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May 27, 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: #16-091

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 March 28, 2016, the MSDE received a complaint from Ms. XXXXXXXXXX, hereafter, “the complainant,” on behalf of 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 has not ensured that the Individualized Education Program (IEP) addresses the student’s identified needs in the area of reading, since March 28, 2015, in accordance with 34 CFR §300.324.
2. The BCPS did not ensure that an IEP was provided within five (5) business days of the IEP team meeting held on March 8, 2016, in accordance with COMAR 13A.05.01.07.
3. The BCPS did not follow proper procedures when disciplinarily removing the student from school since March 28, 2015, as required by 34 CFR §300.530.

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INVESTIGATIVE PROCEDURES:

1. On March 28, 2016, the complainant provided the MSDE with documentation to be considered.
2. On March 28, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, PGCPs.
3. On April 5, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On April 8, 2016, 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.
5. On May 10, 2016, Mr. Chichester and Mr. Gerald Lioacono, Complaint Investigator, MSDE, conducted a site visit to the XXXXXXXXXX Elementary School to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXX, School Psychologist;
 - b. Ms. XXXXXXXXXX, IEP Chairperson;
 - c. Ms. XXXXXXXXXX, Special Educator; and
 - d. Ms. XXXXXXXXXX, Principal.

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.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated April 14, 2015;
 - b. IEP, dated March 8, 2016;
 - c. IEP meeting summary, dated April 14, 2015;
 - d. IEP meeting summary, dated March 8, 2016;
 - e. The student's education progress report for the 2015-2016 school year;
 - f. IEP program team meeting communication log, dated March 8, 2016;
 - g. BCPS student log of disciplinary actions for the 2015 - 2016 school year;
 - h. The special education teacher's weekly tracker sheets for the student for the 2015-2016 school year; and
 - i. BCPS Early dismissal logs, dated January 4, 2016 through April 11, 2016;
 - j. Behavior Intervention Plan, dated April 14, 2015 ; and
 - k. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on March 28, 2016.

BACKGROUND:

The student is seven (7) years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA, related to Attention Deficit Hyperactive Disorder (ADHD). He attends the XXXXXXXXXX Elementary School and has an IEP that requires the provision of special education instruction and related services (Docs. a and b).

During the time period covered by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a and b).

ALLEGATION #1 ADDRESSING THE STUDENT'S READING NEEDS

FINDINGS OF FACTS:

1. The IEP documents that the student has needs in the areas of reading comprehension, reading phonics, and written language expression (Doc. a).
2. The IEP states that the student is able to respond to “what, where, and who” questions orally after reading a short story and highlighting the relevant text. The IEP further states that the student is able to orally retell a story using the illustration from the text and drawings to show and express ideas, but that he requests that staff write for him as he dictates words. The IEP includes a goal for the student to demonstrate understanding of text after reading to a mid first (1st) grade level with eighty (80) percent accuracy (Docs. a, c, and e).
3. The IEP states that the student is able to identify all letter names and matched sounds orally. It states that the student is able to draw a line to match upper case letters with lower case letters with one hundred (100) percent accuracy when presented with a picture, and that he is able to say the word and print the initial consonant with seventy-five (75) percent accuracy, nine (9) out of twelve (12) times. The IEP further states that the student is able to identify rhyming words and blend initial, medial, and final sounds to produce “consonant-vowel-consonant” words, but that he struggles with decoding two (2) or more syllable words. The IEP includes a goal for the student to apply his knowledge of letters, sound relationships, and word structure to decode unfamiliar words in order to improve his performance based on grade level content with eighty (80) percent accuracy (Docs. a, c, and e).
4. The IEP states that the student’s written output has increased, but that he continues to need assistance with writing words, phrases, and complete sentences, and that he needs to dictate lengthy responses to a scribe. The IEP includes a goal for the student to compose oral, written, and visual presentations that express personal ideas and inform to a mid first (1st) grade level in seven (7) out of ten (10) trials (Docs. a, c, and e).

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5. The student's IEP requires that he be provided with pictures to support reading passages and a scribe to assist with writing difficult answers and organizing his thought and ideas. It also states that the special educator is to consult the general educator about monitoring the student's progress towards goals and objectives and to share instructional and behavior management strategies to support the student's academic achievement (Doc. a).
6. At the student's annual IEP meeting held on March 8, 2016, the complainant expressed concern about the student's below average reading and writing skills. The team reviewed the student's IEP and determined that the IEP remains appropriate without explanation, despite the fact that the annual goals had not been achieved or revised within a year of their development and that there is no documentation that the student's skills have improved since the prior annual review (Docs. b, d, e and k).

DISCUSSION/CONCLUSIONS:

The IEP must include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §300.320).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved. In addition, the IEP team must review and revise, as appropriate, the IEP to address any lack of expected progress towards achievement of the goals (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during a State complaint investigation under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach the determinations that were made. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to the IDEA, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

Based on Findings of facts #1 - #5, the MSDE finds that the IEP includes annual goals for the student to improve the specific skills identified as areas of need in the present levels of performance. Based on those Findings of Facts, the MSDE also finds that the IEP requires the provision of special education instruction to assist the student in achieving those goals.

However, based on the Finding of Fact #6, the MSDE finds that there is no documentation to support the team's March 8, 2016 decision that the IEP goals remain appropriate. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #2 PROVISION OF IEP DOCUMENTS

FINDING OF FACT:

7. On March 8, 2016, the IEP team met and revised the IEP. There is documentation that later that day, the IEP was placed in the student's backpack to take home to the complainant (Doc. f).

DISCUSSION/CONCLUSIONS:

No later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, school personnel shall provide the parents with the draft copy of the IEP (Md. Code Ann., Educ., §8-405(e)(1)(2)).

Based on the Finding of Fact #7, the MSDE finds that there is documentation that the complainant was provided with a copy of the student's IEP. Therefore, this office does not find that a violation has occurred with respect to the allegation.

ALLEGATION #3 DISCIPLINARY REMOVAL PROCEDURES

FINDINGS OF FACTS:

8. On April 14, 2015, the IEP team convened. At that meeting, the complainant raised concern about the student's behavior while at school and indicated that after speaking with school staff, she felt that she had to remove the student from school prior to the end of the school day to prevent him from causing disruption during class. In response, the team reviewed and revised a Behavior Intervention Plan (BIP) to include positive classroom interventions, manipulative, pre-identified "buddy" teacher, and various strategies to address the behavior. The team continues to review and revise the BIP to address the student's behavior needs (Docs. a, c, j and k).
9. The student's "weekly trackers"¹ indicate that during the 2015-2016 school year, the complainant requested that the school staff contact her by telephone if the student demonstrates behavioral difficulties while in school. The school staff report that they contacted the complainant regarding the student's behavior on several occasions per her request. However, they deny having requested that she pick the student up from school prior to the end of the school day (Docs. h, k, and an interview with the school staff).

¹ This is a written communication document used by the school staff and the complainant, which provides the complainant with a report of the student's daily homework assignments, behavior, and teacher comments (Doc. h).

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10. The BCPS early dismissal logs indicate that the complainant came to the school on several days during the 2015-2016 school year to remove the student from school early. However, there is no indication that the student was dismissed from school early due to his behavior (Doc. i and an interview with the school staff).
11. A review of the BCPS Student Log of Disciplinary Actions for the 2015-2016 school year indicates that the student has not received any disciplinary removals from school during the school year (Doc. g and an interview with the school staff).

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, during each school year, for each incident that results in disciplinary removal. Once a change in the educational placement² occurs, State and federal regulations require the provision of specific protections to the student (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 school staff frequently contacted her by telephone to request that she remove the student from school for the remainder of that day due to his inappropriate behavior and that the student should have been provided with the IDEA disciplinary protections.

Based on the Findings of Facts #8 - #11, the MSDE finds that there is no documentation that the student has been disciplinarily removed from school during the 2015-2016 school year. Therefore, this office finds that the disciplinary protections do not apply and does not find that a violation has occurred with respect to the allegation.

CORRECTIVE ACTION/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by July 30, 2016, that the IEP team has convened and revised the student's IEP to ensure that it is consistent with the data and address the student's reading needs. If the team determines that there was a negative impact with regard to the violation, it must also determine the amount and nature of compensatory services or other remedy to redress the violation and develop a plan for the provision of those services within one year of the date of this Letter of Findings.

² This occurs if the student is removed for more than ten (10) consecutive days or ten (10) cumulative school days in a year if those removals constitute a pattern of removal of the student.

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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 August 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 XXXXXXXX Elementary School. 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.

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 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.

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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: XXXXXXXX
 Tiffany Clemmons
 Diana Wyles
 XXXXXX
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 Anita Mandis
 Albert Chichester
 Nancy Birenbaum