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August 4, 2017

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Ms. Rebecca Rider  
Baltimore County Public Schools  
Office of Special Education  
The Jefferson Building  
105 West Chesapeake Avenue  
Towson, Maryland 21204

RE: XXXXX  
Reference: #17-130

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 April 20, 2017, the MSDE received a complaint from Ms. XXXXXXXXXXXX hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore County 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 has not ensured that the student's Individualized Educational Program (IEP) addresses his academic, behavioral and transportation needs since October 2016, in accordance with 34 CFR §§300.304, .320, and .324.
2. The BCPS did not ensure that the student was provided with supplementary aids, accommodations and supports, as required by the IEP, since October 2016, in accordance with 34 CFR §§300.101 and .323.

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**INVESTIGATIVE PROCEDURES:**

1. On April 21, 2017, the MSDE sent a copy of the complaint, via facsimile, to Ms. Rebecca Rider, Director, Office of Special Education, BCPS.
2. On May 1 and 2, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE, conducted a telephone interview with the complainant, and identified the allegations for investigation.
3. On May 2, 2017, 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 the BCPS of the allegations and requested that the school system review the alleged violations.
4. On May 8, 2017, Mr. Loiacono contacted Ms. Conya J. Bailey, Compliance Supervisor, Office of Special Education, BCPS, to arrange a document review and site visit.
5. On May 23 and 24, 2017, and June 13 and 22, 2017, the MSDE received documentation from the BCPS.
6. On May 24, 2017, Mr. Loiacono and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX to review the student's educational record and interviewed Ms. XXXXXX, Assistant Principal. Ms. Bailey also 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. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated September 20, 2016;
  - b. IEP, dated April 6, 2017;
  - c. IEP Team Summary, dated September 20, 2016;
  - d. IEP Team Summary, dated December 6, 2016;
  - e. IEP Team Summary, dated March 16, 2017;
  - f. IEP Team Summary, dated April 6, 2017;
  - g. Functional Behavior Assessment (FBA), dated January 19, 2017;
  - h. Behavior Intervention Plan (BIP), dated February 7, 2017;
  - i. Psychological assessment, dated February 8, 2017;
  - j. Educational assessment, dated January 4, 2017;
  - k. Correspondence between complainant and BCPS staff, dated February 22, 2017 to May 24, 2017;
  - l. Social skills group permission slip, dated April 25, 2017
  - m. Supplementary aids and services and "Adult Support" logs; dated October 2016 to May 2017;
  - n. Student's bus route, undated;
  - o. Bus tracking log, dated May 2017; and

- p. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on April 20, 2017.

**BACKGROUND:**

The student is five years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with an Other Health Impairment, related to Attention Deficit Hyperactivity Disorder, under the IDEA and has an IEP that requires the provision of special education instruction and related services (Doc. b).

There is documentation that the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards during the time period addressed by this investigation (Docs. a-f).

**ALLEGATION #1: ADDRESSING THE STUDENT'S NEEDS**

**FINDINGS OF FACTS:**

**Academic and Behavioral Needs**

1. The student's IEP, in effect in October 2016, was developed at an IEP team meeting held on September 20, 2016. The team identified needs for the student in the areas of proofreading his writing, completing math work, and managing his behavior related to coping with transitions and frustrations and shouting out answers. The team developed goals and objectives related to completing work, remaining on task, and correcting punctuation in writing (Docs. a and c).
2. The IEP team met on December 6, 2016, to review and revise the student's IEP. The team determined that the student was exhibiting increasing interfering behaviors. The team further determined that the student's behavior was beginning to seriously impair his ability to complete work. The team proposed revising the student's Behavior Intervention Plan (BIP) developed by the student's previous school. School-based members of the team explained that while these behaviors were not seen at the student's current school at the time of the last IEP team meeting, sufficient information was available to revise the BIP. The complainant requested that the team conduct a Functional Behavior Assessment (FBA) before any changes to the BIP be implemented. The team agreed and also recommended that a psychological assessment, educational assessment, speech assessment, occupational therapy assessment and an FBA be conducted to better identify the student's needs (Doc. d).
3. On February 17, 2017 the complainant requested that an IEP team meeting scheduled for February 21, 2017 be canceled (Doc. e).
4. The school staff rescheduled the IEP team meeting for March 16, 2017. At that meeting, the IEP team reviewed the results of the assessments. The psychological assessment

- indicated that the student exhibited "very elevated" levels of defiance and aggression towards peers and "high average" levels of concerns for peer relations. The educational assessment indicated that the student exhibited "no specific areas of weakness" in academic areas (Docs. e, g-j).
5. The FBA indicated that the student exhibited "tantruming" and eloping from the classroom as primary interfering behaviors. The assessment recommended that the student be encouraged to use coping strategies to manage emotions and independently engage in breaks while remaining in the classroom to address the interfering behaviors. A draft BIP was developed based on the recommendations from the FBA. It included identifying circumstances leading to the identified behaviors and strategies to "reinforce appropriate replacement behaviors." The complainant expressed her disagreement with the identified interfering behaviors from the FBA, but did not share what she believed to be actual interfering behaviors. She again requested that a BIP not be implemented. The team determined that it would be implemented over her objections (Docs. e, g, and h).
  6. On April 6, 2017, the IEP team met to review recent behavioral data collected by school staff. Based on behavioral data and teacher input, the team determined that the student had decreased his amount of time spent outside of the classroom without permission and the intensity of tantrum episodes. However, the team decided that the student's behavior continued to interfere with his ability to complete his work (Doc. f).
  7. Based on the assessment data and teacher reports discussed at the March 2017 meeting, the team determined that the student had achieved his remaining academic goals, and that the student's needs were best addressed through behavioral goals alone. The team developed new behavioral goals targeting behaviors identified in the FBA, including self control and compliance with directions. The complainant expressed her disagreement with the IEP. When school staff inquired as to the nature of her disagreement, she stated only "that was all the team needed to know." The team documented that the complainant again was in disagreement with the implementation of the BIP from the March 2017 IEP team meeting (Docs. a, b, and f).
  8. At the complainant's request, the team recommended that the student participate in social skills instruction. However, on April 25, 2017, the complainant refused consent for the student to participate in a social skills group (Doc. f and l).
  9. The IEP team planned to convene on June 2, 2017 to review the student's IEP. On May 24, 2017, the complaint requested that the the IEP team meeting be canceled citing the lack of documentation provided to her in advance of the meeting. The school staff report that they have attempted to been unable to reschedule the meeting with the complainant (Doc. k).

### **Transportation Needs**

10. The student's IEP requires that the student be provided transportation as a related service. Prior to February 27, 2017, the BCPS offered but the complainant declined transportation services. From February 27, 2017 to April 4, 2017, transportation was provided to the student without incident (Docs. a and k).
11. At the IEP team meeting held on March 16, 2017, the IEP team discussed the student's transportation needs. The complainant questioned whether the student was required to be transported with his disabled peers. The IEP team reviewed the student's IEP and determined that, in part because the student requires additional adult support, the student would ride the bus with disabled peers (Doc. e).
12. On April 7, 2017 and April 18, 2017,<sup>1</sup> the complainant notified the BCPS and school staff that she believed that the bus was arriving on the wrong side of the road. The complainant stated that the student would no longer ride that bus and requested a different bus route. The school staff explained that they believed the bus driver had acted safely given the traffic conditions, but nonetheless arranged for a different bus route to provide transportation to the student (Doc. k).
13. On April 20, 2017 the BCPS arranged for a different bus to transport the student to school, which has been in effect since April 21, 2017 (Doc. k).
14. There is no documentation that the student arrived to school late, or was required to leave school early, resulting in him missing instruction due to transportation (Docs. k, n, and o).

### **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free and 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 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. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability and enable the student to progress through the general education curriculum, and the special education instruction and related services required to assist the student in achieving the goals. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

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<sup>1</sup> Schools were closed for spring break from April 8, 2017 to April 16, 2017 (BCPS 2016-2017 School year calendar)

### **Academic and Behavioral Needs**

In this case, the complainant alleges that the IEP team did not develop an IEP for the student that identified and addressed the student's academic and behavioral needs. Based on the Findings of Facts, #1-9, the MSDE finds that the IEP team met on multiple occasions since October 2016, and has reviewed and revised the IEP to address the identified needs. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

### **Transportation Needs**

In this case, the complainant alleges that the IEP team did not determine appropriate transportation services for the student. She asserts that he should be transported with non-disabled peers and that he is missing instruction as a result of being transported with students with disabilities.

Based on Findings of Facts #10-#14, the MSDE finds that the IEP met in response to the complainant's concerns regarding services available to the student during transportation and determined that the services offered were appropriate to ensure his safety. In addition, there is no documentation to support the allegation that the student is missing instruction as a result of transportation. Therefore, this office does not find that a violation occurred with respect to this allegation.

### **ALLEGATION #2: PROVISION OF SUPPLEMENTARY AIDS, SUPPORTS, AND ACCOMMODATIONS**

#### **FINDINGS OF FACTS:**

15. The student's IEP, developed on September 20, 2016, requires that the student be provided with extended time to complete assignments, multiple and frequent breaks, and reduced distractions during instruction. The student's IEP also requires that the student be provided with repetition and paraphrasing of information, and preferential seating on a periodic basis, adult support on a daily basis and an occupational therapy consultation on a monthly basis.
16. On April 6, 2017, the IEP was revised to include visual cues during instruction, social skills training and an adaptive environment on a periodic basis, and crisis intervention, home school communication and a behavioral chart system on a daily basis (Docs. a and b)
17. There is documentation that the student was routinely provided with the supplementary aids and services, including the assistance of additional adult support since October 2016 (Docs. c-f and n).

#### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that each student is provided with the special education and related services required by the IEP (34 CFR §§300.101, .320, and .323).

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Based on the Findings of Facts #15- #17, the MSDE finds that the student was provided with the supplementary aids, accommodations, supports and services required by his IEP. Therefore, this office does not find that a violation occurred with respect to this allegation.

**TIMELINE:**

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 complainant and the school system 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:gl

c: Verletta White  
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