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August 19, 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: #16-148

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 June 10, 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 student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the Individualized Education Program (IEP) has addressed the student’s needs in math and written language, as well as his handwriting needs and his social, emotional and behavior needs, during the 2015 - 2016 school year, in accordance with 34 CFR §§300.101 and .324.

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2. The BCPS did not ensure that the IEP team's November 2015 and January 2016 reports¹ of the student's progress towards mastery of his annual IEP goals in written language were consistent with the data, in accordance with 34 CFR §300.324.
3. The BCPS did not ensure that the complainant was provided with proper prior written notice of the IEP team's decision, at the April 15, 2016 IEP team meeting, of the refusal to revise the reports of the student's progress towards mastery of his annual IEP goals in written language, in accordance with 34 CFR §300.503 and COMAR 13A.05.01.12.
4. The BCPS did not ensure that the student was consistently provided with the use of a computer in his classes, as required by the IEP, during the 2015 - 2016 school year, in accordance with 34 CFR §§300.101 and .323.
5. The BCPS has not ensured that the IEP is written clearly with respect to implementation of the provision of extended time as an accommodation to the student, in accordance with 34 CFR §§300.101, .320 and .323.
6. The BCPS did not ensure that the complainant was provided with proper written notice of all of the participants expected to participate in the April 15, 2016 IEP team meeting, in accordance with 34 CFR §300.322 and COMAR 13A.05.01.07.

INVESTIGATIVE PROCEDURES:

1. On June 14, 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.
2. On June 20 and 21, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On June 22, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
4. On June 21, 22, 23, and 28, 2016, and July 5, 2016, the MSDE received correspondence and additional documentation from the complainant.

¹ The correspondence from the MSDE to the complainant, dated June 22, 2016, contains an error with respect to the dates of the progress reports. This allegation now reflects the correct months in which the progress reports were issued.

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5. On July 8, 2016, Ms. Austin conducted a review of the student's educational record at the BCPS Central Office. On the same date, the MSDE received documentation from the BCPS.
6. On July 12 and 29, 2016, and August 10, 2016, the MSDE requested additional documentation from the BCPS.
7. On July 18, 2016, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school system staff:
 - a. Mr. XXXXXXXX, Special Educator, XXXXXXXXXXXXXXXXXXXX;
 - b. Ms. Yojinde Paxton, Educational Specialist II, Parent Response Unit, BCPS;
 - c. Mr. XXXXXXXX, Assistant Principal, XXXXXXXXXXXX;
 - d. Ms. XXXXXXXX, IEP Chairperson, XXXXXXXXXXXXXXXXXXXX; and
 - e. Mr. XXXXXXXX, General Educator, XXXXXXXXXXXXXXXXXXXX (participation was via telephone conference).

Ms. Diana Wyles, Associate Counsel, Office of Legal 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.

8. On July 18, 20, 25 and 29, 2016, the MSDE received documentation from the BCPS.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated January 23, 2015;
 - b. IEP, dated January 28, 2016;
 - c. IEP, dated January 14, 2016, and Prior Written Notice of the IEP team's decisions at the January 14, 2016 IEP team meeting;
 - d. IEP, dated April 15, 2016;
 - e. IEP, dated May 9, 2016;
 - f. Receipts of Parental Rights, dated April 15, 2016;
 - g. The record of the student's grades received for individual assignments in math, September 2015 to June 2016;
 - h. The student's report card for the 2015 - 2016 school year;
 - i. The special educator's report of the student's progress prepared for the January 14, 2016 IEP team meeting;
 - j. Reports of the student's progress towards mastery of the IEP goals, dated November 5, 2015, January 14 and 22, 2016, March 24, 2016, April 15, 2016, and June 21, 2016;
 - k. The annual assistive technology progress report, dated January 11, 2016;

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- l. The psychological services progress report, dated January 6, 2016;
- m. The general educators' reports of the student's progress, dated January 5, 2016 and March 21, 2016;
- n. Invitation notice to the April 7, 2016 IEP team meeting, and sign in sheet of attendees at the April 7, 2016 IEP team meeting;
- o. Invitation notice to the April 15, 2016 IEP team meeting, and sign in sheet of attendees at the April 15, 2016 IEP team meeting;
- p. Recording of the April 15, 2016 IEP team meeting;
- q. Prior Written Notice, dated April 19, 2016;
- r. Prior Written Notice, dated April 11, 2016;
- s. The BCPS Special Education Compliance Manual, SY 2012 - 2013;
- t. Electronic mail (email) communication from the school system staff to the complainant, dated April 10, 2016;
- u. Emails between the complainant and the school staff, March 2016 to June 2016;
- v. Notice and consent for assessment, signed by the complainant on February 17, 2016;
- w. The report of the assessment of the student's fine motor skills, dated March 3, 2016;
- x. The psychological services progress reports, dated January 6, 2016 and March 23, 2016;
- y. The consultation notes of the special educator's indirect services with the student's teachers, September 2015 to June 2016;
- z. The graph created by the complainant describing the student's performance in written language content and mechanics, undated;
- aa. The school staff's IEP progress reports, dated December 10, 2015 and March 3, 2016;
- bb. The occupational therapist's log and progress notes, September 2015 to June 2016;
- cc. The log of the indirect services of the occupational therapist, December 2015 to January 2016;
- dd. The special educator's progress report prepared for the April 7, 2016 IEP team meeting;
- ee. The record of the student's grades received for individual assignments in English/language arts class, September 2015 to June 2016;
- ff. Correspondence from the BCPS authorizing an Independent Educational Evaluation, dated July 20, 2016; and
- gg. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on June 10, 2016.

BACKGROUND:

The student is thirteen (13) years old, and is identified as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD). The student has an

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IEP that requires the provision of special education and related services, and attends XXXXXXXXXX
XXXXXXX (Docs. a - d).

During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Doc. f).

ALLEGATIONS #1 - #3 IEP THAT ADDRESSES THE STUDENT'S MATH, WRITTEN LANGUAGE, HANDWRITING, AND SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS; THE NOVEMBER 2015 AND JANUARY 2016 PROGRESS REPORTS; AND PRIOR WRITTEN NOTICE OF THE REFUSAL TO CHANGE THE NOVEMBER 2015 AND JANUARY 2016 IEP PROGRESS REPORTS

FINDINGS OF FACTS:

Written Language Needs

1. The IEP in effect at the start of the 2015-2016 school year was developed on January 23, 2015. The IEP includes a statement of the student's present levels of performance that reflects that the student, who was in the 6th grade, was performing on the late 4th grade level in written language content and mechanics. The IEP states that the decision regarding the student's levels of performance was based on a formal assessment of the student's written expression skills, which was administered in January 2015 (Doc. a).
2. At the January 23, 2015 IEP team meeting, goals were developed for the student to increase his written language skills to the early to mid-6th grade level. The team decided that the student would be provided with special education instruction by the general education teacher with consultation from a special education teacher in order to assist him with achieving the goals. The team also decided that the student would be provided with access to a word processor device with spelling and grammar features and proofreading checklist on a weekly basis (Doc. a).
3. In November 2015 and January 2016, reports were made of the student's progress towards achieving the annual goals. Those reports reflect that the student was making sufficient progress to achieve the goals (Doc. j).
4. On January 14, 2016, the IEP team convened and determined that the student was performing on the 7th grade level in written language content and mechanics. However, the IEP clarifies that, with respect to the spelling aspect of written mechanics, the student remained at the 4.6 grade level. The IEP states that the data used as a basis for the

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- decision included the results of a classroom-based assessment that was administered in December 2015, and information from the general education teacher on the student's classroom performance, which indicates that he was performing on grade level in written language mechanics, content, and spelling (Docs. b and c).
5. At the January 14, 2016 IEP team meeting, the IEP goals were revised for the student to improve his written language content skills to the 8th grade level and his written language mechanics skills to the end of the 6th grade level. The IEP was also revised to increase the student's access to a word processor with grammar and spelling features on a daily basis (Docs. a and b).
 6. On April 7 and 15, 2016, the IEP team reconvened. At those meetings, the complainant expressed her disagreement with the reports from November 2015 and January 2016 that the student had been making sufficient progress to achieve the annual IEP goals. The complainant expressed concern that there is a widening of the gap between the student's performance and his grade level expectations in written language. Based on information from the special education teacher that those reports were accurate at the time that they were made, the IEP team refused to revise the reports (Docs. p - r).
 7. The IEP requires that the student's progress towards achievement of the annual goals be measured through the use of classroom-based assessments. The special education teacher, who developed the progress reports, maintained a log of his contacts with the student's general education teacher. This log contains information that is consistent with the progress reports developed by the special education teacher. In addition, the general education teacher maintained an assignment log that contains information about the grades given for each of the student's assignments, which is also consistent with the progress reports (Docs. a, b, j, y and ee).
 8. The IEP and written summary describe the team's refusal to revise the progress reports, indicate that the basis for the decision was the information provided by the special education teacher, and list the data sources used by the special education teacher in making the decision about the student's progress (Docs. q and r).
 9. In response to the complainant's concern about the student's performance in written language, the IEP was revised to reflect that the student is performing at the 4.6 grade level in all areas of written language mechanics and content. The IEP was also revised to increase the amount of special education instruction to be provided. However, the data that was used to determine the student's present levels of performance reflects that the student was performing at between a 5.1 and 7.0 grade level in written language content and between a 5.1 and a 6.0 grade level in written language mechanics (Docs. d and e).
 10. The school system has agreed to provide the complainant with an Independent Education Evaluation (IEE), which is pending (Doc. ff).

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Math Needs

11. The January 2015 IEP does not identify math as an area in which the student has needs. It reflects that the student is on grade level and states that no academic goals are needed. However, it also states that the student's works at slow pace to complete his work, and that extended time is needed. The IEP requires extended time to allow the student the opportunity to complete assignments and tests (Doc. a).
12. At the January 14, 2016 IEP team meeting, the IEP team considered teacher reports that the student is performing at or above grade level, and the results of a recent informal assessment indicating that the student is performing at the 12th grade level in math. The IEP team documented that the student participates during class instruction, and that, with the provision of extended time, he does well on tests. The IEP team determined that no academic goals in math are required (Docs. b and c).
13. Also at the January 14, 2016 IEP team meeting, the complainant expressed concern that the student is not engaged in learning math and that he needs to complete his assignments, and the math teacher reported that the student delays working on math assignments. The school staff decided that the student will use a visual timer in math to help him start on his work (Docs. b and c).
14. The math teacher's record of the student's grades for the 2015 - 2016 school year documents that he consistently completed assignments. The student's report card for the 2015 - 2016 school year reflects he received two (2) B's and two (2) B-'s, and that his final grade for the year in math was a B (Docs. g, h, m and u).

Handwriting Needs

15. The January 2015 IEP reflects that the student has fine motor needs related to visual motor difficulties, particularly in the area of handwriting. The IEP states that the student requires "increased time" in order to complete written assignments. The IEP includes a goal for the student to improve his fine motor skills by increasing the speed of his handwriting, with correct alignment and spacing, and by editing his written work. The IEP also requires extended time, as well as the support of weekly access to a word processor for written assignments. In addition, the IEP requires two (2) half hour sessions of occupational therapy per month (Doc. a).
16. At the January 14, 2016, the IEP team considered information from the assistive technology team member that the student "consistently produces work with fair handwriting quality," and that he had mastered the IEP goal to improve his visual motor skills for handwriting and editing. The IEP team discussed that the student continues to have needs in the area of handwriting, and determined that he will continue to receive direct occupational therapy twice a month. The IEP team also decided to increase the

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amount of consultations by the occupational therapist with the school system staff to address handwriting strategies.² The IEP team recommended an assessment of the student's fine motor skills in order to determine his need for continued occupational therapy services³ (Docs. b, c, k, l and q).

17. The IEP team also discussed the student's handwriting at the two (2) April 2016 IEP team meetings. The IEP team reviewed the report of the recent occupational therapy assessment. The evaluator concluded that the student demonstrates age-appropriate and functional fine motor, visual perception and visual motor skills, and recommended the discontinuation of occupational therapy services to the student. The IEP team also considered that the student is provided access to a portable laptop for written work. Based on the data, the IEP team revised the IEP to remove occupational therapy services to the student. The written summary indicates that the complainant wanted occupational therapy only for the purpose of addressing cursive writing. The school staff explained that handwriting is not covered by the curriculum (Docs. r, s and v).
18. There is documentation that the student was regularly provided with practice to improve the legibility and speed of his handwriting during the times in the 2015 - 2016 school year when he received occupational therapy services. The documentation also reflects that the student practiced cursive writing, was encouraged to practice cursive writing at home, and that the school staff provided the student with "cursive packets" to continue practice in cursive skills outside of occupational therapy sessions (Doc. dd).
19. There is documentation that the student regularly used his portable laptop to complete classroom assignments throughout the 2015 - 2016 school year (Docs. c - e, j, y bb and cc).

Social, Emotional, and Behavioral Needs

20. The January 2015 IEP reflects that the student "has major difficulties with staying organized and keeping track of his assignments," inconsistently turns in homework, and does not complete all of his classwork. It also states that the student has difficulty with focus, needs redirection when working, and works "very slowly." The IEP includes a goal requiring the student to improve his school behavior by improving focus and ignoring distractions. To address the student's organization, focus, attention, and on-task behavior, the IEP also requires additional supports, including preferential seating, reduced distractions, extended time, and frequent breaks. In addition, the IEP requires a

² The previous IEP required monthly consultations to the student to address his organization (Doc. a).

³ On February 17, 2016, the complainant consented to the assessment (Doc. v).

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monthly consultation by the occupational therapist to address organization strategies for classwork, and psychological services once a month (Doc. a).

21. At the January 14, 2016 IEP team meeting, the IEP team considered that the student was still struggling with his social skills, and that he has difficulty with attention and remaining on task, completing work, and with initiating tasks. The complainant also expressed concern that the student is not completing his assignments. She also reported that the student recently discontinued the use of medication to treat his ADHD. To address the student's social interaction skills, the IEP team revised the behavior goal and increased the psychological services that the student requires to twice a month.⁴ The revised behavior goal no longer included an objective addressing the student's focus. However, the IEP team determined that the occupational therapist will address strategies to address the student's attention during monthly consultations with the school system staff (Docs. b and c).
22. In February 2016, in order to help the student to initiate and sustain attention with writing tasks, the school staff installed a stopwatch on his portable laptop (Doc. bb).
23. There is documentation of consultations, in March 2016, between the occupational therapist and the school system staff on strategies to address the student's attention (Docs. bb and cc).
24. In March 2016, the school staff documented that the student is utilizing preferential seating which "is assisting with [his] attention to task" (Doc. bb).
25. There is documentation that, at the April 2016 IEP team meetings, the IEP team considered the teacher reports stating that the student was struggling with completing work, beginning work in a timely manner, focusing during instruction, and that he becomes easily distracted. The complainant also reported that the student has "checked out" and is not completing his work based on her belief that the school staff have allowed the student a reduced workload instead of requiring him to complete assignments. The complainant also noted that the student needs additional motivation to complete work, and a consequence when he does not complete work. The IEP team discussed that the student continues to need additional time to complete his work due to his slow speed. In addition, a review of the recording of the April 15, 2016 IEP team meeting documents that the IEP team determined that the student will be provided with additional support by a special educator in the classroom twice a week to assist him with completion of work and attention. However, the IEP was not revised to reflect this increase in service (Docs. d, e and p).

⁴ The IEP team determined that the student requires an additional thirty (30) minutes per month (Docs. b and c).

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26. The student grade reports maintained by the math and English language arts teachers document that the student regularly received credit for completing assignments and homework throughout the 2015 - 2016 school year (Docs. g and ee).

LEGAL REQUIREMENTS:

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 consistent with 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 and .324).

The public agency must ensure that the IEP 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).

The IEP team's determination of how the student's disability affects the student's involvement and progress in the general education curriculum is a primary consideration in the development of the annual IEP goals. While the goals should align with the grade level general education curriculum standards, they are used to estimate the outcomes that can be expected in an academic year based on the student's present levels of performance. Therefore, the IEP team must determine how instruction will be modified based on the student's levels of performance in order to enable the student to achieve the goals and participate and progress in the general curriculum (34 CFR §§300.101 and .320, Analysis of Comments and Changes to the IDEA regulations, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006 and Maryland Statewide Individualized Education Program Process Guide).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during a State complaint investigation, the State Educational Agency (SEA) review the procedures that were followed to reach determinations made by the IEP team. 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).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge

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an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (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).

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §300.503).

DISCUSSION/CONCLUSIONS:

Allegation #1 Addressing the Student's Needs

Written Language

Based on the Findings of Facts #1 - #10, the MSDE finds that the IEP team has considered the required data, including information from teachers, the complainant's concerns, and assessment data, and continues to obtain additional data in order to ensure that the student's needs are accurately identified and addressed. Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP in effect at the start of the school year included goals that were aligned with the student's levels of performance and were designed to assist him with progressing through the general curriculum, as well as services to assist him in achieving the goals.

However, based on the Findings of Facts #4 and #5, the MSDE finds that the written language mechanics goal that is contained in the January 14, 2016 IEP requires the student to improve his skills to a level that is below the level at which the team determined that the student was currently functioning.

Based on the Findings of Facts #6 and #9, the MSDE further finds that the level at which the team determined that the student was currently functioning in written language content and mechanics in April 2016 is not consistent with the data that was used as a basis for the decision.

As a result, this office finds that the BCPS has not ensured that the written language goals have been aligned with the student's levels of performance and have been designed to assist the student in progressing through the general curriculum since January 14, 2016. Therefore, a violation is found with respect to this aspect of the allegation.

Math

Based on the Findings of Facts #11 - #14, the MSDE finds that there is no documentation or data to support the allegation that the student has needs in math that require academic goals. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Handwriting

Based on the Findings of Facts #15 - #19, the MSDE finds that the student's IEP has addressed his needs in handwriting throughout the 2015 - 2016 school year, through the provision of occupational therapy services, instruction on the fine motor IEP goal addressing handwriting, and access to a portable laptop that he regularly used to complete written work. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

Social, Emotional and Behavioral Needs

Based on the Findings of Facts #20 - #26, the MSDE finds that the student's IEP addresses his social, emotional and behavioral needs, and that the documentation does not support the allegation. Therefore, the MSDE does not find a violation with respect to this aspect of the allegation.

ADDITIONAL VIOLATION:

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

In order to ensure that the student is provided with the special education services that are required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (34 CFR §§300.101 and .320, and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).⁵

Based on the Finding of Fact #25, the MSDE finds that the BCPS did not revise the IEP in order to reflect the IEP team's decision to increase the specialized instruction by a special educator in the classroom to assist the student with completion of work and attention. Therefore, the MSDE finds a violation occurred.

Allegation #2 Content of the Progress Reports

Based on the Findings of Facts #6 and #7, the MSDE finds that there is documentation that the IEP team's decision was consistent with the data. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

Allegation #3 Prior Written Notice

Based on the Findings of Facts #6 - #8, the MSDE finds that there is documentation that the complainant was provided with proper written notice of the IEP team's decision to refuse to

⁵ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

revise the progress reports. Therefore, this office does not find that a violation occurred with respect to the allegation.

**ALLEGATION #4 PROVISION OF THE USE OF A COMPUTER IN CLASSES
DURING THE 2015 - 2016 SCHOOL YEAR**

FINDINGS OF FACTS

27. The January 2015 IEP states that the student requires access to a portable word processor and/or computer to assist with completing written work. The IEP reflects that this supplementary support is required weekly (Doc. a).
28. In January 2016, the IEP team revised the IEP to require access to a portable word processor and/or computer on a daily basis (Docs. b and c).
29. At the April 2016 IEP team meetings, the IEP team also discussed that the student continues to use the laptop computer, and developed a plan for storing it. The school staff report that the plan was for the student to leave the laptop in the classroom where he has 1st period in order to ensure that the laptop is fully charged overnight and ready for him to access. The IEP team also discussed the current efforts by the school system staff to replace his laptop with an updated version⁶ (Docs. q, s and t, and interview with the school staff).
30. There is documentation that the student consistently used a portable laptop computer during the 2015 - 2016 school year. The school staff documented that, although the student's laptop had damage to the frame in January 2016, the performance of the device was unaffected. The student's laptop was replaced with an updated device in April 2016 (Docs. c, d, e, j, k, x, y, and aa - dd).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student was not consistently provided with a computer in his classes, as required by the IEP.

Based on the Findings of Facts #27 - #30, the MSDE finds that the documentation does not support the allegation. Therefore, the MSDE does not find a violation.

⁶ The documentation reflects that the student was provided with an updated laptop on April 27, 2016 (Doc. aa).

ALLEGATION #5 PROVISION OF EXTENDED TIME

FINDINGS OF FACTS:

31. The January 2015 IEP states that the student works “at a considerably slower pace than his grade level peers, especially with his written work,” and requires that the student receive extended time to complete assignments and tests for full credit. While the IEP does not identify the specific amount of extended time, it includes information that the student often needs two to three (2 - 3) times more time than most of his peers (Doc. a).
32. The January 14, 2016 and the April 15, 2016 IEPs, as amended, also require extended time, but do not reflect the amount of extended time that the student requires (Docs. b - e).
33. At the two (2) April 2016 IEP team meetings, the complainant requested “guidelines” for the use of extended time for the student. The complainant expressly asked for “parameters” for the amount of additional time the student is allowed to complete assignments,” and for “consequences” if he does not complete the work within that time frame. The school staff expressed concern that set times may results in putting pressure on the student with more demand. The complainant noted that the student “needs to be pushed.” A review of the recording of the meeting documents that the IEP team discussed the need for a balance between expectations and what is appropriate for the student. The school staff documented that the complainant’s request for “guidelines” for the amount of extended time that the student is permitted, and her request for “a consequence for uncompleted work,” would be “followed up” by the school staff (Docs. p and q).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that students with disabilities receive the services and supports required by the IEP (34 CFR §§300.101 and .323).

In order to ensure that the student is provided with the special education services that are required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (34 CFR §§300.101 and .320, and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).⁷

In this case, the complainant alleges that the IEP does not identify the amount of extended time that the student is permitted.

⁷ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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Based on the Findings of Facts #31 - #33, the MSDE finds that the IEP team did not address the complainant's concern that the IEP is not written clearly with respect to the amount of extended time that is required for the student to complete assignments and tests. Therefore, the MSDE finds a violation occurred.

ALLEGATION #6 NOTICE OF PARTICIPANTS AT THE APRIL 15, 2016 IEP TEAM MEETING

FINDINGS OF FACTS:

34. The school staff prepared an invitation notice for the IEP team meeting that was held on April 7, 2016. This notice gives the name of an individual from the BCPS Central Office who was to attend, and provides his title as an Educational Specialist (Doc. n).
35. The IEP team convened on April 7, 2016 without the participation of the Educational Specialist named in the invitation. The IEP team did not complete the review of the student's IEP on April 7, 2016, and agreed to reconvene on April 15, 2016 (Docs. n, o, q and r).
36. On April 8, 2016, the school staff prepared an invitation notice for the continuation of the meeting on April 15, 2016. The invitation notice received by the complainant continued to include the name of the Educational Specialist from the BCPS Central Office, but did not include his title. However, an electronic mail (email) communication sent to the complainant on April 10, 2016, reflects that the school system staff informed the complainant that an Educational Specialist would be attending the April 15, 2016 IEP team meeting (Docs. o and t).
37. The IEP team reconvened on April 15, 2016, as a continuation of the April 7, 2016 IEP team meeting. The Educational Specialist from the BCPS Central Office participated in the April 15, 2016 IEP team meeting. At the start of the April 15, 2016 IEP team meeting, the complainant expressed concern that she did not receive proper notification of his participation because the invitation notice does not identify his title (Docs. n - q).
38. The school system has developed procedures addressing parental notification of IEP team meetings. The procedures specifically state that notification of an IEP team meeting must contain the "titles of City Schools staff members who are expected to attend." The procedures further state that "if a staff member is not listed by title, it is within the right of the parent to ask that the staff member who was not included on the list to leave the meeting." A review of the recording of the meeting documents that the complainant agreed to proceed with the Educational Specialist's participation in the April 15, 2016 IEP team meeting (Doc. s).

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DISCUSSION/CONCLUSIONS:

Each public agency must take steps to ensure that the parent of a student with a disability is present at each IEP team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child (34 CFR §300.322).

The United States Department of Education, Office of Special Education Programs (OSEP) has explained that a public agency can satisfy the requirements of notifying parents of “who will be in attendance” by indicating in the notice of the IEP meeting only the positions, rather than the names, of the individuals from the public agency who will be in attendance (*Letter to Livingston*, 23 IDELR 564, July 24, 1995).

In this case, the complainant asserts that she was not provided proper notice of the participants in the April 15, 2016 IEP team meeting because the invitation notice did not identify the title of the BCPS Education Specialist who participated in the meeting.

Based on the Findings of Facts #34 - #38, the MSDE finds that the BCPS did not provide the complainant with a written invitation notice that included the information required by the BCPS regulations. Therefore, the MSDE finds a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #34, #36 and #38, the MSDE finds that the complainant had previously been provided with information about the title of the school system staff member who participated in the meeting, and agreed to his participation. Therefore, the MSDE does not require corrective action for this violation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation, by October 1, 2016, that the IEP team has reviewed and revised the IEP, as appropriate, in order to do the following:

1. Ensure that the IEP contains a statement of the present levels of performance in the areas of written language content and written language mechanics that is consistent with the data and goals that are aligned with the present levels of performance and designed to assist the student with progressing through the general curriculum.
2. Ensure that the IEP contains an accurate statement of the services to be provided to assist the student with the completion of his work and maintaining his attention.

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3. Ensure that the IEP is written clearly with respect to the amount of extra time to be given to the student to complete work.

The MSDE also requires the BCPS to provide documentation, by October 1, 2016, that the IEP team has convened and taken the following action:

1. Determined whether the violations related to the IEP not being written clearly with respect to the services to be provided had a negative impact on the student's ability to benefit from the education program, and if so, determine the compensatory services or other remedy for the violations.
2. Determined the compensatory services or other remedy for the lack of appropriate goals to address the student's written language needs.

School-Based

The MSDE requires the BCPS to provide documentation, by November 1, 2016, of the steps taken to ensure that the XXXXXXXXXXXXXXXX staff comply with the requirements to ensure that the IEP includes: (a) a statement of present levels of performance that is based on the data; (b) goals that are aligned with the present levels of performance and designed to assist students with progressing through the general education curriculum; and (c) a description of the services to be provided that is clear to all individuals involved in the development and implementation of the IEP.

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 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

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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 consistent with the timeline requirement as 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. 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: Tammy Turner
Linda Chen
Jennifer Dull
Darnell Henderson
Diana Wyles
XXXXXXXXXXXXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Nancy Birenbaum