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October 7, 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: #17-018

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 August 9, 2016, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXX, hereafter, “the complainants,” on behalf of their daughter, the above-referenced student. In that correspondence, the complainants 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 student was provided with the amount of special education 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 reports of the student’s progress towards achievement of the annual IEP goals were provided as required by the IEP, in accordance with 34 CFR §§300.101 and .323.

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3. The BCPS did not ensure the confidentiality of the educational records of the student's classmates, in accordance with 34 CFR §300.622 and 34 CFR §99.30.

INVESTIGATIVE PROCEDURES:

1. On July 19, 2016, Ms. Anita Mandis, Complaint Investigation Section Chief, MSDE, conducted a telephone interview with the student's mother to discuss the procedures for filing a State complaint.¹
2. On August 9, 2016, the MSDE received the State complaint and documentation to be considered.
3. On August 9, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS.
4. On August 17, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the student's mother to discuss the allegations.
5. On August 15, 2016, the MSDE sent correspondence to the complainants 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.
6. On September 20, 2016, Mr. Chichester and Mr. Gerald Lioacono, Complaint Investigator, MSDE, conducted a site visit to XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXX, Special Educator;
 - c. Mr. XXXXXXXXX, General Educator; and
 - d. Mr. XXXXXXXXX, City Schools Education Specialist.

Mr. Darnell Henderson, Legal Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP, dated April 23, 2015;

¹ On July 18, 2016, the MSDE received correspondence from the complainants, which did not include all of the information required in order to be able to initiate a State complaint investigation.

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- b. The student's 2015-2016 class schedule;
- c. The student's 2015-2016 attendance log;
- d. The student's sign-in log for pull-out sessions for the 2015-2016 school year;
- e. The student's IEP goal progress reports for the 2015-2016 school year;
- f. Electronic mail (email), dated June 10, 2016, between the special education teacher and the student's mother; and
- g. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on August 9, 2016.

BACKGROUND:

The student is 11 years old and is identified as a student with an Other Health Impairment (OHI) under the IDEA, related to Attention Deficit Hyperactive Disorder (ADHD). She attends the XXXXXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a and g).

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

ALLEGATION #1: PROVISION OF SPECIAL EDUCATION INSTRUCTION

FINDINGS OF FACTS:

1. The IEP in effect during the 2015-2016 school year required that the student be provided with special education instruction in math. Specifically, the IEP required that the student receive 3 sessions each week for 30 minutes each, inside the general education classroom, and 3 sessions each week for 30 minutes each, inside a special education classroom (Docs. a and g).
2. The student's 2015-2016 school year class schedule reflects that she was scheduled to receive special education instruction in math, in general and special education classrooms (Doc. b).
3. The school staff report that students are instructed to sign-in on an attendance log sheet each time they receive instruction in a special education classroom. The school staff reports that this log sheet reflects the days that the student was provided with special education instruction in math in a separate special education classroom. However, these logs do not indicate that she was provided with instruction in this setting with the frequency required by the IEP (Doc. d and an interview with the school staff).

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4. There is no documentation that reflects that special education instruction in math was provided to the student inside the general education classroom (Doc. g).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that special education services and related services are provided in the educational placement required by the student's IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #1 - #4, the MSDE finds that there is not documentation that the student was consistently provided with the amount of special education instruction in math in the educational placement required during the 2015-2016 school year. Therefore, this office finds that a violation has occurred with respect to this allegation.

ALLEGATION #2: PROVISION OF PROGRESS REPORTS

FINDINGS OF FACTS:

5. The IEP requires that the complainants be provided with the student's IEP progress reports on a "trimester" basis. The IEP reflects that progress reports were made on the IEP document on December 2, 2015, March 25, 2016, and June 10, 2016, but there is no documentation that they were sent to the complainants (Doc. a and an interview with the school staff).
6. At the June 7, 2016 IEP meeting, the student's mother expressed concern that she had not been provided with the student's progress reports for the 2015-2016 school year. On June 10, 2016, the special education teacher emailed the complainants a copy of the IEP progress reports for the 2015-2016 school year (Docs. e - g, and an interview with the school staff).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that the IEP is implemented, including the provision of progress reports to parents, as set forth in the IEP (34 CFR §§300.101 and .323).

Based on the Findings of Facts #5 and #6, the MSDE finds that there is no documentation that the progress reports were provided to the complainants with the frequency required by the IEP. Therefore, this office finds that a violation has occurred with respect to the violation.

Notwithstanding the violation, based on the Finding of Fact #6, the MSDE finds that the complainants were provided with the IEP progress reports for the 2015-2016 school year on June 10, 2016. Therefore, no student-specific corrective action is required.

**ALLEGATION #3: CONFIDENTIALITY OF PERSONALLY-IDENTIFIABLE
INFORMATION OF OTHER STUDENTS**

FINDING OF FACT:

7. There is no documentation that the IEP, dated April 23, 2015 and September 7, 2016, contains personally-identifiable information about other students. Further, there is no documentation that the student's educational record maintained by the BCPS contains personally-identifiable information about other students (Doc. a, and a review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Parental consent must be obtained before personally-identifiable information is disclosed unless disclosure is specifically authorized without parental consent by the Family Educational Rights and Privacy Act (FERPA) (34 CFR §99.31).

In this case, the complainants alleged that the student's IEP included the names of other students; thereby disclosing personally-identifiable information to them about those students without parental consent.

Based on the Finding of Fact #7, the MSDE finds that there is no documentation that personally-identifiable information of other students was disclosed to the complainants. Therefore, this office does not find that violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the school system to provide documentation by December 1, 2016 that the IEP team has determined the compensatory services to remediate the violations identified through this investigation. Further, the BCPS must provide the MSDE with documentation, within one year of the date of this Letter of Findings, that the compensatory services have been provided.

The BCPS must also ensure that the complainants are provided with written notice of the team's decisions. The complainants maintain the right to request mediation or to file a due process complaint to resolve any disagreement with the IEP team's decisions.

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School-Based

The MSDE requires the BCPS to provide documentation by January 1, 2017 of the steps it has taken to determine if the violation related to the provision of the amount of special education instruction in the educational placement required by the IEP is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXXXXXXXXXX. 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.

The MSDE also requires the BCPS to provide documentation by January 31, 2017 of the steps it has taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXXXXXX staff comply with the requirements for the provision of IEP progress reports to parents, as documented in the IEP. If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and 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.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Ms. Bonnie Preis, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainants 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 within the timelines 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 Free Appropriate Public Education 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:ac

c: Sonja Santelises
Darnell Henderson
XXXXXXXX
Dori Wilson
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Albert Chichester
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