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August 12, 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: #16-127

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.

ALLEGATIONS:

On May 12, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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 followed proper procedures when disciplinarily removing the student from school since October 2015, in accordance with 34 CFR §300.530 and COMAR 13A.08.03.
2. The BCPS has not developed and implemented an Individualized Education Program (IEP) that addresses the student’s identified needs since May 2015, in accordance with 34 CFR §§300.101, .320, and .324.

INVESTIGATIVE PROCEDURES:

1. On May 12, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS; Ms. Diana K. Wyles, Associate Counsel, Office of Legal Counsel, BCPS; and Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS.
2. On May 16, 2016, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a telephone interview with the complainant and clarified the allegations to be investigated.
3. On May 18, 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 Ms. Clemmons of the allegations and requested that her office review the alleged violations.
4. On August 11, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant.
5. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence from the BCPS to the complainant, dated October 27, 2015, December 21, 2015, and March 3, 2016;
 - b. IEP, dated May 2, 2016;
 - c. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on May 12, 2016; and
 - d. Written summary of a May 17, 2016 IEP team meeting.

BACKGROUND:

The student is nineteen (19) years old and has graduated at the end of the 2015-2016 school year with a Maryland High School Diploma. During the 2015-2016 school year, the student was identified as a student with an Other Health Impairment under the IDEA due to an Attention Deficit Hyperactivity Disorder, and he had an IEP that required the provision of special education instruction and related services (Doc. b and interview with the complainant).

The student attended the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX at the start of the 2015-2016 school year. In October, 2015, he was placed at the XXXXXXXXX as an alternative educational setting as a result of a disciplinary removal. Subsequently, he was placed at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX School (Docs. a and c).

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

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FINDINGS OF FACTS:

1. There is documentation that the student was removed to an alternative educational setting for an incident that occurred on October 1, 2015, and that he was not permitted to return to school until March 7, 2016 following the school system's decision to rescind and expunge the suspension (Doc. a).
2. There is documentation that the IEP team convened on May 2 and 17, 2016. The documentation reflects that the school-based members of the team acknowledged that violations had occurred with respect to the allegations, including that the IEP had not been based on current information about the student's levels of performance. The team reviewed and revised the IEP, and determined that, in order to remediate the violations, the student would be provided with tutoring during the remainder of the school year and that he would be enrolled in a career assessment program (Docs. b and d).

DISCUSSION/CONCLUSIONS

Allegation #1: Disciplinary Removal Procedures

The IDEA provides specific protections for students with disabilities who are disciplinarily removed from school. These protections include that a student must be returned to school if the IEP team determines that the behavior that resulted in removal was a manifestation of the student's disability. The exception to this requirement is that the student may be removed to an interim alternative educational setting without regard to whether the behavior is determined to be a manifestation of the disability if the student possesses and weapon or illegal drugs or has inflicted serious bodily injury on another person. However, in that case, the student may not be removed in excess of forty-five school days (34 CFR §300.530).

Based on the above Findings of Facts, the MSDE finds that the student was disciplinarily removed from school in excess of forty-five days and that a violation occurred.

Allegation #2: Addressing the Student's Needs

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 it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also 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 §§300.101 and .320).

Based on the above Findings of Facts, the MSDE finds that the IEP was not based on the student's present levels of performance and as a result, a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by October 1, 2016 of the steps taken to enroll the student in a career assessment program in accordance with the IEP team's decision.

School/System-Based

The MSDE requires the BCPS to provide documentation by December 1, 2016 of the steps it has taken to do the following:

- a. Determine whether the violation related to ensuring that the IEP was based on the student's present levels of performance is unique to this case or if it represents a pattern of noncompliance at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX and the XXXXXXXXXXXX; and
- b. Determine whether the violation related to disciplinary removal of the student in excess of forty-five school days is unique to this case or if it represents a pattern of noncompliance within the school system.

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, the BCPS must provide documentation of the steps being taken to ensure the future provision of appropriate services to students with disabilities, including a description of how it will evaluate the effectiveness of the steps taken and how it will monitor to ensure that the violations do not recur. 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.

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.

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TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Consultant, 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 (15) days of the date of this letter if they disagree with the 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 student's parents 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 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:am

c: Tammy Turner
Darnell L. Henderson
Dori Wilson
Anita Mandis
Sharon Floyd
Bonnie Preis