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State Superintendent of Schools

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July 27, 2015

Ms. Pat Halle  
Maryland Disability Law Center  
1500 Union Avenue, Suite 2000  
Baltimore, Maryland 21211

Ms. Linda Chen  
Chief Academic Officer  
Baltimore City Public Schools  
200 East North Avenue  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #15-084

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 29, 2015, the MSDE received a complaint from Ms. Pat Halle, hereafter, “the complainant,” on behalf of the above-referenced student and his mother, Ms. XXXXXXXXXXX. 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 following allegations:

1. The BCPS did not develop an Individualized Education Program (IEP) that addresses the student’s behavioral and academic needs, during the 2014-2015 school year, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS did not ensure that the IEP team convened to address lack of expected progress towards achievement of the annual IEP goals during the 2014-2015 school year, in accordance with 34 CFR §§300.101, .320, and .324.

3. The BCPS did not ensure that the student's IEP included an appropriate transition plan that addresses the student's needs, during the 2014-2015 school year, in accordance with 34 CFR §§300.320 and .324.

### **INVESTIGATIVE PROCEDURES:**

1. On May 29, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, former Executive Director of Special Education, BCPS; and Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS.
2. On June 2, 2015, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant about the allegations. On the same date, the MSDE received documentation from the complainant for consideration in the investigation.
3. On June 3, 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 Dr. Hoffman of the allegations and requested that her office review the alleged violations.
4. On June 22, 2015, Ms. Austin and Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE, conducted a review of the student's educational record at the central offices of the BCPS. On the same date, the MSDE obtained documents for consideration from the student's record, and requested additional documentation.
5. On June 30, 2015, Ms. Austin and Dr. Aux conducted a site visit to XXXXXXXXXXXX XXXXXXXX(XXXXXXX) and interviewed the following BCPS staff:
  - a. Ms. XXXXXXXXXXX, Attendance Monitor, XXXXXXXXXXXXXXX;
  - b. Mr. Donnae Busrod, Educational Specialist, BCPS;
  - c. Mr. XXXXXXXXXXX, Assistant Principal, XXXXXXXXXXXXXXX;
  - d. Ms. XXXXXXXXXXX, IEP Chairperson, XXXXXXXXXXXXXXX HS; and
  - e. Ms. XXXXXXXXXXX, Special Education Teacher and Case Manager, XXXXX XXXXXXXXXXXXXXX.

Ms. Diana K. Wyles, Associate Counsel, attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed. On the same date, the MSDE requested additional documentation from the BCPS.

6. On July 8, 2015, the BCPS provided the MSDE with documents to consider.

7. On July 9 and 16, 2015, Ms. Austin spoke with the complainant about the allegations. On the same dates, the MSDE received documentation from the complainant for consideration in the investigation.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated March 21, 2014;
  - b. The reports of the student's progress towards achievement of the annual IEP goals, dated October 29 and 31, 2014, January 16, 2015, March 25, 2015 and June 8, 2015;
  - c. Attendance letter from the school staff to the parent, dated December 23, 2014;
  - d. The school staff's log of correspondence activity between December 2012 and June 2015;
  - e. Attendance letter from the school staff to the parent, dated February 28, 2015;
  - f. Progress reports of the special education classroom teacher and the general education teacher, dated March 3 and 4, 2015;
  - g. Report of the student's progress by the social worker, dated March 4, 2015;
  - h. The school staff's report of the student's progress, dated March 11, 2015;
  - i. The school staff's planning log of activity pertaining to the March 12, 2015 IEP team meeting;
  - j. IEP, dated March 12, 2015, and the sign-in sheet of attendees at the March 12, 2015 IEP team meeting;
  - k. Prior Written Notice, dated March 12, 2015;
  - l. Email among the school staff regarding referral of the student to the attendance team, dated March 16, 2015;
  - m. The student's report card for the 2014-2015 school year;
  - n. The student's transcripts for the 2014-2015 school year, dated April 15, 2015 and June 30, 2015;
  - o. The student's enrollment history, undated;
  - p. Correspondence from the school staff to the parent of the student's progress on his IEP goals, dated May 29, 2015;
  - q. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 29, 2015;
  - r. Correspondence from the school staff to the student's parent, dated June 8, 2015; and
  - s. Email from the complainant to the school system staff, dated July 9, 2015.

**BACKGROUND:**

The student is seventeen (17) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services. At the start of the 2014-2015 school year, the student was enrolled at XXXXXX XXXXXXXXXXXXXXXX. On January 5, 2015, the school system staff withdrew the student from school due to unknown information about his whereabouts. The school staff report that the

student returned to school in February 2015, at which time he was reenrolled for the remainder of the 2014-2015 school year (Docs. a, j and o, and interview with the school staff).

There is documentation that, during the period of time addressed by this investigation, the school staff mailed the written notice of the procedural safeguards to the student's parent (Docs. i and j).

**ALLEGATIONS #1 AND #2                      IEP THAT ADDRESSES BEHAVIORAL AND  
ACADEMIC NEEDS & MEETING TO ADDRESS  
LACK OF EXPECTED PROGRESS**

**FINDINGS OF FACTS:**

1. The 2014-2015 school year was the third (3<sup>rd</sup>) year in which the student was enrolled in the ninth (9<sup>th</sup>) grade (Doc. n).
2. The IEP in effect at the start of the 2014-2015 school year was developed on March 21, 2014. The IEP reflects that the student has "poor attendance," does not attend classes even if he is in school, and that the "greatest barrier to him being successful is his attendance."<sup>1</sup> The IEP also reflects that the student has "impulsive behavior and poor decision making" skills (Doc. a).
3. The present levels of performance indicate that the student was performing at a second (2<sup>nd</sup>) grade level in reading comprehension and math calculation, and at a kindergarten level in math problem solving and written language expression. In addition to goals requiring the student to improve his math, reading and written language skills, the IEP also included a goal requiring the student to attend school daily, the success of which would be measured based by achieving passing grades. The IEP required that the student receive fifteen (15) hours per week of special education instruction in a separate special education class to address "his very low academic functioning level and interfering behaviors," and that the student receive thirty (30) minutes per week of social work services as a related service (Doc. a).
4. The March 21, 2014 IEP states that the student "does not require assistive technology services or devices to successfully access his grade level curriculum," but does not indicate the basis for the decision given that the student was identified with needs in written language expression and was performing at the second (2<sup>nd</sup>) grade level in the ninth (9<sup>th</sup>) grade (Doc. a).

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<sup>1</sup>While the State complaint process cannot address allegations of violations which occurred more than one (1) year prior to the date the complaint was received, the student's transcript documents that the student was chronically absent during the 2012-2013 and the 2013-2014 school years (Doc. n).

5. The student's report card indicates that he was absent thirty seven (37) days in the first quarter of the 2014-2015 school year (Doc.m).
6. On October 29, 2014, the school staff documented in the reports of the student's progress towards achievement of the annual IEP goals that he had been absent 96% of the time, and that the IEP goals had not been introduced due to the student's lack of attendance (Doc.b).
7. At the end of December 2014, the school staff documented that the student had been absent seventeen days (17) days during the month of December(Docs.c and d).
8. The January 16, 2015 report of the student's progress on the annual IEP goal to attend school daily states that he is not making progress. Additionally, the January 16, 2015 reports of the student's progress on the math, written language, and reading goals state that the goals have not been introduced and that the student needs to attend his classes (Doc.b).
9. At the end of February 2015, the school staff documented that the student had been absent 16 days during the month of February (Docs. d and e).
10. The school staff's communication and planning log reflects that on February 27, 2015 and March 6, 2015, the school staff mailed the parent an invitation to attend the IEP team meeting scheduled for March 12, 2015. The school staff documented that a telephone call to the parent was made on March 11, 2015. The complainant reports that on March 11, 2015, after receiving a voicemail message from the school staff, the student's step-father called to inform the school staff that March 12, 2015 was not a convenient date for the parent to attend an IEP team meeting. However, he reports that he was placed on hold and, after some time, discontinued holding because no one returned to the call (Doc. i, review of the student's educational record, and interview with the complainant).
11. On March 12, 2015, the IEP team, without the student's parent, convened to conduct the annual IEP review. At that time, the IEP team documented that the student had "only attended school for one day" during the 2014-2015 school year, and that he was failing all of his classes. The IEP team considered reports from the student's teachers that the student never attended classes, and further considered that the student's IEP goals had not been introduced due to the student's nonattendance. In addition, the IEP team determined that the student has "deficit skills" in all academic areas, and that he is performing below grade level in all content areas (Docs.f, h,j and v).
12. While the IEP team documented that the student has "ongoing problem[s]" and "challenges" with attendance, there is no documentation that the IEP team considered positive behavioral interventions to address his lack of attendance. The school staff report that they did not consider recommending a Functional Behavior Assessment to develop a Behavior Intervention Plan based upon the belief that they would not be able to assess the student and gather the necessary data because of his continued absence(Doc. jand interview with the school staff).

13. The March 12, 2015 IEP reflects that the IEP team determined that the student does not require assistive technology services or devices. The IEP team documented that the decision was based on a review of the student's academic record, attendance, progress and teacher reports. However, the IEP team used data that was obtained in 2013 in identifying the student's levels of performance (Doc. j).
14. At the March 12, 2015 IEP team meeting, the IEP team removed counseling services from the student's IEP, and documented that this decision was based on his lack of participation due to absences. In addition, the IEP team revised the IEP to remove the annual behavior goal to improve the student's attendance, and reduced the number of hours of specialized instruction that the student requires, from fifteen (15) hours to ten (10) hours per week. There is no documentation that indicates the IEP team's basis for making these revisions to the student's IEP(Docs. g, j and k).
15. There is documentation that on March 16, 2015, the school staff referred the student to the attendance team for being "chronically absent." There is no documentation of interventions taken by the school's attendance team to address the student's chronic absences following the referral (Doc.l, review of the student's educational record, and interview with the school staff).
16. The reports of the student's progress towards achievement of the annual IEP goals dated March 25, 2015 and June 8, 2015,state that the student is not attending class(Doc. b).
17. On May 29, 2015, the school staff documented that the student was not making progress in the areas of reading, math, and written language due to his absences, and that he "needs more assistance" in order to make progress on his IEP goals in these areas(Doc. p).
18. The student's report card for the 2014-2015 school year reflects that he failed all of his classes (Doc. m).
19. On July 9, 2015, the complainant provided the school system staff with the report of a private psychological assessment, dated October 28, 2014, and requested an IEP meeting (Doc. s).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1 IEP that Addresses the Student's Behavior and Academic Needs**

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student's identified needs. In order to offer a FAPE, the public agency is required to develop an IEP that includes special education and related services designed to address the academic,

developmental, and functional needs of the student. In the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

The public agency is required to take steps to ensure the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings, including notifying the parent of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322 and COMAR 13A.05.01.07). The public agency may conduct the meeting without a parent if it is unable to convince the parent to attend. However, when doing so, the public agency is required to maintain a record of its attempts to arrange a mutually agreed on time and place, including detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parents home or place or employment and the results of those visits (34 CFR §300.322).

In this case, the complainant alleges that the IEP does not address the student's absences from school, his need for assistive technology in order to make progress in the general education curriculum, and his need for appropriate behavioral supports (Doc. q).

Based on the Findings of Facts #2 - #3, #5 - #9, #11-#12, #14 - #16, and #17, the MSDE finds that the BCPS has not ensured that the IEP team considered interventions and strategies to address the student's interfering behavior related to lack of regular school attendance. Furthermore, based on the Findings of Facts #10 and #11, the MSDE finds that there is no documentation that the BCPS made sufficient efforts to obtain the parent's participation in the March 12, 2015 IEP team meeting.

Based on the Findings of Facts #3, #13 and #14, the MSDE finds that the BCPS did not ensure that the IEP team had current data to identify the student's academic needs when developing the March 12, 2015 IEP. Thus, the MSDE finds that the IEP team did not have sufficient information on which to base the decision about whether the student requires assistive technology to improve his functional capabilities. Therefore, this office finds that a violation occurred with respect to this allegation since the start of the 2014-2015 school year.

#### **Allegation #2            Meeting to Address Lack of Expected Progress**

The public agency must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress toward achieving the goals, information provided by the parents, or the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #6, #8, #11, #16 and #17, the MSDE finds that the student was not making sufficient progress towards achievement of the annual IEP goals during the 2014-2015 school year. Based on the Findings of Facts #11 - #14, the MSDE finds that, while the IEP team conducted the annual review of the student's IEP at a meeting on March 12, 2015, the IEP team did not address the student's lack of expected progress towards achieving the annual IEP goals at that time. Therefore, this office finds a violation occurred with respect to this allegation, and that the violation is continuing.

**ALLEGATION #3                      DEVELOPING AN APPROPRIATE TRANSITION PLAN**

**FINDINGS OF FACTS:**

20. The IEP in effect at the start of the 2014-2015 school year reflects that on March 21, 2014, the student indicated his preference and interest in becoming an auto mechanic in an interview with the school staff. Based on this information, the IEP team developed post secondary goals for the student to attend a technical school for training, and to work as a certified mechanic, after graduating with a Maryland high school diploma. In addition, the IEP team identified transition activities to assist the student in preparing for becoming a mechanic, which included attending class on a regular basis, completing a resume, researching programs that offer mechanic certification, and job shadowing of a mechanic (Doc. a).
21. The school staff report that transition planning was not conducted during the 2014-2015 school year due to the student's absence from school. However, at the March 12, 2015 IEP team meeting, the IEP team revised the transition activities to include completing employment, tax and insurance forms, and reading and interpreting documents including warranties, product quantities and "over the counter medicine instructions." The IEP team removed the transition activities of attending class on a regular basis, completing a resume, researching programs that offer mechanic certification, and job shadowing of a mechanic. There is no documentation that indicates the IEP team's basis for making these revisions to the student's IEP (Docs. a andj, and interview with the school staff). \
22. The present levels of performance in the March 12, 2015 IEP indicate that the student is performing at the second (2<sup>nd</sup>) grade level in reading and math, and at the kindergarten level in written language. The IEP reflects that the student is pursuing a Maryland high school diploma, and that his postsecondary goals are to attend a technical school for training and to be employed as an auto mechanic. The IEP team documented that the student is behind in meeting his graduation requirements, and that he has only earned one (1) credit since entering high school in 2012 (Doc.j).
23. On June 8, 2015, the school staff sent the parent a transition planning inventory form to gather information from the student, and requested that the parent return the form to school. However, there is no documentation that this information has been used to conduct transition planning for the student (Doc. r).



## **DISCUSSION/CONCLUSIONS:**

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, the IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. The IEP must also include the transition services, including courses of study needed to assist the student with the goals (34 CFR §300.320 and COMAR 13A.05.01.09). When the purpose of an IEP team meeting is to consider the transition plan, the public agency must ensure that the student is invited to the IEP team meeting and, if the student is unable to attend the meeting, that the public agency takes steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

Based on the Findings of Facts #20 - #23, the MSDE finds that the IEP team did not consider the student's individual needs when it revised the transition activities in the March 12, 2015 IEP. Therefore, the MSDE finds that a violation has occurred with respect to this allegation.

## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The MSDE requires the BCPS to provide documentation that the following actions have taken place in accordance with the indicated time frame:

1. By the start of the 2015-2016 school year, the IEP team, with the participation from the BCPS central office staff who are knowledgeable about behavioral supports, assistive technology, and placement options, has convened an IEP team meeting. The BCPS must make sufficient efforts to conduct the IEP team meeting at a mutually agreeable time and place in order to ensure participation by the parent and the student. At that meeting, the IEP team shall have performed the following actions:
  - a. Identified the barriers to the student's attendance;
  - b. Developed positive behavior interventions to address the student's difficulty with attendance;
  - c. Developed a plan for the student's return to school, after having considered all appropriate placement options, including an alternative school; and
  - d. Considered the student's need for assistive technology consistent with the current data, including information provided by the student and his parent.

The IEP shall review and revise the student's IEP, as appropriate, based on these actions. In addition, the BCPS must ensure that the parent is provided with written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations.

2. By October 1, 2015, the BCPS must conduct a comprehensive, age appropriate transition assessment to evaluate the student's interests and skills in the areas of training, education, employment, and independent living in order to develop appropriate measurable postsecondary goals and transition services to assist the student in reaching those goals. The MSDE encourages the BCPS to consider using a combination of formal and informal assessments<sup>2</sup> in order to collect data from a variety of sources to identify the student's strengths, weaknesses, preferences and interests, as they relate to the demands of current and future work, education, employment and living.
3. By October 15, 2015, the IEP team, with the participation of BCPS central office staff who is knowledgeable about transition planning, has convened another IEP team meeting. The BCPS must make sufficient efforts to conduct the IEP team meeting at a mutually agreeable time and place in order to ensure participation by the parent and the student. At that meeting, the IEP team shall have performed the following actions:
  - a. Reviewed the results of the transition assessment;
  - b. Based on the transition assessment results, the IEP team has developed postsecondary goals, courses of study, and transition services and activities that address the student's needs; and
  - c. Determined the services needed to compensate the student for the loss of a FAPE since the start of the 2014-2015 school year, and a plan for how and when the services are to be provided within one (1) year of the date of this Letter of Findings.

In addition, the BCPS must ensure that the parent is provided with written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations.

### **School-Based**

The MSDE requires the BCPS to provide documentation, by October 1, 2015, that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at XXXXXXXXXXXX High School. 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

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<sup>2</sup>Informal measures may include interviews or questionnaires, direct observations, anecdotal records, environmental or situational analysis, curriculum-based assessments, interest inventories, preference assessments, and transition planning inventories. Formal measures include adaptive behavior and independent living assessments, aptitude tests, interest assessments, intelligence tests, achievement tests, personality or preference tests, career development measures, on the job or training evaluations, and measures of self-determination (<http://nstattac.org/sites/default/files/assets/toolkits/ageAppTrans/>).

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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.

### **Systemic**

The MSDE requires the BCPS to provide documentation by October 1, 2015, of the steps it has taken to ensure compliance by all BCPS schools with the requirement that IEP teams must consider positive behavior interventions and supports in the case of a student with a disability whose behavior related to lack of regular school attendance impedes his or her learning, in accordance with 34 CFR §§300.101, .320 and .324.

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 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.

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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's parents 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

c: Gregory E. Thornton  
Jenn Dull  
Darnell Henderson  
Diana Wyles  
XXXXXXXXXX  
Dori Wilson  
Anita Mandis  
K. Sabrina Austin  
Kathy Aux