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January 14, 2015

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Ms. Rebecca Rider  
Executive Director, Special Education  
Baltimore County Public Schools  
The Jefferson Bldg. 4<sup>th</sup> Floor  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: #16-049

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 his son, the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On November 17, 2015, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that a Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) were completed within the required timelines, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
2. The BCPS did not ensure that all of the sensory and behavioral needs that arise out of the student’s disability have been identified and addressed since the start of the 2015-2016 school year, in accordance with 34 CFR §300.324.

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3. The BCPS did not ensure that the student's sensory supports required by the Individualized Education Program (IEP) have been provided since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .324.

### **INVESTIGATIVE PROCEDURES:**

1. On November 18, 2015, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Executive Director of Special Education and School Support, BCPS; and Ms. Denise Mabry, Coordinator of Compliance and Related Services, BCPS.
2. On November 23, and 24, 2015, Ms. Sharon Floyd, Education Program Specialist, MSDE, placed telephone calls and left messages for the complainant.
3. On December 14, 2015, Ms. Floyd conducted a record review at XXXXXX XXXXXXXXX (XXXXXXXXXXXX) to review documentation, and met with Ms. XXXXXXXXX, IEP Chairperson, BCPS.
4. On December 17, 2015, Ms. Floyd, conducted a telephone interview with the complainant about the allegations to be investigated.
5. On January 7, 2016, Ms. Floyd and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit at XXXXXXXXX and interviewed the following school system staff:
  - a. Ms. XXXXXX, Special Education Resource Teacher;
  - b. Ms. XXXXXXX, School Psychologist;
  - c. Ms. XXXXXXXXXXX, IEP Chairperson, Assistant Principal;
  - d. Ms. XXXXXXXXXXXX, Special Educator;
  - e. Ms. XXXXXXXXXXX, Speech/Language Pathologist;
  - f. Ms. XXXXXXX, Occupational Therapist (OT); and
  - g. Ms. XXXXXXXXX, Special Educator.
6. Ms. Conya Bailey, Supervisor of Compliance, BCPS, and Ms. Kathryn MacDonald, Resource Teacher, BCPS, attended the site visit as representatives of the BCPS and to provide information on the school system's policies and procedures, as needed.
7. On January 1, 2016, documentation was submitted electronically (email) by the complainant to the MSDE.
8. Between January 8 and 13, 2016, documentation was submitted by email to the MSDE from the BCPS.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Notice of the procedural safeguards, provided to the student's parents on October 27, 2015;
  - b. Reports of the determination of disability dated February 23, 2015, consent for assessments, dated November 25, 2014, psychological assessment dated, February 3, 2015, speech/language assessment dated February 4, 2015, educational assessment dated January 30, 2015, and occupational therapy assessment dated January 8, 2015;
  - c. IEP, dated May 12, 2015, and progress reports dated October 30, 2015;
  - d. IEP, dated October 7, 2014, and progress reports;
  - e. Invitation and team summary to the February 23, 2015 IEP team meeting;
  - f. Invitation and team summary to the March 23, 2015 IEP team meeting;
  - g. Invitation and team summary to the October 27, 2015 IEP team meeting;
  - h. Invitation and team summary to the May 12, 2015 IEP team meeting;
  - i. Student daily behavioral data, strategy documentation, IEP data collection, quarterly compilation of behavioral data,;
  - j. Behavior Intervention Plans dated March 23, 2015, and dated October 27, 2015;
  - k. Functional Behavior Analysis (FBA) dated May 20, 2015;
  - l. The student's pictures of the sensory diet, activity choices, safety/social skills, class rules, preparation for special area classes, behavioral reminders, social story, break choices, reminders for student that all school staff wears, calendar activities, and prize choices;
  - m. Reports of a private psychological consultation by *Bodnar Psychological Solutions*, dated September 16, 2014, a private support plan from Project Act, dated December 23, 2014 and a school observation that was privately funded with recommendations by the Little Leaves Behavioral Services, dated November 12, 2015;
  - n. Email correspondence from the BCPS and the complainant to the MSDE, dated February 10, 2015, and December 1, 2016;
  - o. Correspondence containing allegations of violations of the IDEA, received by the MSDE on November 17, 2015;
  - p. Teacher report for the IEP team meeting dated October 27, 2015;
  - q. Invitation and team summary to the November 25, 2014 IEP team meeting;
  - r. Email correspondence between the MSDE and school staff, dated January 11, 12, 13, 2016; and
  - s. Report of OT sensory assistance and service logs, dated January 12, 2016.

**BACKGROUND:**

The student is five (5) years old and attends XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX). He is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education and related services (Doc. d).

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

**ALLEGATIONS #1 AND 2:           REQUIRED TIMELINES FOR THE COMPLETION OF THE FBA AND THE BIP AND AN IEP THAT IDENTIFIES AND ADDRESSES BEHAVIORAL AND SENSORY NEEDS**

**FINDINGS OF FACTS:**

1. On November 25, 2014, an IEP team convened and recommended that a Functional Behavior Assessment (FBA) be completed. The IEP team summary reflected that “the student has behaviors that range between compliant to non-compliant and defiant behaviors.” The complainant signed consent for the FBA to be conducted (Doc. q).
2. On February 23, 2015 the IEP team convened and reviewed the results of assessments including the FBA. However, they decided to reconvene to revise the Behavior Intervention Plan (BIP) based on information from the FBA (Doc. e).
3. There is no documentation that the BIP has been revised by the IEP team (Docs. e, f, g, h, j, and p).
4. The IEP in effect at the start of the 2015-2016 school year was developed on May 12, 2015. The IEP states that the “student’s academic performance in the areas of reading, communication, specifically his severe receptive, moderate expressive and pragmatic language, and his emotional, social, and behavioral development impact his ability to communicate with teachers and peers, attend to daily instruction, interact socially and acquire and demonstrate the acquisition of pre-academic skills at rate comparable to age level peers” (Docs. c and h).
5. The IEP also states that “the student performs best with multi-sensory strategies, clear and consistent routines and expectations, hands-on high-interest materials, movement, and a smaller student population with minimal distractions.” It also states that “he requires ten (10) or prompts to be able to focus and provide attention and during play he requires full adult support.” It states that the “student has tantrums, he elopes from unfamiliar/non-preferred settings, he will eat nonfood items, and will hit, slap, kick and head butt others” (Docs. c and h).
6. The IEP also documents the concerns of the student’s parents about the student’s pica<sup>1</sup> behaviors. According to the parents, the student’s pica behaviors have greatly increased, that he is attempting to take food from wherever he finds it. They also shared that they believe that the student’s behaviors are interfering with his academic success (Docs. c and h).

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<sup>1</sup> Pica is the persistent eating of substances that have no nutritional value ([www.webmd.com/mental-health-pica](http://www.webmd.com/mental-health-pica)).

7. The IEP includes an annual goal for the student to increase his attention and level of participation during classroom routines and activities. It also includes a goal for the student to expand his play behaviors by generating meaningful and sequential play actions, engage in turn-taking, sharing by using words and actions, and interact with a peer in play with a mutual set of toys. The IEP also includes a goal for the student to improve his behavior by following school and classroom routines and expectations by staying in his assigned seat, decreasing his use of verbal prompts, and maintaining a “safe body” with adults and peers (Doc. c).
8. The IEP requires supplementary aids, services, program modifications and supports that include the provision of sensory activities to promote focusing and listening skills, including gaining the student’s attention prior to comprehension tasks, a visual schedule, positive reinforcers, heavy work movement breaks, social stories, and social skills training (Doc. c).
9. The IEP also requires the provision of a daily sensory diet that is provided before beginning work and frequent breaks throughout the day. This process is to begin with a ten-minute window of work completion, then a sensory break, and increasing periods of work completion as his negative behaviors decrease and his focus and attention increases (Doc. c).
10. The IEP requires special education instruction in a separate class with a special education teacher “to help maintain the student’s attention and focus and to be able to provide frequent sensory breaks.” The IEP also states the student will participate with non-disabled peers during art, music, physical education, and media. The IEP indicates that the student will receive speech/language therapy for two (2) thirty (30) minute sessions weekly and OT fifteen (15) minutes a month and special education transportation (Doc. c).
11. The IEP requires that the student be provided with a “personal adult throughout the day” to “implement strategies for attention and focus, monitor the safety of the student and observe how safe the student is with his peers, elopement, and social interactions” (Doc. c).
12. On October 27, 2015, the IEP team convened. The complainant requested the meeting “to review the student’s special education instruction and placement.” The written summary of the meeting indicates that “the complainant reports concerns that the student’s behaviors do not allow him to be available for academic learning.” It also reflects that the complainant states that the student has “great rote skills but the application of skills is not occurring and that” the complainant “requested that edible reinforcers be eliminated during the school day since October 15, 2015” (Doc. g).
13. At the October 27, 2015 IEP team meeting, the special education teacher reported that there is an improvement with the student’s elopement behavior. The teacher indicated that “schedule changes within the classroom reduced the opportunities for the student to elope and that while the student still exhibits challenging behaviors, the behaviors have

decreased since the start of the 2015-2016 school year.” The special education teacher stated that “while the data shows that the student’s behaviors are inconsistent, the student’s time inside the classroom has increased since last year resulting in an increase in instruction time.” The special education teacher reported that “another positive change in the student’s behavior is his ability to move to the quiet corner in the classroom when he is feeling over-sensitized.” The general education teacher reported that “the student blends in with all of the students at lunch and recess.” While the teacher acknowledged that the student’s challenging behaviors had increased in the past week, the teacher reported that this was likely caused by the change in the use of edible reinforcers at the complainant’s request (Docs. g and Interview with school staff).

14. At the October 27, 2015 IEP team meeting, the occupational therapist (OT) stated that the student’s need to “seek satisfying sensory input” often results in inappropriate social and impulsive behaviors. The OT also stated that “the student is easily distracted by excessive auditory input and seems impatient with structured group tasks.” The team summary reflects the team’s decision that the “student will be provided with an environment that maintains a sense of calm and focus for learning, as much as possible.” The IEP team summary also notes that the “student’s disorganization and non-compliance are a result of his need to control the situation and the people in it” (Docs. g and s).
15. Also at the October 27, 2015 IEP team meeting, the student’s parents stated that the daily point sheet behavior data was inconsistent with verbal reports of the student’s improved behaviors that were made by teachers (Doc. g).
16. The team summary states that the complainant’s advocate reported that “the student is not available for learning and he needs to be in a more restrictive environment like Kennedy Krieger because he is not making progress and there is no data-based evidence that there is any progress being made” (Doc. g).
17. A BCPS Central Office representative explained that “based on the teacher reports of the student’s daily behavior, it was anticipated that the student’s sensory needs will be increased and that the student is able to use the behavioral strategies at the time they are presented, however, he does not apply them in varied situations.” The IEP team recommended that a behavior specialist observe the student in the classroom to provide additional strategies to decrease the instances of unsafe behavior. The IEP team also recommended “an increase in the student’s sensory diet” (Doc. g).
18. The IEP team decided to continue the current placement while collecting additional behavioral data, finding that the current placement is “a highly structured, language rich environment with predictable routines and opportunities for one to one instruction and skills reinforcement, small group instruction, frequent breaks, and repetitive instruction.” The IEP team documented that the student would be able to receive positive behavior supports and close adult monitoring to ensure the student is not engaging in unsafe behaviors in the current placement (Interview with school staff and Docs. g and l).

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19. On October 27, 2015, the IEP team indicated they had planned to review the Behavior Intervention Plan (BIP) to ensure it reflects the student's current behaviors but did not have sufficient time to do so and decided to reconvene on another date to do so (Docs. j and g).
20. There is no documentation that the team has reconvened to review the BIP or to consider information from an observation conducted by a behavior specialist (Interview with school staff).

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: Required Timelines for the Completion of the FBA and the BIP**

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

Based on the Findings of Facts #1-#5 and #19 and #20, the MSDE finds that the BIP has not been reviewed based on the FBA results, therefore, the MSDE finds that a violation occurred with respect to this allegation.

#### **Allegation #2: An IEP That Identifies and Addresses Behavioral and Sensory Needs**

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).

Based on the Findings of Facts #4-#20, the MSDE finds that the BCPS did not consider the results of the updated data and recommendations from the IEP team to revise the student's IEP. Therefore, this office finds a violation occurred with respect to this allegation.

**ALLEGATION #3**

**IEP IMPLEMENTATION OF SENSORY SUPPORTS**

**FINDINGS OF FACTS:**

21. At the October 27, 2015 IEP team meeting, the IEP team summary reflected that the teacher reported “improvements in the student’s aggressive behaviors such as hitting, scratching and eloping and that the improvements are related to the changes the school staff has made to the classroom environment and that as a result the student’s behaviors have changed since the beginning of the 2015-2016 school year” (Doc. g and Interview with school staff).
22. The IEP team summary reflected that the student’s daily point sheet data is sent to the complainant daily and that the data documents the student’s behaviors that are identified on the IEP goals, FBA targeted behaviors, and the behaviors identified in the BIP (Docs. c, o, j, p, q and Interview with school staff).
23. There is documentation that the teacher is collecting data on the student’s behavior that is in addition to the behavioral data collection that is compiled daily and provided to the complainant. The data reflects the student’s IEP goals and objectives (Docs. c, i, j, k, l, n and p).
24. There is also documentation that the teacher is using pictures and symbols to reflect the student’s sensory diet, activity choices, safety skills, social skills, class rules, preparation for special area classes, behavioral reminders, social story for sensory breaks, and break choices. The school staff also wears a picture menu on their identification badges to reinforce positive behavior and good communication (Docs. c, i and l).
25. There is documentation that the “OT has assisted school staff in developing additional strategies to help calm the student so that he can participate in instruction.” She has frequent contact with the special education teacher throughout the week to discuss new problems that might have a sensory basis. There is documentation that during these exchanges the OT has made suggestions, expressed her observations/concerns and provided equipment such as a weighted backpack and a tricot tunnel to be used as a body sock.” The OT has also observed “when the student is given a sensory break in the class library, he is able to use the time and setting as he chooses, within the parameters of safety” (Doc. s).
26. The reports of the student’s progress, dated October 30, 2015, reflect the student “is making sufficient progress to meet the goal for him to increase his attention and participation during classroom routines and activities and the goal to expand his play behaviors.” However, the progress reports also reflect that the student “is not making sufficient progress to meet the behavioral goal for him to follow school and classroom rules, routines and expectations because the IEP does not reflect the student’s current program” (Doc. c and Interview with school staff).



### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that each student with a disability is provided with the special education services in the educational placement required by the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #7, #8-#14 and #22-#26, the MSDE finds that the BCPS' implemented behavioral interventions, a daily sensory diet, activity choices, social stories, preparation for classes, frequent breaks, choices for breaks and heavy work movement breaks that were required by the IEP. Therefore, the MSDE does not find a violation in respect to this allegation.

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

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

The MSDE requires the BCPS to provide documentation by February 1, 2016, that the IEP team has taken the following actions:

1. Reviewed and revised the IEP and BIP consistent with the data to ensure that both address the student's behavioral and sensory needs; and
2. Determined the services needed to remediate the violations identified in this investigation.

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 1, 2015, of the steps taken to determine whether the violations are unique to this case or if it represents a pattern of noncompliance at XXXXXXXX ES.

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.

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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 both the complainant and the BCPS 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 consistent with the timeline requirement as 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 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:sf

c: S. Dallas Dance  
Conya Bailey  
XXXXXXXXXX  
William Reinhard  
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Anita Mandis  
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