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August 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: #16-151

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 20, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of his 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 above-referenced student.

The MSDE investigated the following allegations:

1. The BCPS did not ensure that the Individualized Education Program (IEP) addresses the student’s transportation needs during the provision of Extended School Year (ESY) services, in accordance with 34 CFR §300.324.
2. The BCPS did not ensure that the IEP was provided within five days after an April 28, 2016 IEP team meeting, accordance with COMAR 13A.05.01.07.

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INVESTIGATIVE PROCEDURES:

1. On June 20, 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 July 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.
3. On August 1, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, requested information from the complainant and the school system staff.
4. On August 2, 2016, the MSDE received the requested information from the complainant.
5. On August 8, 2016, the MSDE received documentation from the BCPS.
6. On August 9, 2016, the MSDE received documentation from the complainant.
7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated April 28, 2016, invitation to the IEP team meeting, and summary of the meeting;
 - b. School communication log for April and May, 2016;
 - c. Electronic mail messages between the complainant and the school system staff, dated between June 6, 2016 and June 17, 2016;
 - d. Correspondence from the school system staff to the complainant, dated June 22, 2016;
 - e. IEP, revised on July 15, 2016, invitation to the IEP team meeting, and summary of the meeting;
 - f. Electronic mail message from the BCPS Office of Nonpublic and Citywide Services staff to the complainant, dated July 22, 2016; and
 - g. Electronic mail message from the complainant to the MSDE, dated August 2, 2016.

BACKGROUND:

The student is thirteen (13) years old, is identified as a student with Multiple Disabilities under the IDEA, including Autism, Intellectual Disability, Orthopedic Impairment, and Other Health Impairment. She has an IEP that requires the provision of special education instruction and related services. The student is placed by the BCPS at the XXXXXXXXXX, a nonpublic, separate, special education school (Docs. a and e).

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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. a, d, and e).

FINDINGS OF FACTS:

1. The IEP team met on April 28, 2016 for the purpose of conducting a review of the IEP and determining whether the student requires Extended School Year (ESY) services. At the meeting, the team decided that ESY services would be provided during “the two week period the end of the 2015-2016 school year and the start of the 2016-2017 school year and the two week break in August.” The team decided that the ESY services would be provided to address the goals to improve the student’s fine and gross motor skills needs. At the meeting, the IEP team documented its decision that the student requires bus services with the use of a wheelchair lift for transportation. The IEP documents that the complainant requested that bus transportation be provided using an air conditioned bus, and the team requested medical documentation of the need for this service. The IEP states that the IEP team “noted that the IEP could be revised without a meeting if the parent and the school system agrees to add the need for air conditioning if documentation is presented” (Doc. a).
2. The school system’s communication log reflects that, on May 11, 2016, staff from the BCPS Office of Nonpublic and Citywide Services mailed a copy of the April 28, 2016 IEP to the complainant (Doc. b).
3. On June 6, 2016, the complainant sent the school system staff correspondence indicating that he had not received the April 28, 2016 IEP and requesting a copy. In response, the school system staff indicated that the complainant should have already received a copy, and that another copy would be provided, but that another copy could not be provided immediately because “our systems have been down for a few days and are still down” (Doc. c).
4. On Thursday, June 16, 2016, the BCPS Office of Nonpublic and Citywide Services staff informed the complainant of the dates and times when the ESY services would be provided for the first two week period to begin on Monday, June 20, 2016. The correspondence states that the services would be provided at the XXXXXXXXXXXX. In response, the complainant indicated that he was under the impression that ESY services would be provided in the home, expressed concern that he was being informed of the ESY arrangements at such a late date, and provided the school system staff with medical documentation of the student’s need for air conditioning on the bus. The complainant also reiterated his request for a copy of the April 28, 2016 IEP (Doc. c).
5. In response to the complainant’s June 16, 2016 correspondence, the BCPS Office of Nonpublic and Citywide Services staff explained that the ESY services had been arranged only “minutes before” the complainant was notified of those arrangements. The BCPS Office of Nonpublic and Citywide Services staff also explained that only Home

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and Hospital Teaching (HHT) services could be provided in the home, and informed the complainant that the student “would need to be brought to the school” in order to receive ESY services. In response to the medical documentation provided by the complainant, the BCPS Office of Nonpublic and Citywide Services staff indicated that an IEP team meeting would need to be held to review the medical documentation and determine whether air conditioning bus services are required. The complainant responded by reminding the school system staff that the student’s IEP requires the provision of transportation services, and requesting bus pick up and drop off times for ESY services (Doc. c).

6. On Friday, June 17, 2016, the complainant expressed concern to the BCPS Office of Nonpublic and Citywide Services staff that he had not yet been informed of bus pick up and drop off times for the ESY services that were to begin on Monday, June 20, 2016. The complainant also expressed concern that holding an IEP team meeting to discuss the student’s transportation services needs would result in a delay in the provision of services, and indicated his agreement to amend the IEP to require air conditioned bus services without an IEP team meeting. In addition, the complainant, again, requested a copy of the April 28, 2016 IEP. On the same date, the school system staff provided the complainant with a copy of the April 28, 2016 IEP (Doc. c and interview with the complainant).
7. On the morning of Monday, June 20, 2016, the date that the ESY services began, the complainant was notified of the bus pick up and drop off times (Doc. g and interview with the complainant).
8. Starting on June 20, 2016, transportation by an air conditioned bus was provided in order for the student to participate in ESY services. However, on June 22, 2016, the BCPS Office of Nonpublic and Citywide Services staff sent the complainant correspondence stating that “transportation was not discussed for this period at the April 28, 2016 IEP meeting,” but that the BCPS “is willing to provide transportation via reimbursement to you for the mileage of transportation”¹ (Doc. d and interview with the complainant).
9. On July 15, 2016, the IEP team considered the complainant’s concern about being provided with such short notice of the ESY arrangements. The school system staff reported that coordinating the services “was a difficult task,” but agreed to give more advanced notice if possible in the future, and if not possible, to keep the parent abreast of the arrangements as they are being made (Doc. e).

¹ The offer to reimburse the complainant for mileage was reiterated by the BCPS Office of Nonpublic and Citywide Services staff through an electronic mail correspondence that was sent to the complainant on July 22, 2016. The complainant reports that he was successful in obtaining the intervention of the BCPS special education and transportation staff in order to ensure that bus transportation was provided for ESY services, and that the BCPS Office of Nonpublic and Citywide Services staff appears to be unaware that the transportation services are being provided (Doc. f and interview with the complainant).

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DISCUSSION/CONCLUSIONS:

Allegation #1: Addressing the Student's Transportation Needs During ESY Services

The public agency must ensure that ESY services are provided if a student requires those services in order to receive a Free Appropriate Public Education (FAPE) (34 CFR §300.106). These services are the extension of specific special education and related services that are provided to a student beyond the normal school year (COMAR 13A.05.01.03). The public agency must ensure that IEP team meetings to determine a student's need for ESY services are conducted early enough in the school year to provide the parent with the opportunity to request mediation or file a due process complaint to resolve a dispute regarding the IEP team's decision (COMAR 13A.05.01.07).

In this case, the complainant alleges that it was not his understanding that the April 28, 2016 discussion about transportation was intended to apply to the ESY services to be provided, and that he was expecting to have the ESY services provided in the home because a similar arrangement had been made when the student required ESY services in the past. He asserts that the school-based members of the IEP team also did not intend for the team's decision about transportation to apply to the period of time that ESY services were provided, and reports that he had to obtain the intervention of the staff from the BCPS special education and transportation offices in order to obtain transportation at the last minute once he realized that the services would not be provided in the home (Doc. and interview with the complainant).

Based on the Finding of Fact #1, the MSDE finds that there is documentation that the IEP team considered the student's transportation needs at the April 28, 2016 IEP team meeting at which ESY services were determined. However, based on the Findings of Facts #4 - #8, the MSDE finds that there is documentation that there was no understanding among the IEP team members about the transportation services that were to be provided for the duration of ESY services. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #8 and #9, the MSDE finds that transportation services were provided in order to enable the student to participate in ESY services and the IEP team has addressed the complainant's concern about the timeliness of arrangements made for the provision of ESY services. Therefore, no student-specific corrective action is required to redress the violation.

Allegation #2: Provision of the IEP Within Five Days After the IEP Team Meeting

The public agency must ensure that parents are provided with a copy of the IEP within five business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07 and Md. Code Ann., Educ., §8-405).

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Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP was not provided to the complainant within the required timelines. Therefore, this office finds that a violation occurred. Notwithstanding the violation, based on the Findings of Facts #3, #4, and #6, the MSDE finds that the complainant has been provided with the IEP. Therefore, no student-specific action is required to redress the violation.

CORRECTIVE ACTIONS/TIMELINE:

The MSDE requires the BCPS to provide documentation by November 1, 2016 of the steps taken to ensure that the BCPS Office of Nonpublic and Citywide Services staff comply with the requirement to provide parents with the IEP within five business days after an IEP team meeting.

The MSDE further requires the BCPS to provide documentation by November 1, 2016 of the steps taken to ensure that transportation services are made available during periods of time when special education services are to be provided beyond the regular school year for each student whose IEP requires the related service of transportation.

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 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

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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
Bonnie Preis