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April 24, 2017

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

RE: XXXXX
Reference: #17-107

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 February 23, 2017, the MSDE received a complaint from XXXXXXXXXXXXXXXXXXXX, 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 student. The MSDE investigated the following allegations:

1. The BCPS did not ensure that the student has been provided with the special education services required by the Individualized Education Program (IEP), as indicated below, since February 23, 2016, in accordance with 34 CFR §§300.101 and .323.
 - a. The student has not been provided with the accommodations and supplementary aids and services as required;
 - b. The student has not been provided with a dedicated aide consistently as required;

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- c. The student has not been provided with a fade-plan for the dedicated aide as required;
 - d. The student has not been provided with enlarged work as required;
 - e. The student has not been provided with a homework log as required;
 - f. The student has not been provided with home school communication as required; and
 - g. The student has not been provided with the indirect services as required.
2. The BCPS did not ensure that the student was provided with language arts and math services in a separate special education classroom, as required by the IEP since February 23, 2016, in accordance with 34 CFR §300.101.
 3. The BCPS did not provide a quarterly report on the student's progress toward achieving the annual Individualized Education Program (IEP) goals since February 23, 2016, in accordance with 34 CFR §300.320.
 4. The BCPS did not ensure that copies of documents the IEP team intended to consider at IEP team meetings have been provided at least five days in advance of the meetings held since February 23, 2016, in accordance with COMAR 13A.05.01.07D(3).
 5. The BCPS did not ensure that the IEP team meetings convened since February 23, 2016 included the required participants, in accordance with 34 CFR §300.321.
 6. The BCPS did not follow proper procedures when conducting a reevaluation of the student since December 20, 2016, in accordance with 34 CFR §§300.303- .306.

INVESTIGATIVE PROCEDURES:

1. On February 23, 2017, the MSDE sent a copy of the complaint, via facsimile, to Mr. Sean L. Conley, Chief Academic Officer, BCPS, Mr. Macon Tucker III, Manager of Specialized Services, BCPS, Ms. Jennifer Dull, Director, Strategy and Compliance, BCPS, and Ms. Diana Wyles, Attorney, BCPS.
2. On February 23, 2017, and March 17, 2017, Ms. Sharon Floyd, Education Program Specialist, MSDE, conducted telephone interviews with the complainant and discussed the allegations being investigated.
3. On March 19, 2017 and April 3, 2017, the complainant provided the MSDE with additional documentation to consider for revision of the allegations for investigation.
4. On March 22, 2017, the complainant requested that the time period for the investigation

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be extended beyond the original timeframe identified.

5. On March 26, 2017 and April 3, and 4, 2017, the complainant provided the MSDE with documentation to be considered.
6. On April 18, 2017, the MSDE sent correspondence to the complainant that acknowledged receipt of the revised 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.
7. On April 19, and 21, 2017, the BCPS provided the MSDE with documentation to be considered.
8. On April 20, 2017, Ms. Floyd and Ms. Nicole Green, Data Analyst for Mediation and Due Process, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Principal;
 - b. Ms. XXXXXXXXXXXX, Lead Teacher/IEP Chairperson;
 - c. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - d. Mr. XXXXXXXX, Math Teacher;
 - e. Ms. XXXXXXXX, English/Language Arts Teacher;
 - f. Ms. XXXXXXXX, School Social Worker;
 - g. Ms. XXXXXXXX, IEP Chairperson, XXXXXXXXXXXXXXXXXXXXXXXX; and
 - h. Ms. XXXXXXXX, Language Arts Teacher, XXXXXXXXXXXXXXXXXXXXXXXX
XXXXXX.

Ms. Diana K. Wyles, Attorney, BCPS, and Christa McGonigal, Educational Specialist, BCPS attended the site visit as representatives of the BCPS and to provide information on the school system's policies and procedures, as needed.

7. On April 22, 2017, the complainant provided MSDE with additional documentation to consider.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated March 23, 2016;
 - b. IEP, dated June 9, 2016, amended September 13, 2016;
 - c. IEP, dated October 27, 2015;
 - d. IEP team summary of the June 13, 2016, and December 20, 2016 IEP team meetings;

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- e. The IEP team meeting attendance record, dated March 28, 2017 and April 4, 2017;
- f. The IEP team excusal form of the March 28, 2017 meeting;
- g. Receipt of the parental rights document, dated December 20, 2016;
- h. Form for *Notice of Documents*, dated March 23, 2016 and June 9, 2016;
- i. Reports of progress, dated February 29, 2016, March 10 and 18, 2016, December 12, 2016, February 22 and 28, 2017, and March 8 and 31, 2017;
- j. Logs of communication, dated January 12, 2015 through January 20, 2017;
- k. Reports of IEP progress, dated November 4, 2016 through February 24, 2017;
- l. Electronic mail (email) correspondence from the complainant to the MSDE, dated March 19, 2017 and April 22, 2017;
- m. Samples of the student's work, dated September, 2016 through April, 2017;
- n. Notice(s) and consent for assessment, dated December 20, 2016 and March 28, 2017;
- o. The student's schedule and attendance for the 2016-2017 school year;
- p. The special education teacher's schedule for the 2016-2017 school year;
- q. Log of indirect services, dated for the 2016-2017 school year;
- r. Fade plan and log of student monitoring by the dedicated aide for the 2015-2016 school year;
- s. The core teachers' lesson plans for the 2016-2017 school year;
- t. The timesheet for the dedicated aide(s); and
- u. Correspondences from the complainant alleging violations of the IDEA, received by the MSDE on February 23, 2017 and March 19, 2017.

BACKGROUND:

The student is twelve (12) years old, is identified as a student with Multiple Disabilities under the IDEA, due to visual and orthopedic impairments and Attention Deficit Hyperactivity Disorder, and has an IEP that requires the provision of special education and related services. She previously attended XXXXXXXXXXXXXXXXXXXXXXXXXX and now attends XXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXX (Docs. a, b, and c).

There is documentation that, during the time period covered by this investigation, the complainant was provided with notice of the procedural safeguards (Doc. g).

**ALLEGATION #1: PROVISION OF ACCOMMODATIONS,
 SUPPLEMENTARY AIDS AND SERVICES**

FINDINGS OF FACTS:

- 1. The IEP requires accommodations, to be provided during instruction and testing, including:

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- a. Large print - material;
 - b. Magnification devices;
 - c. A human reader;
 - d. Notes and outlines;
 - e. A scribe;
 - f. An electronic word processor;
 - g. Monitoring test responses;
 - h. Visual organizers;
 - i. Graphic organizers;
 - j. Computer access;
 - k. Extended time;
 - l. Multiple and frequent breaks; and
 - m. Reduction of distractions to the student (Docs. a, b, and c).
2. The IEP requires supplemental aids and services, to be provided daily, including:
- a. Printed copies of posted materials or email students to enlarge, daily;
 - b. Consultation with the vision teacher, monthly;
 - c. Clear copies of assignments with 18 point font or larger, daily;
 - d. Reduction of the amount of required reading, daily;
 - e. Verbal cues, daily;
 - f. Check notebook and organization, daily;
 - g. All notes in enlarged print, daily;
 - h. Magnification devices, high contrast materials and large print, daily;
 - i. Adjust the student's workload, daily;
 - j. Use of highlighters, daily;
 - k. Frequent and/or immediate feedback, daily;
 - l. Use of characters 2 inches or more for viewing, daily;
 - m. Alternative ways for the student to demonstrate learning, daily;
 - n. Advance preparation for schedule changes, as appropriate;
 - o. Allow for the use of a computer, daily;
 - p. Preferential seating, daily;
 - q. Temporary adult support with a fade plan, daily;
 - r. Consultation with the general education teachers and special education teachers, monthly;
 - s. Consultation with the adapted physical education teacher, quarterly;
 - t. Use of an agenda book, daily; and
 - u. A set of textbooks for home; daily (Docs. a, b, and c).

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3. There is no documentation to support that accommodations, supplementary aids and services, program modifications and supports, enlarged work, a homework log and indirect services were implemented from February 23, 2016 through June, 2016 (Docs. i, j, and k and Interview with school staff).
4. There is documentation to support that the student was provided with accommodations, supplementary aids and services consistently in the language arts class since the start of the 2016-2017 school year (Docs. i and s).
5. While there is documentation to support that the student was provided with accommodations, supplementary aids and services since the start of the 2016-2017 school year, there is no documentation that they were provided consistently in all of the student's classes, as required by the IEP (Doc. r).
6. There is documentation that the student has been provided with a dedicated aide and a "fade plan" for decreasing her dependency on the dedicated aide, from February 23, 2016 through the end of the 2015-2016 school year, as required by the IEP (Doc. r).
7. There is no documentation that the student has been consistently provided with a dedicated aide and a "fade plan" for decreasing her dependency on the dedicated aide, since the start of the 2016-2017 school year, as required by the IEP. However, there is documentation that the all of the dedicated aides received training from the special education case manager which included a plan for the student's increased independence from the support provided by the dedicated aide (Docs. q and t).
8. There is documentation that the student has been provided with enlarged print for classwork assignments, provided her with a modified workload since the start of the 2016-2017 school year and enlarged the home assignments since January 26, 2017 (Docs. m and q).
9. There is documentation that the student was provided with the indirect services of the special education case manager between September 2015 and February 2016 (Doc. j).
10. There is documentation that the student has been provided with the indirect services of the special education case manager, the dedicated aide(s), the general education teachers and the teacher of the visually impaired since the start of the 2016-2017 school year, as required by the IEP (Doc. q).
11. There is no documentation that the student has been provided with the indirect services of the assistive technology staff and the adapted physical education staff (Interview with school staff and Doc. q).

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DISCUSSION/CONCLUSIONS:

The public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student is not being provided with the accommodations, supplementary aids and services as required by the IEP (Doc. u).

Based on the Finding of Fact #4, the MSDE finds that there is documentation that the student received some of the accommodations and supplementary aids and services required by the IEP. Based on the Findings of Facts #1 - #3, and #5, however, the MSDE finds that there is no documentation that accommodations and supplementary aids and services were being implemented consistently within all of the student's classes. Therefore, this office finds that a violation occurred with respect to this allegation.

ALLEGATION #2: PROVISION OF LANGUAGE ARTS AND MATH WITHIN A SEPARATE SPECIAL EDUCATION CLASSROOM

FINDINGS OF FACTS:

12. The IEP states that the student will be removed from the general education setting to receive language arts instruction and supports in a small group setting with a special education teacher for three (3) hours a week (Doc. a).
13. There is no documentation that the student received language arts instruction and supports with a special education teacher, in a small group setting for three (3) hours a week between February 23, 2016 through the end of the 2015-2016 school year (Doc. d and Interview with school staff).
14. On June 13, 2016, an IEP team meeting convened and acknowledged a Free and Appropriate Public Education (FAPE) violation occurred and awarded the student fifty-five (55) hours of compensatory services in language arts and mathematics (Doc. d).
15. There is documentation that the student receives language arts instruction and supports with a special education teacher, in a small group setting for three (3) hours a week during the 2016-2017 school year (Docs. o, p, and s and Interview with staff).
16. The IEP does not require the student's math instruction to be provided in a separate special education classroom (Doc. a).

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DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

In this case, the complainant alleges that the student is not being provided with the special education services as required by the IEP (Doc. u).

Based on the Findings of Facts #12 - #16, the MSDE finds that the documentation supports the allegation. Therefore, this office finds that a FAPE violation occurred with respect to this aspect of the allegation.

Notwithstanding the violation, based on the Finding of Fact #14, the IEP team subsequently determined the compensatory services to be provided to remediate the violation. As a result, no student-based corrective action is required to redress the violation.

ALLEGATION #3: PROVISION OF QUARTERLY IEP REPORTS ON THE STUDENT'S PROGRESS

FINDINGS OF FACTS:

17. The IEP requires that the complainant be notified of the student's progress toward the IEP goals within an IEP report that is provided on a quarterly basis (Doc. a).
18. There is documentation that the complainant was provided with quarterly IEP reports for the first and second quarters of the 2015-2016 school year (Doc. k).
19. There is no documentation that the complainant was provided with quarterly IEP reports for the second and third quarters of the 2015-2016 school year (Docs. j and k).
20. There is documentation that the complainant was provided with quarterly IEP reports for the first, second and third quarters of the 2016-2017 school year (Docs. j, and k).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that each student is provided with the special education instruction and related services required by the student's IEP (34 CFR §§300.101 and .323).

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In this case, the complainant alleges that he has not been provided with the IEP quarterly progress reports, as required by the IEP (Doc. u).

Based on the Finding of Fact #17 and #19, the MSDE finds that the documentation supports the allegation. Therefore, this office finds that a violation occurred with respect to the allegation.

ALLEGATION #4: PROVISION OF DOCUMENTS IN ADVANCE OF THE IEP TEAM MEETINGS

FINDINGS OF FACTS:

21. There is documentation that the complainant was provided with documents including the draft IEP, teacher progress reports, attendance and work samples to be discussed at the IEP team meetings that occurred on March 23, 2016 and June 9, 2016, five (5) business days before the IEP team meetings (Doc. h).
22. There is no documentation that the complainant was provided with documents to be discussed at the remaining IEP team meetings that occurred during the 2015-2016 school year (Doc. j).
23. There is no documentation that the complainant was provided with documents that were to be discussed at the IEP team meetings held during the 2016-2017 school year (Doc. j).

DISCUSSION/CONCLUSIONS:

The public agency must take steps to ensure that parents are afforded the opportunity to participate in IEP team meetings. This includes making sure that parents are provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at that meeting, at least within five (5) business days of the date of an IEP team meeting (COMAR 13A.05.01.07).

In this case, the complainant alleges that he has not been provided with the documents that were discussed at the IEP team meetings (Doc. u).

Based on the Findings of Facts #21 - #23, the MSDE finds that the documentation supports the allegation. Therefore, this office finds that a violation occurred with respect to the allegation.

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ALLEGATION #5: REQUIRED PARTICIPANTS AT THE IEP TEAM MEETINGS

FINDINGS OF FACTS:

24. There is documentation to support that all of the required participants were in attendance at the IEP team meetings that occurred during the 2015-2016 and 2016-2017 school years (Docs. d e, f and l).

DISCUSSION/CONCLUSIONS:

The IEP team must include the student's parent, at least one (1) regular education teacher of the student if the student is, or may be, participating in the regular education environment, at least one (1) special education teacher of the student, a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and about the availability of resources of the public agency, an individual who can interpret the instructional implication of evaluation results, at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, and the student when appropriate (34 CFR §300.321).

Parents may invite individuals who have knowledge or special expertise regarding the student, including public agency personnel. However, decisions as to which particular teachers or special education providers will participate on the IEP team are left to the public agency (34 CFR §300.321 and *Analysis of Comments and Changes*, pp. 46670 and 46674).

The specific members of the IEP team may be excused from attending an IEP team meeting, in whole or in part, if the parent and the public agency consent to the excusal in writing (34 CFR §300.321). The procedures for excusing IEP team members from meetings do not apply to individuals invited at the discretion of the public agency or the parent because "such individuals are *not required members of the IEP team*" (*Analysis of Comments and Changes*, Federal Register, Vol. 71, No. 156, August 2006, p. 46675) (emphasis added).

In this case, the complainant alleges that all of the student's service providers were not in attendance at the IEP team meetings and were not excused from the meetings (Doc. u).

Based on the Finding of Fact #24, the MSDE finds that all of the required participants were in attendance at the IEP team meetings. Therefore, the MSDE does not find that a violation occurred with respect to this allegation.

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ALLEGATION #6: PROPER PROCEDURES FOR THE REEVALUATION

FINDINGS OF FACTS:

25. At an IEP team meeting held on December 20, 2016, the school staff proposed that an educational assessment be administered to the student to determine the student's present academic achievement and functional performance as part of a reevaluation. The team summary states that informal teacher made tests, progress monitoring, student work and observation of the student were used as the basis for the proposal to conduct an educational assessment (Doc. d).

26. On March 28, 2017 and April 3, 2017, IEP team meetings were conducted to review the educational assessment. The complainant, the student's mother, and school staff report that a determination was made to conduct additional assessments. However, the IEP team did not document the decision and the BCPS did not ensure that the additional testing was conducted (Docs. d, e and f and Interview with school staff).

DISCUSSION/CONCLUSIONS:

When conducting a reevaluation, the public agency must ensure that assessments are conducted, the results are considered by the IEP team, and the IEP is reviewed and revised, as appropriate, within ninety (90) days of the date the team determines that assessments are required (COMAR 13A.05.01.06E).

The IDEA requires that the IEP address the needs that arise from the student's disability regardless of the category of disability determined by the IEP team. When conducting a reevaluation, the public agency must ensure that the student is assessed in all areas related to the suspected disability, and that the reevaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. A variety of assessment tools and strategies must be used to gather relevant functional, developmental, and academic information about the student, including information provided by the parents, to assist the team in determining whether the student is a student with a disability and in determining the content of the student's IEP (34 CFR §300.304).

As part of the reevaluation, the IEP team must review existing data, including evaluations and information provided by the parents, current classroom-based, local, or State assessments, classroom-based assessments, and observations by teachers and related service providers. On the basis of that review, and input from the student's parents, the team must identify what additional data, if any, are needed to determine whether the student continues to meet the criteria for identification as a student with a disability and whether any additions or modifications to the

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special education and related services are needed to enable the student to meet the measurable annual goals in the IEP (34 CFR §300.305 and COMAR 13A.05.01.06).

Based on the Findings of Facts #25 and #26, the MSDE finds that the school system did not ensure that the reevaluation was comprehensive and completed within a timely manner. Therefore, the MSDE finds that a violation has occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation, by June 15, 2017, that the student is receiving the accommodations, supplementary aids and services required by the IEP.

The MSDE also requires the BCPS to provide documentation by June 15, 2017, of the complete reevaluation that includes conducting the assessments that were previously recommended, ensuring that the complainant is provided with the opportunity to participate and that the IEP is revised based on the reevaluation data.

The BCPS is also required to provide documentation by the end of the 2016-2017 school year, that compensatory services will be provided to remediate the delay in completion of the reevaluation and to redress lack of provision of the enlarged print for homework assignments, the homework log, indirect services of the assistive technology staff and the adapted physical education staff, the dedicated aide, and a fade plan for the dedicated aide, and developed a plan for the provision of those services within a year of the date of this Letter of Findings.

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

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.

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School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2017-2018 school year, 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 XXXXXXXXXXXXXXX
XXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXXXXX. 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 Consultant, 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 student's parents and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with

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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:sf

c: Sonja Brookins Santelises

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Diana Wyles

Darnell L. Henderson

Dori Wilson

Anita Mandis

Sharon Floyd

Bonnie Preis