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July 7, 2017

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Mr. Sean Conley, Chief Academic Officer  
Ms. Jennifer Dull, Director, Strategy and Compliance  
Mr. Macon Tucker, Manager of Specialized Services  
Baltimore City Public Schools  
200 East North Avenue, Room 204B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #17-137

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.

**ALLEGATION:**

On May 8, 2017, the MSDE received a complaint from 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 allegation that the BCPS has not ensured that the Individualized Education Program (IEP) addressed the student’s social-emotional needs, in accordance with 34 CFR §§300.101, .320, and .324.

**INVESTIGATIVE PROCEDURES:**

1. On May 8, 2017, the MSDE received the State complaint and documentation to be considered.

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2. On May 8, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. Sean Conley, Chief Academic Officer, BCPS, Ms. Jennifer Dull, Director, Strategy and Compliance, BCPS, and Mr. Macon Tucker, Manager of Specialized Services, BCPS.
3. On May 22, 2017, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegation.
4. On May 26, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. The MSDE also notified Mr. Conley, Ms. Dull, and Mr. Tucker of the allegation to be investigated and requested that their office review the alleged violation.
5. On June 13, 2017, Mr. Chichester reviewed the student's educational record at the Baltimore City Public Schools Central Office.
6. On July 6, 2017, Mr. Chichester spoke with Mr. Darnell Henderson, Attorney, BCPS, about the allegation.
7. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated October 6, 2016;
  - b. IEP meeting summary, dated September 22, 2016;
  - c. Initial eligibility determination report, dated September 22, 2016;
  - d. Behavior Assessment System for Children, 2nd Edition (BASC-2), dated June 16, 2016;
  - e. BCPS psychological report, dated September 21, 2016;
  - f. IEP, dated June 8, 2017;
  - g. IEP meeting summary, dated June 8, 2017;
  - h. Speech and language logs, dated between November 2016 and May 2017; and
  - i. Correspondence containing an allegation of a violation of the IDEA, received by the MSDE on May 8, 2017.

**BACKGROUND:**

The student is 13 years old and is identified as a student with an Intellectual Disability under the IDEA. She attends XXXXXXXXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - c, f - g, and i).

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, f - g, and i).

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### **FINDINGS OF FACTS:**

1. The IEP states that the student is “frequently alone, often seems withdrawn, pessimistic and sad, and has poor social skills.” It further states that the behaviors appear to be symptoms of her language and communication difficulties, as well as her cognitive impairment. The IEP indicates that this does not impact the student’s academic achievement and/or functional performance (Docs. a and f).
2. While the IEP states that the student’s verbal comprehension skills, visual spatial skills, working memory skills, and processing speed are in the “extremely low, very weak” range, it indicates that this does not impact her academic achievement and/or functional performance (Docs. a and f).
3. While the IEP states that the student is challenged with understanding complex sentences, quantitative concepts, emergent literacy, identification of sounds, main ideas, and inference and prediction, it indicates that this does not impact her academic achievement and/or functional performance. Nevertheless, it includes annual goals for her to improve these skills (Docs. a and f).
4. While the IEP states that the student is challenged with using grammatical markings, naming described objects, answering questions about hypothetical events, and naming categories, it indicates that this does not impact her academic achievement and/or functional performance. Nevertheless, it includes annual goals for her to improve these skills (Docs. a and f).
5. There is documentation that the complainant informed the school staff on April 3, 2017, that the student did not want to return to school because she felt that “children were not being nice to her.” There is also documentation that, subsequent to the complainant’s reported concern, the student missed seven (7) speech and language sessions, due to school absences. However, there is no documentation that the IEP team convened to address the student’s lack of attendance or to discuss the student’s social-emotional needs (Docs. h and i).
6. Following the filing of the State complaint, on June 8, 2017, the IEP team convened to review and revise the student’s IEP. The speech and language log documents that the student had several absences from school since April 3, 2017. The complainant again indicated that the student did not want to attend school because she was having difficulties with other students and was feeling depressed. The school staff reported that the student’s inappropriate behaviors toward other students made it difficult for her to make friends. The IEP was revised to reflect that this behavior impacts her academic achievement and/or functional performance. The IEP was also revised to include a self-management goal to improve the student’s ability to develop relationships with other students and school staff, and to require social skills training, frequent reminders of school rules as supports, and consultation between the school social worker and the

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student's teachers. However, the IEP was not revised with respect to the statement regarding the lack of impact of the student's difficulty with cognition and language on her academic achievement and functional performance (Docs. f, g, and i).

### **DISCUSSION/CONCLUSIONS:**

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 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. The public agency must ensure that it includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. In the case of a student whose behavior impedes the student's learning or that of others, the IEP team must also consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §§300.101, .301, .320, and .324).

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).<sup>1</sup>

Based on the Findings of Facts #5 and #6, the MSDE finds that the IEP team did not convene to consider the concerns raised by the complainant with respect to the student's social-emotional needs or the use of positive behavioral interventions and supports, and other strategies, to address the student's refusal to attend school, until June 8, 2017.

In addition, based on the Findings of Facts #1 - #4, the MSDE finds that the IEP is not written clearly with respect to the impact of the student's difficulty with cognition and language on her academic achievement and functional performance. Therefore, this office finds that violations occurred.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by September 30, 2017, that the IEP has been reviewed and revised to provide clarification regarding the impact of the student's difficulty with cognition and language on her academic achievement and/or functional performance. Further, the BCPS must ensure that the IEP addresses all areas of difficulty that impact academic achievement and/or functional performance.

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<sup>1</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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The BCPS must also provide documentation that the IEP team has determined the compensatory services to remediate the violations identified through this investigation. BCPS must provide documentation within one year of the date of this Letter of Findings that the compensatory services have been provided.

### **School-Based**

The MSDE requires the BCPS to provide documentation by October 31, 2017, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance within BCPS. 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.

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 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 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 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:ac

c: Sonja Brookins Santelises  
Darnell Henderson  
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