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October 6, 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: XXXX
Reference: #18-004

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.

ALLEGATION:

On July 17, 2017,¹ the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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.

¹ On August 8, 2017, the MSDE informed the parties, in writing, that the State complaint investigation was being held in abeyance because the complainant had filed a due process complaint to resolve the allegation identified for investigation. On August 29, 2017, the MSDE informed the parties that this office was proceeding with the State complaint investigation as a result of the complainant’s withdrawal of the due process complaint.

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The MSDE investigated the allegation that the BCPS did not follow proper procedures when determining the student's educational placement since July 2016,² in accordance with 34 CFR §§300.114 - .117.

BACKGROUND:

The student is seven (7) years old, is identified as a student with Autism under the IDEA, and has an IEP that requires the provision of special education instruction and related services. The student attends XXXXXXXXXXXXXXXX.

FINDINGS OF FACTS:

1. The educational placement that was in effect in July 2016 was made by the Individualized Education Program (IEP) team on May 16, 2016. The IEP team has subsequently determined the educational placement on October 13, 2016, February 13, 2017, April 6, 2017, and May 8, 2017. There is documentation that, at each of these IEP team meetings, the team considered assessment data, information from the student's teachers, and input from the complainant. At each IEP team meeting, the team determined that, with the provision of supplementary aids and supports, the Least Restrictive Environment (LRE) in which the IEP can be implemented is a separate special education classroom with a program that is designed to address the needs demonstrated by the student.
2. At the May 8, 2017 IEP team meeting, the complainant requested that the BCPS provide the student with a residential placement due to her concern about addressing his behavior at home. There is documentation that the IEP team denied the request based on information from the school staff that they are able to successfully implement the IEP in the less restrictive setting of a separate special education classroom. The IEP team's decision was consistent with the data, including reports that the student is making sufficient progress towards achievement of the annual goals and that he is performing at grade level in some areas. There is documentation that the IEP team discussed various sources of community-based support for the complainant.³

² The complainant alleged that the violation occurred since 2009. She was informed, in writing, that the State complaint investigation procedure may only be used to resolve allegations of violations that occurred within one year of the date of the filing of the State complaint (34 CFR §300.153).

³ The complainant is currently receiving services through the Maryland Department of Health, the Maryland Developmental Disabilities Administration, and the XXXXXXXXXXXXXXXX. She is on the waiting list for Maryland's Autism Medicaid Waiver, which allows eligible children with Autism to receive services, such as respite care and family training, to maintain them in their home and community (www.marylandpublicschools.org).

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DISCUSSION/CONCLUSIONS:

Each student's educational placement must be made by the IEP team in conformity with the requirement that, to the maximum extent appropriate, students with disabilities, including those in public or private institutions or other care facilities, are educated with nondisabled students. This is the requirement to ensure that the IEP is implemented in the LRE. Each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities, including instruction in regular class and special classes. Placement in a residential setting is considered one of the most restrictive environments along the continuum of placements (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

The removal of a student with a disability from the regular educational environment may occur only if the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved (34 CFR §300.114). In selecting the LRE, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs. The placement must be made in conformity with the LRE requirements, must be based on the IEP, and must be as close as possible to the student's home. Unless the student requires some other arrangement, the student must be educated in the school that he or she would attend if not disabled (34 CFR §300.116).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainant alleges that the student requires a residential placement in order to access instruction.

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Based on the Findings of Facts above, the MSDE finds that there is documentation that the IEP team considered the required data and made decisions that were consistent with the data. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

ADDITIONAL DISCUSSION:

The MSDE understands that the complainant disagrees with the IEP team's decisions, and that she was unsuccessful in an attempt to resolve the matter with the school system informally. The complainant is reminded that she maintains the right to file a due process complaint regarding the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) for the student, including issues subject to this State complaint investigation.

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 available during the complaint investigation and there must be a substantial reason why it was not provided during the investigation.

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. Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:am

c: Sonja Brookins Santelises
Darnell L. Henderson
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Anita Mandis
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