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Interim State Superintendent of Schools

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October 29, 2015

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

RE: XXXXX
Reference: #16-019

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.

ALLEGATION:

On August 31, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of the above-referenced student, her son. 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 allegation that the BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's academic and behavioral needs, in accordance with 34 CFR §300.324.

INVESTIGATIVE PROCEDURES:

1. On September 1, 2015, MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS; and Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS.

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2. On September 2, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and identified the allegation for investigation.
3. On September 4, 2015, Mr. Loiacono and Ms. Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview to clarify the allegations for the investigation.
4. On September 8, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the school system review the alleged violation.
5. On September 9, 2015, Mr. Loiacono contacted Ms. Diana Wyles, Associate Counsel, Office of Legal Counsel, BCPS, by electronic mail to arrange an document review and site visit.
6. On September 16, 2015, Mr. Loiacono and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a review of the student's educational record at the BCPS Central Office.
7. On September 28, 2015, Mr. Loiacono, Ms. Mandis, and Mr. Chichester conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review records and interviewed the following school staff:
 - a. Ms. XXXXXXXX, Regular Educator;
 - b. Ms. XXXXXXXX, Social Worker;
 - c. Ms. XXXXXXXX, Speech Language Pathologist;
 - d. Ms. XXXXXXXX, IEP Chairperson;
 - e. Ms. XXXXXXXX, Assistant Principal;
 - f. Ms. XXXXXXXX, Principal; and
 - g. Ms. XXXXXXXX, Special Educator.

Ms. Wyles attended 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 September 28, 2015, Mr. Loiacono contacted Ms. Wyles by electronic mail requesting additional documentation concerning IEP Progress Reports sent to the complainant.
9. On October 1, 2015, Mr. Loiacono contacted Ms. Wyles by electronic mail requesting additional documentation concerning technical assistance "packets" sent from the school to BCPS central office, and the behavior contract developed for the student.

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10. On October 2, 2015, Ms. Wyles sent Mr. Loiacono an electronic copy of a student observation conducted by the BCPS on December 9, 2014.
11. On October 8, 2015, Mr. Loiacono again requested the above referenced documents. Ms. Wyles replied later that day stating that she had not received any additional documentation from the school.
12. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated June 13, 2014;
 - b. IEP dated April 27 2015;
 - c. IEP dated June 2, 2015;
 - d. IEP dated August 31, 2015;
 - e. Prior Written Notice Dated April 27, 2015;
 - f. Prior Written Notice Dated June 02, 2015;
 - g. Anecdotal Behavior Record dated September 5, 2014 to March 23, 2015;
 - h. Social Work Progress Report dated January 1, 2015;
 - i. Social Work Progress Report dated April 15, 2015;
 - j. Student Report Card dated June 15, 2015;
 - k. IEP Progress Report Dated December 12, 2014;
 - l. IEP Progress Report Dated April 21, 2015;
 - m. Behavior Intervention Plan (BIP) dated May 14, 2014;
 - n. Observation Report dated May 30, 2015;
 - o. Occupational Therapist (OT) assessment completed August 11, 2015; and
 - p. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on August 31, 2015.

BACKGROUND:

The student is ten years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with Autism under the IDEA and has an IEP that requires the provision of special education instruction and related services in a general education setting (Docs. a-d).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Doc. a).

FINDINGS OF FACTS:

June 13, 2014 IEP

1. The IEP in effect when the student began the 2014-2015 school year was developed on June 2, 2014. The IEP reflects that the areas affected by the student's disability include reading comprehension and math problem solving skills, and behavioral functioning. It includes information about the student's levels of performance obtained from classroom-based assessments and observations, as indicated below:
 - Reading Phonics - The student was performing between the first and second grade levels, and had needs related to decoding grade level multisyllabic vocabulary and sight words.
 - Reading comprehension - The student was performing at the first grade level, and had needs related to answering questions that require deeper thinking, making inferences and making connections.
 - Math calculation - The student was performing at the second grade level, and had needs related to complete problems that involved regrouping.
 - Written Language Expression - The student was performing between the kindergarten and first grade levels, and had needs related to using proper grammar, writing a short paragraph to express himself and handwriting.
 - Social, emotional, and behavioral functioning - The student had needs related to not being able to effectively communicate his wants and needs, and displayed an increase in angry outbursts in intensity and frequency.
 - Speech and Language Expressive Language - The student demonstrated weaknesses speaking and in asking and answering questions (Doc. a).
2. Each present level of academic achievement and functional performance included in the IEP notes that the student's behavior negatively impacted his ability to achieve academic IEP goals (Doc. a).
3. The IEP includes annual goals for the student to improve reading comprehension, reading phonics, math calculation, written language expression, speech and language expression as well as management techniques for his behavior. It requires the provision of special education instruction to assist him with achieving the goals, and supplementary aids and services, including implementation of a behavior contract, use of positive behavior reinforcers and a use of word bank for written assignments (Doc. a).

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4. The IEP developed by the team included an objective to address the student's continuing tardiness with arriving to school on time as part of his behavioral goal (Doc. a).
5. A Behavior Intervention Plan (BIP) was developed on May 23, 2014 in preparation for the IEP meeting. The BIP described the student's destructive outbursts and elopement (Doc. m).
6. The IEP states that the complainant expressed concern about the student having "an adult support." While the IEP team documented that it agreed with this request, no adult support services were added to the IEP (Doc. a).

April 27, 2015 IEP

7. The IEP team met and revised the IEP on April 27, 2015. The IEP continues to identify the student with needs in the area of reading comprehension, reading phonics, math calculation and written expression. The IEP also identifies him with needs in the area of math problem solving. It also reflects that the annual goals were revised based on reports of the student's progress (Doc. b).

The IEP includes information about the student's levels of performance in the following areas:

- Reading Phonics - The student was reported to be performing at the first grade level, and had previously been performing at the kindergarten level. However, the previous IEP states that the student was already performing on the first grade level. He had needs related to decoding grade level multisyllabic vocabulary and sight words.
- Reading comprehension - The student was reported to be performing at the first grade level and had needs both with drawing conclusions based on information he read and with recalling details to support responses to explicit questioning. The IEP stated that he had made five months of progress since the previous IEP meeting.
- Math calculation - The student was reported to be performing between the second and third grade levels, representing half a year growth over the previous IEP. He had needs related to subtraction with regrouping, multiplication of two digit by one-digit whole numbers, and long division.
- Math Problem Solving - The team added goals and objectives for math problem solving. The student was reported to be performing on the second grade level. The IEP team noted that he last placed at the third grade level, representing a regression of one year. The student had needs related to identifying the question in the problem, subtraction, multiplication, division, word problems, and solving multiple step word problems.

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- Written Language Expression - The student was reported to be performing between the kindergarten and first grade levels, representing no growth. He had needs related to using proper grammar, writing a short sentences and handwriting.
 - Social, emotional, and behavioral functioning - The IEP team noted that the student had needs related to not being able to effectively communicate his wants and needs. The student displayed an increase in angry outbursts in intensity and frequency.
 - Speech and Language Expressive Language - The IEP noted that the student demonstrated a language delay. Weaknesses included the ability to respond to “wh-” questions, interacting skills with peers, staying on task and relating effectively to teachers, and participating in the classroom routine. The present level of performance noted that the student's delays in speech and language expression may impact classroom performance.
 - Speech and Language articulation - New goals and objectives were added to the IEP for speech and language articulation, based on an a referral and assessment conducted by a private clinician.
8. Each present level of academic achievement and functional performance included in the IEP and available teacher and social worker reports note that the student’s behavior negatively impacted his ability to achieve academic IEP goals (Docs. b, g, h, i.).
9. By the time of the April 27, 2015 IEP meeting, the student had been tardy almost 100 times during the 2014-2015 school year. As a result, he had missed a significant amount of instruction. Behavioral notes from the teacher indicate that the student was frequently tardy and that it created significant behavioral disruptions. However, the IEP team removed the behavioral objective related to attendance, but did not document any discussion related to it. Further, no discussion was documented regarding interventions to assist the student in making progress towards the objective (Docs. b, g-l).
10. The school staff reported that the student lives within walking distance of the school, but it would be unsafe for him to do so as a result of his disability. The parent has been walking him to school, but not in a timely manner. However, the IEP team has not considered whether the student requires transportation services in order to improve his school attendance (Docs. b, g-l).
11. The complainant, at the meeting, requested temporary adult support for the student and was told that a decision would be made following review of a technical assistance packet sent to the BCPS Central Office staff. A behavioral observation was completed in response to the complainant's request (Docs. d, m).

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June 13, 2015 IEP

12. The IEP team met on June 13, 2015 to discuss the results of the technical assistance packet forwarded to the BCPS Central Office, and the behavioral observation. The behavioral observation, conducted by a BCPS behavioral specialist, recommended, among other things, that:
 - The team should consider adding additional supplementary aides and services;
 - The team should adjust behavioral strategies;
 - The team should consider monthly support from the BCPS Program for Autistic Learners (PAL) support teacher; and
 - The team should consider more intensive outside services (Doc. n).
13. The behavioral specialist attended the IEP team meeting and expressed concern over “the amount of services provided.” The team decided that, “Based on the teachers and related service providers concerns about his [the student’s] slow progress and frustration levels, difficulty articulating his wants and needs, and slow progress did not see a need to increase his speech or classroom instruction service hours” (Doc. f).
14. During a discussion of the student’s behavior issues, the teacher noted that the student had reduced the number of times of elopement from class, but that she “is concerned for the safety of the other students in the class” (Doc. f).
15. The complainant requested that the IEP team consider placement in an “Autism program.” In response, she was informed that, “A decision could not be made at this time” and decided to keep the student in his current placement. The team did not document its discussion of the Autism program placement, if any occurred. While the IEP team also informed the complainant that additional services could be provided, no new direct services were included in the IEP (Doc. f).
16. The documentation from the April 27, 2014 and June 2, 2014 IEP state that sufficient progress was made towards achievement of the annual IEP goals. However, IEP Progress Reports sent to the complainant on December 12, 2014 and April 21, 2015 state that the student “Needs More Assistance” towards meeting his behavioral goals (Docs. a, b, k, l).

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. In developing each student’s IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral

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interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

The public agency must ensure that the IEP team reviews the IEP at least annually in order to determine the student's progress towards achievement of the annual IEP goals. In addition, the public agency must ensure that the IEP team revises the IEP, as appropriate, to address lack of expected progress towards achievement of the goals (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on Findings of Facts #1-6 and #11, the BCPS did not ensure that additional adult support was added to the IEP as determined by the IEP team.

Based on Findings of Facts #12-16, the BCPS did not ensure that the concerns of the parent were considered when making a placement decision.

Based on Findings of Facts #1, #2, #4-10, and #16 the MSDE finds that, while the IEP team documented sufficient progress with regards to achieving IEP behavior goals, it was not consistent with the data reviewed.

Further, based on Findings of Facts #8 and #10, the MSDE finds that the BCPS did not ensure that the IEP team considered providing transportation services to address behavioral issues related to attendance.

Based on Findings of Facts #1, #2, and #7, the BCPS did not ensure that the IEP team considered accurate information with regards to the student's performance in reading comprehension when determining his academic, developmental, and functional needs.

Therefore, the MSDE finds that violations have occurred since the beginning of the 2014-2015 school year.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by January 1, 2016 that the IEP team has completed the following:

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- a. Reviewed and revised the IEP, as appropriate, to ensure that it accurately measures the student's present levels of performance and addresses all of the student's needs, including considering adult support or placement in another BCPS program.
- b. Determined whether the student has needs in the areas of transportation or other supports to address attendance issues, and if so, ensured that the IEP addresses those needs.
- c. Determined the amount and type of compensatory services to be provided to remedy the violations identified in this investigation.

School-Based

The MSDE requires the BCPS to provide documentation by February 1, 2016 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 the XXXXXXXXXXXX Elementary 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 the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

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

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, 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.

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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 complainant 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:gl

c: Gregory E. Thornton
Diana K. Wyles
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Dori Wilson
Anita Mandis
Bonnie Preis
Gerald Loiacono