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Interim State Superintendent of Schools

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October 9, 2015

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

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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: #16-017

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 August 14, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, the student's mother, and Ms. Pat Halle, hereafter, "the complainants," on behalf of the above-referenced student. In that correspondence, the complainants 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 ensure that the student's academic, transition and behavioral needs were identified and addressed through the Individualized Education Program (IEP) during the 2014-2015 school year, in accordance with 34 CFR §300.324; and

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2. The BCPS did not ensure that proper procedures were followed in response to a request for an IEP team meeting on July 21, 2015 in accordance with 34 CFR §§300.324 and .503.

INVESTIGATIVE PROCEDURES:

1. On August 14, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS, and Mr. Darnell L. Henderson, Esq., Associate Counsel, Office of Legal Counsel, BCPS.
2. On August 20, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, sent correspondence about the allegations to the complainants.
3. On August 24, 2015, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation.
4. On August 27, 2015, Mr. Henderson sent an electronic mail (email) correspondence about the student's transfer request approval for the 2015-2016 school year.
5. On September 8, 2015, the MSDE reviewed the student's educational record at the Office of Legal Counsel, BCPS.
6. On September 16, 2015, Ms. Floyd discussed the allegations being investigated with the complainants and emailed an additional copy of the correspondence that identified the allegations to be investigated.
7. On September 14, 2015, Ms. Floyd and Ms. Memuna Bangura, MSDE Monitoring Specialist, MSDE conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXX (XXXXXXX) and interviewed the following:
 - a. Mr. XXXXXXXXXXXX, Assistant Principal;
 - b. Dr. XXXXXX, School Psychologist; and
 - c. Ms. XXXXXXXXXXXX, IEP Chairperson.

Ms. Donnae B. Bushrod, Educational Specialist, BCPS, and Mr. Henderson attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, this includes:

- a. Notice of the procedural safeguards, provided to the parent on August 21, 2015;
- b. IEP, dated January 8, 2014, progress report on IEP goals, and written summary of the IEP meeting;
- c. IEP, dated November 7, 2014, progress report on IEP goals, invitation and written summary of the meeting;
- d. IEP, dated August 21, 2015, invitation and written summary of the meeting;
- e. Transition planning inventory student form, dated August 21, 2015, Transition process: agency linkage to parent, signed August 21, 2015;
- f. Invitation to the parent from the BCPS to participate in an IEP team meeting dated August 6, 2015, invitation to the complainants from the BCPS to participate in an IEP team meeting dated October 21, 2015;
- g. A log of scheduled IEP teams, documented by the BCPS staff, dated November 6, 2014 through August 14, 2015;
- h. A log of parent contacts, documented by the BCPS staff, dated January 2, 2014 through September 23, 2015;
- i. Student's report card dated June 15, 2015;
- j. Service coordination log, third party billing, dated January 17, 2013 through May 18, 2015;
- k. Classroom teacher progress report completed by a general education teacher, dated November 5, 2014;
- l. Encounter log report completed by the school psychologist, dated August 25, 2014 through September 30, 2014;
- m. Progress report completed by the special education teacher, dated November 7, 2014;
- n. Classroom teacher progress report completed by the special education teacher, dated November 6, 2014;
- o. Speech and language progress report, dated November 1, 2014;
- p. The student's unofficial transcript, dated August 7, 2015;
- q. Email correspondence between the MSDE and the complainants;
- r. The student's schedule for the 2014-2015 school year at the XXXXXXXX HS;
- s. Transfer request correspondence from the BCPS to the parent, dated August 26, 2015;
- t. Service and communication logs from the speech and language pathologist, dated September 10, 2014 through November 5, 2014;
- u. Verification of the IEP receipt and start date from the special education teacher to the student's scheduled teachers, dated January 8, 2014;
- v. Reports of a classroom observation on the student dated May 1, 2012, educational assessment dated May 3, 2011, psychological dated June 2, 2009, psychological dated October 1, 2005, psychological update dated March 31, 2011, and a psychological dated May 31, 2011;

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- w. Notice and consent for assessment, signed by the parent on August 21, 2015;
- x. Correspondence to the parent from the BCPS regarding the student's absences, United States Post Office receipts;
- y. The student's attendance for the 2014-2015 school year; and
- z. Correspondence from the complainants alleging violations of the IDEA, received by the MSDE on July 20, 2015.

BACKGROUND:

The student is eighteen (18) years old and attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) during the 2014-2015 school year. Since August 31, 2015, she has attended XXXXXXXXXXXXXXXXXXXX as a result of her mother's request for an administrative transfer (Doc. s).

The student is identified as a student with an Emotional Disability (ED) under the IDEA, and has an IEP that requires the provision of special education instruction and related services (Docs. b, c and d).

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

FINDINGS OF FACTS:

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

IEP dated January 8, 2014

1. The IEP in effect when the student began attending XXXXXXXXXXXXXXXXXXXX was developed on January 8, 2014 while the student was attending the XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXXXXX). The IEP included goals for the student to improve reading comprehension, reading fluency, math calculation and problem solving, written language expression, speech/language expressive and pragmatic language. It also contained goals to address the student's social, emotional, and behavioral needs identified in the data described in the Present Levels of Academic and Functional Performance section of the IEP. The student's social, emotional, and behavioral needs included those related to anxiety at school and lack of regular attendance (Docs. b, v, x, and y).
2. The January 8, 2014 IEP developed by the staff at XXXXX, states that due to the student's lack of regular school attendance and difficulty in convincing the student's mother to participate in IEP team meetings, special education services were being placed "on hold" (Docs. b, g, h, x and y).

3. The January 8, 2014 IEP developed by the staff at XXXXX also includes transition planning information that was based on a Transition Planning Inventory that had been conducted on January 11, 2013 (Doc. b).

IEP dated November 7, 2014

4. On November 7, 2014, the IEP team at the XXXXXXXXXXXXXXXXXXXX convened and discussed their unsuccessful efforts that had been made to encourage the student's mother to participate in the meeting. The team also discussed that the student was not attending school regularly, which was impacting her ability to make progress towards achievement of the annual IEP goals. The team revised the academic goals based on the report of the student's lack of progress and decided to discontinue the goals for the student to improve her school attendance and to manage feelings of stress, anxiety, and frustration. The team also decided to discontinue the provision of related speech/language and counseling services due to the student's lack of regular school attendance. However, there is no documentation that the team considered positive behavioral interventions to address the student's behaviors that were impacting her school attendance (Docs. c, k, m, n, o, t, x, and y).

IEP dated August 21, 2015

5. On August 21, 2015, the IEP team, including the complainants, convened. At that meeting, the complainants expressed concern about the student's anxiety related to school and shared a report of a private mental health assessment that the student's mother had obtained. Based on information from the complainants, the IEP team decided that the student requires greater support to address her emotional difficulties. Annual goals were added to the IEP for the student to improve her social, emotional, and behavioral functioning, and services, including psychological services and the provision of a temporary adult assistant, were added to assist her in achieving the goals (Doc. d).
6. The student participated in the August 21, 2015 meeting. The IEP team considered the results of a transition planning inventory that had been administered to the student on that date, reflecting the student's interests in animals and attending a technical school after high school. Based on this information, the team developed post-secondary goals for the student to work in a veterinarian's office and attend a technical school after high school. A course of study in Environmental, Agricultural and Natural Resource Systems was determined to be most appropriate to assist the student to be prepared to address these goals after high school (Docs. d, e and w).
7. At the IEP meeting, the student reported that she does not believe that she has the skills to live independently, and the IEP team decided that more data is needed to determine if the student needs an independent living goal. The student's mother consented for the IEP

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team to conduct assessments and the IEP team is planning to reconvene on October 21, 2015 to review the results and consider the student's postsecondary goals and transition services (Docs. d, e and w).

DISCUSSION/CONCLUSIONS:

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. The only circumstances under which this obligation is not required to be fulfilled is if the parent revokes consent to the provision of those services or the student no longer meets the qualifications for the provision of special education and related services under federal or State law (34 CFR §§300.9, .101 and .102).

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. The IEP must include a statement of the program modifications or supports for school personnel that will be provided to enable the child to be involved in and make progress in the general education curriculum. In the case of a child 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).

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 #2 and #4, the MSDE finds that the XXXXXXXXX and XXXXXXXXXXXX IEP teams did not have the authority to determine that special education would not be provided because the student was not attending school regularly.

Based on Findings of Facts, #1, #2, #4 and #5, the MSDE finds that the IEP in effect from the start of the 2014-2015 school year, until August 21, 2015 did not address the student's behavior related to a lack of school attendance, which was interfering with her access to instruction. As a result, the IEP was not designed to assist her in making progress through the general curriculum and thus, did not address her academic needs.

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Based on the Findings of Facts #1, and #3 - #7, the MSDE finds that the IEP in effect since the start of the 2014-2015 school year has not addressed the student's transition needs because transition planning was not based upon current information about the student's interests and preferences. Therefore, this office finds that violations occurred.

ALLEGATION #2 RESPONSE TO A REQUEST FOR AN IEP TEAM MEETING

FINDINGS OF FACTS:

8. On August 6, 2015, the BCPS sent a notice of invitation to the student's mother by the United States Post Office first class and "return receipt requested" mail delivery (Docs. d, g, h and x).
9. On August 14, 2015, the notice was returned to the BCPS as undeliverable by the United States Post Office (Docs. d, g, h and x).\
10. An IEP team meeting was rescheduled by the BCPS for August 17, 2015 and the complainants attended and participated in the meeting (Docs. d, g, h and x).

DISCUSSION/CONCLUSION:

The public agency or the parent may request that an IEP team meeting be convened at any time to review a student's program, determine the appropriate services, and discuss the provision of services. If the parent requests a meeting, the public agency must either convene an IEP team meeting or provide the parent with written notice, within a reasonable time, to explain why the agency has determined that conducting the meeting is not necessary to ensure the provision of FAPE (34 CFR §§300.324 and 503).

Based on the Findings of Facts #8 - #10, the MSDE finds that the BCPS followed proper procedures when responding to the complainants' request for an IEP team meeting. Therefore, the MSDE finds that no violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by December 1, 2015 that transition planning for the student has been completed and the IEP team has convened and determined the amount and nature of compensatory services or other remedy to redress violations identified, which resulted in the loss of a FAPE since the start of the 2014-2015 school year. The

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documentation must include 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 student's mother 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 December 1, 2015 of the steps it has taken to ensure that the XXXXXXXX and XXXXXXXXXXXXX staffs properly implements the requirements for ensuring students academic, transition and behavioral needs are addressed through the IEP. 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 actions taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the BCPS and the parties 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 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 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
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