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State Superintendent of Schools

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December 16, 2014

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

RE: XXXXX  
Reference: #15-024

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 October 17, 2014, the MSDE received a complaint from Maureen van Stone, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his mother Ms. XXXXXXXX. 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 allegations listed below.

1. The BCPS did not ensure that the Individualized Education Program (IEP) team developed a plan to transition the student from Home and Hospital Teaching services to a school-based program from October 17, 2013<sup>1</sup> through the end of the 2013-2014 school, in accordance with COMAR 13A.03.05.03 and .04 and COMAR 13A.05.01.10(C)(5)).

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<sup>1</sup> The complaint included allegations of violations that occurred more than a year before the date it was received by this office. The complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one (1) year prior to the receipt of the State complaint (34 CFR §300.153).

2. The BCPS did not ensure that the IEP team meetings held between October 17, 2013<sup>1</sup> and the end of the 2013-2014 school year included an individual who could interpret the nursing care assessment data, in accordance with 34 CFR §300.321 and COMAR 13A.05.01.07 and 13A.08.03.08.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On October 17, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Executive Director of Special Education, BCPS; and Mr. Darnell Henderson, Associate Counsel, BCPS.
3. On October 23, 2014, Ms. Moyo conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On November 7 and 13, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On both dates, the MSDE notified Dr. Hoffman of the allegations being investigated and requested that her office review the alleged violations.
5. On December 3, 2014, Ms. Moyo and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit at the XXXXXXXX to complete a review of the student's educational record and interviewed the following school staff:
  - a. Mr. XXXXXXXXX, IEP Chairperson;
  - b. Ms. XXXXXXXXX, IEP Chairperson;
  - c. Mr. XXXXXXXXX, Principal;
  - d. Ms. XXXXXXXXX, Assistant Principal; and
  - e. Ms. XXXXXXX, School Nurse.

Ms. Diana K. Wyles, Associate Counsel, BCPS, and Dr. Louise Fink, Director of Home and Hospital Teaching Services, BCPS, attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed. On the same date, the BCPS provided the MSDE with documentation from the student's educational record.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to the MSDE, received on October 17, 2014;
  - b. Nursing records and notes regarding the student maintained from July 1, 2013 through June 10, 2014;

- c. School health care forms for the student, signed by the student's private physician on August 8 and 10, 2013;
- d. Physician orders and medical authorization forms for the student, dated August 8, 13, and 14, 2013;
- e. Amended IEP, dated August 13, 2013;
- f. Home and Hospital Teaching (HHT) verification, dated August 30, 2013;
- g. Updated HHT verification, dated September 4, 2013;
- h. IEP team meeting notice, dated September 5, 2013;
- i. Home Health Certification and Plan of Care, dated September 5, 2013;
- j. IEP, dated September 12, 2013;
- k. HHT re-verification, dated October 10, 2013;
- l. IEP team meeting notice, dated February 10, 2014;
- m. IEP team meeting notes, dated February 19, 2014;
- n. IEP team meeting notice, dated February 21, 2014;
- o. HHT verification, dated February 22, 2014;
- p. HHT re-verification, dated April 28, 2014;
- q. IEP, dated May 19, 2014;
- r. Nursing care plan, dated May 19, 2014;
- s. IEP team meeting notes, dated June 10, 2014; and
- t. Amended IEP, dated August 28, 2014 and September 5, 2014.

### **BACKGROUND:**

The student is thirteen (13) years old. He is identified as a student with a Traumatic Brain Injury under the IDEA and has an IEP that requires the provision of special education instruction and related services.

On August 26, 2014 the student began attending the XXXXXX, a public, separate, special education school in the Baltimore City School System. However, he was provided with HHT services for the remainder of the 2013-2014 school year. The student is now attending the Maryland School for the Blind.

During the period of time addressed by this investigation, the student's parent participated in the education decision-making process and received notice of the procedural safeguards (Docs. a, e – q, s, and t).

### **ALLEGATION #1**

### **PROVISION OF HOME AND HOSPITAL TEACHING (HHT) SERVICES FROM OCTOBER 17, 2013 UNTIL THE END OF THE 2013-2014 SCHOOL YEAR**

### **FINDINGS OF FACTS:**

1. Although the student attended school on the first (1<sup>st</sup>) day of the 2013-2014 school year, he received Home and Hospital Teaching (HHT) services throughout the remainder of the school year. This includes the period of time between January 4, 2014 and

2. February 22, 2014, while there was no verification that he was unable to attend school due to a medical or emotional condition<sup>2</sup> (Docs. a, f, g, j, k, o, p, and q).
3. There is no documentation that the IEP team developed a plan to transition the student from HHT services back to a school-based program prior to January 4, 2014 despite the fact that the verification of the need for HHT services indicated that he would be able to return to a school-based program by that date (Doc. k and review of the educational record).

### **DISCUSSION/CONCLUSIONS:**

The public agency must make instructional services (HHT services) available to students who are unable to attend school due to a physical or emotional condition. The need for HHT services is determined by verification from a licensed physician, a certified school psychologist, a licensed psychologist, or a licensed psychiatrist (COMAR 13A.03.05.03 and .04).

If a student with a disability is unable to attend school due to a physical or emotional condition, the IEP team must determine the instructional services to be provided to the student as long as the medical restrictions apply, and must develop a plan for returning the student to a school-based program. The continuation of HHT services beyond sixty (60) calendar days after the initial determination of eligibility requires re-verification that the student continues to be unable to attend school due to a physical or emotional condition (COMAR 13A.03.05.04 and 13A.05.01.10).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP team did not develop a plan to return the student to a school-based program, and that he was provided with HHT services between January 4, 2014 and February 22, 2014 without re-verification of his inability to attend a school-based program. Therefore, this office finds that a violation occurred with respect to the allegation.

**ADDITIONAL ISSUE: THE FOLLOWING ISSUE WAS IDENTIFIED  
DURING THE COURSE OF THE INVESTIGATION**

### **FINDING OF FACT:**

4. Although the school system had nursing services in place for the student when he started school on the first day of the 2013-2014 school year, the IEP team did not determine the nursing services that were required until February 19, 2014 while the student was receiving HHT services (Docs. a – e and m).

### **DISCUSSION/CONCLUSIONS:**

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 special education and related services

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<sup>2</sup> There were verifications of the need for HHT services up to January 4, 2014 and after February 22, 2014 (Docs. f, g, k, o, and p).

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to address all of the needs that arise out of the student's disability as identified in the evaluation data. The public agency must ensure that an IEP is in effect for each student with a disability at the start of the school year (34 CFR §§300.101, .320, and .323).

Special education instruction means specially designed instruction to meet the unique needs of the student. Related services means such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education, including school nursing services. School nursing services means services provided by a qualified school nurse (34 CFR §§300.34 and .39).

Based on the Finding of Fact #3, the MSDE finds that the IEP team did not determine the related nursing services required by the student until after the start of the 2013-2014 school year. Therefore, this office finds that the student did not have an appropriate IEP in place from October 17, 2013 until February 19, 2014, and that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #1, the MSDE finds that the student did not attend school during this period of time, and as a result, the violation did not negatively impact his ability to benefit from special education. Therefore, no student-specific corrective action is required in order to remediate the violation.

**ALLEGATION #2 PROPER PARTICIPANTS IN THE IEP TEAM MEETINGS HELD BETWEEN OCTOBER 17, 2013 AND THE END OF THE 2013-2014 SCHOOL YEAR**

**FINDING OF FACT:**

5. There were two (2) IEP team meetings held between October 17, 2013 and the end of the 2013-2014 school year. These meetings were held on February 19, 2014 and May 19, 2014. Both of the IEP teams included a nurse who could interpret nursing care assessment data (Docs. a, m, and q).

**DISCUSSIONS/CONCLUSIONS:**

The IEP team must include specific participants, including an individual who can interpret the instructional implications of evaluation results (34 CFR §300.321). In this case, the complainant alleges that the IEP team did not include an individual who could interpret the instructional implications of the results of nursing care assessments (Doc. a).

Based on the Finding of Fact #4, the MSDE finds that the documentation does not support the allegation. Therefore, no violation is found with respect to the allegation.

## **CORRECTIVE ACTIONS/TIMELINES:**

### **Student-Specific**

The MSDE requires the BCPS to provide documentation by March 1, 2015 that the IEP team has determined the services needed to compensate the student for the loss of instruction in a school-based program from January 4, 2014 until February 22, 2014 and developed a plan for the provision of those services within one (1) year of the date of this Letter of Findings.

### **Systemic**

The MSDE requires the BCPS to provide documentation by April 1, 2015 of the steps taken to determine whether the violation related to the delay in the IEP team's determination of the required nursing services is unique to this case or constitutes a pattern of noncompliance within the school system. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Upon receipt of this report, the MSDE will verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the US Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Policy and Accountability Branch for its consideration during present or future monitoring of the BCPS.

Documentation of all Corrective Actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

## **TECHNICAL ASSISTANCE:**

Technical assistance is available to the complainant and the BCPS by the Family Support and Dispute Resolution Branch, MSDE. This office may be contacted 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 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

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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, 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 the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to the 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/km

cc : XXXXXXXX  
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Charles Brooks  
Darnell Henderson  
XXXXXXXXXX  
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Dori Wilson  
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