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September 2, 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: #17-003

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On July 6, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her 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 identified the following allegations for investigation:

1. The BCPS did not ensure that the student was provided with the amount of special education and related services required by the Individualized Education Program (IEP) during the 2015-2016 school year, in accordance with 34 CFR §§300.101 and .323.
2. The BCPS did not ensure that proper procedures were followed when determining that the student did not require Extended School Year (ESY) services during the summer of 2016, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.

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**INVESTIGATIVE PROCEDURES:**

1. On July 6, 2016, the MSDE received the State complaint and documentation to be considered.
2. On July 6, 2016, Ms. Kim Marchman, Family Support Services Specialist, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
3. On July 8, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS.
4. On July 11, 2016, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Clemmons of the allegations to be investigated and requested that her office review the alleged violations.
5. On July 15, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, reviewed the student's educational record. Mr. Darnell Henderson, Attorney, BCPS, attended the record review as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.
6. On August 1, 2016, Mr. Chichester conducted a telephone interview with the complainant to discuss the allegations.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated May 13, 2015;
  - b. IEP, dated March 22, 2016;
  - c. IEP team meeting summary, dated June 20, 2016;
  - d. Related service logs, dated from August 31, 2015 through June 17, 2016; reported by the Occupational Therapist, Physical Therapist, and the Speech and Language Therapist;
  - e. The BCPS *Early Learning Programs* brochure for young children with special needs; and
  - f. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on July 6, 2016.

**BACKGROUND:**

The student is four years old and is identified as a student with a Development Delay under the IDEA. She attends XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX and is enrolled in the *Early Learning Environment (ELE)* program for 3 and 4 year olds. The student has an IEP that requires the provision of special education instruction and related services (Docs. a – c).

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

### **PRELIMINARY DISCUSSION:**

During the course of the investigation, the complainant clarified her allegation regarding the ESY program by indicating that she suspected a violation with regard to the ESY determination decision for the summer of the 2015 and not the ESY determination decision for the summer of the 2016 school year.

On August 1, 2016, Mr. Chichester explained that only those violations of the IDEA that are alleged to have occurred within one year of the filing of a State complaint may be addressed through the State complaint process. Therefore, this office only conducted an investigation into Allegation #1.

### **FINDINGS OF FACTS:**

1. The IEP in effect at the start of the 2015-2016 school year required the following:
  - a. 10 hours each week of special education instruction (2 hours/day);
  - b. 30 minutes each week of occupational therapy (1-30 minute session);
  - c. 30 minutes each week of speech/language therapy (2-15 minute sessions); and
  - d. 30 minutes each week of physical therapy (1-30 minute session) (Doc. a).
2. The IEP, revised on March 22, 2016, requires the following:
  - a. 10 hours each week of special education instruction (2 hours/day);
  - b. 30 minutes each week of occupational therapy (1-30 minute session);
  - c. 30 minutes each week of speech/language therapy (2-15 minute sessions); and
  - d. 1 hours per month of physical therapy (2-30 minute sessions) (Doc. b).
3. The student participates in the afternoon Early Learning Environment (ELE)<sup>1</sup> program for 2.5 hours in length each day, 5 days each week (Docs. a, b, and e).
4. At the June 20, 2016 IEP team meeting, the complainant raised concern about how the student could receive all of the required services as well as have lunch during a 2.5 hour school day. The team explained that “time for therapy is included within specialized instruction, and the student has self-help skills related to feeding as part of her special specialized instruction” (Docs. c and f).

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<sup>1</sup> BCPS-ELE program is a separate classroom for children with developmental delays who need more intensive specialized instruction. The school day consist of two and one half (2.5) hours each day, Monday through Friday (Doc. e).

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5. There is documentation that some of the related services are also provided during special education instruction (Doc. d).
6. The related service logs document that the student has been provided with the amount of occupational, speech/language, and physical therapy services required by the IEP (Doc. d)
7. The progress reports, dated November 05, 2015, January 22, 2016 and June 21, 2016, document that the annual goals are being addressed and that the student is making sufficient progress on the goals (Docs. a and b).

### **DISCUSSION/CONCLUSIONS:**

The public agency must ensure that special education services and related services are provided in accordance with each student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant reports that the student's 2.5 hour school day includes one half hour for lunch and that there are not enough hours each day in the school day for the student to have lunch and to receive all of the services required by the IEP (Doc. f).

Based on the Findings of Facts, the MSDE finds that there is documentation that the student has been provided with the amount of related services required by the IEP. Based on those Findings of Facts, the MSDE further finds that, because special education instruction is also provided during lunchtime and since related services are provided during periods of time that the student is receiving special education instruction, there is sufficient time for the student to receive the amount of special education and related services required by the IEP. Therefore, this office does not find that a violation has occurred with respect to the allegation.

### **TIMELINE:**

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 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.

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 Free Appropriate Public Education for the student, including issues subject to this State complaint investigation, consistent with the IDEA.

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The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:ac

c:     Sonja Santelises  
       Darnell Henderson  
       Perry Gorgen  
       Dori Wilson  
       Anita Mandis  
       Albert Chichester