



September 18, 2015

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Ms. Tiffany Clemmens  
Executive Director of Specialized Services  
Baltimore City Public Schools  
200 East North Avenue, Room 204 B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #16-012

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 July 20, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student. 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 her son, the above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s academic and behavioral needs during the 2014-2015 school year, in accordance with 34 CFR §300.324.

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2. The BCPS did not ensure that the Behavior Intervention Plan (BIP) had been implemented, since March 2015, in accordance with 34 CFR §§300.101 and .323.
3. The BCPS did not ensure that the student was 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, COMAR 13A.08.02.09, and the Maryland Student Records System Manual.
4. The BCPS did not ensure that the student's transportation needs had been appropriately addressed since June 25, 2015, in accordance with 34 CFR §§300.34, .39, .320, and .324.

#### **INVESTIGATIVE PROCEDURES:**

1. On July 22, 2015, the MSDE sent a copy of the complaint, via facsimile, to Mr. Darnell L. Henderson, Esq., Associate Counsel, Office of Legal Counsel, BCPS.
2. On July 29, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, discussed the allegations being investigated with the complainant.
3. On July 30, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation.
4. On August 3, 2015, the complainant provided documents to the MSDE for consideration.
5. On August 21, 2015, Ms. Floyd, discussed the allegations being investigated with Ms. Diana K. Wyles, Esq., Associate Counsel, Office of Legal Counsel, BCPS.
6. On August 26, and 27, 2015, Ms. Floyd spoke with the complainant about the IEP team meeting held on August 13, 2015.
7. On August 28, 2015, Ms. Floyd, Ms. Janette Guerra, Early Childhood Specialist, MSDE, and Mr. Albert Chichester, Complaint Investigator, MSDE conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following:
  - a. Ms. XXXXXXXXXX, Assistant Principal/IEP Chairperson;
  - b. Ms. XXXXXXX, School Psychologist;
  - c. Ms. XXXXXXXXXX, School Social Worker;

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- d. Ms. XXXXXXXXX, Principal;
- e. Ms. XXXXXXXX, General Education Teacher;
- f. Ms. XXXXXXXXXX, Special Education Teacher; and
- g. Ms. XXXXXXXXX, Speech and Language Pathologist.

Ms. Roberta Courter, Office of Early Learning Programs, Early Learning Lead, BCPS, Mr. James Pierce, Special Education Response Unit Specialist, BCPS, and Ms. Wyles attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.

- 8. On September 1 and 11, 2015, the BCPS provided documents to the MSDE for consideration.
- 9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Notice of the procedural safeguards, provided to the complainant on June 25, 2015;
  - b. IEP, dated January 16, 2014, and progress report on IEP goals;
  - c. IEP, dated January 9, 2015 and progress report on IEP goals;
  - d. IEP, dated June 25, 2015 and progress report on IEP goals;
  - e. IEP, dated August 10, 2015;
  - f. Invitation to the January 9, 2015 IEP team meeting and written summary of the meeting;
  - g. Invitation to the March 25, 2015 IEP team meeting and written summary of the meeting;
  - h. Invitation to the May 27, 2015 IEP team meeting and written summary of the meeting;
  - i. Invitation to the June 25, 2015 IEP team meeting and written summary of the meeting;
  - j. Invitation to the August 13, 2015 IEP team meeting and written summary of the meeting;
  - k. The student's report card, dated June 15, 2015;
  - l. A list of behavioral interventions implemented from January 16, 2014 through April 1, 2015;
  - m. A log of communication by the complainant dated September 22, 2014 through June 8, 2015;
  - n. The speech and language encounter log report dated August 25, 2014 through June 15, 2015;

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- o. The student's picture schedules for full and partial day, medical management, and a daily behavior chart;
- p. Referrals to the principal's office for the student, and letters of suspension to the complainant;
- q. A log of calls and texts between the complainant and the school staff dated February 12, 2015 through June 9, 2015;
- r. The school's log of visitors and early dismissal logs for the 2014-2015 school year;
- s. Electronic mail (email) correspondence between the school system staff and the complainant;
- t. Reports of the Functional Behavior Assessment (FBA), dated April 23, 2015, the Behavior Intervention Plan (BIP), dated June 11, 2015, the private neuropsychological assessment, dated July 23, 2015; the psychological assessment, dated May 22, 2015, and the educational assessment, dated April 23, 2015;
- u. The report of the student's general education progress, dated January 8, 2015;
- v. The report of the student's speech and language progress, dated January 8, 2015;
- w. The BCPS special education services location and city-wide program assignment, dated July 27, 2015; and
- x. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on July 20, 2015.

### **BACKGROUND:**

The student is five (5) years old and attended XXXXXXXXXXXXXXXX (XXXXXXX) during the 2014-2015 school year. Since August 31, 2015, he has attended XXXXXXXXXXXX XXXXXXXXXXXX as a result of the IEP team's change in educational placement on June 25, 2015.

He is identified as a student with an Other Health Impairment (OHI) related to a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) under the IDEA, and has an IEP that requires the provision of special education instruction and related services in an early learning therapeutic separate class within a public school (Docs. e, t and w).

During the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Doc. a).

**FINDINGS OF FACTS:**

**ALLEGATION #1                      IEP THAT ADDRESSES THE STUDENT'S BEHAVIORAL  
AND ACADEMIC NEEDS**

**IEP team meeting January 9, 2015**

1.        At an IEP team meeting held on January 9, 2015, the IEP which required speech therapy for the student's articulation needs was reviewed. While there was information from the student's teachers and the complainant that the student was experiencing behavioral difficulties, mostly in the afternoon, there is no documentation that the student's behavioral needs were discussed at the IEP team meeting (Doc. f).
2.        Also at the IEP team meeting on January 9, 2015, a report of the student's progress on the speech and language goals reflected that the student was making sufficient progress to achieve the goals. The progress report documented that "the student responds well to positive reinforcement and enjoys helping others." He has made good progress this school year on his target sounds. He is still judged to be moderately unintelligible in connected speech due to the number of error sounds he produces (Docs. b and v).

**IEP team meeting March 25, 2015**

3.        At the IEP team held on March 25, 2015, the team discussed that, as of March 1, 2015, the student had begun "hitting peers and adults, eloping, and throwing objects." The IEP team made the determination that the student's behaviors were resulting in numerous office referrals to the administration, and was impacting the student's education because he was losing instructional time (Docs. g and o).
4.        The school staff discussed the behavioral strategies currently being implemented which included a picture schedule, breaks outside of the classroom every 30 minutes, lunch with an administrator, a picture schedule to assist him with taking medication, a positive behavioral management system, a home-school communication system and a partial-day schedule (Docs. g and o).
5.        These behavioral interventions were to be put in place immediately in addition to a recommendation for a temporary adult assistant and the change in the student's schedule from a full day to a partial-day schedule. The complainant and her mother agreed to assist the student with his behavior in the classroom three days per week (Docs. g and o).

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6. On March 25, 2015, the IEP team also discussed that “another disability may be causing the student’s extreme behaviors.” As a result, the IEP team recommended assessments be conducted in the areas of education, cognitive, social, emotional, and behavioral, Functional Behavior Assessment (FBA), and a classroom observation to determine the possible existence of another disability (Docs. g and l).

#### **IEP team meeting May 27, 2015**

7. At the IEP team meeting held on May 27, 2015, the team discussed the student’s behavior and the impact the behavior has had on the student, the student’s family, and the student’s school family. The student received a two (2) day short term suspension for “unacceptable behaviors” beginning on May 21, 2015 (Docs. p and q).
8. Also at the IEP team held on May 27, 2015, the reports of educational assessment, psychological assessment, and classroom observations documented the student’s need for behavioral strategies and a therapeutic aide in a school setting (Doc. t).
9. On May 27, 2015, the student’s primary disability was changed from a Speech and Language Impairment to OHI based on a diagnosis of ADHD. The team recommended a BIP to be completed and that goals are drafted in the following areas:
  - a. Early literacy skills;
  - b. Early math literacy skills;
  - c. Articulation;
  - d. Behavioral and emotional; and
  - e. Counseling (Doc. h).

#### **IEP team meeting June 25, 2015**

10. At the IEP team meeting held on June 25, 2015, the team convened to review the FBA and revise the IEP based on evaluation data reviewed at the May 27, 2015 team meeting. The IEP requires that the student be provided with special education instruction and related services in a separate special education therapeutic classroom outside of the student’s home school (Doc. i and interview with school staff).
11. The team developed a BIP that requires the use of strategies and social language skills training to help the student with transitions, responding to difficult behaviors, and using social stories and social interaction to support learning of self-management strategies.

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The BIP also requires that strategies be used during transitions throughout the school day when giving the student directions, prior to phonics activities, prior to the afternoon activities and when completing work. The student is to choose from a folder with multiple subject-related activities. The BIP requires the responsive strategies to address the target behaviors to include providing the student with the, “opposite direction” so that the student will ultimately comply with the school rules and routines (Doc. t).

12. The IEP requires that the student is to be provided with goals in speech and language articulation, early literacy, early math literacy, social, emotional and behavioral skills, and behavioral independence (Doc. d).
13. The IEP also requires the supplementary aids and services to include a transition plan for entering and leaving class, a picture schedule, extra time allowed for responses, advance preparation for schedule changes, crisis intervention, strategies for increasing attention, reinforcement of appropriate behaviors in non-academic settings, a home/school communication system, and preferential seating (Doc. d).

#### **IEP team meeting August 13, 2015**

14. At the IEP team meeting on August 13, 2015, a private neuropsychological evaluation report was reviewed and documented that the student’s, “academic abilities are commensurate with his cognitive ability and grade level.” The report also documented that, “the student has a solid foundation of academic and cognitive skills, however, without behavioral and social/emotional supports the student is at risk for encountering problems meeting the social/emotional and academic demands. This is a critical time to identify supports that will address these identified areas of concern.” The report stated that, “throughout the evaluation, severe behavior problems were noted including multiple elopement attempts and physical aggression requiring significant reinforcement and redirection to complete tasks.” A recommendation within the neuropsychological report states that, “due to his difficulties with emotional regulation and low frustration tolerance, the student will require a one-to-one aide in order to provide him with the structure he needs to learn” (Doc. t).
15. As a result of the data provided by the private neuropsychological, the IEP was revised to require the provision of special education and related services in a separate special education class with behavioral supports, specifically, the supplementary aids and services listed below were revised to include:

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- a. Crisis intervention services (with use of “a physical transport” limited to instances to ensure safety to access the crisis room);
- b. Use of a reduced rate of speech and clear articulation by his teachers;
- c. Use of social stories to increase the student’s understanding of different ways to respond in social situations;
- e. “Adult support for behavior management and academic tasks in all classes, during transition periods, and on the school bus to reduce and monitor frustration;” and
- f. A picture schedule with a break board to assist the student with identifying when he needs a break (Docs. e and t).

## **DISCUSSION/CONCLUSIONS:**

It is the responsibility of the local school system to offer a Free Appropriate Public Education (FAPE) to all students within its jurisdiction. In order to do so, the public agency is required to develop an IEP that includes special education and related services designed to address the needs that arise from the student’s disability. In the case of a student whose behavior impedes his or her learning or that of others, the IEP must also include strategies to address that behavior (34 CFR §§300.34, .101, .320, .323 and .324).

Based on the Findings of Facts #1 - #15, the MSDE finds that the IEP did not address the student’s behavioral needs, which were impacting his ability to access academic instruction until June 2015. Therefore, this office finds that a violation occurred from January 8, 2015 until June 2015.

## **FINDINGS OF FACTS:**

### **ALLEGATION #2 PROVISION OF BEHAVIORAL INTERVENTIONS**

16. On March 26, 2015, the student began receiving assistance with his behavior in the school setting from family members (Docs. g and r).
17. There is documentation that a daily picture schedule was created to provide multiple breaks, resting time, multiple bathroom breaks, and preferred activities for the student. The full day picture schedule was varied for the student to allow for changes in the daily schedule. When the student’s schedule was changed to a partial-day, the picture schedule was revised. There is also documentation that the student was provided with a “first-then picture schedule” to assist him with his transition for medication management and positive reinforcement when non-preferred activities were scheduled (Doc. o and interviews with school staff).



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18. On April 1, 2015, the school staff made a request to the Central Special Education Office for assistance to improve the educational services for the student. The “first then picture schedule”, frequent breaks, positive behavioral management sticker reward system, and a home-school communication system were documented as interventions put in place for the student. A temporary adult assistant was also requested by the school staff to assist the student with managing his behavior (Doc. l).
19. Between April 2, 2015 and May 20, 2015 the student had a picture communication log and a home/school positive behavior communication system which allowed the student to earn stickers for preferred behaviors (Docs. l and o).

### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101).

In this case, the complainant alleges that while the formal BIP was developed on June 25, 2015 other behavior interventions were required prior to that time, but were not provided.

Based on Findings of Facts #16 through #19 the MSDE finds that there is documentation that informal behavioral interventions were implemented prior to the development of the BIP.

Therefore no violation occurred with respect to the allegation. However, as indicated above, this office finds that the IEP did not address the student’s behavioral needs prior to June 25, 2015 when the formal BIP was developed.

### **FINDINGS OF FACTS:**

#### **ALLEGATION #3 PROVISION OF DISCIPLINARY PROTECTIONS**

20. Between March 17, 2015 and June 5, 2015 there were nineteen (19) written referrals in which the student was given administrative consequences not involving disciplinary removal from school, for his “inappropriate behaviors” (Doc. p).
21. At the IEP team held on March 25, 2015, the complainant and her mother agreed to assist the student with his behavior in the classroom three days per week. Between February 12, 2015 and June 9, 2015 there were one hundred forty-eight (148) calls and texts made between the complainant and school staff (Docs. g and q).
22. On May 20, 2015 the student was given a two (2) day short term suspension for “unacceptable behaviors” (Docs. g and o).

### **DISCUSSION/CONCLUSIONS:**

The IDEA provides protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year (34 CFR §300.530).

The complainant alleges that because of the significant amount of disciplinary referrals and school contacts when they were unable to address the student's behavior, the student has experienced disciplinary action for which protections should have been provided.

Based on the Findings of Facts #20 - #22, the MSDE finds that there is no documentation that the student was removed from school in excess of ten school days during the 2014-2015 school year. Therefore, this office finds the disciplinary protections of the IDEA are not applicable, therefore, the MSDE does not find a violation occurred with respect to this allegation. However, as indicated above, this office finds that the IEP did not address the student's behavioral needs prior to June 25, 2015 when the formal BIP was developed.

### **ALLEGATION #4                      TRANSPORTATION NEEDS SINCE JUNE 25, 2015**

### **FINDINGS OF FACTS:**

#### **Transportation Needs**

23. At the IEP team held on June 25, 2015, the IEP was revised to require that the student be provided with special education transportation. It was determined that a safety vest is needed to assist the student during transportation. The IEP team documented that the student did not need a one-to-one aide on the school bus because additional staff was already in place to assist the student on the bus (Doc. i and interview with school staff).
24. At the IEP team meeting on August 13, 2015, a private neuropsychological evaluation was reviewed which documented that the student will require a one-to-one aide during periods of time such as transition. As a result of the data provided by the private neuropsychological, the IEP was revised to require "adult support on the school bus to reduce and monitor the student's frustration" (Docs. e and t).

### **DISCUSSION/CONCLUSIONS:**

As stated above, the IEP must include special education and related services designed to meet the unique needs of each student that arise from the student's disability (34 CFR §§300.34, .101, .320, .323 and .324).

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In this case the complainant alleges that the IEP team did not consider the student's significant emotional needs when determining additional adult support on the school bus was not needed at the June 25, 2015 IEP team meeting.

Based on the Findings of Facts #23 and #24, the MSDE finds that on June 25, 2015, the IEP team considered the need for adult support and determined the bus had sufficient staff to address the student's needs. Once there was data presented to the team on August 10, 2015 the team decided to add the support. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **CORRECTIVE ACTIONS/TIMELINE:**

#### **Student-Specific**

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

1. Determined the services required to compensate the student for the loss of a FAPE;
2. Developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings; and
3. Provided the complainant with a written summary of the meeting that contains all of the required information.

The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

#### **School-Based**

The MSDE requires the BCPS to provide documentation by November 1, 2015 of the steps it has taken to ensure that the BCPS staff properly implements the requirements for the areas of noncompliance. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

Documentation of all corrective action taken is to be submitted to this office to: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

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### **Technical Assistance**

Technical assistance is available to the parties from Bonnie Preis, Compliance Specialist, MSDE at (410) 767-7770.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The 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 FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF: sf

c: Gregory Thornton  
Linda Chen  
Diana Wylie  
Anita Mandis

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