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Interim State Superintendent of Schools

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November 28, 2011

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Dr. Kim Lewis
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue
Baltimore, Maryland 21202

Dr. Kim Hoffman
Director, Data Monitoring and Compliance
Baltimore City Public Schools
200 East North Avenue
Baltimore, Maryland 21202

RE: XXXXX
Reference: #12-024

Dear Parties:

The Maryland State Department of Education, Division of Special Education/Early Intervention Services (MSDE), 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 October 6, 2011, the MSDE received a complaint from Mr. XXXXXXXX and Mrs. XXXXXXXX, hereafter, “the complainants,” on behalf of their son. In that correspondence, the complainants 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. This office investigated the allegation that the BCPS has not ensured that the student has been provided with the transportation services required by the Individualized Education Program (IEP) since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.

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2. On October 7, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the student's father by telephone and clarified the allegation to be investigated.
3. On October 11, 2011, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Lewis, Executive Director, Special Education; BCPS Dr. Kim Hoffman, Director, Data Monitoring and Compliance, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
4. On October 12, 2011, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE sent a copy of the complaint and the identified allegation, via facsimile, to Dr. Lewis, Dr. Hoffman, and Ms. Ruley.
5. On October 20, 2011 and November 4, 2011, Ms. Moyo conducted telephone interviews with the student's father regarding the allegation being investigated.
6. On October 21, 2011, Ms. Moyo, Mrs. Martha J. Arthur, Education Program Specialist, MSDE, Ms. Christine Hartman, Education Program Specialist, MSDE, and Ms. Tyra Williams, Education Program Specialist, MSDE conducted a site visit at BCPS Central Office and interviewed the following staff:
 - a. Mr. J. Keith Scroggins, Chief Operations Officer, BCPS;
 - b. Mr. John Land, Deputy Chief Operations Officer, BCPS;
 - c. Mr. Francis Aning, Manager of Routing and Scheduling, BCPS; and
 - e. Mr. Ayodeji Olubusi, Graduate Intern, BCPS.

Ms. Tiffany Puckett, Associate Legal Counsel, BCPS, Dr. Hoffman, and Ms. Nancy Feely, State Superintendent's Designee, MSDE, attended the site visit. Ms. Puckett and Dr. Hoffman were available to provide information regarding the BCPS policies and procedures, as required.

7. On November 3, 2011, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
 - a. Dr. XXXXXXXXX, Special Education Coordinator; and
 - b. Ms. XXXXXXXXX, Transportation Coordinator.

Ms. Ruley attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed. On the same date, the BCPS staff provided the MSDE staff with documentation regarding the allegation being investigated.

8. On November 10, 2011, Ms. Moyo conducted a telephone interview with staff at the Maryland Public Service Commission regarding the certification process for taxicab drivers.
9. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated September 10, 2010;
 - b. The BCPS School Bus Personnel Transportation Manual, issued August 2011;
 - c. Electronic mail correspondence between school staff and the BCPS Office of Transportation staff, dated August 29, 2011;
 - d. Excerpts from the bus student attendance roster from August 31, 2011 to September 12, 2011;
 - e. IEP, dated September 9, 2011;
 - f. Transportation service provider arrival and departure sign-in log from September 12, 2011 to October 31, 2011;
 - g. Taxicab transportation vouchers from September 14, 2011 to September 30, 2011;
 - h. The complainant's correspondence to MSDE, received October 6, 2011;
 - i. The BCPS instructional bell schedule for the 2011-2012 school year;
 - j. The student's school attendance logs for the 2011-2012 school year;
 - k. Transportation routing report for the 2011-2012 school year;
 - l. Taxicab driver certification issued by the BCPS Department of Pupil Transportation Safety Office;
 - m. The State of Maryland Public Service Commission "for hire" application requirements; and
 - n. Certificate of Perfect Attendance from the first quarter of the 2011-2012 school year.

BACKGROUND:

The student is fifteen (15) years old and attends the Baltimore Freedom Academy, a BCPS charter school, where he receives instruction in a life skills program. He is identified as a student with an intellectual disability under the IDEA, and receives special education instruction and related services. During the period of time covered by this investigation, the complainants participated in the educational decision-making process and were provided with notice of the procedural safeguards, as required (Docs. a, e, h, and j).

FINDINGS OF FACTS:

1. The IEP that was in effect at the start of the 2011-2012 school year is dated September 10, 2010 and requires that the student be provided with transportation services to and from school by the "yellow school bus," on a daily basis. The IEP document indicates that when the team determined the student's transportation services, it considered the nature of the student's disability and the time and distance involved in transporting him to and from school (Doc. a).
2. The student's school day begins at 8:30 am and ends at 3:20 pm (Docs. i, k, and interview with school staff).

3. On August 26, 2011, the complainants were provided with information, in writing, from the BCPS regarding the transportation services to be provided at the start of the 2011-2012 school year. A review of the BCPS Transportation Office routing report indicates that the student was scheduled to be picked-up at home by bus at 6:41 am and dropped-off at home by bus at 5:04 pm (Doc. k and interview with the student's father).
4. On August 29, 2011, the school's transportation coordinator contacted staff at the BCPS Transportation Office to inform them that the complainants had contacted the school and expressed their concern regarding the length of the student's scheduled bus ride (Doc. c and interview with school staff).
5. There is documentation that at the start of the school year the bus arrived each morning at the student's home to transport him to school. However, the complainants did not accept the transportation services due to the length of the scheduled bus ride and did not send the student to school (Docs. d, h, j, and interviews with the student's father and school staff).
6. On September 9, 2011, the IEP team met and determined that the student cannot "tolerate lengthy bus rides (no more than forty-five (45) minutes)" due to, among other things, his irritability and short attention span. As a result, the team determined that the student would be transported to and from school each day by taxicab service (Doc. e).
7. The student has been provided with taxicab service since September 14, 2011¹, when he began attending school. The BCPS Transportation Office staff report that they require documentation that all taxicab drivers who transport students are certified by the Maryland Public Service Commission (PSC) as qualified taxicab drivers² (Docs. b, f, l, and interviews with the BCPS Transportation Office staff, school staff, and the student's father).
8. The BCPS provided documentation of the assigned taxicab driver's BCPS in-service certification form, including the driver's PSC number (Doc. l).
9. Taxicab vouchers are used to document the provision of transportation services and include information such as the name of the driver, the PSC number, and the date of service (Doc. g and interviews with the student's father and BCPS staff).
10. The taxicab vouchers provided by the BCPS to document the provision of transportation services to this student contain two different PSC numbers and neither of the PSC numbers included on the taxicab vouchers is consistent with the PSC number listed on the assigned driver's PSC certification. There is no other information on the taxicab vouchers that can be used to verify that the driver who actually transported the student was the driver who was assigned to transport the student (Docs. g and l).

¹The student's father has also expressed the concern that on October 7, 2011, the student was awarded a Certificate of Perfect Attendance for his attendance since the start of the 2011-2012 school year, despite the fact that he did not begin attending school until September 14, 2011. School staff report that the certificate was provided to all the students in his class as a positive reinforcement for school attendance and is not an official record. The official attendance record maintained by the school reflects the student's actual school attendance since the start of the school year (Docs. h, j, n, and interviews with school staff and the student's father).

² Once a taxicab driver is certified by the PSC, the driver is issued an individual PSC number (Doc. m and interview with PSC staff).

11. While school staff have maintained documentation of when the student is dropped off and picked up from school each day, there is no documentation of the length of the student's taxicab ride to and from school each day (Doc. f and review of the education record).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction, related services and accommodations, including transportation services, required by the IEP (34 CFR §300.101 and .323). In this case, the complainants assert that more than one (1) taxicab driver has transported the student. They allege that the BCPS has not ensured that each taxicab driver who has transported the student has been qualified, and as a result, the student has not consistently been provided with transportation services in accordance with the requirements of the IEP (Doc. h and interview with the student's father).

Based on the Findings of Facts #1 - #5, the MSDE finds that from the start of the 2011-2012 school year until September 12, 2011, transportation services were made available to the student by bus, in accordance with the IEP, but the complainants did not accept the services. Therefore, the MSDE does not find that a violation occurred with regard to this time period.

However, based on the Findings of Facts #6 - #10, the MSDE finds that there is no documentation that the taxicab drivers who transported the student have been certified by the PSC since the initiation of taxicab services. Based on the Finding of Fact #11, the MSDE further finds that the BCPS has not ensured that the length of time of the student's commute has been consistent with the requirements of the IEP. Therefore, the MSDE finds that a violation has occurred since September 14, 2011.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the BCPS to provide documentation by January 31, 2012 that steps have been taken to ensure that the taxicab drivers for the student and all the BCPS students with disabilities are qualified to provide transportation services and that taxicab services are provided consistent with each student's IEP.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring is being informed of the violations identified through this investigation for use in its future monitoring for continuous improvement activities. Documentation of completion of the required actions is to be submitted to this office to the attention of Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the complainants and the school system have the right to submit additional written documentation to this office which must be received within fifteen (15) days of the date of this letter if they disagree with the findings of facts 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 consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings of facts, conclusions, and corrective actions contained in this Letter of Findings 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 free appropriate public education for the student, including issues subject to a State complaint investigation, in accordance with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

MEF/km

cc: Andrés Alonso
Nancy Ruley
Francis Aning
Erin Leff
Glenn Johnson
William Fields
Noel L. Green
Dori Wilson
Anita Mandis
Martha J. Arthur
Koliwe Moyo