 2015;
  - i. IEP, dated March 16, 2015;
  - j. IEP goal reports, dated March 31, 2015, April 20, 2015, and June 12, 2015;
  - k. Email correspondence between the complainant and the school staff, dated April 15, 16, and 17, 2015;
  - l. Email correspondence from the complainant to the MSDE, dated May 26, 2015;
  - m. Health Suite Visit – Parent Report, dated June 11, 2015;
  - n. Email correspondence from the complainant to the MSDE, dated June 15, 2015;
  - o. Schedule of coverage for the provision of adult support for the student; and
  - p. The student’s Behavior Plan.

### **BACKGROUND:**

The student is nine (9) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA, and he has an IEP that requires the provision of special education and related services (Doc. i).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Docs. b, c, g, h, and i).

### **ALLEGATION #1: ADULT SUPPORT**

### **FINDINGS OF FACTS:**

1. The IEP states that the student requires “adult support” in order to participate and interact with others. It states that the student “needs to be monitored during lunch for food intake to ensure that he eats allowable foods, gluten free and lactose free.” In addition, it states that the student “may also need adult prompting to focus on instruction and support

during sensory break when needed.” The IEP reflects that this support will be provided primarily by an Instructional Assistant, but may also be provided by the teacher and other adults. It does not require that a specific staff member be dedicated to working exclusively with the student (Docs. b, c, g, h, and i).

2. While there is a school staff member who is assigned as the primary provider of adult support for the student, as the IEP team discussed on February 5, 2015, there are various individuals who provide this support throughout the day. At the February 5, 2015 IEP team meeting, the team considered the student’s progress with the provision of adult support and discussed that he is at step two (2) of a plan to fade the support (Fade Plan) in order for him to work more independently. The Fade Plan describes step two (2) as follows:

[The student] will receive adult support during arrival and dismissal, transitions, bathroom, lunch and in the general education classroom. During morning arrival, [the student] will enter the front doors of the building independently. An adult will be waiting inside the front doors to ensure that [the student] walks “independently” to his classroom/locker. At dismissal, [the student] will walk to the school foyer as the adult follows behind, having [the student] within her line of sight. [The student] will wait in the appropriate location in the foyer with his peers until his name is called. [The student] will get in line and walk out to the car/parent. The adult assistant will allow [the student] to walk out independently. [The student’s] dismissal will be supervised by the teachers located at the front doors as all other student car riders/walkers.

During transitions to specials, recess and other school activities, [the student] will be escorted along with his peers by the general educator. If there is a special assembly that the general/special educator feels the need for [the student] to have an adult in close proximity, [the student’s] adult assistant will be available to provide [the student] with the support he requires. [The student] will “independently” walk to the resource room and back to his homeroom as an adult follows, keeping [the student] in her line of sight.

An adult will be with [the student] during all specials throughout the week. Distance will be increased and [the student] will always be within the adult’s “line of sight.”

[The student] will be monitored by the general educator during bathroom breaks taken as entire class. If [the student] is alone and needs to use the bathroom, an adult will allow [the student] to walk “independently” to the bathroom, while she follows behind, having [the student] in her line of

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sight. The adult will wait for [the student] to finish in the bathroom and allow the student to walk back to the classroom “independently” but in her line of sight. If possible, [the student] will not be aware that he is being accompanied to the bathroom.

During lunch, an adult will “keep an eye” on [the student] to ensure that [he] eats his own gluten free lunch. The adult does not need to sit or stand next to [the student] during lunch.

An adult support will go to recess with [the student].

During instruction, [the student] will have access to an adult assistant. The level of support will be faded: distance will be increased, verbal prompts will be reduced/replaced with visual/gestural/natural prompts, and an adult will periodically “check in” with [the student] to ensure he is on task and understands the activity/concept (adults will refrain from sitting next to [the student] when possible).

The general educator and special educator will promote communication between [the student] and students in his group. [The student] will have a “peer buddy.” [The student] and his buddy will help each other throughout the day with minor tasks (i.e., repeating/clarifying directions, helping each other remain on task). [The] adult assistant will continue to provide sensory breaks or preferred activity breaks outside the classroom (Docs. b, c, e, g, h, i, and o).

3. On April 15, 2015, the complainant sent an electronic mail (email) message to the school staff explaining that when asked whether the staff member with primary responsibility for providing adult support worked with him that day, the student informed her that this staff member was absent. The complainant expressed concern that, while the student was able to tell her the staff member who provided the adult support for him throughout other portions of the day, he could not identify a staff member who accompanied him to the restroom that day (Doc. k).
4. On April 16, 2015, the school staff responded to the complainant that there was a schedule in place for other school staff to provide coverage when the individual with primary responsibility for adult support is absent from school. The school staff further indicated that the student usually goes to the restroom with the rest of his class, accompanied by the teacher two (2) to three (3) times per day, and that he does not normally request additional restroom breaks, but that she would confirm with the other staff members that support is provided when the student requires an additional restroom break (Doc. k).

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5. On April 17, 2015, the school staff sent email correspondence to the complainant indicating that the school staff who provided adult support for the student on April 15, 2015 reported that she follows behind the student at a distance when he goes to the restroom, in accordance with the Fade Plan, and that this is what the individual with primary responsibility for the provision of adult support does as well (Doc. k).
6. There is documentation that, in the past, the complainant has expressed concern to the school staff about other school staff providing coverage when the individual assigned as the primary provider of the adult support is absent. The complainant's concern was that the student requires consistency and that he needs to be working with someone who knows his needs (Doc. d).
7. On June 11, 2015, the student sustained a scrape on his back during recess. He was taken to the school nurse and a bandage was applied (Docs. m and n).
8. A review of the attendance records for the individual with primary responsibility for the provision of adult support and those school staff members assigned to provide coverage when this individual is unavailable indicates that there has been school staff present to provide the student with the required support (Review of the school staff attendance records).
9. The reports of the student's progress towards achievement of the annual IEP goals and the written summaries of the IEP team meetings held during the 2014-2015 school year reflect that he has made sufficient progress (Docs. g, h, i, and j).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student has not been consistently provided with adult assistance throughout the school day when the student's "regular 1:1 aide" is absent. The complainant reports that the school staff acknowledged this on one (1) occasion and assured her that a plan was in place to provide coverage.

The complainant further reports that, on June 11, 2015, the student was injured during recess and that the staff member who was providing the adult assistance could not explain how the injury occurred, thereby documenting that this individual was not providing sufficient supervision of the student (Docs. e and n).

Based on the Findings of Facts #1 - #9, the MSDE finds that the documentation does not support the allegation. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #2                      BEHAVIOR INTERVENTION PLAN (BIP)**

**FINDINGS OF FACTS:**

10. A Behavior Intervention Plan (BIP) is in place to address the student's identified behaviors including his yelling or becoming loud when told to do something he does not want to do or when he is confronted with a challenging task, and demonstrating distracting behavior, such as making noises, during "down" time or when he is not focused on instruction. The BIP includes strategies to address the contributing factors of the behavior, strategies to minimize the triggers of the behavior, and positive rewards to reinforce appropriate replacement behaviors.
11. The BIP states with respect to consequences to be provided for problem behavior, the student is to be "simply redirected to appropriate behaviors." However, there is no language in the BIP or the IEP that prohibits the use of consequence for negative behavior (Doc. a).
12. There is documentation that the student has lost up to the first five (5) minutes of the twenty (20) minute recess period as a consequence for inappropriate behavior and that the complainant has expressed her belief that there was agreement that this would not occur (Docs. f and p).

**DISCUSSION/CONCLUSIONS:**

As stated above, the public agency must ensure that students with disabilities receive the services and supports required by the IEP. In order to do so, the public agency must ensure that the IEP is written in a manner that is clear with respect to the services to be provided (34 CFR §§300.101 and .323).

In this case, the complainant asserts that the student has been given consequences that include loss of recess time for negative behavior despite the fact that the IEP and the BIP prohibit this type of consequence (Doc. e).

Based on the Findings of Facts #10 and #11, the MSDE finds that neither the IEP nor the BIP expressly forbid the loss of recess time as a consequence for the student's inappropriate behavior. However, based on the Finding of Fact #12, this office finds that the BIP is not written clearly with respect to whether there are to be consequences for the student's inappropriate behavior and that, as a result, a violation occurred with respect to the allegation.

**CORRECTIVE ACTION/TIMELINE:**

The MSDE requires the BCPS to provide documentation by the start of the 2015-2016 school year that the IEP team has reviewed and revised the BIP to ensure that it is written clearly with respect to consequences for the student's negative behavior.

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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, 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 parties 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 (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  
Conya Bailey  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Kathy Aux