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State Superintendent of Schools

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September 24, 2013

Ms. XXXXXX
XXXXXXXXXX
XXXXXX, XXXXXX XXX

Dr. Kim Hoffmann
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

Ms. Debra Y. Brooks
Executive Director of Special Education
Baltimore County Public Schools
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: XXXXXX
Reference: #13-104

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 June 14, 2013, the MSDE received a complaint from Ms. XXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Baltimore City Public Schools violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

There is a sixty (60) day timeline for completion of the complaint investigation process. During the course of the investigation, this office determined that an additional public agency was responsible for the provision of a Free Appropriate Public Education (FAPE) to the student during the time period covered by the investigation. As a result, the Baltimore County Public Schools was included in the investigation, and it was necessary to extend the timeline for completion of this Letter of Findings (LOF) in order to obtain the needed information to complete the investigation, pursuant to 34 CFR §300.152.

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The MSDE investigated the following allegations:

1. The Baltimore County Public Schools and the Baltimore City Public Schools have not ensured that the student's Individualized Education Program (IEP) addresses his social, emotional, and behavioral needs since June 14, 2012, in accordance with 34 CFR §300.324;
2. The Baltimore City Public Schools did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achieving the annual IEP goals during the 2012-2013 school year, in accordance with 34 CFR §300.324;
3. The Baltimore County Public Schools and the Baltimore City Public Schools did not ensure that proper procedures were followed when conducting transition planning since June 14, 2012, in accordance with 34 CFR §300.320;
4. The Baltimore City Public Schools did not provide the complainant with a copy of the IEP document within five (5) business days after the May 7, 2013, IEP team meeting, in accordance with Md. Code, Ann., Educ. §8-405(d) (2010) and COMAR 13A.05.01.07;
5. The Baltimore City Public Schools did not ensure that the student was provided with the special education instruction and related counseling services from the providers and in the educational placement required by the IEP during the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323.
6. The Baltimore City Public Schools did not follow proper procedures when disciplinarily removing the student from school during the 2012-2013 school year, in accordance with 34 CFR §§300.530-.536.

INVESTIGATIVE PROCEDURES:

1. On June 17, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Executive Director of Special Education, Baltimore City Public Schools; and Ms. Nancy Ruley, Associate General Counsel, Baltimore City Public Schools.
2. On June 20, 2013, Ms. Kathy Stump, former Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
3. On June 25, 2013, 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 Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
4. On July 10, 2013, Ms. Stump reviewed the student's educational record at the Baltimore City Public Schools' Central Office. Mr. Darnell Henderson, Associate General Counsel, Baltimore City Public Schools, was present at the record review.

5. On July 26, 2013, Ms. Stump and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX School to review the student's educational record, and interviewed the following Baltimore City Public Schools personnel:

- a. Ms. XXXXXX, School Secretary;
- b. Ms. XXXXXXXXXXX, Former Principal;
- c. Mr. XXXXXXXXXXX, Student Support Administrator; and
- d. Mr. XXXXXXXX, Interim Principal.

Ms. XXXXXXXX, IEP Team Chairperson, participated in the site visit via telephone conference. Mr. Henderson attended the site visit as a representative of the Baltimore City Public Schools and to provide information on the Baltimore City Public Schools policies and procedures, as needed.

6. On July 29, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Executive Director of Special Education, Baltimore County Public Schools; Mr. J. Stephen Cowles, Associate General Counsel, Baltimore County Public Schools; and Ms. Sharon Floyd, Supervisor of Compliance, Baltimore County Public Schools. On that same date, the MSDE sent the complainant correspondence informing her of the time period covered by the investigation with respect to the Baltimore County Public Schools. By copy of the correspondence, Ms. Brooks was informed of the allegations and was requested to review the alleged violations.

7. On September 6, 2013, Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXX to review the student's educational record, and interviewed Mr. XXXXXXXX, the student's special education teacher for math during the 2011-2012 school year, and Mr. XXXXXXXX, the school's current Special Education Department Chairman. Ms. Floyd attended the site visit as a representative of the Baltimore County Public Schools and to provide information on the Baltimore County Public Schools policies and procedures, as needed.

8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. IEP, dated February 24, 2012, summary of the IEP team meeting, and written invitation to the meeting;
- b. Summary of the April 12, 2012 IEP team meeting and written consent for assessments;
- c. Summary of the May 31, 2012 IEP team meeting and written invitation to the meeting;
- d. Baltimore City Public Schools Student Enrollment/Transfer Application, dated July 23, 2012;
- e. Baltimore County Public Schools Withdraw Register, dated July 31, 2012;
- f. IEP, dated September 18, 2012, written invitation to the meeting, and written consent for assessments;

- g. Report of the Functional Behavioral Assessment, dated May 4, 2013;
- h. Proposed Behavioral Intervention Plan, dated May 4, 2013;
- i. Summary of School Social Work Services, dated May 25, 2012;
- j. Summary of the December 11, 2012 IEP team meeting, written invitation to the meeting, and receipt of notice of the procedural safeguards;
- k. IEP, dated January 31, 2013, summary of the IEP team meeting, receipt of notice of the procedural safeguards,
- l. General education progress reports, dated December 10, 2012;
- m. Report of psychological assessment, dated November 8, 2012;
- n. Report of educational assessment, dated December 11, 2012;
- o. Transition Planning Inventory Student Form, dated September 20, 2012;
- p. Reports of the student's progress towards achieving the annual IEP goals, generated on February 28, 2013 and May 1, 2013;
- q. IEP, dated May 7, 2013, summary of the IEP team meeting, and written invitation to the meeting;
- r. Reports of the student's progress towards achieving the annual IEP goals, generated on June 3, 2013;
- s. School social worker's provider log for the 2012-2013 school year;
- t. Student's attendance data for the 2012-2013 school year;
- u. Log of disciplinary actions taken with the student for the 2012-2013 school year;
- v. Behavioral Intervention Plan, dated November 25, 2008;
- w. Student's class schedule for the 2011-2012 school year; and
- x. Log of disciplinary actions taken with the student for the 2011-2012 school year.

BACKGROUND:

The student is fifteen (15) years old, is identified as a student with a Specific Learning Disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services. During the period of time addressed by this investigation, the complainant was provided with the opportunity to participate in the education decision-making process and with notice of the procedural safeguards.

During the 2011-2012 school year, the student attended XXXXXXXXXXXXXXXX, a public school under the jurisdiction of the Baltimore County Public Schools.

During the summer of 2012, the student transferred to the Baltimore City Public Schools as a result of a family move. At the start of the 2012-2013 school year, the student began attending the XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX School (XXXXXXXXXXXXXXXX XXXXX), a public school under the jurisdiction of the Baltimore City Public Schools (Docs. a – f, j, k, q, and t).

FINDINGS OF FACTS:

Baltimore County Public Schools

February 24, 2012 IEP Team Meeting

1. The IEP in effect in June 2012 was developed on February 24, 2012. The IEP includes annual goals for the student to improve math, reading, and written language skills, as well as his ability to follow school rules, to use appropriate self-management and coping strategies, to decrease impulsive behaviors, and to increase on-task behaviors consistent with the data documented by the team. It also requires the provision of special education instruction by the special education teacher, the general education teacher, or an instructional assistant, and counseling by the "IEP team," the school social worker, or "other service provider." In addition, it requires the provision of accommodations and the supports of a Behavioral Intervention Plan (BIP) to assist the student with his behavioral needs (Docs. a and v).
2. The IEP team documented that transition planning was conducted based on information from the student that his interests include video games, football, and obtaining employment after high school. Based on that information, a post secondary goal was developed for the student to be employed in a career related to sports. The team further documented its determination of the course of study that would support the goal and the decision that the student would work with the case manager and counselor to identify careers in his area of interest (Docs. a and o).
3. While the IEP indicates that the location of special education instruction and counseling services would be in the general education classroom, it also documents the team's determination that the student was to be provided with the special education services in a separate special education classroom. The written summary of the February 24, 2012 IEP team meeting contains the following statement:

The accommodations and modifications with adjusted pacing needed for specialized instruction for [the student's] academic and behavior needs are beyond what can be implemented in the general education setting without compromising learning for the student or other students (Doc. a).

April 12, 2012 IEP Team Meeting

4. On April 12, 2012, the IEP team recommended that an educational assessment, a Functional Behavioral Assessment (FBA), and a classroom observation be conducted (Doc. b).

May 31, 2012 IEP Team Meeting

5. On May 31, 2012, the IEP team considered teacher reports that the student was demonstrating interfering behaviors with increasing frequency, but that he was continuing to pass all of his classes. The team documented that the student had been receiving special

education instruction in a separate special education classroom for reading, language arts, and math, as reflected in his class schedule (Docs. c and w).

6. The IEP team also discussed that on May 25, 2012, the student had been disciplinarily removed from school for the remainder of the school year, and that he was not consistently accepting the special education instruction that was being offered during the period of removal. The team documented that while the FBA and classroom observation that were recommended on April 12, 2012 had been conducted, the student had not been available to administer the educational assessment (Docs. c, g, h, and x).
7. The team decided that the complainant would work with school staff to coordinate the provision of services during periods of time that the student was willing to accept them and would provide him with encouragement to do so. The team also decided that the student's progress would be monitored (Doc. c).

Baltimore City Public Schools

8. On July 23, 2012, the complainant enrolled the student in the Baltimore City Public Schools. At that time, the complainant provided the student's Baltimore County Public Schools IEP to the Baltimore City Public Schools (Doc. d and interviews with the school system staff).
9. On July 31, 2012, the complainant withdrew the student from the Baltimore County Public Schools (Doc. e).
10. The Baltimore County Public Schools maintained documentation that the student's educational record was transferred to the Baltimore City Public Schools on August 2, 2012. The document does not reflect that any further contact was made between the Baltimore County Public Schools and the Baltimore City Public Schools about the record (Doc. e).
11. The Baltimore City Public Schools did not maintain documentation of its request for the student's educational record or any other contact with the Baltimore County Public Schools about the student's transfer (Review of the educational record).

September 18, 2012 IEP Team Meeting

12. On September 18, 2012, the IEP team at XXXXXXXXXXXXXXXX XXXXX convened. The team considered information from the student's current math teacher that the student was not participating in class, not attending class regularly, and was in danger of failing the class. The team also considered information from the student that he was having difficulty focusing in class. In addition, the team considered information from the XXXXXXXXXXXXXXXX XXXXX social worker that the student was receiving special education instruction in "an inclusive classroom setting" as well as weekly counseling services, and that there had been "no reported incidents of ungovernable behavior" (Doc. f).
13. At the meeting, the Baltimore City Public Schools IEP team recommended that educational and psychological assessments be conducted, and documented that when the student's

educational record was received from Baltimore County Public Schools, “there were no assessments in the assessment section of the folder.” However, there is no documentation that the Baltimore City Public Schools staff contacted the Baltimore County Public Schools staff about the assessments recommended in April 2012. Further, the team documented that it reviewed the report of the results of the FBA conducted by the Baltimore County Public Schools and the proposed Behavioral Intervention Plan (BIP) that the school system developed on May 4, 2012 (Docs. f, g, and h).

14. The FBA conducted by the Baltimore County Public Schools on May 4, 2012 indicates that the student had been demonstrating defiance and disrespect, and was disrupting the learning of other students. It reflects that the student was displaying the behavior in order to gain attention. The proposed BIP provides interventions to address “bullying” and “off-task” behavior identified in the FBA (Docs. g and h).
15. At the September 18, 2012 IEP team meeting, the IEP team revised the IEP to reflect that weekly counseling services would be provided in a separate special education classroom, and decided that the BIP that was developed by the Baltimore County Public Schools on May 4, 2012 was appropriate (Docs. f, g, and h).
16. Documentation from the student’s education record that was received by the Baltimore City Public Schools includes a Summary of School Social Work Services, developed by the school social worker on May 25, 2012. The summary documents that the student was provided with counseling services to assist him with achieving the annual IEP goals to improve his behavior. It states that when the student accepted the accommodations provided in the classroom he “met with success,” but that he was no longer accepting the accommodations and that he “gradually began to regress behaviorally towards the latter part of the school year” (Doc. i).
17. On October 2, 2012, the complainant provided written consent for the educational and psychological assessments that the IEP team recommended at the September 18, 2012 meeting (Doc. f).

December 11, 2012 IEP Team Meeting

18. On December 11, 2012, the IEP team reconvened to review the assessment results. Documentation of the meeting indicates that the team decided to continue its review of the assessment data on another date because the educational assessment had not been completed (Doc. j).

January 31, 2013 IEP Team Meeting

19. On January 31, 2013, the IEP team reconvened and considered the assessment data, including a report of the results of a November 8, 2012 psychological assessment indicating that the student’s teachers reported that the student displays “adequate self-control,” but is frequently absent and does not make up the work he misses (Docs. k and m).

20. The team also considered the report of an educational assessment conducted on December 11, 2012, indicating that the student, who was in the eighth (8th) grade, was functioning at the third (3rd) grade level in both reading and math. It reflects that both the family and school staff report that the student demonstrates problems staying on task, that he displays “mood swings,” and that he is easily frustrated. The report states that the student “has demonstrated limited skill acquisition in most academic areas,” noting that this was not necessarily the result of a lack of ability, and stating that the student “seems to try harder and work much better when he has very close 1-1 support” (Docs. k and n).
21. The team also considered information from the student’s general education teacher in math that the student’s “frequent absences are negatively impacting his academic success.” The team also considered information from the student’s general education teacher in science that the student “usually will put forth an effort to complete given assignments,” and that he asks for assistance as needed, but that he has “difficulty understanding content vocabulary and comprehending what he reads” (Docs. k and l).
22. The team revised the academic goals based on the student’s current levels of performance as reflected in the evaluation data. However, the statement of present levels of performance in the area of behavior and annual goals to improve the student’s behavior were removed from the IEP. The revised IEP reflects that the team decided that the student no longer requires the supports provided by the BIP; there is no documentation that the IEP team considered positive behavioral interventions to address the student’s lack of consistent school attendance. The IEP continues to require counseling as a related service, stating that these services are “to address nonacademic concerns resulting from [the student’s] disability which have an impact on his academic performance,” and clarifies that the services are to be provided by the school social worker (Doc. k).
23. The IEP team documented that transition planning was conducted, and that the student participated in the meeting. The team documented that information was obtained from the student that his interests include playing sports and playing on the computer, as well as being employed and attending college upon completion of high school. The team developed postsecondary goals. However, they are not stated in terms of measureable outcomes to be achieved, but are statements of the student’s interests. In addition, while the team identified the “courses of study to consider,” it did not make a determination of the student’s course of study (Doc. k).
24. The team decided that the Least Restrictive Environment (LRE) in which special education instruction can be provided is the general education classroom. The team documented that it based the decision on the evaluation data, including progress reports, team discussion, and assessments conducted in December 2012. However, the student’s educational record does not contain a report of his progress towards achieving the annual IEP goals at that time, and the report of the educational assessment includes a recommendation for the provision of special education services in a separate special education classroom (Doc. k).

May 7, 2013 IEP Team Meeting

25. The reports of the student's progress towards achieving the annual IEP goals, generated on February 28, 2013 and May 1, 2013, reflect that the student was not making sufficient progress to achieve the annual goals due to lack of attendance and completion of work (Doc. p).
26. On May 7, 2013, the IEP team convened to review the student's program and progress. While the IEP continues to reflect school staff reports that the student's frequent absences negatively impact his academic success, there is no documentation that the IEP team considered positive behavioral interventions to address the interfering behavior (Doc. q).
27. The student's attendance data indicate that, between February 1, 2013 and May 7, 2013, the student was absent from school for twenty-seven (27) days (Doc. t).
28. At the May 7, 2013 IEP team meeting, the team increased the amount of special education instruction to be provided to 10 hours of special education instruction per day. However, the IEP indicates that the student's school day is only 6.5 hours long (Doc. q).
29. The IEP team documented that, at the May 7, 2013 meeting, it considered the complainant's concern that the student requires a more structured and restrictive environment in order to access special education instruction. The IEP was revised to require that all special education instruction be provided in a separate special education classroom (Doc. q).
30. There is documentation that the school staff assigned to send the complainant the IEP obtained a copy of the IEP from the database following the May 7, 2013 meeting. However, there is no documentation that the IEP was provided to the complainant (Review of educational record).
31. The reports of the student's progress towards achieving the annual IEP goals, generated on June 3, 2013, indicate that the student continued to make insufficient progress and state that "The IEP team needs to meet to address insufficient progress" (Doc. r).
32. There is no documentation that the IEP team has met since May 7, 2013 (Review of the educational record).
33. There is documentation that the student was provided with counseling services by a school social worker throughout the school year, with the exception of the month of February 2013, during which there is no documentation of the provision of counseling services (Doc. s).
34. The documentation of IEP team meetings reflects that special education instruction was provided by both the special education teacher and general education teacher (Docs. a – f, j, k, and q).

35. The student's attendance data for the 2012-2013 school year reflects that the student was suspended on May 2, 2013. However, the discipline record for the 2012-2013 school year does not reflect that the student was disciplinarily removed from school (Docs. t and u).

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS SINCE JUNE 14, 2012

**BALTIMORE COUNTY PUBLIC SCHOOLS AND
BALTIMORE CITY PUBLIC SCHOOLS**

LEGAL REQUIREMENTS:

IEP Content

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that includes a statement of the student's present levels of performance, including how the disability affects the student's progress in the general curriculum, which is based on the evaluation data. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to make progress in the general curriculum, the annual IEP goals must be aligned with the student's present levels of performance as reflected in the evaluation data (34 CFR §300.101, .320, and Analysis and Comments, *Federal Register*, Vol., 71, No. 156, p. 46602, August 14, 2006).

Data to be Considered by the IEP Team

The public agency must ensure that, in identifying the needs that arise out of a student's disability, the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In addition, in the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

All Baltimore City Public Schools are required to follow specific procedures in response to a student's lack of consistent school attendance. The Baltimore City Public Schools procedures require that the IEP team be convened to review the program and the interventions being provided to ensure that they remain appropriate when a student with a disability accrues 21 days of sporadic absences (<http://www.baltimorecityschools.org>).

If the IEP team recommends that assessment data are required in order to ensure that a student's needs are properly identified, the public agency must ensure that the IEP is reviewed and revised, as appropriate, based on the assessment results, within ninety (90) days of the date the team's recommendation (COMAR 13A.05.01.06E). Each public agency must ensure that assessments for

a student transferring from one public agency to another are coordinated between the sending and receiving schools as expeditiously as possible to ensure prompt completion of full evaluations (34 CFR §300.304).

Records Maintenance

To facilitate the transition of a student from one public agency to another, the new public agency must take reasonable steps to promptly obtain records relating to the provision of special education or related services to the student, from the previous public agency. Each State Education Agency must have in effect policies and procedures for records maintenance (34 CFR §§300.323 and .626). In Maryland, student records are to be maintained in accordance with the Maryland Student Records System Manual (COMAR 13A.08.02.09).

When a student transfers from one public agency to another within Maryland, the sending school must provide the receiving school with the original student records in their entirety. The sending school is required to maintain copies of the student's attendance information, all subject performance information, the IEP, most recent assessment reports, and documentation of the disability for students with disabilities who have received or are receiving special education services (*Maryland Student Records System Manual*).

DISCUSSION/CONCLUSIONS:

Baltimore County Public Schools

Based on the Finding of Fact #1, the MSDE finds that the IEP addressed the student's identified behavioral needs consistent with the evaluation data. However, based on the Findings of Facts #4 - #9, the MSDE finds that the Baltimore County Public Schools did not ensure that the IEP team considered the results of the assessments within the required timelines. Therefore, the MSDE finds that a violation occurred with respect to the Baltimore County Public Schools from July 12, 2012 to July 23, 2012.¹

Baltimore City Public Schools

Based on the Findings of Facts #4, #8 - #19, and #22 - #24, the MSDE finds that there is no documentation that the Baltimore City Public Schools took steps to coordinate with the Baltimore County Public Schools to ensure that the re-evaluation that began in the Baltimore County Public Schools was completed expeditiously once the student transferred to the Baltimore City Public Schools. Based on the Findings of Facts #19 - #22 and #24, the MSDE finds that when the assessment data was obtained, the Baltimore City Public Schools did not ensure that the IEP team's decisions were consistent with the evaluation data.

¹ The IEP required the provision of Extended School Year (ESY) services in Baltimore County during the summer of 2012. Therefore, from the time period beginning June 14, 2012 (one year prior to the filing of the complaint on June 14, 2013) until July 23, 2013 (the date that the student transferred to the Baltimore City Public Schools), the Baltimore County Public Schools was responsible for the provision of a FAPE to the student. The assessment results should have been considered by the Baltimore County Public Schools IEP team by July 12, 2012. Therefore, the violation is identified for the time period from July 12, 2012 until July 23, 2012.

Based on the Findings of Facts #6, #7, #12, #16, #19, #22, #26, #27, #31, and #32, the MSDE also finds that the Baltimore City Public Schools has not ensured that the IEP team considered interventions and strategies to address the student's interfering behavior related to lack of regular completion of class work and school attendance. Therefore, this office finds that violations occurred with respect to the Baltimore City Public Schools since July 23, 2012.

**ALLEGATION #2 REVIEW AND REVISION OF THE IEP BY THE
BALTIMORE CITY PUBLIC SCHOOLS TO
ADDRESS LACK OF EXPECTED PROGRESS
DURING THE 2012-2013 SCHOOL YEAR**

LEGAL REQUIREMENTS:

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual IEP goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress towards achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

DISCUSSION/CONCLUSIONS:

Based on the Findings of Facts #6, #7, #12, #14 - #16, #25, #28, #29, #31, and #32, the MSDE finds that, while the IEP team revised the IEP and recommended additional assessment data on May 7, 2013, the Baltimore City Public Schools has not ensured that the IEP has been reviewed and revised, as appropriate, to address the lack of expected progress towards achievement of the annual IEP goals since that time. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #3 TRANSITION PLANNING SINCE JUNE 14, 2012 –
BALTIMORE COUNTY PUBLIC SCHOOLS AND
BALTIMORE CITY PUBLIC SCHOOLS**

LEGAL REQUIREMENTS:

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, the IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. The IEP must also include the transition services, including courses of study needed to assist the student with the goals (34 CFR §300.320 and COMAR 13A.05.01.09). When the purpose of an IEP team meeting is to consider the transition plan, the public agency must ensure that the student is invited to the IEP team meeting and, if the student is unable to attend the meeting, that the public agency takes steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

DISCUSSION/CONCLUSIONS:

Baltimore County Public Schools

Based on the Findings of Facts #1 and #2, the MSDE finds that the Baltimore County Public Schools followed proper procedures when conducting transition planning. Therefore, this office does not find that a violation occurred with respect to the Baltimore County Public Schools.

Baltimore City Public Schools

Based on the Findings of Facts #2, #15, #23 and #32, the MSDE finds that the Baltimore City Public Schools has not ensured that proper procedures were followed when conducting transition planning since January 31, 2013. Therefore, this office finds that a violation occurred with respect to the Baltimore City Public Schools.

**ALLEGATION #4 PROVISION OF THE IEP BY THE BALTIMORE CITY
PUBLIC SCHOOLS WITHIN 5 BUSINESS DAYS OF THE
MAY 7, 2013 IEP TEAM MEETING**

LEGAL REQUIREMENTS:

The public agency must ensure that not later than five (5) business days after a scheduled IEP team meeting, a copy of the IEP is provided to the parent (Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07).

DISCUSSION/CONCLUSIONS:

Based on the Finding of Fact #30, the MSDE finds that the Baltimore City Public Schools did not document the provision of the IEP to the complainant following the revisions made on May 7, 2013. Therefore, this office finds that a violation occurred with respect to this allegation.

**ALLEGATION #5 PROVISION OF SPECIAL EDUCATION INSTRUCTION FROM
THE PROVIDERS IN THE EDUCATIONAL PLACEMENT
REQUIRED BY THE IEP BY THE BALTIMORE CITY
PUBLIC SCHOOLS AND**

**PROVISION OF COUNSELING SERVICES IN THE EDUCATIONAL
PLACEMENT REQUIRED BY THE IEP BY THE BALTIMORE CITY
PUBLIC SCHOOLS DURING THE 2012-2013 SCHOOL YEAR**

LEGAL REQUIREMENTS:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP. In order to do so, the public agency must ensure that each teacher and provider has access to an IEP that contains a clear statement of the special education and related services that are to be provided (34 CFR §§300.101 and .323).

DISCUSSION/CONCLUSIONS:

Special Education Instruction

Based on the Findings of Facts #1, #3, #5, #12, #15, #24, #29, and #34, the MSDE finds that while special education instruction was provided by the school staff required by the IEP, the Baltimore City Public Schools did not ensure that the IEP was written clearly with respect to the educational placement in which it was to be provided from the start of the 2012-2013 school year until January 31, 2013.

Based on the Finding of Fact #28, the MSDE finds that the Baltimore City Public Schools has not ensured that the IEP is written in a manner that is clear with respect to the amount of special education instruction to be provided since May 7, 2013. Therefore, this office finds that the school system could not have ensured that the IEP was implemented in accordance with the IEP team decisions, and that violations occurred with respect to this aspect of the allegation.

Counseling as a Related Service

Based on the Findings of Facts #1, #3, and #15, the MSDE finds that the Baltimore City Public Schools did not ensure that the IEP was written clearly with respect to the setting in which the related service of counseling was to be provided from the start of the 2012-2013 school year until September 18, 2012.

Based on the Findings of Facts #1, #3, #12, #15, #22, and #33, the MSDE finds that while counseling services were provided, the Baltimore City Public Schools did not ensure that the IEP was written clearly with respect to the provider of the related services of counseling from the start of the 2012-2013 school year until January 31, 2013.

Notwithstanding the violation, based on the Findings of Facts #1, #16, and #33, the MSDE finds that the student received counseling services from a school system staff member who was clearly described on the IEP as a provider of the service. Therefore, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the education program and does not require student-specific corrective action to remediate the violation.

However, based on the Finding of Fact #33, the MSDE finds that there is no documentation that weekly counseling services were provided to the student during the month of February 2013. Therefore, this office finds that violations occurred with respect to this aspect of the allegation.

ADDITIONAL VIOLATION: DURING THE COURSE OF THE INVESTIGATION, THE FOLLOWING VIOLATION WAS IDENTIFIED WITH RESPECT TO THE PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES BY THE BALTIMORE COUNTY PUBLIC SCHOOLS

As stated above, the public agency is required to ensure that the student is provided with the special education and related services required by the IEP. In order to do so, the public agency must ensure

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that each teacher and provider has access to an IEP that contains a clear statement of the special education and related services that are to be provided (34 CFR §§300.101 and .323).

Based on the Finding of Fact #1, the MSDE finds that the Baltimore County Public Schools did not ensure that the IEP contained a description of the counseling services that was written clearly with respect to the school staff responsible for providing the service. Therefore, the MSDE finds that a violation occurred with respect to the Baltimore County Public Schools from June 14, 2012 to July 23, 2012.¹

Notwithstanding the violation, based on the Findings of Facts #1 and #16, the MSDE finds that the student received counseling services from a school system staff member who was clearly described on the IEP as a provider of the service. Therefore, the MSDE finds that the violation did not negatively impact the student's ability to benefit from the education program and does not require student-specific corrective action to remediate the violation.

Based on the Findings of Facts #1, #5, and #16, the MSDE finds that the student was provided with special education instruction and related counseling services from the school system staff required by the IEP. However, based on the Finding of Fact #3, the MSDE finds that the Baltimore County Public Schools did not ensure that the IEP contained a description of the services that was written clearly to make sure that they were provided in the educational placement determined by the IEP team. Therefore, the MSDE finds that a violation occurred with respect to the Baltimore County Public Schools from June 14, 2012 to July 23, 2012.¹

**ALLEGATION #6 DISCIPLINARY PROCEDURES FOLLOWED BY
THE BALTIMORE CITY PUBLIC SCHOOLS
DURING THE 2012-2013 SCHOOL YEAR**

LEGAL REQUIREMENTS:

The IDEA provides protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year (34 CFR §300.530).

DISCUSSION/CONCLUSIONS:

Based on the Finding of Fact #35, the MSDE finds that the Baltimore City Public Schools did not ensure that the student's disciplinary record reflected the student's disciplinary removals from school in order to ensure that the IDEA protections were provided if he was disciplinarily removed from school for more than ten (10) school days. Therefore, the MSDE finds that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the Baltimore City Public Schools to provide documentation by November 30, 2013 that an IEP team has convened and taken the action listed below.

- a) Considered positive behavioral supports to address the student's interfering behaviors related to lack of regular completion of class work and school attendance;
- b) Reviewed and revised the IEP, as appropriate, to ensure that it addresses the student's identified behavioral needs and the lack of expected progress towards achievement of the annual IEP goals consistent with the evaluation data;
- c) Reviewed and revised the IEP to ensure that it contains a clearly written statement of the amount of special education instruction required to be provided;
- d) Conducted transition planning in accordance with the requirements;
- e) Determined whether the violation related to the delay in the completion of the re-evaluation from July 23, 2012 to January 31, 2013 resulted in a negative impact on the student's ability to benefit from the education program, and if so, the amount and nature of *compensatory services*² or other remedy for the delay;
- f) Determined whether the violations related to the IEP not being written clearly with respect to the educational placement in which the special education instruction and counseling services were resulted in a negative impact on the student's ability to benefit from the education program, and if so, the amount and nature of *compensatory services*² or other remedy;
- g) Determined the *compensatory services*² or other remedy for the violation related to the IEP not being written clearly with respect to the amount of special education instruction to be provided since May 7, 2013;
- h) Determined the *compensatory services*² or other remedy for the violation related to the loss of counseling services during the month of February 2013;
- i) Determined the *compensatory services*² or other remedy for the violations related to reviewing and revising the IEP since the start of the 2012-2013 school year; and
- j) Determined the *compensatory services*² or other remedy for the violation related to transition planning since January 31, 2013.

In addition, the MSDE requires the Baltimore City Public Schools to provide documentation by November 30, 2013 that it has coordinated with Baltimore County Public Schools to convene an IEP team. The IEP team is to determine whether violations related to the delay in the completion of the re-evaluation from July 12, 2012 to July 23, 2012 and the IEP not being written clearly with respect to the educational placement in which the special education instruction was to be provided from June 14, 2012 to July 23, 2012 resulted in a negative impact on the student's ability to benefit

² Compensatory services, for the purposes of this letter, mean the determination by the IEP team as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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from the education program. If the team finds that there was a negative impact, it must determine the amount and nature of *compensatory services*² or other remedy for the violations.

The Baltimore City Public Schools must ensure that the complainant is provided with proper written notice of the determinations made at the IEP team meetings, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

The MSDE requires the Baltimore County Public Schools to provide documentation by February 1, 2014 of the steps it has taken to determine if the violations identified in the Letter of Findings related to the Baltimore County Public Schools are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX.

The MSDE requires the Baltimore City Public Schools to provide documentation by February 1, 2014 of the steps it has taken to determine if the violations identified in the Letter of Findings related to the Baltimore City Public Schools are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXX XXXXX.

Both of the school systems are required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to the MSDE. If the school systems report compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the school systems determine that the regulatory requirements are not being implemented, they must identify the actions that will be taken to ensure that the violations do not recur. The school systems must submit follow-up reports to document correction within ninety (90) days of the initial date of the determination of non-compliance.

Upon receipt of the reports, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the school systems.

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 through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the complainant and the school systems 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 systems must implement any Corrective Actions consistent with the timeline requirements as 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 systems 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:am

cc :	Tisha S. Edwards	S. Dallas Dance	Maureen Hartlieb
	Charles Brooks	J. Stephen Cowles	Dori Wilson
	Darnell Henderson	Sharon Floyd	Martha Arthur
	XXXXXXXXXX	Carol Rook	Anita Mandis
bc:	Donna Riley		
	Anita Mandis		
	Tom Barkley		
	Marjorie Shulbank		
	File		