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October 14, 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: #17-021

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 18, 2016, the MSDE received a complaint from Mr. XXXXXX, hereafter, “the complainant,” on behalf of his daughter, the above-referenced. 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 complete an IDEA evaluation within the required timelines, during the 2015-2016 school year, in accordance with 34 CFR §300.301 and COMAR 13A.05.01.06.
2. The BCPS did not ensure that an Individualized Education Program (IEP) was provided within five (5) business days of the IEP team meeting held on March 22, 2016, in accordance with COMAR 13A.05.01.07.

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INVESTIGATIVE PROCEDURES:

1. On August 18, 2016, the MSDE received the State complaint and documentation to be considered.
2. On August 19, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS.
3. On August 26, 2016, Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a telephone interview with the complainant to discuss the allegations.
4. On September 7, 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 October 5, 2016, Mr. Chichester and Mr. Gerald Lioacono, Complaint Investigator, MSDE, conducted a site visit to the XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed Ms. XXXXXXXX, Special Educator, and Mr. XXXXXXXX, Dean of Students. 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.
6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. IEP meeting invitation for the October 14, 2015 IEP meeting;
 - b. IEP meeting summary, dated January 5, 2016;
 - c. IEP sign-in sheet, dated January 5, 2016;
 - d. IEP meeting summary, dated March 22, 2016;
 - e. IEP sign-in sheet, dated March 22, 2016;
 - f. IEP, dated March 22, 2016;
 - g. Notice of consent for assessment reports, dated October 27, 2015;
 - h. The student's psychological assessment report, dated December 21, 2015;
 - i. The student's educational assessment report, dated December 30, 2015;
 - j. The student's speech and language assessment report, dated December 22, 2015;
 - k. The BCPS communication log, dated between August 31, 2015 and May 31, 2016;
 - l. Electronic mail (email) dated between August 29, 2015 and June 16, 2016, among the complainants and the school staff; and
 - m. Correspondence from the complainants containing allegations of violations of the IDEA, received by the MSDE on August 18, 2016.

BACKGROUND:

The student is 10 years old and is identified as a student with an Emotional Disability under the IDEA. She attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX and has an IEP that requires the provision of special education instruction and related services (Docs. a - g).

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 - g).

FINDINGS OF FACTS:

1. On October 14, 2015, the IEP team met to discuss the referral by the student's mother for an evaluation under the IDEA, which was made on September 21, 2015. Based on information from the parents and the student's teachers, the team decided to request additional assessments to determine eligibility. Written consent was provided by the student's mother on October 27, 2015 (Docs. a, g, k, and an interview with the school staff).
2. On January 5, 2016, the IEP team convened to review the results from the assessments requested at the October 14, 2015 IEP meeting and identified the student as a student with an Emotional Disability under the IDEA. The IEP team agreed to reconvene on February 9, 2016 to develop the student's IEP but was unable to do so because schools were closed due to inclement weather (Docs. b, c, h - j, l, and an interview with the school staff).
3. The documentation reflects that on March 22, 2016, the IEP team developed the student's IEP (Docs. d - f, l, and m).
4. Correspondence, dated April 6, 2016, reflects that the complainant contacted the IEP team chairperson to inform her that he had not received a copy of the student's IEP that was developed at the March 22, 2016 IEP meeting. The IEP team chairperson responded on April 11, 2016, indicating that she would have the IEP completed on April 12, 2016 (Docs. l and m).
5. Correspondence, dated April 15, 2016, reflects that the complainant again contacted the IEP team chairperson to inform her that he had not received a copy of the student's IEP that was developed at the March 22, 2016 IEP meeting. The IEP team chairperson responded on April 18, 2016 indicating that she would have the IEP available for the complainant that same day (Docs. l and m).
6. There is documentation that the complainant received a copy of the student's IEP on April 27, 2016 (Docs. l and m).

DISCUSSION/CONCLUSIONS:

Allegation #1: Evaluation Timelines

The public agency must obtain parental consent to conduct an evaluation and must ensure that the evaluation is completed within sixty (60) days of parental consent for assessments and within ninety (90) days of the receipt of the referral for evaluation. Each public agency must ensure that a meeting to develop an IEP for a student is conducted within thirty (30) days of a determination that the student needs special education and related services (34 CFR §§300.300, .301, .323, and COMAR 13A.05.01.06).

Based on the Findings of Facts #1 - #3, the MSDE finds that the BCPS did not ensure that the IDEA evaluation was completed within ninety (90) days of the receipt of the referral for evaluation and within sixty (60) days of the date of consent.

Further, based on the Findings of Facts #1 - #3, the MSDE also finds that the BCPS did not ensure that an IEP was developed for the student within thirty (30) days of the determination that the student requires special education and related services. Therefore, this office finds that violations occurred with respect to this allegation.

Allegation #2: Provision of the IEP

No later than five (5) business days after a scheduled IEP team meeting, the parent must be provided with a copy of the completed IEP. If the IEP has not been completed by the fifth (5th) business day after the IEP team meeting, school personnel must provide the parent with the draft copy of the IEP (Md. Code Ann., Educ., §8-405).

However, the failure of school personnel to comply with this timeline for providing a copy of a student's completed IEP following the IEP team meeting does not constitute a substantive violation of the requirement to provide a Free Appropriate Public Education (FAPE) (Md. Code Ann., Educ., §8-405).

Based on the Findings of Facts #4 - #6, the MSDE finds that the complainant was not provided with the IEP within five (5) days after the March 22, 2016 IEP meeting. Therefore, this office finds that a violation has occurred with respect to this allegation.

However, because the IEP was subsequently provided to the parent, and because a violation of this requirement does not result in a loss of a FAPE to a student, no student-specific corrective action is required to remediate the violation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by December 31, 2016 that the IEP team has determined the compensatory services to remediate the delay in completing the XXX

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evaluation and developing the IEP. The MSDE further requires that the BCPS 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 January 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 at XXXXXXXXXXXX School. 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.

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.

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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
XXXXXXXXXX
Dori Wilson
Anita Mandis
Albert Chichester
Bonnie Preis