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December 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: #16-042

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 November 4, 2015, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. 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 follow proper procedures when responding to requests for an evaluation under the IDEA, from May 28, 2015 through November 3, 2015, in accordance with 34 CFR §§300.301, .302, and .304 – .311, and COMAR 13A.05.01.04 – .06.
2. The BCPS did not ensure that a language interpreter was provided upon prior request to the school, for the Individualized Education Program (IEP) meetings held in June 2015, August 2015, and November 2015, in accordance with 34 CFR §300.322.

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INVESTIGATIVE PROCEDURES:

1. On November 5, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS.
2. On November 10, 2015, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations. On the same date, the complainant provided the MSDE with documentation to be considered.
3. On November 17, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Clemmons of the allegations to be investigated and requested that her office review the alleged violations.
4. On December 7, 2015, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:

XXXXXXXXXXXXXX

- a. Ms. XXXXXXXXX, Assistant Principal;
- b. Ms. XXXXXXXXX, Special Educator;
- c. Ms. XXXXXXXXX, General Educator; and
- d. Ms. XXXXXXXXX, IEP Chairperson.

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- e. Ms. XXXXXXXXX, Special Educator;
- f. Ms. XXXXXXXXX, School Psychologist;
- g. Ms. XXXXXXXXX, IEP Chair; and
- h. Ms. XXXXXXXXX, Pre-K General Educator.

BCPS Central Office

- i. Ms. Annette Boone, Teacher of the Visually Impaired;
- j. Ms. Hope Wrenn, Dietician;
- k. Ms. E. Ramsey Mihavetz, Early Learning Programs Representative;
- l. Ms. Serene Peterson, Education Specialist II, BCPS; and
- m. Ms. Samantha McGaven, Intern, Office of Legal Counsel, BCPS.

Ms. Diana Wyles, Attorney, BCPS, attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

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6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. Child Find Referral for the XXXXXXXXXXXXXXXXXXXX, dated May 28, 2015;
 - b. Child Find Referral for the XXXXXXXXXXXXXXXXXXXX, dated September 8, 2015;
 - c. IEP Prior Written Notice, dated June 1, 2015;
 - d. IEP Prior Written Notice, dated June 16, 2015;
 - e. IEP Prior Written Notice, dated September 8, 2015;
 - f. IEP Prior Written Notice, dated November 3, 2015;
 - g. Notice and Consent for Assessment, dated June 1, 2015 and September 8, 2015;
 - h. Evaluation Report and Determination of Initial Eligibility, dated November 3, 2015;
 - i. Pediatric Cardiologist Progress Note, dated April 1, 2015;
 - j. Pediatric Genetics Consultation Summary, dated May 18, 2015;
 - k. Ophthalmologist Summary, dated April 7, 2015;
 - l. Orientation and Mobility Assessment Report, dated October 1, 2015;
 - m. Functional Vision Assessment, dated October 5, 2015;
 - n. Occupational Therapy Assessment Report, dated October 22, 2015;
 - o. Educational Assessment Report, dated June 1, 2015;
 - p. Correspondence, dated July 22, 2015, between the complainant and the BCPS Central Office staff; and
 - q. Correspondence containing allegations of violations of the IDEA, received by the MSDE on November 4, 2015.

BACKGROUND:

The student is four (4) years old and attends the XXXXXXXXXXXXXXXXXXXX. She is not identified as a student with a disability under the IDEA.

The complainant initially intended to enroll the student at the XXXXXXXXXXXXXXXXXXXX for the 2015-2016 school year but obtained an administrative transfer to XXXXXXXXXXXXXXXXXXXX XXXXX (Doc. p).

ALLEGATION # 1: EVALUATION PROCEDURES

FINDINGS OF FACTS:

XXXXXXXXXXXXXXXXXX

1. On May 28, 2015, the complainant made a referral for an evaluation of the student under the IDEA. The referral identified the complainant's concerns about the student's vision, health, and motor skills. The basis of the medical concerns are related to the student's

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diagnosis of Celiac disease and a heart condition, and the concern about the student's vision was related to her diagnosis of XXXXXX, a condition in which one or both eyes turn inward (Doc. a).

2. On June 1, 2015, the IEP team convened to considered data, including:

- A vision report from the student's ophthalmologist indicated that the student's visual acuity was 20/80 in her right eye and 20/40 in her left eye, without correction. The report recommended occlusion therapy of the left eye (using a patch) for four (4) hours each day and indicated that glasses were not required at that time (Docs. c, d, and k).
- A progress note from the student's cardiologist reflecting that the student has a heart condition but that she is cleared for all activities with no follow-up needed and no need for limitation in activities (Docs. c, d, and i).
- The complainant's concern regarding the student's diagnosis of Celiac disease, which necessitates that the student be restricted to a gluten-free diet (Docs. c, d, j, and q).

3. Based on the data, the team recommended an educational assessment in order to determine whether the student required special education instruction as a result of these conditions. The complainant provided consent for the school staff to conduct assessments on the student. It was also recommended that the complainant obtain a doctor's order that would require the school to provide the student with a gluten-free diet for breakfast and lunch (Docs. c, d, and g).

4. On June 16, 2015, the IEP team reconvened and considered the results of the educational assessment, which indicated that the student was in the "average range" for pre-mathematics, cognitive thinking, and pre-literacy comprehension skills, but that she was "below average" in the area of fine motor skills. The team also considered her doctor's orders regarding the student's dietary restrictions (Docs. d and o).

5. Based on the data reviewed, the team determined that there was insufficient data to indicate that the student requires special education instruction as a result of her conditions, and therefore, does not meet the criteria for identification as a student with a disability under the IDEA. It was noted that the student recently began wearing an eye patch, and that the team recommended that an occupational therapy assessment be conducted in the Fall of the 2015-2016 school year if the student's fine motor writing skills did not improve after the use of the eye patch. The team decided that the student's diet would be restricted consistent with the doctor's recommendation. The school-based members of the IEP team suggested to the complainant that a referral be made to consider whether the student

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requires accommodations through a 504 Plan. However, the complainant indicated that she did not want to consider a 504 Plan (Doc. d and q).

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6. On September 8, 2015, the IEP team convened in response to the complainant's request for another IEP meeting. The team reviewed the data that was considered during the previous IDEA evaluation and decided that it did not suspect a disability based on the student's health needs because no additional documentation had been provided. However, the team suspected a Visual Impairment and recommended a functional vision assessment, an orientation and mobility assessment, and an occupational therapy assessment, in order to determine whether there was a Visual Impairment that was impacting the student's development of fine motor skills. The complainant provided consent for the school staff to conduct assessments on the student (Docs. b, e, and g).
7. On November 3, 2015, the IEP team reconvened and considered the following:
 - The functional vision assessment, which indicated that, based on the medical documentation considered during the previous evaluation, the student functions well visually and has acuity of 20/40 based upon her most recent eye report. The document states that the standard for finding an individual visually disabled is 20/70 in the better eye with correction or a diagnosis that is degenerative in nature and is likely to result in significant loss of vision in the future. The report states that the student demonstrated the ability to fix and follow objects, distinguish and match colors, match letters and pictures, and is able to read print in various font sizes. The report also included recommendations for flexible seating arrangements, which includes proximity to the board (Doc. m).
 - The orientation and mobility assessment, which indicated that the student did not exhibit any difficulty traveling around the school that was related to her vision. The report indicated that the student noticed obstacles and safely maneuvered around them and was willing to attempt unknown tasks that were unfamiliar to her (Docs. h and l).
 - The occupational therapy assessment, which indicated that the student demonstrated age-appropriate skills in joint mobility, attending to task, bilateral integration skills, muscle tone, reflexes, automatic righting reactions, classroom posture, activities of daily living, gross motor, and sensory motor processing skills. It also indicated that the student demonstrated skill deficits in fine motor endurance, manipulation, grasp, ocular motor skills, visual perception, visual motor integration, and fine motor coordination. The report included recommendations for direct

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occupational therapy services to address visual perceptual motor and fine motor skills deficits (Doc. n).

8. Based on the data, the IEP team found that, although the student was found to have fine motor skill needs based on the occupational therapy assessment, the data regarding the student's vision that was reviewed during the previous evaluation, and again during the evaluation planning for the current evaluation, did not meet the criteria for identification of a student with a Visual Impairment under the IDEA (Docs. f, h, and q).

DISCUSSION/CONCLUSIONS:

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR §300.111).

A student with a disability, under the IDEA, is a student who has been evaluated as having one of a list of impairments, including Other Health Impairment (OHI) and a Visual Impairment, and who, by reason thereof, requires special education and related services (34 CFR §300.8).

An OHI means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, resulting in limited alertness with respect to the educational environment. This may be due to chronic or acute health problems (34 CFR §300.8).

Visual Impairment including blindness means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness (34 CFR §300.8).

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, in physical education, and in other settings. Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children (34 CFR §300.39).

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. This includes speech-language pathology and audiology services, as well as physical and occupational therapy services (34 CFR §300.34).

Upon receipt of a referral for an IDEA evaluation, the public agency must review the existing data, including evaluations, information provided by the student's parents, classroom-based assessments, and observations conducted by teachers. On the basis of that review, the public agency must determine whether additional data is needed and if so, that assessments and other evaluation measures needed to produce the data are conducted (34 CFR §§300.301 - .305 and COMAR 13A.05.01.04).

Based on the information in the data considered during the evaluation, the IEP team must determine whether the student has one of the impairments covered by the IDEA and whether the student requires special education instruction, and if so, the educational needs that arise out of the disability (34 CFR §300.8).

June 16, 2015 Evaluation – XXXXXXXXXXXXXXXXXXXX

Based on the Findings of Facts #1 - #5, the MSDE finds that the IEP team considered the assessment data, the complainant's concerns, and information from private medical reports and determined that the student does not require special education instruction as a result of her vision and health conditions, consistent with the data. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

November 3, 2015 Evaluation – XXXXXXXXXXXXXXXXXXXX

Based on the Findings of Facts # 6 and #7, the MSDE finds that the decision made by the IEP team on September 8, 2015 that there was no data to support that the student requires special education instruction to address needs related to the student's heart condition and Celiac disease is consistent with the data. Therefore, this office does not find that a violation occurred with respect to this aspect of the evaluation procedures.

However, based on the Finding of Fact #8, the MSDE finds that the decision made by the IEP team on November 3, 2015 that there is no data to support that the student has a Visual Impairment is inconsistent with the team's September 8, 2015 decision to obtain data to determine whether the student requires special education instruction as a result of a Visual Impairment. Therefore, this office finds that a violation occurred with respect to this aspect of the evaluation procedures.

ALLEGATION # 2: PROVIDING AN INTERPRETER FOR IEP TEAM MEETINGS

FINDINGS OF FACTS:

9. There is no documentation that indicates that the complainant requested that an interpreter be present at the June 1, 2015 and June 16, 2015 IEP meetings held at the XXXXXXXX XXXXXXXXXXXX and the school staff denies having received such a request (Docs. c, d, and interview with the school staff).

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10. There is correspondence, dated July 22, 2015, that documents that the complainant contacted the BCPS Central Office staff to request that an IEP meeting be held prior to the start of the 2015-2016 school year. The complainant also requested that a Portuguese or Spanish speaking interpreter be present at the meeting to assist the student's father with participating in the IEP team meeting. The IEP meeting was subsequently scheduled for September 8, 2015 at the XXXXXXXXXXXXXXXXXX (Doc. p).
11. An interpreter was not present at the IEP meeting held at XXXXXXXXXXXXXXXXXX XXXX on September 8, 2015. However, there is documentation that the complainant, who is the student's mother, represented the student's interest at that meeting (Docs. e and interview with the school staff).
12. There is no documentation that indicates that the complainant requested that an interpreter be present at the November 3, 2015 IEP meeting held at the XXXXXX Elementary School and the school staff denies having received such a request (Docs. c, d, f, and interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English (34 CFR §300.322).

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Based on the Finding of Fact #9, the MSDE finds that there is no documentation to support that the complainant requested that an interpreter be provided for the June 1, 2015 and June 16, 2015 IEP meetings. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

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Based on the Finding of Fact #12, the MSDE finds that there is no documentation to support that the complainant requested that an interpreter be provided for the November 3, 2015 IEP meeting. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on the Findings of Facts #10 and #11, the MSDE finds that there is no documentation to support that an interpreter was provided at the request of the complainant for the IEP meeting held on September 8, 2015. Therefore, the MSDE finds that a violation has occurred with respect to this allegation.

Notwithstanding the violation, based on the Findings of Facts #10 and #11, the MSDE finds that, the complainant, who is the student's mother, was able to participate and represent the student at those IEP meetings. Therefore, this office finds that the violation did not have a negative impact on the student and no student-specific corrective action is required to remediate the violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by February 29, 2016, that the IEP team has conducted an evaluation following proper procedures that is consistent with the data. If the team determines that the student meets the criteria for identification as a student with a disability under the IDEA, it must develop an IEP and determine the amount and nature of compensatory services to redress the delay in identifying the student.

The BCPS must ensure that the complainant is provided with written notice of the team's decisions. The complainant maintains the right to request mediation or to file a due process complaint to resolve any disagreement with the team's decisions.

School-Based

The MSDE requires the BCPS to provide documentation by March 31, 2016, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at the XXXXXXXXXXXXXXXXXXXX.

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.

TECHNICAL ASSISTANCE:

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

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Please be advised that both the complainant and the PGCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. 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 and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

MEF:ac

c: Gregory Thornton
Diana Wyles
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XXXXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Nancy Birenbaum