



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

April 24, 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: #18-117

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 March 5, 2018, the MSDE received a complaint from Ms. XXXXXXXXXXXXXXXXXXXX, 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 allegation that the BCPS has not ensured that the student has had an Individualized Education Program (IEP) that addresses her academic, functional, and social, emotional, and behavioral needs since March 2017,<sup>1</sup> in accordance with 34 CFR §§300.101 and .324 and Md. Code Ann., Educ. §8-405.

<sup>1</sup> The complainant alleged that the violation occurred prior to this time period, and 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).

**BACKGROUND:**

The student is ten (10) years old, is identified as a student with an Intellectual Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services.

At the start of the time period covered by this investigation the student attended XXXXXXXX  
XXXXXXXXXXXXXXXXXXXX. During the time period covered by this investigation, the student and her family moved and she is currently attending XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

**FINDINGS OF FACTS:**

**February 14, 2017 IEP Team Meeting**

1. On February 14, 2017, the IEP team at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX conducted a reevaluation. The documentation of the meeting reflects that the team decided that the student continues to meet the criteria for identification as a student with an Intellectual Disability under the IDEA, finding that her “educational scores are consistent with her cognitive ability” and her adaptive scores are in the “extremely low range.” The team decided that the student has a significant cognitive disability and will receive instruction and assessment on alternate academic achievement standards. However, while adaptive behavior scores were obtained through the last cognitive assessment that was administered in 2012, no standard cognitive score was obtained through that assessment because the student was unable to complete the tests. The team did not document any other the source of the data upon which the student’s cognitive ability was determined. In addition, the IEP includes no information about the student’s functional skills.
2. At the February 14, 2017 IEP team meeting, the team revised the IEP. The student’s present levels of performance were reported based on educational assessments conducted in October 2012 and March 2015 and reports of the student’s classroom performance as follows:
  - a. The student, who was in the fourth (4<sup>th</sup>) grade, was performing at the mid-kindergarten level in early literacy and at the kindergarten level in pre-writing skills.
  - b. The student was working on improving speech/language skills by being able to describe items using a visual prompt or organizer, answer simple “wh” questions, re-tell a four (4) part story, and know to raise her hand and say “excuse me.”

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- c. The student was working on improving her ability to stay in her seat and remain focused on tasks, and to decrease wandering off.
3. While the February 14, 2017 IEP states that the student was determined to be performing at the mid-kindergarten level in math calculation, the reevaluation form states that the student was performing at the early first (1<sup>st</sup>) grade level.
4. The February 14, 2017 IEP states that the student, who was receiving speech/language therapy as a related service, made good progress with taking turns, knowing to raise her hand and say “excuse me,” and decreasing her volume with minimal cues. Based on this information, the IEP team found that pragmatic language was not an area that impacts the student’s academic achievement and functional performance. However, the team found that the student continued to have needs in the area of expressive language.
5. The February 14, 2017 IEP included goals for the student to do the following:
  - a. Create and utilize objects to add, subtract, and multiply.
  - b. Produce complete sentences to describe pictures and answer questions.
  - c. Recall and discuss events read in grade level text.
  - d. Produce a written product that includes descriptive sentences and a concluding statement.
  - e. Follow behavioral rules within the school community.
6. The February 14, 2017 IEP required that the student be provided with special education instruction and related speech/language therapy services in a separate special education classroom to assist her with achieving the goals. It also required that the student be provided with advance preparation for schedule changes, reinforcement of positive behavior, use of manipulatives, checks for understanding, a picture schedule, extended time to complete tasks, frequent breaks, reduced distractions during instruction and testing, verbatim reading of tests, a calculator, visual cues, and visual organizers to assist her with comprehending content skills taught.
7. On June 13, 2017, reports were made on the student’s progress towards achieving the early literacy, pre-writing, and math calculation goals. All of the reports state that the student was making sufficient progress to achieve the goals by February 13, 2018. However, the report of the student’s progress on the early literacy goal states that the student “is able to add within 20 given moderate verbal and gestural support, to solve a given equation,” which was the skill to be addressed in the math goal.

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8. On November 22, 2017, reports were made on the student's progress towards achieving the early literacy, pre-writing, and math calculation goals. All of the reports state that the student was making sufficient progress to achieve the goals by February 13, 2018. While the goal to improve early literacy skills required her to discuss events and conflicts within grade level text, the report of the student's progress on the goal states that the student was currently working on identifying the conflict "within an instructional level story, or text."

### **December 19, 2017 IEP Team Meeting**

9. On December 19, 2017, the IEP team at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX convened. The written summary of the meeting states that the student had attended the school for less than one (1) month at that time. The IEP states that the purpose of the meeting was to "discuss IEP progress and determine [the student's] current level of academic and functional performance."
10. The December 19, 2017 IEP states that the speech/language therapist reported that the student had made "excellent progress" since arriving at the school, had met her speech/language goal, and was "able to carry these skills over to the classroom setting." The speech/language therapist further reported that the student's language skills were "at expected levels" and that the student was able to communicate effectively in the educational setting.
11. The December 19, 2017 IEP reflects that the student was performing at the same academic levels as reported in February 2017. The IEP team documented that the student's poor attention span, lack of retention of information, incomplete mastery of basic facts, inability to understand abstract concepts/materials, poor listening comprehension, difficulty with generalization, poor processing skills, and difficulty sequencing were interfering with her ability to acquire and retain new skills. However, at the time of the December 19, 2017 IEP team meeting, the student was reportedly making sufficient progress to achieve all of the annual IEP goals by February 13, 2018.
12. With respect to the student's social, emotional, and behavioral functioning, the December 19, 2017 IEP states the following:

Since the time of her last IEP, [the student] has demonstrated remarkable behavioral growth. She has internalized the classroom based incentive system to the point that at least 80% of the time she needs no [1] to 1 prompt to follow basic classroom rules. As well, [the student] is able to follow rules during resource and stay perfectly with the line during transition. [The student] has matured considerably in the past year in the area of social emotion and behavioral development.

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13. At the December 19, 2017 IEP team meeting, the team decided to discontinue the speech/language goal and services and to continue the remaining goals as written.
14. There is documentation that at the December 19, 2017 meeting, the student's mother raised concern that the student be provided with instruction that will enable her to pursue a Maryland High School Diploma. However, there is no documentation that the IEP team considered the concern.

### **January 19, 2018 IEP Team Meeting**

15. On January 19, 2018, the IEP team at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX reconvened to conduct a reevaluation and review the IEP. At the meeting, the team determined that, based on a February 13, 2017 educational assessment and classroom-based data, the student was performing at the same levels in reading, writing, and math, as she was using the October 2012 and March 2015 assessment data. At that time, the IEP team recommended that cognitive and educational assessments be conducted.
16. At the January 19, 2018 IEP team meeting, the team revised the IEP to include a new goal to improve reading phonics by January 18, 2019. It also revised the reading comprehension goal for the student to demonstrate understanding of key details using grade level text with 80% accuracy by January 18, 2019.
17. At the January 19, 2018 IEP team meeting, the team added a math problem solving goal for the student to solve one (1) step word problems requiring two (2) operations by January 18, 2019. The math calculation goal was revised for the student to understand that the three digits of a three-digit number represent amounts of hundreds, tens, and ones by comping and decomposing numbers from twenty (20) to fifty (5) into ten (10) ones (1s) and counting to 200 by January 18, 2019.
18. At the January 19, 2018 IEP team meeting, the team developed a written language mechanics goal for the student to increase her writing skills to the mid-second grade level by January 18, 2019.
19. The social, emotional, and behavioral goal was discontinued based on the December 19, 2017 report of the student's functioning in this area and the IEP continued to reflect that the student would receive instruction and assessment on alternate academic achievement standards despite the mother's stated objection.

**April 12, 2018 IEP Team Meeting**

20. On April 12, 2018, the IEP team at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXX convened to consider the results of assessments that were recommended on  
January 19, 2018 and the concerns raised by the complainant through the State complaint.  
At the meeting, the team considered the report of the cognitive assessment that states that  
the student's overall thinking and learning ability is in the "extremely low range," and  
that she is likely to have significant difficulty learning and maintaining grade level skills,  
especially on tasks involving verbal comprehension and working memory.
21. Based on the data, the student was identified as having functional needs in the area of  
reacting appropriately to emergency and dangerous situations and people. She was  
identified with weaknesses in insight, judgment and problem-solving skills needed to  
understand the behavior that is expected in a given situation and to make changes to her  
behavior based on how others react.
22. The IEP team considered the concerns of the student's parents about the student being  
provided with instruction and assessment on alternate academic achievement standards.  
The team determined that the student has a significant cognitive disability, is learning  
content derived from the Maryland College and Career Ready Standards, and requires  
extensive, direct, repeated, and individualized instruction and substantial support to  
achieve measureable gains in the grade and age appropriate curriculum. The school-  
based members of the team reported that it will be difficult for the student to meet the  
requirements for earning a Maryland High School Diploma given her needs, and the  
student's father provided written consent for the provision of instruction and assessment  
on alternate academic achievement standards.
23. The IEP team also considered information that the student was experiencing chronic  
absenteeism, and decided that the student will be provided with incentives for school  
attendance.
24. The student's mother expressed concern about the student not being sent home with  
homework on a consistent basis. The teacher reported that no homework was assigned  
during the previous week due to testing. The team decided that the teacher and parents  
would use a daily journal that logs behavior and the homework that is required.
25. The team considered concerns of the student's parents about the student's self-esteem  
that they have observed at home. Based on the school staff's report that the student  
exhibits appropriate social skills, self-esteem, and social behavior during the school day,  
the team did not identify needs in this area.

26. Based on the data, the team added goals for the student to improve school attendance and community living and safety skills and determined that the academic goals developed on January 19, 2018 remain appropriate. However, the team also determined that the student's IEP had not previously addressed her academic, functional, and social, emotional, behavioral needs and as a result had been denied a FAPE. The team decided that the student would be provided with tutoring in reading and writing as compensatory services.

**CONCLUSIONS:**

Based on the Findings of Facts #1 - #26, the MSDE finds that the BCPS did not ensure that the student was provided with a FAPE from March 2017 until April 12, 2018, in accordance with 34 CFR §§300.101 and .324 and Md. Code Ann., Educ. §8-405.

Notwithstanding the violation, based on the Findings of Facts #20 - #26, this office finds that the IEP has been revised to address the student's needs and the school system has taken appropriate steps to remediate the violation. Therefore, no additional student-specific corrective action is required.

**CORRECTIVE ACTIONS/TIMELINES:**

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

The MSDE requires the BCPS to provide documentation by the start of the 2018-2019 school year of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXXXXX staff properly implements the following requirements:

1. That present levels of performance are clearly stated and supported by data.
2. That all needs arising out of a student's disability are addressed through the IEP.
3. That each student's progress towards achievement of the annual IEP goals is measured consistent with the IEP goals and that reports of the progress on all IEP goals are made to parents in accordance with the IEP.
4. That students are not identified for instruction and assessment on alternate academic standards without parental consent or a due process hearing decision that permits such identification.

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 recur.

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The MSDE requires the BCPS to provide documentation by the start of the 2018-2019 school year of the steps it has taken to ensure that XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX staff properly implements the following requirements:

1. That present levels of performance are clearly stated and supported by data.
2. That all needs arising out of a student's disability are addressed through the IEP.
3. That students are not identified for instruction and assessment on alternate academic standards without parental consent or a due process hearing decision that permits such identification.

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 recur.

**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Pries, Compliance Specialist, MSDE, at (410) 767-7770.

Please be advised that the parties 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 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



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IDEA. 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:am

c: Sonja Brookins Santelises  
Allen Perrigan  
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