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August 21, 2017

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Ms. Debra Brooks  
Director of Special Education  
Baltimore City Public Schools  
200 East North Avenue, Room 204-B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #17-147

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 May 8, 2017, the MSDE received a complaint from Mr. XXXXXXXXX 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 following allegations:

1. The BCPS did not ensure that the Individualized Education Program (IEP) addressed the student’s behavioral needs during the 2016-2017 school year, in accordance with 34 CFR §300.324;

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2. The BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the IEP to address lack of expected progress toward achieving the student's academic and behavioral IEP goals, during the 2016-2017 school year, in accordance with 34 CFR §§300.324;
3. The BCPS did not ensure that the student's transportation needs have been appropriately addressed during the 2016-2017 school year, in accordance with 34 CFR §§300.34, 39, .320 and .324;
4. The BCPS did not follow proper procedures when disciplinarily removing the student from school during the 2016-2017 school year, in accordance with 34 CFR §§300.324; and
5. The BCPS did not ensure that the student was consistently provided with the toileting services required by the IEP during the 2016-2017 school year, in accordance with 34 CFR §300.101.

**BACKGROUND:**

The student is ten years old. She is identified as a student with Autism and has an IEP that requires the provision of special education and related services.

At the start of the 2016-2017 school year, the student was placed at the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX. However, the student received Home and Hospital Teaching (HHT) services from February 17, 2017 until May 30, 2017. On June 12, 2017, the IEP team determined she would begin attending school at XXXXXXXXXXXXXXXX School as a result of a change in educational placement.

**ALLEGATIONS #1 - #4: ADDRESSING BEHAVIORAL NEEDS, TRANSPORTATION NEEDS, LACK OF EXPECTED PROGRESS, AND USE OF PROPER PROCEDURES WHEN DISCIPLINARILY REMOVAL OF THE STUDENT**

**FINDINGS OF FACTS:**

1. There is documentation that the student's IEP, in effect at the start of the 2016-2017 school year, included positive behavioral interventions.
2. The IEP team met on October 24, 2016 and revised the IEP to address the student's lack of progress on academic and behavioral goals.

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3. On February 3, 2017, the IEP team met and determined HHT services were to be provided as a result of receiving verification of emotional need. At that time, the IEP team noted that the student still wasn't making sufficient progress but did not revise the IEP to address the lack of progress. On April 3, 2017, a subsequent reverification for the continuation of HHT services was accepted for the student.
4. On May 25, 2017, the IEP team reviewed the IEP in anticipation of the student's return to a school-based program. At that time, the IEP team decided that the student requires additional supports in a more restrictive setting in order to address her identified needs.
5. At the start of the 2016-2017 school year, the IEP states that the student requires special education transportation, a safety harness and assistance getting to her seat and with buckling the safety restraint system. At the October 24, 2016 IEP team meeting, the student's transportation service was revised to include taxi services, a therapeutic behavioral aide, and a reduced number of students. At the May 25, 2017 IEP team meeting, the IEP was revised to reflect that the student would not ride with any other students due to concerns about safety and a goal was added to reduce the student's resistance to traveling in a taxi.
6. The student has been transported to and from school by taxi during the 2016-2017 school year. However, a safety harness and a therapeutic behavioral aide has not been provided for transportation services. As a result, family members have had to ride in the taxi with the student to ensure her safety.
7. There is no documentation that the student was disciplinarily removed from school in excess of ten school days during the 2016-2017 school year as a result of her behavior.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegations #1 & #2: Addressing Academic and Behavioral Needs Since the Start of the 2016-2017 School Year**

Based on the Findings of Facts #1-#4, the MSDE finds that the BCPS did not address the student's lack of progress between February 3, 2017 and May 25, 2017, in accordance with 34 CFR §§300.324 . Therefore, the MSDE finds violations with respect to Allegations #1 and #2.

#### **Allegation #3: Transportation Services**

Based on the Findings of Facts #5 and #6, the MSDE finds that the BCPS has not ensured that the student's transportation needs have been addressed since the start of the 2016-2017 school year, in accordance with 34 CFR §300.101. Therefore, the MSDE finds a violation with respect to this allegation.

**Allegation #4: Disciplinary Removal of the Student**

Based on the Finding of Fact #7, the MSDE finds that there is no documentation that the student was disciplinarily removed from school in excess of ten days during the 2016-2017 school year. Therefore, the MSDE finds that the disciplinary protections, as required by 34 CFR §§300.324, do not apply, and therefore no violation is found with respect to this allegation.

**ALLEGATION #5: PROVISION OF TOILETING SERVICES**

**FINDINGS OF FACTS:**

8. There is insufficient documentation to support that the toileting services were implemented during the 2016-2017 school year, as required by the IEP.
9. The IEP progress reports dated October 7, 2016 and October 24, 2016 reflect that the student was not making sufficient progress to meet the goal to improve her toileting skills.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #8 - #9, the MSDE finds that there is insufficient documentation to support that the toileting services were provided as required by the IEP in accordance with 34 CFR §§300.101 and .323. Therefore, this office finds a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires that the BCPS provide documentation that the student's transportation needs have been addressed and that the student will be transported to and from school in accordance with her IEP, at the start of the 2017-2018 school year.

The MSDE also requires that the BCPS provide documentation, by October 1, 2017, that the IEP team has determined the nature and amount of compensatory services necessary to redress the violations related to transportation, lack of expected progress, and the provision of toileting services. The BCPS must also ensure that the IEP team considers the difference between the student's present and expected levels of performance when determining the services needed to remediate the violations.

The BCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations,

he maintains the right to request mediation or to file a due process complaint, in accordance with the IDEA.

### **System-Based**

The MSDE requires the BCPS to provide documentation by December 1, 2017, of the steps it has taken to ensure that the BCPS staff properly implements the requirements for the provision of special education transportation. The documentation must include a description of how the BCPS will evaluate the effectiveness of the steps taken and monitor to ensure that the violations do not recur.

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 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 Free and Appropriate Public Education

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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:sf

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