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March 7, 2016

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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: #16-069

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 January 13, 2016, the MSDE received a complaint from Ms. XXXXXXXXX, 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 allegation that the BCPS has not ensured that the student’s Individualized Education Program (IEP) was implemented since January 2015,<sup>1</sup> in accordance with 34 CFR §§300.101 and 323.

**INVESTIGATIVE PROCEDURES:**

1. On January 13, 2016, MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS; and

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<sup>1</sup>While the complainant included allegations of violations that occurred prior to this date, she was informed, in writing, 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 process (34 CFR §300.153).

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- Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS.
2. On January 13, 2016, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant and identified the allegations for investigation.
  3. On January 20, 2016, 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.
  4. On December 20, 2015, Mr. Loiacono contacted Mr. Darnell Henderson, Associate Counsel, Office of Legal Counsel, BCPS, by electronic mail to arrange a document review.
  5. On February 8, 2016, Mr. Loiacono conducted a review of the student's educational record at the BCPS Central Office.
  7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
    - a. IEP, dated September 29, 2014;
    - b. IEP, dated January 11, 2016;
    - c. Prior Written Notice, dated October 1, 2014;
    - d. Prior Written Notice, dated March 27, 2015;
    - e. Prior Written Notice, dated January 11, 2016;
    - f. Initial Evaluation Report, dated March 27, 2015;
    - g. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on January 13, 2016.

### **BACKGROUND:**

The student is seven years old and attends XXXXXXXXXXXXXXXXXXXX, a Baltimore City Public School. He is identified as a student with a Speech/Language Impairment under the IDEA, and has an IEP that requires the provision of related services (Docs. a and b).

During the time period covered by the investigation, the student also attended XXXXXXXXXXXX XXXXXXX in Baltimore City. Prior to attending Baltimore City Public Schools, the student attended Prince George's County Public Schools during the 2013-2014 school year.

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 and b).

### **FINDINGS OF FACTS:**

1. On September 29, 2014, the IEP team at XXXXXXXXXXXXXXXXXXXX, a Prince George's County Public School that the student was attending, identified the student as a student with a disability under the IDEA and developed an IEP (Doc. a).
2. In October 2014, the student began attending XXXXXXXXXXXXXXXXXXXX, a Baltimore City Public School, as a result of the family's move from Prince George's County to Baltimore City. There is no documentation of the student's registration in the BCPS or that the school staff at XXXXXXXXXXXXXXXXXXXX requested the student's educational record from the PGCPs (Docs. d and f).
3. On March 27, 2015, an IEP team at XXXXXXXXXXXXXXXXXXXX convened in response to the complainant's concerns about the student's speech/language skills. The documentation of the meeting reflects that the IEP team determined that the student does not meet the criteria for identification as a student with a disability under the IDEA. However, the documentation does not reflect that the team was aware that the student had already been identified as a student with a disability by the PGCPs (Docs. d and f).
4. At the beginning of the 2015-2016 school year, the student began attending XXXXX XXXXXXXXXXXXXXXXXXXX, another Baltimore City public school, as a result of the family's move to a different neighborhood (Doc. e).
5. On January 11, 2016, an IEP team at XXXXXXXXXXXXXXXXXXXX convened in response to the complainant's concerns about the student's speech/language skills. In preparation for the meeting, the school staff obtained the student's educational record from the PGCPs and ascertained that the student had previously been identified as a student with a disability under the IDEA and that an IEP had been previously developed. In response to this information, the IEP team determined that the student is owed thirteen months of compensatory services for the lack of implementation of the PGCPs IEP (Doc. e).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §300.101). In order to do so, the public agency must make sure that the IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation (34 CFR §300.323).

Therefore, each public agency must have procedures to ensure that specific data is accurately maintained in the student's educational record. In Maryland, the requirements for the documents to be maintained in the educational record are contained in the *Maryland Student Records System*

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*Manual* (COMAR 13A.08.02). The Maryland Student Records System Manual requires schools to ensure that each student's educational record, including documents such as the IEP and related documents, are transferred to each school the student attends (*Maryland Student Records System Manual*).

Based on the Findings of Fact #1-5, the MSDE finds that the BCPS did not ensure that the student's educational record was properly transferred from the PGCPs upon the student's move to Baltimore City until January 2016. Therefore, the MSDE finds that BCPS did not ensure that the student's PGCPs IEP was implemented, and that as a result, the MSDE finds that a violation occurred.

Notwithstanding that violation, based on Finding of Fact #5, the MSDE further finds that the BCPS has determined that the student was owed compensatory services as a result of not implementing the student's IEP. Therefore, no additional student-specific corrective action is necessary.

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

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 XXXXXXXXXXXXXXXXXXXX and 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

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findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

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  
XXXXXXXXXXXX  
Dori Wilson  
Anita Mandis  
Gerald Loiacono  
Nancy Birenbaum