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Interim State Superintendent of Schools

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May 17, 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: #16-089

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 March 22, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, 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 student.

The MSDE investigated the allegation that the BCPS has not ensured that the student was provided with a Free Appropriate Public Education (FAPE), since October 2015, in accordance with 34 CFR §300.101 and COMAR 13A.05.01.01 and .02.

INVESTIGATIVE PROCEDURES:

1. On March 23, 2016, the MSDE provided a copy of the State complaint, by 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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3. On March 29, 2016, the MSDE sent correspondence to the complainant that identified the allegation subject to this investigation. On the same date, the MSDE notified the BCPS of the allegation and requested that the BCPS review the alleged violations.
4. On March 31, 2016 and April 4 and 26, 2016, the MSDE requested documentation from the BCPS.
5. On April 12, 2016, Ms. Austin conducted a review of the student's educational record at the BCPS Central Office.
6. On April 29, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXX Elementary School (XXXXXXX ES) and interviewed the Ms. XXXXXXX, Individualized Education Program (IEP) Chairperson, XXXXXXX, ES and Ms. Roberta Courter, Education Associate with the Office of Early Learning, BCPS. Ms. Diana Wyles, Associate Counsel, BCPS, participated in the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. The BCPS student registration form for the XXXXXX School, dated February 11, 2016;
 - b. Reports, assessments and correspondence of various providers from XXXXX, dated March 2013 to November 2015;
 - c. The Child Find Referral, and the Child Find Referral Notification, dated October 20, 2015;
 - d. The school staff's IEP meeting communication log, dated November 2015 to January 2016;
 - e. Notice of an IEP team meeting scheduled for November 24, 2015;
 - f. The school staff's communication log, dated November 2015 to February 2016;
 - g. Electronic mail communications (emails) between the school system staff and a provider of translation services, and emails among the school system staff, dated November 9, 2016 to December 8, 2016;
 - h. Sign-in sheet of attendees at the November 24, 2015 IEP team meeting;
 - i. Notice and Consent for Assessment, dated November 24, 2015;
 - j. Receipt of parental rights notice, dated November 24, 2015;
 - k. Notice of an IEP team meeting scheduled for January 20, 2016, and sign-in sheet of attendees at the January 20, 2016 IEP team meeting;
 - l. Evaluation Report and Determination of Initial Eligibility, dated January 20, 2016;
 - m. Notice and Consent for Assessment, dated January 20, 2016;

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- n. IEP, dated January 20, 2016;
- o. Correspondence from the school system staff to the complainant, dated February 10, 2016;
- p. Prior Written Notice, dated February 10, 2016;
- q. Amended IEP, dated February 18, 2016;
- r. The XXXXXXXX School parent permission forms signed by the complainant on February 11, 2016;
- s. The BCPS documentation of student registration signed by the school registrar on February 18, 2016;
- t. The XXXXXXXX School staff acknowledgement of IEP implementation, dated February 18, 2016;
- u. The school staff's parent contact log, dated February 2016 to March 2016;
- v. Correspondence from the complainant alleging a violation of the IDEA, received by the MSDE on March 22, 2016;
- w. Correspondence from the MSDE to local school systems concerning the State Assigned Student Identification Number (SASID), dated April 18, 2016;
- x. Emails among the school system staff concerning the SASID, dated January 19, 2016, February 2, 3, and 9, 2016; and
- y. Prior Written Notice, dated April 14, 2016.

BACKGROUND:

The student is five (5) years old, 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. The student began attending the XXXXXXXXXXXXXXXX in February 2016. Prior to that time, the student was not attending school. At the start of the investigation period, the student was four (4) years old and did not have an IEP (Docs. l, n, s - u, and interview with the complainant).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. j).

FINDINGS OF FACTS:

1. The student was born in XXXXXX. In fall 2015, the student and her family moved from XXXXXX to Baltimore, after a brief stay in XXXXXX (Doc. a and interview with the complainant).

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2. On October 20, 2015, the complainant referred the student for an IDEA evaluation. The referral was made to the XXXXXXXXXXXXXXXXXXXX.¹ The school staff report that the XXXXXXXXXXXXXXXXXXXX is the closest school to the address listed by the complainant on the referral form. The referral indicates that the complainant had concerns about the student's oral expression, reading, listening comprehension, fine motor and visual motor coordination, motor skills, and adaptive skills. There is documentation that the student's mother provided the school staff with assessments and progress reports from XXXXX, and that the school system staff took steps to obtain translations of the documents because that were written in XXXXXXXX (Docs. c, f and g, and interview with the school staff).
3. In early November 2015, the school XXXXXXXXXXXXXXXXXXXX (XXXX XXXXX ES) obtained the complainant's IDEA referral from the XXXXXXXXXXXX School following the move by the student's family to the neighborhood served by XXXXXXXX ES (Docs. c, d and f).
4. On November 11, 2015, via electronic mail communication (email), the XXXXXXXX ES staff sent the complainant written notification of an IEP team meeting scheduled for November 24, 2015. The notification identifies that the purpose of the IEP team meeting was to review the referral and existing information to determine the need for additional information, and, if appropriate, determine the student's eligibility for special education services (Docs. d and e).
5. The IEP team convened on November 24, 2015 to conduct an initial evaluation of the student. The IEP team considered information from the complainant that the student "has a global developmental delay with cognitive and motor involvement," as well as information from the XXXXXXX assessments and reports provided by the complainant. Based on this information, the IEP team suspected that the student has a Developmental Delay. The IEP team determined that additional was needed and recommended assessments in the areas of reading, math, written language, articulation, expressive and receptive language, and fine motor and gross motor skills. The complainant provided consent for the assessments to be conducted (Docs. b, c, e, f, h and i).
6. On January 20, 2016, the IEP team convened to determine the student's eligibility for special education and related services. The IEP team considered the results of the assessments that were recommended on November 24, 2016. Based on the data, the IEP team determined that the student is a student with a disability under the IDEA based on a Developmental Delay (Docs. k and l).

¹ There is no documentation that the complainant attempted to enroll the student in October 2015 (Review of the student's educational record).

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7. At the January 20, 2016 IEP team meeting, the IEP team developed and approved an initial IEP for the student. The January 20, 2016 includes twelve (12) annual goals, supplementary aids and supports, and occupational, physical, and speech and language therapies as related services to address the student's needs. The IEP team determined that the student requires twenty five (25) hours of specialized instruction per week outside of the general education setting, and that the student's placement would be a public separate day school. The school staff report that the IEP team discussed the XXXXXXXXXXXXXXXX, as the location where the student's IEP would be implemented, and that the complainant was in agreement with the placement location (Docs. n and p, and interview with the school staff).
8. The January 20, 2016 IEP identifies January 21, 2016 as the date for the start of services (Doc. n).
9. The school staff report, and the documentation reflects, that the student's IEP services did not begin following the IEP team's approval of the student's initial IEP on January 20, 2016 because the IEP could not be "closed" in the Maryland Online IEP system due to the absence of a State Assigned Student Identification Number (SASID).² The school staff explained that, until an IEP is "closed" in the Maryland Online IEP system, arrangements for bus transportation to the placement location cannot be made (Docs. n and y, and interview with the school staff).
10. The documentation reflects that, on January 19, 2016, one (1) day before the IEP team met to develop the student's initial IEP, the XXXXXXXX ES staff sent an email to the BCPS Central Office staff requesting a SASID for the student. The documentation indicates that a SASID had not been requested by the XXXXXXXX School staff. The XXXXXXXX ES staff made a second (2nd) request to the BCPS Central Office staff for the student's SASID February 2, 2016 (Doc. x).
11. On February 9, 2016, the BCPS sent an email to the XXXXXXXX ES staff indicating that a SASID for the student had been obtained. The following day, February 10, 2016, the student's January 20, 2016 IEP was "closed" in the Maryland Online IEP system (Doc. x and review of the student's information in the Maryland Online IEP system).
12. In correspondence to the complainant dated February 10, 2016, the school system documented that "it has been determined that [the student's] IEP services will be provided at the XXXXXXXXXXXXXXXX (XXXXXXX). The correspondence identified February 18, 2016 as the student's "proposed start date," and instructed the complainant to contact the XXXX School in order to complete registration (Doc. o).

² The SASID is a unique State-wide student identification number assigned by the MSDE.

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13. On February 11, 2016, the complainant registered the student at the XXXXXX (Docs. a and r).
14. On February 18, 2016, the student began attending school at the XXXXXXXX (Docs. s - u).
15. The student's IEP was amended on February 18, 2016, to reflect the XXXXXXXX as the student's residence school and service school (Doc. q).
16. On April 14, 2016, the IEP team determined that compensatory services would be provided for the delay in the provision of a FAPE from January 20, 2016 to February 18, 2016 (Doc. y).

DISCUSSION/CONCLUSIONS:

The public agency must offer each student with a disability a FAPE through an IEP that includes special education and related services that address the student's identified needs. The public agency is required to ensure that each student is provided with the special education instruction, related services, and supports required by the IEP (34 CFR §§300.101, .323 and .324).

Each public agency must ensure that special education and related services are provided to a student as soon as possible following the development of the IEP, and that there is no delay in implementing a student's IEP (34 CFR §§300.103 and 323).

In April 2016, the MSDE sent correspondence to all local school systems regarding the State Assigned Student Identification Number (SASID). The correspondence states that "the request for a SASID should be made as soon as possible after the child is referred to Child Find, as it can take up to a few weeks for the SASID to be generated and assigned." The correspondence also states the "once a child has been determined eligible and an IEP has been developed, services should be initiated regardless of whether a SASID has been assigned," and "under no circumstances should the absence cause a delay" in the provision of special education or related services" (Doc. w).

Based on the Findings of Facts #1 - #9 and #12 - #15, the MSDE finds that there was a delay in implementation of the student's IEP from January 20, 2016, until February 18, 2016. Therefore, the MSDE finds that a violation occurred. Based on the Findings of Facts #9 - #11, the MSDE further finds that the violation occurred as the result of a delay in making the timely request for the student's SASID.

Notwithstanding the violation, based on the Finding of Fact #16, the MSDE finds that the IEP team has acknowledged the violation, and has determined compensatory services to the student for the loss of FAPE. Therefore the MSDE does not require any additional corrective action.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birembaum, 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.

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

c: XXXXXXXXXX
 Linda Chen
 Jennifer Dull
 Diana Wyles
 XXXXXXXXXX
 XXXXXXXXXX
 Dori Wilson
 Anita Mandis
 K. Sabrina Austin
 Nancy Birenbaum