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June 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: #16-107

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 April 14, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced. 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 student has been provided with an Individualized Education Program (IEP) that addresses his social, emotional, and behavioral needs since August 2015, in accordance with 34 CFR §300.324.
2. The BCPS has not ensured that the student has been provided with appropriate transportation services since the start of the 2015-2016 school year, in accordance with 34 CFR §§300.101, .323, Md. Code Ann., Educ. §8-410 and COMAR 13A.06.07.
3. The BCPS did not provide an IEP within five (5) business days of the April 11, 2016 IEP team meeting, in accordance with COMAR 13A.05.01.07.

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INVESTIGATIVE PROCEDURES:

1. On April 14, 2016, the complainant provided the MSDE with documentation to be considered.
2. On April 18, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Director of Special Education, BCPS.
3. On April 27, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On May 5, 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 June 6, 2016, Mr. Chichester and Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Mr. XXXXXXXX, BCPS Transportation;
 - b. Ms. XXXXXXXX, IEP Chairperson and Educational Associate;
 - c. Ms. XXXXXXXXXXXX, Special Educator; and
 - d. Ms. XXXXXXXX, Special Educator.

Mr. Donnae Bushrod, Education Specialist II, 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 29, 2015;
 - b. IEP, dated March 18, 2016;
 - c. IEP, dated April 11, 2016;
 - d. Meeting summary, dated November 11, 2015;
 - e. BCPS, Department of Transportation Attendance Logs, dated between August 31, 2015 and May 27, 2016;
 - f. Correspondence, dated November 11 and 12, 2015, January 14, 2016, February 2, 2016, and April 11, 12, and 13, 2016, among school staff;
 - g. BCPS *transportation notification* letters, dated September 15, 2015 and September 21, 2015;
 - h. BCPS Transportation Services Handbook, dated August 2011; and
 - i. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on April 14, 2016.

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BACKGROUND:

The student is seventeen (17) years old and is identified as a student with Autism under the IDEA. He attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX and has an Individualized Education Program 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).

ALLEGATIONS #1 AND #2

**AN IEP THAT ADDRESSES SOCIAL,
EMOTIONAL AND BEHAVIORAL NEEDS AND
THE PROVISION OF TRANSPORTATION
AS A RELATED SERVICE**

FINDINGS OF FACTS:

1. On April 29, 2015, the IEP in effect at the start of the 2015-2016 school year was developed. It identifies the student with significant communication needs and requires that the student be provided with transportation as a related service to address “safety” needs (Docs. a – c).
2. On September 15, 2015 and September 21, 2015, the complainant was notified of the student’s bus pick-up time (Doc. g).
3. The BCPS transportation handbook informs parents that normally, students should be at their bus stop at least ten (10) minutes in advance of their scheduled bus arrival time and wait fifteen (15) minutes beyond the designated bus arrival time before contacting the BCPS about late bus arrivals. When parents are notified of the pick-up times at the start of the 2015-2016 school year, they are informed that during the *first week* of school, the bus schedules may need to be adjusted while the transportation office confirms the number of students being transported and finalizes routes, and that parents should ensure that students are at their pick-up locations fifteen (15) minutes in advance of their scheduled pick-up time (Docs. f and g).
4. From August 24, 2015 through August 28, 2015, there is no documentation that the student was provided with transportation to school. From August 31, 2015 through September 16, 2015, there is no documentation that the bus has arrived at the student’s stop within the designated window of time. From September 17, 2015 through September 22, 2015, the bus arrived at the student’s stop within the designated window of time (Docs. e, i, and a review of the student’s record).
5. From September 23, 2015 through November 11, 2015, there is documentation that the bus arrived at the student’s stop each day prior to the designated window of time (Docs. g and i).

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6. On November 11, 2015, the IEP team convened in response to the complainant's concern that the bus was arriving prior to the arrival window before the student had time to eat breakfast and take medication. The complainant and the school staff reported that if the student has to board the bus before he has breakfast and his medication, it negatively impacts his ability to work during the school day. The team contacted transportation and arranged for the bus to arrive at a time that allows the student to eat breakfast and receive his medication (Docs. d, f, and an interview with the school staff).
7. There is no documentation that the bus has arrived within the designated window from November 12, 2015 through April 11, 2016 (A review of the student's record).
8. On April 11, 2016, the IEP team reconvened to consider continued concerns about the student's transportation arrangements and the impact on the student's behavior at school. The team decided that, while the transportation arrangements were being adjusted again, a functional behavioral assessment (FBA) would be conducted to identify the targets of the behavior in school when the student is unable to take his medication and the strategies to implement to address the behavior (Doc. c).
9. The IEP team has not been convened to consider the results of the FBA, and while an additional bus route has been added to address the concerns about transportation, there is no documentation that the bus is arriving within the designated window (A review of the student's record and an interview with the complainant and the school staff).

DISCUSSION/CONCLUSIONS:

Allegation#1

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data. 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 (34 CFR §§300.101, .320, and .324).

If the IEP team decides that additional data is needed to identify and address the student's needs, the public agency must ensure that the results of the assessment procedures are used by the team in reviewing and, as appropriate, revising the IEP within ninety (90) days of the receipt of the decision that additional data is needed (34 CFR §§300.300, .301, and COMAR 13A.05.01.06).

Based on the Findings of Facts #1, #6, #8 and #9, the MSDE finds that, while the IEP team has considered information from the complainant and teachers, the BCPS has not ensured that the results of an FBA have been considered by the team within the required timelines to address the student's behavior at school. Therefore, this office finds that a violation has occurred with respect to this allegation.

Allegation #2

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323). Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education (34 CFR §300.34).

Based on the Findings of Facts #1 - #9, the MSDE finds that transportation has not been provided consistently. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #3

PROVISION OF THE IEP FOLLOWING THE APRIL 11, 2016 IEP MEETING

FINDINGS OF FACTS:

10. There is no documentation that the IEP was provided to the complainant within five (5) days after the April 11, 2016 IEP meeting (A review of the student's record and an interview with the school staff).

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 must provide the parents with the draft copy of the IEP. However, the failure of school personnel to comply with the timelines and actions listed above for providing copies of a child's completed IEP following the IEP team meeting does not constitute a substantive violation of the requirement to provide a FAPE (Md. Code Ann., Educ., §8-405).

Based on the Finding of Fact #10, the MSDE finds that the complainant was not provided with the IEP within five (5) days after the April 11, 2016 IEP meeting. Therefore, this office finds that a violation has occurred with respect to this allegation. However, because a violation of this requirement does not result in a loss of a FAPE to a student, no student-specific corrective action is required to remediate the violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the start of the 2016-2017 school year of the following:

- a. That the IEP team has considered the results of the FBA and reviewed and revised the IEP, as appropriate, based on the assessment results, and

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- b. That steps have been taken to ensure that the student is provided with bus transportation within the window of time established by the school system.

The MSDE requires the BCPS to provide documentation by September 30, 2016 of the following:

- a. That the bus is regularly arriving at the student's stop within the window of time established by the school system, and
- b. That the team has determined the compensatory services or other agreed upon remedy for the violations identified in this investigation.

School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2016-2017 school year of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXXXXXX staff properly implements the requirements for completion of reevaluations within the required timelines. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 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: Tammy Turner
Diana Wyles
XXXXXXXX
Dori Wilson
Anita Mandis
Linda Bluth
Albert Chichester
Nancy Birenbaum