



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • msde.maryland.gov

January 14, 2016

XXX  
XXX  
XXX

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: #16-048

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 November 16, 2015, the MSDE received a complaint from Ms. XXXXXXXXXX,<sup>1</sup> hereafter, “the complainant,” on behalf of her son, 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 the above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not follow proper procedures when disciplinarily removing the student from school during the 2015-2016 school year, as required by 34 CFR §§300.530 and .536.

---

<sup>1</sup> The complainant received assistance preparing her complaint from Ms. Nabanita Pal, Postgraduate Legal Fellow, Maryland Office of the Public Defender, who forwarded the complaint, electronically, to this office.

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 2

2. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's behavioral and academic needs since November 2014<sup>2</sup>, as required by 34 CFR §§300.320 and 324.
3. The BCPS has not ensured that the IEP includes a transition plan with appropriate measurable post-secondary goals based on an age-appropriate transition assessment, and transition services needed to assist the student in achieving those goals, since November 2014<sup>2</sup> as required by 34 CFR §300.320.
4. The BCPS has not provided access to the student's educational record, in accordance with 34 CFR §300.613.

#### **INVESTIGATIVE PROCEDURES:**

1. On November 17, 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.
2. On November 25, 2015, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and Ms. Pal, and identified the allegations for investigation.
3. On December 2, 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 the BCPS of the allegation and requested that the school system review the alleged violation.
5. On December 2, 2015, Mr. Loiacono contacted Mr. Darnell Henderson, Associate Counsel, Office of Legal Counsel, BCPS, by electronic mail to arrange a document review and site visit.
6. On December 9, 2015, Mr. Loiacono conducted a review of the student's educational record at the BCPS Central Office.
7. On December 18, 2015, Mr. Loiacono, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE and Mr. Albert Chichester, Complaint Investigator, MSDE conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review records and interviewed the following school staff:

---

<sup>2</sup>The complainant was informed that only those violations of the IDEA that are alleged to have occurred within one year of the filing of a State complaint may be addressed through the State complaint procedure (34 CFR §300.153).

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 3

- a. Ms. XXXXXXXXXX, School Psychologist;
- b. Ms. XXXXXXXX, Educational Specialist;
- c. Ms. XXXXXXXXXX, School Counselor;
- d. Ms. XXXXXXXX, IEP Chairperson;
- e. Ms. XXXXXXXXXX, Assistant Principal;
- f. Mr. XXXXXXXXXX Pride Team Lead; and
- g. Ms. XXXXXXXX, Case Manager/Special Educator.

Mr. Henderson 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. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated September 25, 2014;
  - b. IEP, dated April 29, 2015;
  - c. IEP, dated December 4, 2015;
  - d. Prior Written Notice, dated September 25, 2014;
  - e. Prior Written Notice, dated April 29, 2015;
  - f. Prior Written Notice, dated December 4, 2015;
  - g. Manifestation Worksheet, dated December 4, 2015;
  - h. Maryland Online IEP Parent Contact Log, undated;
  - i. Behavior Intervention Plan (BIP) dated April 29, 2015;
  - j. IEP meeting notice, dated December 2, 2015;
  - k. Electronic Mail (Email) from Ms. Pal to the school staff, dated October 23, 2015;
  - l. Email from the school staff to Ms. Pal, dated October 26, 2015;
  - m. Email from the school staff to Ms. Pal, dated November 18, 2015;
  - n. Student Enrollment History, undated; and
  - o. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on November 16, 2015.

### **BACKGROUND:**

The student is fifteen years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Emotional Disability 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-c).

During the time period covered by the investigation, the student attended the following schools:

- From the start of the 2014-2015 school year to January 27, 2015- XXXXXXXXXXXX  
XXXXXX;

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 4

- From January 27, 2015 to the conclusion of the 2014-2015<sup>3</sup> school year - XXXXXXXXXXXXXXXX;
- From the start of the 2015-2016 school year to September 15, 2015 - XXXXXXXXXXXX XXXXXXXX; and
- From September 15, 2015 to the present- XXXXXXXXXXXXXXXX (Doc. n).

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 (Docs. a-c).

**ALLEGATION #1: DISCIPLINARY REMOVALS DURING THE 2015-2016 SCHOOL YEAR**

**FINDINGS OF FACTS:**

1. From August 2015 to December 4, 2015, the student was involved in five documented incidents that resulted in disciplinary removals, as follows:
  - October 5, 2015 - one day for a “classroom disruption”;
  - October 20, 2015 - two days for “drug possession”;
  - November 2, 2015 - three days for “inciting or participating in a disturbance”;
  - November 9, 2015 - three days for “inciting or participating in a disturbance”; and
  - December 1, 2015 - one day for fighting (Doc. g).
2. On December 2, 2015, the school mailed a notice to the complainant of an IEP team meeting and manifestation meeting, to be held on December 4, 2015 (Docs. g and h).
3. On December 3, 2015, the student’s case manager informed the complainant, by telephone, of the December 4, 2015 IEP team and manifestation meeting. The complainant informed the case manager that she could not participate in the meeting by telephone, but would be available to discuss the issues before the meeting (Doc. h).
4. There is evidence to document that the school staff attempted to contact the complainant immediately before the IEP team meeting held on December 4, 2015, but were unsuccessful (Doc. h).
5. On December 4, 2015, following the student’s return to school, an IEP team meeting was held. At that meeting, the IEP team decided that the student’s behavior was not a manifestation of his disability, but recommended that a Functional Behavioral Assessment (FBA) be conducted to ensure that the behavior does not recur. The school

---

<sup>3</sup> There is documentation that the student was in state custody from March 5, 2015 to March 19, 2015. There is no information that the student was enrolled in school during this time period.

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 5

staff report that, although, the student had not been disciplinarily removed from the school in excess of ten school days during the year, they held the IEP meeting to ensure that the behavior is addressed (Doc. g)

6. The school staff deny that there were any instances, aside from the documented disciplinary removals, when the complainant was contacted to inform her that the student was being dismissed from school early because of his behaviors. However, there is a notation on the school communication log that the complainant was contacted on November 24, 2015 for “parent permission to go home due to him not being in uniform and getting into a fight and not going to class” (Doc. h).

### **DISCUSSION/CONCLUSIONS:**

A student with a disability may be disciplinarily removed from the current educational placement, to the extent that removal is applied to students without disabilities, for up to ten school days for each incident that results in disciplinary removal. In Maryland, for each period of removal after a student with a disability has been removed for the cumulative equivalent of ten school days in a school year, school personnel must consult with at least one of the student’s teachers to determine what services to provide to enable the student to appropriately progress in the general curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

In addition, once a change in educational placement occurs for a student with a disability as a result of a disciplinary removal, State and federal regulations require the provision of specific protections to the student. These protections include the requirement that the IEP team convene within ten business days of the removal to develop or review and revise, as appropriate, an existing plan to address the behavior that resulted in the removal and to determine whether the student’s behavior was a manifestation of the disability (34 CFR §300.530 and COMAR 13A.08.03).

The IEP team must take steps to ensure the parent of a student with a disability are afforded an opportunity to attend and participate at meetings of the IEP team. The parent of a student with a disability must be provided with written notice at least ten days in advance of the meeting, unless an expedited meeting is being conducted to address matters such as disciplinary issues (COMAR 13A.05.01.07.(D)(2)(a)).

If the student’s behavior is found to be a manifestation of the disability, the student must be returned to the educational placement from which the student was removed unless the parent and public agency agree to a change in placement. If the student’s behavior is not found to be a manifestation of the disability, the IEP team must determine the extent to which services are necessary during the period of removal in order to enable the student to progress in the general

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 6

curriculum and advance toward achieving the annual IEP goals (34 CFR §300.530 and COMAR 13A.08.03).

In order to ensure that students are provided with the disciplinary protections of the IDEA, the public agency must maintain accurate student records, including discipline data, in accordance with the *Maryland Student Records System Manual* (COMAR 13A.08.02.04).

In this case, the complainant alleges that the student has been dismissed early from school on several occasions due to his behavior, resulting in disciplinary removals in excess of ten school days, and that the disciplinary protections should have been provided. The complainant further alleges that she was not provided an opportunity to participate in the meeting held on December 4, 2015 because she was not provided with notice of the meeting within a reasonable amount of time (Doc. m).

Based on the Findings of Facts #1-5, the MSDE finds that the IEP team properly convened to address the pattern of behavior as a result of the documented disciplinary removals from school. Based on Findings of Facts #2 and #3, the MSDE finds that there is documentation that the complainant was provided with notice of the IEP team meeting, and because the meeting was held on an expedited basis, the requirement to provide notice of at least ten days in advance of the meeting was not applicable. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

However, based on Findings of Fact #6, the MSDE finds that the BCPS did not ensure the proper documentation of all of the student's disciplinary removals from school. As a result, the MSDE finds that the BCPS could not have ensured that the student would be provided with the protections required by the IDEA if disciplinary removals were not properly documented. Therefore, this office finds that a violation occurred.

## **ALLEGATION #2**

## **MEETING THE ACADEMIC AND BEHAVIORAL NEEDS OF THE STUDENT SINCE NOVEMBER 2014**

### **FINDINGS OF FACTS**

#### **September 24, 2014 IEP**

7. The IEP in effect in November of 2014 was developed on September 25, 2014 while the student was attending XXXXXXXXXXXX High School. The IEP reflects that the areas affected by the student's disability include reading comprehension, written language expression, math problem solving skills, math calculation, social emotional/behavioral and social interaction skills. It includes information about the student's levels of performance obtained from classroom-based assessments, observations, teacher consultations, and student interviews in behavioral need areas as indicated below:

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 7

- Social Emotional/Behavioral - The IEP indicates that the student has difficulty forming relationships with peers and adults. The IEP further indicates that the student was not regularly attending class, and when in class, the student was often disruptive. The IEP team recommended that the Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) be updated. In response, the IEP team developed goals and objectives related to improving emotional functioning, coping skills, following directions, remaining in designated areas, and completing work in a timely manner.
  - Social Interaction Skills - The present levels of performance for "Social Interaction Skills" was verbatim copied from "Social Emotional/Behavior." In response, the IEP team developed goal objectives related to respecting the space of others, not interrupting while in class, initiating appropriate interactions and creating and maintaining friendships (Doc. a).
8. The IEP team noted that due to the student's lack of attendance and classroom disruptions, it was difficult to assess the student's level of performance in academic areas. The IEP team relied on information contained in previous IEPs for the student's present levels of performance in academic areas. The IEP includes annual goals for the student to improve reading comprehension, written language expression, math calculation, and math problem solving (Doc. a).
9. The progress reports related to the student's behavioral goals were completed by school staff on October 29, 2014 and January 21, 2015. The progress reports for both goals on October 29, 2014 stated that "progress was not measurable at this time." The progress reports for both goals completed on January 21, 2015 stated only that "[the student] is not making sufficient progress towards his psychological goals" (Doc. a).
10. The school-based staff completed progress reports for the student in academic areas on October 29, 2014 and January 15, 2015. The October 29, 2015 reports indicate that the student was not making progress due to attendance issues. The January 15, 2015 progress reports indicate that the student was making "minimal" progress, but attendance issues limit any progress made (Doc. a).

#### April 29, 2015 IEP

11. On April 29, 2015, the IEP team at XXXXXXXXXXXXXXXXXXXX met to review and revise the student's IEP. The student's social/behavioral present levels of performance completed by the IEP team did not indicate a change in either the student's social/behavioral or social interaction skills. The team noted that the student had only been at the school for a few months, and that his attendance was poor. The team was unable to update the present levels of performance for the student in academic areas of need due to attendance and

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 8

behavioral issues. The team removed math calculation goals and objectives from his IEP without discussion. The team did not change the remaining goals and objectives and did not substantially revise the student's BIP. There was no documented discussion by the team aimed at addressing the lack of progress or interfering behaviors (Docs. b and e).

12. The school-based staff completed progress reports for the student in academic areas on November 5, 2015. The reports indicate that the student is not making progress due to his attendance and behavioral issues (Doc. b).
13. The progress reports completed by school staff on June 15, 2015 and November 6, 2015 indicate that the student was not making progress towards behavioral goals primarily due to attendance issues (Doc. b).

#### December 4, 2015 IEP

14. On December 4, 2015, the IEP team at XXXXXXXXXXXXXXXXXXXX met to revise the student's IEP goals and objectives related to his behavioral needs. The present levels of performance completed by the IEP team for areas of need did not indicate a change in the student's skills, nor did they revise the student's goals and objectives. The team determined that there was insufficient data to make informed decisions regarding the student's lack of progress and interfering behaviors, and in response, recommended educational, behavioral, and psychological assessments (Doc. c).

#### **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 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).

Based on Findings of Facts #7-14, the BCPS did not ensure that the IEP team collected sufficient and accurate data to measure the student's present levels of performance in academic and behavioral need areas. Furthermore, the BCPS did not ensure that the IEP team determined or measured the progress towards the goals and objectives in the IEP. Therefore, the MSDE finds that violations have occurred with respect to this allegation.

**ALLEGATION #3                      TRANSITION PLANNING FOR THE STUDENT SINCE  
NOVEMBER 2014**

**FINDINGS OF FACTS**

15. On September 25, 2014, prior to the IEP team meeting, staff at XXXXXXXX High School attempted to complete transition planning surveys with the student. Because the student was uncooperative, the staff completed the transition assessment without him using prior assessment data (Doc. a).
16. During the April 29, 2015 IEP meeting, staff at XXXXXXXXXXXXXXXXXXXXXXXX administered the transition survey with the student. Using information from that survey, and prior IEP data, the team developed career training goals. These included researching construction at the library and taking steps to complete a resume (Doc. b).
17. The IEP developed by the team at the December 4, 2015 meeting states that an interview was completed that day with the student about his interests and preferences. However, there is no documentation of the results of the interview. The student and the complainant were invited to the meeting, but neither were present. The transition activities were revised, but without documented input from the student or parent (Docs. c and j).

**DISCUSSION/CONCLUSION**

Beginning not later than the first IEP to be in effect when a student turns fourteen 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, the public agency must take steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

Based on Findings of Facts #14-16 the MSDE finds that the BCPS has not ensured that proper procedures were followed when conducting transition planning from November 2014 to April 29, 2015. The MSDE further finds that transition planning completed for the student at the December 4, 2015 meeting was not based on current information about the student's interests and preferences. Therefore, this office finds that violations occurred.

#### **ALLEGATION #4                      ACCESS TO THE STUDENT'S RECORD**

##### **FINDINGS OF FACTS:**

18. On October 23, 2015, the complainant's advocate made an in-person request, to school staff, for copies of part of the student's record. Later that day, she made a similar request by electronic mail (Doc. k).
19. On October 26, 2015, the school staff acknowledged the request and stated that they would provide copies of the requested documents (Doc. l).
20. On November 18, 2015, school staff provided the requested documents to the complainant's advocate (Doc. m).

##### **DISCUSSION/CONCLUSIONS:**

The IDEA requires that each public agency permit parents to inspect and review any educational records regarding their children that are "collected, maintained, or used by the agency," consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.10 and 34 CFR §300.613). The public agency must comply with a request for access to the educational record without unnecessary delay, and before any meeting regarding an IEP, or any due process hearing or resolution session. However, in no case should the response be provided more than forty-five days after the request has been made (34 CFR §300.613).

Based on the Findings of Facts #18-20, the MSDE finds that the BCPS responded to the complainant's request in a timely manner. Therefore, this office does not find that a violation occurred.

##### **CORRECTIVE ACTIONS/TIMELINES:**

###### **Student-Specific**

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

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 11

- a. Reviewed and revised the IEP, as appropriate, to ensure that it contains current information about the student's present levels of performance and addresses the lack of expected progress;
- b. Considered positive behavioral supports to address the student's interfering behaviors related to his lack of regular school attendance and disruptive classroom behavior;
- c. Conducted transition planning based on the student's current interests and preferences; and
- d. Determined the compensatory services or other remedy for the violations identified in this Letter of Findings.

### **School-Based**

The MSDE requires the BCPS to provide documentation by May 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 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 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 Dr. Nancy Birenbaum, 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 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

XXX

Ms. Tiffany Clemmons

January 14, 2016

Page 12

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 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 Free and Appropriate Public Education 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  
Darnell Henderson  
XXXXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono  
Nancy Birenbaum