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July 5, 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 204-B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #17-136

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 5, 2017, the MSDE received a complaint from XXXXXXXXXXXX hereafter, the “complainant,” on behalf of her 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 has not ensured that the Individualized Educational Program (IEP) addresses the student's academic needs, since May 2016,<sup>1</sup> in accordance with 34 CFR §§300.320 and .324.

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<sup>1</sup> While the complainant alleges that the violation occurred before May 2016, she was informed, in writing, that this office could only investigate violations occurring from one year of the date that the complaint is received.

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2. The BCPS did not ensure that the student was provided instruction in the educational placement required by her IEP, from the start of the 2016-2017 school year until April 2017, in accordance with §§300.101 and .323.
3. The BCPS did not follow proper procedures when responding to a request for an IEP team meeting in January 2017, in accordance with 34 CFR §§300.324 and .503.

### **INVESTIGATIVE PROCEDURES:**

1. On May 6, 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 Mr. Sean Conley, Chief Academic Officer, BCPS, Ms. Jennifer Dull, Director, Strategy and Compliance, BCPS, and Mr. Macon Tucker, Manager of Specialized Services, BCPS of the allegations and requested that the BCPS review the alleged violations.
2. On May 10, 2017, Mr. Gerald Loiacono, Complaint Investigator, MSDE contacted Ms. Diana Wyles, Associate Counsel, BCPS, to arrange a document review and site visit.
3. On May 11, 2017, Mr. Loiacono conducted a telephone interview with the complainant to clarify the allegations for investigation.
4. On May 15, 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.
5. On May 31, 2017, Mr. Loiacono reviewed the student's record at the BCPS Central Office.
6. On June 8, 2017, Mr. Loiacono and Mr. Albert Chichester, Complaint Investigator, MSDE, conducted a site visit at the student's school to review the student's educational record and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXX, IEP Chairperson;
  - b. Ms. XXXXXXXX Special Educator;
  - c. Mr. XXXXXXXX, Principal;
  - d. Ms. XXXXXXXX, Special Educator; and
  - e. Ms. XXXXXXXX, Speech-Language Pathologist.

Ms. Wyles attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

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7. On June 15, 2017, the MSDE received additional documentation from the BCPS.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP, dated October 6, 2015;
  - b. IEP, dated September 27, 2016;
  - c. IEP, dated December 10, 2016;
  - d. IEP, dated April 20, 2017;
  - e. Prior Written Notice (PWN), dated October 6, 2015;
  - f. PWN, dated September 27, 2016;
  - g. PWN, dated December 13, 2016;
  - h. Lesson Plans, dated September 1, 2016 to February 21, 2017;
  - i. Correspondence from the complainant to school staff, dated January 4, 2017; and
  - j. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on May 5, 2017.

### **BACKGROUND:**

The student is 11 years old and attends XXXXXXXXXXXXXXXXXXXX. She is identified as a student with Multiple Disabilities under the IDEA including an Intellectual Disability and Other Health Impairment relating to XXXXXXXXXXXX. The student has an IEP that requires the provision of special education instruction and related services (Doc. a).

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-g).

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

### **FINDINGS OF FACTS:**

1. The student's IEP, in effect in May 2016, was developed at an IEP team meeting on October 6, 2015. The IEP team identified needs of the student in reading phonemic awareness, reading phonics, reading comprehension, math calculation and written language content. The team developed goals and objectives for the student in reading phonics, reading comprehension, math calculation, written language content, receptive language and expressive language. The team further determined that the student would receive instruction outside of the general education setting for five hours daily. The team did not document its basis for the decisions, stating only that "The team proposed that all of [the student's] current services remain the same"<sup>2</sup> (Docs. a and e).

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<sup>2</sup> There is documentation that the student's present levels of performance, goals and objectives in some areas of need had not been revised for multiple years prior to May 2016 (Review of student's record).

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2. The progress reports completed during the 2015-2016 school year indicate that the student was making "sufficient progress" in each goal area, despite making "sufficient progress" on identical goals during the previous school year<sup>2</sup> and not yet having achieved the goals (Docs. a and b).
3. The IEP team met again on September 27, 2016, for the purposes of reviewing and revising the student's IEP. The only revision made to the IEP was to extend the date for achievement of the goals and services for another year. The team determined that an evaluation would be conducted, and recommended that academic, speech, and occupational therapy assessments be conducted (Docs. b and f).
4. The IEP team met on December 13, 2016 to review the assessment data. The team determined that the student continued to be eligible as a student with a disability and that the IEP remained appropriate and did not revise the student's IEP (Docs. c and g).
5. The progress reports completed between December 2016 and April 2017 indicate that the student was making sufficient progress to achieve each goal despite the goals being continued for multiple years<sup>2</sup> (Doc. c)
6. On April 20, 2017, the IEP team established new present levels of performance for the student based on teacher reports of her classroom performance and formal and informal assessment data. The team also developed new goals in each area of need that was identified in the data (Doc. d).
7. A review of online IEP for other students at XXXXXXXXXXXXXXXXXXXX reflects that there are other students at the school who have been reported to be making made sufficient progress on the same IEP goals and objectives for multiple years without a documented basis for continuing them (Review of electronic student records).

### **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 (34 CFR §§300.101 and .320).

The public agency must ensure that the IEP is reviewed at least annually in order to determine whether the student is making sufficient progress towards achievement of the annual IEP goals.

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In addition, the IEP team must review and revise, as appropriate, the IEP to address lack of expected progress, information from the student's parents, and the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts, #1-6, the MSDE finds that although the IEP included the same goals for several years, the IEP team did not review and revise the student's IEP during the IEP team meetings. Further, based on the Finding of Fact #7, the MSDE finds that violations have occurred with respect to similarly situated students at XXXXXXXXXXXXXXXX. Therefore, the MSDE finds that violations occurred with respect to this allegation.

**ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION**

**FINDINGS OF FACTS:**

8. The student's IEP, developed on October 6, 2015, requires that the student receive instruction outside of the general education setting. The student's goals require that the student be exposed to "curriculum-based-texts" and "grade-level phonics" (Docs. a-d)
9. There is documentation that the student received instruction on her goals and objectives, as well as grade level content outside of the general education setting from the beginning of the 2016-2017 school year to April 2017 (Doc. h).

**DISCUSSION/CONCLUSIONS:**

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

Based on Findings of Facts #8 and #9, the MSDE finds that there is documentation that the student was provided with the instruction required by her IEP. Therefore, this office does not find that a violation occurred with respect to this allegation.

**ALLEGATION #3: RESPONSE TO REQUEST FOR IEP TEAM MEETING**

**FINDING OF FACT:**

10. On January 4, 2017, the complainant requested an IEP team meeting to "talk about placement and transition to middle school" (Doc. i).
11. The IEP team did not convene until April 20, 2017, and there is no documented basis for the delay in scheduling the meeting (Doc. e).

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**DISCUSSION/CONCLUSIONS:**

In addition to reviewing the IEP at least annually, the public agency must ensure that the IEP team reviews and revises, as appropriate, the IEP to address any information from the parent (34 CFR §300.324). Therefore, if a parent requests an IEP team meeting and the public agency refuses to convene the IEP team to consider parent concerns, it must provide proper written notice to the parent of the basis for the refusal within a reasonable time (34 CFR §300.503).

In this case, the complainant alleges that the school staff did not convene an IEP team meeting in a timely manner in response to her request. Based on the Findings of Facts, #10 and #11, the MSDE finds that there was a delay in scheduling an IEP team meeting to discuss the student's placement. Therefore, this office finds that a violation occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the BCPS to provide documentation by August 30, 2017 that the IEP team has determined the compensatory services necessary to remediate the violations found in this letter.

**School-Based/Similarly Situated Students**

The MSDE requires the BCPS to provide documentation by August 30, 2017 of the steps that have been taken to ensure XXXXXXXXXXXXXXXXXXXX staff follow proper procedures for reviewing and revising the IEP to address the lack of expected progress and for convening the IEP team to address parent concerns. 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 reoccur.

Furthermore, the MSDE requires that the BCPS conduct a review of student records at XXXX XXXXXXXXXXXXXXXX to identify the students for whom similar violations may have occurred. In particular, the BCPS must identify other students for whom goals and objectives were developed and continued for multiple years, while "sufficient progress" was made to meet the goal within a year. For each student identified, the BCPS must ensure that an IEP team reviews and revises the goals, as appropriate, and determines whether the violation negatively impacted the student's ability to benefit from the educational program. In each case where a negative impact is found, the IEP team must also determine the compensatory services required to remedy the violation.

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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**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 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: Sonja Brookins Santelises  
Diana Wyles  
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Dori Wilson  
Anita Mandis  
Gerald Loiacono  
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