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August 26, 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: #16-152

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 21, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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 follow proper procedures, from June 2015 to February 2016, to ensure that the student was evaluated and identified as a student with a disability under the IDEA, in accordance with 34 CFR §§300.8 and .111. and COMAR 13A.05.02.13.
2. The BCPS has not ensured that the Individualized Education Program (IEP), developed in April 2016, addresses the student’s social, emotional and behavioral needs, in accordance with 34 CFR §300.101 and .324.

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**INVESTIGATIVE PROCEDURES:**

1. On June 22, 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 July 12, 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.
  3. On July 25, 2016, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a review of the student's educational record at the BCPS Central Office and obtained documents from the BCPS for consideration. On the same date, Ms. Austin requested additional documentation from the BCPS.
  4. On July 25 - 27, and 29, and August 23, 2016, the BCPS provided the MSDE with documentation for consideration.
  5. On July 27, 2016, Ms. Austin and Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
    - a. Mr. XXXXXXXXXXXX, Psychologist;
    - b. Ms. XXXXXXXXXXXX, Special Educator;
    - c. Ms. XXXXXXXXXXXX, IEP Chairperson;
    - d. Ms. XXXXXXXXXXXX, Special Educator (participation was via telephone); and
    - e. Ms. XXXXXXXXXXXX, a representative from XXXXXXXX Behavioral Health.<sup>1</sup>
- 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.
6. On July 29, 2016, Ms. Austin discussed the allegations with 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 7, 2016;
    - b. Amended IEP, dated April 8, 2016, signed by the complainant on May 24, 2016;

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<sup>1</sup> Ms. XXXXXXX reported that she is a clinical therapist with XXXXXXX Behavioral Health, and is providing the student with therapy services in the school and at home. The school system staff report that, through a partnership with BCPS, school staff make referrals to XXXXXXX Behavioral Health of students who have been identified as needing additional supports (Interview with the school system staff).

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- c. Receipts of parental rights and notice of procedural safeguards, signed by the complainant on February 15, 2016 and May 24, 2016;
- d. Child Find Referral, dated December 22, 2015;
- e. Prior Written Notice, dated February 11, 2016;
- f. Notices of IEP team meetings scheduled for January 14, 2016 and February 11, 2016;
- g. Child Find Referral, dated February 11, 2016;
- h. The school staff's log of communications with the complainant, from December 2015 to May 2016;
- i. The complainant's consent for assessments, signed on February 15, 2016;
- j. Prior Written Notice, dated April 7, 2016;
- k. The report of an educational assessment, dated March 15, 2016;
- l. The report of a psychological assessment, dated April 5, 2016;
- m. The report of an occupational therapy assessment, dated March 31, 2016;
- n. The report of the determination of initial eligibility, dated April 7, 2016;
- o. The student's grades for his kindergarten year, 2014 - 2015;
- p. The student's report card for the 2015 - 2016 school year;
- q. The student's attendance record for the 2015 - 2016 school year;
- r. The BCPS calendar for the 2015 - 2016 school year;
- s. The student's attendance summary from August 17, 2015 to February 10, 2016; and
- t. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on June 21, 2016.

### **BACKGROUND:**

The student is seven (7) years old. He was identified in April 2016 as a student with an Other Health Impairment under the IDEA related to Attention Deficit Hyperactivity Disorder (ADHD), and has an IEP that requires the provision of special education and related services (Docs. a and b).

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

### **FINDINGS OF FACTS:**

1. There is documentation that, in June 2015, at the end of the student's kindergarten year, he received final satisfactory grades in language and literacy and math. There is also documentation that, at the end of the 1st quarter of the 2015 - 2016 school year which ended on November 5, 2015, the student received satisfactory grades in language arts and in math (Docs. o, p and r).

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2. In October 2015, the school staff began providing the student with instructional interventions and strategies in the general education classroom. These interventions included preferred seating, proximity control, and the use of a classroom behavior chart as well as a home/school communication system. The school staff report that the supports were provided in order to assist the student with his attention and focus (Doc. g and interview with the school staff).
3. On December 22, 2015, the complainant requested an IDEA evaluation for the student. The referral indicates that the complainant had concerns about the student's reading, math, written expression, fine motor, and visual motor coordination skills. The referral also documents the complainant's concerns about the student's difficulty with beginning tasks, maintaining attention, completing tasks and assignments, following directions, working independently, and maintaining organization. It also reflects the complainant's report that the student is easily distracted, overactive, late for class, loses or forgets materials, needs constant approval, lacks motivation and self-control, and interrupts and distracts other in class. The referral states that the complainant is concerned that the student's difficulty in completing assignments is negatively affecting his grades (Doc. d).
4. There is documentation that, as of January 22, 2016, at the close of the 2nd quarter of the 2015 - 2016 school year, the student's grades in language arts and in math had declined to "needs development." There is also documentation that, during the 2nd quarter of the 2015 - 2016 school year, the student was tardy on twelve (12) days, and absent on four (4) days. The school staff reports that when the student was tardy, he missed some or all of his first (1st) period language arts class (Docs. p and q, and interview with the school staff).
5. On February 11, 2016, the IEP team convened to conduct an initial evaluation of the student in response to the complainant's referral. While the complainant was unable to attend the meeting, the IEP team considered information from the complainant from the referral, as well as her reported concern that the student was receiving low grades in math and reading, and not completing assignments (Doc. e).
6. At the February 11, 2016 IEP team meeting, the IEP team considered the student's performance on BCPS assessments indicating that he is functioning below grade level in reading and math. They also considered the following information reported by the classroom teacher about the student's performance and behavior:
  - He is unsuccessful in the classroom, does not complete assignments, is distracting to himself and to other students;
  - He is performing "well below grade level" in reading and math;
  - He has "poor" writing skills, and takes a long time to write; and
  - He is unmotivated, and will often refuse to work.

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In addition, the IEP team considered the student's attendance report documenting twenty-two (22) days when he was tardy, and seven (7) days when he was absent from school since the start of the school year. The IEP team agreed to discuss the student's attendance with the complainant, noting its impact on his progress (Docs. e and s).

7. Based on the information considered at the February 11, 2016 IEP team meeting, the IEP team suspected that the student may have a disability. The IEP team determined that additional information was needed and recommended assessments in the areas of reading, math, written language, and fine motor skills, as well as a psychological assessment of the student's social, emotional, and behavioral needs. On February 15, 2016, the complainant provided consent for the assessments to be conducted (Docs. e, g, and i).
8. On April 7, 2016, the IEP team convened to determine the student's eligibility for special education and related services. The IEP team considered the results of the assessments that were recommended at the February 11, 2016 IEP team meeting. The assessments document that the student was performing "approximately" one and one half (1½) years below grade level in reading, math and written language. They also document that the student was struggling with tasks relating to visual motor coordination, such as writing, and that he presents with inattention, hyperactivity and impulsivity (Docs. j - n).
9. At the time of the April 7, 2016 IEP team meeting, the student's attendance record reflects that he had been tardy on thirty-seven (37) days, and absent on thirteen (13) days, since the start of the 2015 - 2016 school year (Docs. q and s).
10. At the April 7, 2016 IEP team meeting, the IEP team determined that the student is a student with a disability under the IDEA based on an Other Health Impairment relating to ADHD, and developed a proposed IEP for the student to address his needs in the areas of reading, math, written language expression, fine motor skills, and social, emotional and behavior. The complainant did not sign the proposed IEP at the meeting (Docs. a, j and n).
11. The proposed IEP, dated April 7, 2016, as amended on April 8, 2016, includes information about the student's social, emotional and behavioral functioning. It reflects that the student's ADHD impacts his ability to be successfully engaged in learning, and his ability to manage attention and focus. The IEP also states that the student exhibits impulsive and distracting behaviors, that he will have difficulty focusing in a large group where he will need redirection, and that he needs incentives for work completion, and monitoring of behaviors in order for him to make progress in grade level curriculum (Docs. a and b).
12. To address the student's impulsive behaviors and difficulty with attention and focus, the IEP requires extended time, multiple or frequent breaks, and monitoring of his test responses. It also requires that the student receive supplementary supports including

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repetition of directions, monitoring of independent work, assignments broken into smaller units, home-school communication, preferential seating, and reinforcement and encouragement of appropriate in academic and non-academic settings. In addition, to specialized instruction in the general education classroom, the IEP also requires five (5) hours per week of specialized instruction outside of the general education classroom in a small group setting due to the impact of his “significant” ADHD on his progress and ability to focus (Docs. a and b)

13. On May 24, 2016, the complainant signed the IEP to consent to the initial provision of special education and related services to the student (Docs. b and h).
14. There is no documentation that the student has any difficulty with peer interactions (Review of the student’s educational record).

### **DISCUSSION/CONCLUSIONS:**

#### **ALLEGATION #1**

#### **INITIAL IDENTIFICATION AND EVALUATION**

The public agency must ensure that each student with a disability residing within its jurisdiction is identified and is offered a Free Appropriate Public Education (FAPE) through an IEP (34 CFR §§300.101, .111, and .320).

The Child Find requirements of the IDEA impose an affirmative obligation on the school system to identify, locate, and evaluate all students residing within its jurisdiction who are suspected of having disabilities and who need special education instruction and related services (34 CFR § 300.111). However, in order to ensure that students are not misidentified as being disabled, the IDEA mandates that a student may not be determined to be eligible under IDEA if the student does not meet the eligibility criteria (34 CFR §300.8). Under the IDEA, a student with a disability under IDEA is defined as a student with one of the listed disabilities, and who, by reason thereof, needs special education and related services (34 CFR §300.8).

It is the intent of State and federal law that interventions and strategies be implemented to meet the needs of students within the regular school program, as appropriate, before referring students for special education services. To meet this expectation, school staff may review a student’s academic and behavioral performance and determine teaching strategies, modifications to instruction, and behavior management techniques, which will appropriately assist the student (34 CFR §300.111).

The IEP team must complete an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral (34 CFR § 300.301 and COMAR 13A.05.01.06(A)).

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In this case, the complainant alleges that the BCPS did not conduct an IDEA evaluation of the student in a timely manner. She alleges that the BCPS was required to evaluate the student as early as June 2015.

Based on the Findings of Facts #1 - #3, the MSDE finds that, prior to beginning an IDEA evaluation on February 11, 2016, in response to the complainant's referral for an IDEA evaluation on December 22, 2016, there was no data that the student may have required specialized instruction, which would trigger the need for an IDEA evaluation. However, based on the Findings of Facts #3 - #10, the MSDE finds that the IDEA evaluation was not completed within ninety (90) days of the date on which the student's mother made a referral for evaluation and within sixty (60) days of date on which she provided consent for the evaluation. Therefore, this office finds a violation occurred.

**ALLEGATION #2                      IEP THAT ADDRESSES THE STUDENT'S SOCIAL,  
EMOTIONAL AND BEHAVIORAL NEEDS**

A FAPE means special education and related services that are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge to the parent (34 CFR §§300.17, .101 and .323).

In order to provide a student with a 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. If a student's behavior impedes the student's learning, the team must consider interventions, supports, and strategies to address the behavior (34 CFR §§300.101, .320, and .324).

In this case, the complainant alleges that the IEP does not address the student's need to improve his skills in the areas of self-regulation, attention and building relationships with peers because it does not include annual goals that address his need to improve in these areas.

Based on the Findings of Facts #10 - #13, the MSDE finds that the IEP requires the BCPS to provide the student with accommodations, supplementary supports, and specialized instruction to address his needs in the areas of self-regulation and attention. Further, based on the Finding of Fact #14, the MSDE finds that there is no documentation that the student has needs relating to peer relationships. Therefore, the MSDE does not find a violation occurred.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-Specific**

The MSDE requires the BCPS to provide documentation, by October 1, 2016, that the IEP team has convened and determined whether there was a negative impact on the student as a result of the violation related to the delay in the completion of the initial evaluation. If the IEP team determines that there was a negative impact, 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 (1) year of the date of this Letter of Findings

**School-Based**

The MSDE requires the BCPS to provide documentation by October 1, 2016, of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXXXXXX complies with the IDEA and State provisions requiring the completion of an initial evaluation of a student within sixty (60) days of parental consent for assessments and ninety (90) days of the public agency receiving a written referral.

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 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 consistent with the timeline requirement as reported in this Letter of Findings.

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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

MEF:ksa

c: Sonja Santalises  
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