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State Superintendent of Schools

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March 2, 2018

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

RE: XXXXX  
Reference: #18-070

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 January 2, 2018, the MSDE received a complaint from XXXXXXXXXX hereafter, “the complainant,” on behalf of his son, the above-referenced student. In that correspondence, the complainant alleged that 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 develop an Individualized Education Program (IEP) that addresses the student’s academic and behavioral needs since January 2, 2017, in accordance with 34 CFR §300.324.

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2. The BCPS did not follow proper procedures when disciplinarily removing the student from school since January 2, 2017, in accordance with 34 CFR §§300.530 – 300.536, COMAR 13A.08.03, and COMAR 13A.05.01.10.
3. The BCPS did not provide access to the student's educational record when requested in May, 2017, in accordance with 34 CFR §§300.501 and .613.

**BACKGROUND:**

The student is fifteen (15) years old, is identified as a student with an Other Health Impairment under the IDEA, due to an Attention Deficit with Hyperactivity Disorder (ADHD) and has an IEP that requires the provision of special education and related services.

At the start of the 2017-2018 school year, the student attended XXXXXXXXXXXX: XXXXXX. XXXXXXXX. On January 26, 2018, the student was transferred by parent choice to XXXXX XXXXXXXXXXXXXXXXXXXXXXXX (XXXXX). However, he has only attended Carver five (5) school days because he has been hospitalized.

During the period of time addressed by this investigation, the complainant participated in the educational decision-making process and was provided with notice of the procedural safeguards.

**ALLEGATIONS #1 AND #2: IEP THAT ADDRESSES ACADEMIC, SOCIAL, EMOTIONAL AND BEHAVIORAL NEEDS**

**FINDINGS OF FACTS:**

1. The IEP in effect in January 2017 was developed by the IEP team on June 15, 2016. The IEP included annual goals for the student to increase management of his behavior, use coping strategies to manage the stressors within school, increase his tolerance to academic challenges and improve the way in which he deals with his perceived perceptions of others. There were also academic goals to improve his math calculation skills and to increase his written language output consistent with the needs identified for the student.
2. The accommodations included a human reader to assist the student with understanding directions, extended time and reduced distractions. The IEP required that the student be provided with frequent feedback, done in private, monitoring of independent work, checking for understanding, breaking down assignments into smaller units, allowing open book tests, a home-school communication system and a weekly opportunity to build a relationship with adult support. The IEP also required that the student be provided with special education instruction on how to manage stressful situations and use strategies to identify the causes of his anger and frustration to minimize the impact his emotional outbursts have within the classroom.

3. The IEP required the provision of psychological services for thirty (30) minutes per week to assist the student in achieving the annual IEP behavioral goals. The IEP also required the provision of classroom instruction for eighteen (18) hours per week to assist the student in achieving his academic goals.

#### **IEP Team Meeting February 16, 2017**

4. The IEP team convened on February 16, 2017, to revise the IEP. The teacher's reports reflect that the student continued having difficulty completing and turning in assignments. They also reflect that the student demonstrated low frustration tolerance with academic challenges, and difficulty with authority, that he acts out when he feels challenged by authority and does not attend all classes regularly even though the IEP team reports that "he attends school nearly every day."
5. The complainant expressed concerns about whether the student's IEP was being implemented, whether teachers were able to deal effectively with the student's behavioral needs and his need to be informed when the student "skipped" classes. The complainant stated that the student was meeting with a private therapist about his behavior and provided the IEP team with a letter detailing the private psychologist's five years' summary of working with the student along with recommendations based on the sessions and private evaluation. The private physician recommended the student receive his education at a school that offers a school wide behavior management system, one-to-one assistance during transitions, support with initiating tasks, adult monitoring during unstructured times, consistent auditing of the student's compliance with conduct codes, a resource room, psychiatric consultation, individual psychotherapy, group therapy, a crisis room and crisis intervention when the student is unable to control his behavior.
6. The IEP team decided to continue the text chain<sup>1</sup> as a way to communicate the student's absences to the complainant. The IEP team added preferential seating, and psychological and instructional consultation for teachers to collaborate about the student's behavioral needs and the provision of non-verbal signals for the student to seek assistance. However, direct psychological services were reduced from thirty (30) minutes per week to one (1) hour per month without explanation, and there is no documentation of the IEP team's consideration of the need for the services recommended in the private assessment.

#### **IEP Team Meeting September 8, 2017**

7. On September 8, 2017, the IEP team convened to review the student's progress. The complainant expressed concerns about the student's failure since his first ninth grade year

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<sup>1</sup> The text chain is a series of texts by school staff to the complainant to inform him of the student's absences. These texts are also logged into the parent contact log on IEP online at (<https://iep.online-iep.com/maryland/>).

at the school, the large size of his classes, and the lack of emotional and personal connections made between his son and his teachers. The complainant shared that the student receives private medical management every six (6) months, attends a psychiatric rehabilitation program two to three times per month and family counseling weekly. The complainant requested that the IEP team review the student's IEP, consider adding the recommendations from the private therapist's report and consider the appropriateness of the student's educational program and placement.

8. At the September 8, 2017 IEP team meeting, the special education teacher reported that the behaviors the student exhibited included putting his feet on the desk, writing on tables, tearing up work and throwing it on the floor, throwing things across the room to his friends, elopement from class and leaving the school building without permission.
9. The IEP team decided to reevaluate the student's cognitive, psychological, and educational present functioning.

#### **IEP Team Meeting October 31, 2017**

10. From October 9 through 31, 2017, the student was disciplinarily removed from school, for a total of eleven (11) school days. The student was not provided with the special education services after the tenth day of disciplinary removal.
11. On October 31, 2017, the IEP team convened. At that meeting, the complainant expressed concerns about the student not receiving enough special education support within the classes. He stated that the student reported feeling overwhelmed and was not interested in the arts curriculum that was featured at this high school.
12. The documentation of the October 31, 2017 IEP team meeting states that the student's teachers reported that "the student throws objects across the room at friends, uses his phone in class, walks out of the classroom without permission, arrives late to class or not at all, refuses to complete classwork, uses profanity toward staff members, loses his temper easily, argues with adults and is unresponsive to adults efforts to assist him in deescalating." It also states that "his teachers all describe him as a very capable student but it is difficult to get him to produce in class because of these behaviors." The teachers also reported that the student's "inappropriate phone usage in class is the most significant source of outbursts, power struggles, blatant disrespect and distractions within class."
13. The results of the psychological assessment report that was considered at the October 31, 2017 IEP team meeting, indicates the student's cognitive results were consistent with previous assessments. The school psychologist reported that the assessment data does not indicate an emotional disability, but does reflect significant difficulty with executive functioning, impulsivity, planning ahead, following directions, maintaining attention and focus for sustained periods of time, frustration tolerance, and deescalating his emotions.

14. The recommendations contained in the assessment reports included to provide frequent check-ins, using proximity, and prompting to begin his work. They also included the provision of short frequent breaks, clear, firm limits for classroom breaks, and positive feedback. They further included the provision of a few items at a time to complete to help with the student's compliance and focusing, limitation of access to his phone during class time, and incorporation of some of the student's interests into the instruction to increase his motivation and engagement.
15. The IEP team reviewed the student's Behavior Intervention Plan (BIP) and determined that the plan was relevant for the student's current behaviors and stated that the strategies also remain relevant.
16. The IEP team revised the IEP to add suggestions from the student's private therapist which included having the student use process charts, assessment choices, and chunking of tests. The student's written language goal was revised to reflect his current organizational needs. However, the IEP team reduced the amount of special education services from eighteen (18) hours per week to three (3) hours per week without a documented basis for the reduction in special education hours.
17. At the IEP team meeting the student expressed his disdain for the school and his intention to attend a school with sports teams. The IEP team stated their agreement that the school "was not a good fit" and that transfer options would be explored with the complainant.

**IEP Team Meetings November 8, 2017, December 5, 2017 and January 12, 2018**

18. On November 8, 2017, December 5, 2017 and January 12, 2018, the IEP team convened and determined that the behavioral incidences which resulted in disciplinary removals from school on those dates were a manifestation of his disability.
19. Between November 2, 2017 and January 8, 2018, the student was disciplinarily removed from school for ten (10) school days, totaling twenty-one (21) school days for the 2017-2018 school year.
20. The IEP team determined that a work packet to be completed at home would address the student's instructional needs and provide him with a Free and Appropriate Public Education (FAPE) during his disciplinary removals.
21. On November 8, 2017, the IEP team met and school staff reported that "they attempted to implement the BIP on November 2, 2017, the day of the incident, but the student refused to comply." The IEP team proposed to continue to implement the BIP stating that it

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addressed the behavioral needs of the student. There is no documentation of when the student's behavior is not able to be sufficiently addressed by the school staff, except when the student's behavior results in disciplinary action.

22. The IEP team determined that the student's behavior was a manifestation of the student's disability. On the student log of disciplinary actions, the documented number of days the student was disciplinarily removed was fifteen (15) instead of twenty-one (21).
23. On January 24, 2018, the report of the student's progress towards achievement of the annual IEP goals, reflects that because of his lack of class attendance the student's progress was not able to be measured.

### **DISCUSSION/CONCLUSIONS:**

#### **Allegation #1: IEP that Addressed Academic, Social, Emotional and Behavioral Needs**

Based on the Findings of Facts #15, #21 and #23, there is no documentation that the IEP team reviewed and revised the BIP to address the student's interfering behavior of not attending school regularly or positive behavioral interventions to address the behavior which interfered with his ability to access special education instruction on a regular basis since January 2, 2017, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #1 - #3, #4, #6, #14, #16, and #23, this office finds that the IEP has included goals to address the student's math calculations and written language expression needs. However, there is no documentation that the decisions to decrease special education services is consistent with the data, in accordance with 34 CFR §300.324.

Based on the Findings of Facts #5, #7, and #11, the MSDE also finds that the BCPS did not ensure that the IEP team considered all of the complainants' requests for more special education support, reconsideration of placement, and a more structured environment, in accordance with 34 CFR §300.324. As a result, this office finds that violations occurred with respect to this allegation.

#### **Allegation #2: Proper Procedures during Disciplinarily Removals**

Based on the Findings of Facts #10, #15, and #18 - #22, the MSDE finds that the student was not provided with the disciplinary protections after the tenth day of removal, in accordance with 34 CFR §§300.530 – .536. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #3: ACCESS TO THE STUDENT'S EDUCATIONAL RECORD**

**FINDINGS OF FACTS:**

24. There is documentation that the complainant requested access to the student's educational record on April 26, 2017 and February 27, 2018.
25. There is no documentation that the BCPS responded to the complainant's requests to access the student's record.
26. There have been six (6) IEP team meetings held since the complainant made the initial request.

**DISCUSSION/CONCLUSIONS:**

Based on the Findings of Facts #24 - #26, the MSDE finds that there is no documentation that the school system responded to the complainant's request for access to the student's educational record without unnecessary delay to allow his full participation in the IEP team meetings, in accordance with 34 CFR §§300.501 and .613. 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 April 1, 2018 that the school system has provided the complainant with access to the student's record.

The MSDE requires the BCPS to provide documentation by May 1, 2018 that the IEP team has taken the following actions:

- a) Considered the complainant's concerns about the student's education;
- b) Reviewed and revised the IEP to address the student's needs, consistent with the data;
- c) Determined the levels of functioning and performance that were expected to have been demonstrated by that time;
- d) Determined the services needed to remediate the violations identified in this investigation; and
- e) Developed a plan for the implementation of the services within one (1) year of the date of this Letter of Findings.

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

### **School-Based**

The MSDE requires the BCPS to provide documentation by June 1, 2018 of the steps taken to ensure that the XXXXXXXXXXXXXXXXXXXXXXXXXXXX staff follow proper procedures for IEP development and the provision of disciplinary protections after the tenth day of removal in a school year.

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 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 be accompanied by a substantial explanation of why it was not provided 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 parent 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

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