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State Superintendent of Schools

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December 23, 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: XXXXXXXXXXXX and  
Baltimore City Public Schools  
Preschool Students with Disabilities  
Participating in Head Start Programs

Reference: #15-027

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 October 28, 2014, the MSDE received a complaint from Ms. Martha Goodman, hereafter, “the complainant,” on behalf of the above-referenced students and Ms. XXXXXXXXXXXX and Ms. XXXXXXXXXXXXXX, the named student’s mother and grandmother, respectively. 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 students.

The MSDE investigated the allegation that the BCPS has not ensured that the Individualized Education Programs (IEPs) for the above-referenced student and preschool students with disabilities participating in Head Start Programs are based on each student’s identified needs and

not on the school system's service delivery system since October 28, 2013,<sup>1</sup> in accordance with 34 CFR §§300.320 and .324.

**INVESTIGATIVE PROCEDURES:**

1. On October 30, 2014, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant to clarify the allegation to be investigated.
2. On October 31, 2014, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Executive Director of Special Education, BCPS; and Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS.
3. On November 7, 2014, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Dr. Hoffman of the allegation and requested that her office review the alleged violation.
4. On November 25, 2014, Ms. Mandis discussed the allegation with Diana K. Wyles, Esq., Associate Counsel, Office of Legal Counsel, BCPS, by telephone, and requested a site visit.
5. On December 19, 2014, Ms. Mandis and Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a site visit to the BCPS Central Office to review records, and interviewed the following BCPS staff:
  - a. Ms. XXXXXXXXX, Speech/Language Pathologist;
  - b. Ms. XXXXXXXXXXX, Education Associate, Early Learning;
  - c. Mr. XXXXXXXXX, Director of Early Learning Programs; and
  - d. Ms. XXXXXXXXX, Special Educator.

Ms. Wyles attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. IEP and written summary of an IEP team meeting held for the named student on August 29, 2013;

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<sup>1</sup> Although the allegation covers a period of time beyond this date, the complainant was informed, in writing, that only those allegations of violations that occurred no more than one (1) year from the date of the filing of the complaint can be addressed through the State complaint investigation procedure (34 CFR §§300.153).

- b. IEP and written summary of an IEP team meeting held for the named student on April 29, 2014;
- c. Written summary of the IEP team meeting held for the named student on October 10, 2014;
- d. Correspondence from the complainant containing an allegation of a violation of the IDEA, received by the MSDE on October 28, 2014; and
- e. Invitation to an IEP team meeting for the named student for January 6, 2015; and
- f. Memorandum of Understanding Among the Baltimore City Public School System and Baltimore City Head Start Collaborative Member Agencies.

### **BACKGROUND:**

The named student is five (5) years old, is identified as a student with a Developmental Delay under the IDEA, and has an IEP that requires the provision of special education instruction. The student is currently in kindergarten at XXXXXXXXXXXXXXXX (XXXXXXXXXXXX) (Doc. c).

During the 2013-2014 school year, the named student received special education services at the location in which he received Head Start services<sup>2</sup> (Docs. a and b).

### **FINDINGS OF FACTS:**

The BCPS' Provision of Special Education Services to Children Ages Three (3) to Five (5)

1. The BCPS provides special education and related services to children with disabilities ages three (3) to five (5) in general education pre-kindergarten and kindergarten programs and in preschool special education programs. For children who participate in Head Start, special education services may also be provided at those program sites ([www.baltimorecityschools.org](http://www.baltimorecityschools.org)).
2. The BCPS has entered into a Memorandum of Understanding with the Baltimore City Head Start Collaborative Member Agencies to provide comprehensive early education services, including special education and related services, to prepare children in Baltimore City to succeed when they reach school age. In accordance with the Memorandum of Understanding, Head Start services are provided in alignment with the BCPS related to hours of operation up to six (6) hours per day and 180 days per year. Conducting the IEP team meetings for children with disabilities is the responsibility of the child's zoned elementary school. The IEP team meetings are held at the zoned elementary school, with the participation of both BCPS and Head Start Collaborative Member Agency representatives. Those IEP team meetings for children transitioning

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<sup>2</sup> Head Start is a federally funded pre-school and family development program providing educational, health, nutritional, social/emotional, and other services to children whose families meet income eligibility requirements (<http://humanservices.baltimorecity.gov/HeadStart>).

from an Individualized Family Service Plan (IFSP) or an Extended IFSP to an IEP are conducted by the BCPS Office of Early Learning Programs (Doc. f).

3. The BCPS Office of Early Learning Programs is located within the BCPS Department of Teaching and Learning. The Departments of Special Education and Teaching and Learning are both located within the BCPS Office of Academics. The BCPS staff report that the Departments of Special Education and Teaching and Learning work together to ensure the provision of special education and related services to children with disabilities ages three (3) to five (5). The BCPS staff further report that the Department of Special Education conducts monthly trainings of IEP team chairpersons and that the Office of Early Learning Programs conducts one (1) of the sessions at these monthly trainings (Doc. f, [www.baltimorecityschools.org](http://www.baltimorecityschools.org), and interviews with the BCPS staff).
4. The BCPS staff report that the children who participate in Head Start and whose IEPs can be implemented at those sites are to be provided with the choice of receiving special education services at either the Head Start location or in the general education pre-kindergarten or kindergarten programs (Interviews with the BCPS staff).

### **The Named Student**

5. The IEP developed for the named student on April 29, 2014, states that, based on the teacher and service provider reports of the student's progress, the team decided that the student no longer required the special education classroom instruction that he had been receiving at the location in which he received Head Start services. The team also decided that the student made progress in the area of receptive language, but that there continued to be "receptive language concerns along with behaviors that impede upon his progress." Therefore, the IEP was revised to require special education instruction of speech/language services (Doc. b).
6. The documentation of the April 29, 2014 IEP team meeting for the named student reflects that his teacher reported that the student continued to demonstrate interfering behaviors, and recommended that additional strategies be utilized to address these behaviors. The school system staff report that, because the teacher was unable to describe specific behaviors that were atypical of children of the child's age, and there was no other evidence that the behaviors were interfering with his learning, the team decided that no additional interventions were required. However, the documentation of the meeting states that the team rejected a proposal to conduct a Functional Behavioral Assessment (FBA) because "according to BCPS policy [the student] must be in a BCPS school for services and currently he is in a private school for head start"<sup>3</sup> (Doc. b and interview with the BCPS staff).

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<sup>3</sup> While the IEP lists the service school as "private" because the services are not provided in a Baltimore City public school, it also clarifies that the student is served in this setting by the public agency in order to receive a Free Appropriate Public Education (FAPE), and is not a parentally-placed private school student (Doc. b).

7. On October 10, 2014, the IEP team for the named student considered information from the school-based members of the team that the student's language skills are now "age appropriate," that he demonstrates an "increased ability to stay on task and participate in class" and an increased ability to respond and follow directions, and that he is now functioning at "the high end" of the class. The IEP team also considered information from the school staff that, while the student continues to demonstrate "fidgety" and impulsive behavior, he no longer exhibits "extreme changes in behaviors" and "participates well with peers." In addition, the IEP team considered the family's concern about whether the student has received appropriate services to address an Autism diagnosis, and decided to conduct a reevaluation, which is pending (Docs. c and e).

#### **Other BCPS Students Receiving Special Education Services at Head Start Sites**

8. A review was conducted of the IEPs in effect during the 2013-2014 and 2014-2015 school years for other BCPS students with disabilities who receive special education services at the location where they are provided with Head Start services. That review indicates that there are IEPs that require the provision of special education classroom instruction at the Head Start location. The documentation of the IEP team meetings reflects that the decisions made by the IEP teams about the special education services to be provided were based upon the individual needs of the students and not on the service delivery system (Review of the IEPs for BCPS students with disabilities who receive special education services at Head Start sites).
9. The review of these IEPs reflects that, on November 14, 2014, a parent requested that her child be provided with all special education services at the site where the child was provided with Head Start services instead of in a combination of both the Head Start location and in a BCPS preschool special education program. In that case, the IEP team decided that the special education services that had been provided in the preschool special education program could be provided at the Head Start site with the provision of supplementary aids and services (Review of the IEPs for BCPS students with disabilities who receive special education services at Head Start sites).
10. The review of these IEPs also reflects that, on September 17, 2014, another parent of a child receiving services in a BCPS preschool special education program requested that the services be provided at the site where the child would be receiving Head Start services. The parent expressed concern that the child not be required to transition between the BCPS preschool special education program and the Head Start site and that there be time built into his day for him to take afternoon naps. The IEP team documented

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its discussion that the services in the BCPS preschool special education program could not be provided at the Head Start site. The team proposed to provide the preschool special education services in the morning and to have the child participate in Head Start in the afternoon, when time could be made for him to take his nap. However, when the parent rejected this proposal, the IEP team decided that special education instruction would be provided at the Head Start site despite the fact that this “may result in less progress toward IEP goals” (Review of the IEPs for BCPS students with disabilities who receive special education services at Head Start sites).

### **DISCUSSION/CONCLUSIONS:**

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student’s identified needs. The special education services that are provided are to be based on the decisions made by the IEP team about the student’s individual needs and not solely on factors such as the configuration of the service delivery system, availability of staff, or administrative convenience (34 CFR §§300.101, .103, .320, .323, and .324).

In developing each student’s IEP, the public agency must ensure that 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 the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.320 and .324).

Although the IDEA does not require that each location be able to provide all of the special education and related services needed for all types and severity of disabilities, the public agency has an obligation to make available a full continuum of alternative placement options that maximize opportunities for students with disabilities to be educated with nondisabled students to the extent appropriate (34 CFR §300.116, COMAR 13A.05.01.10, and *Letter to Clay*, United States Department of Education, Office of Special Education Programs, 23 IDELR 341, May 17, 1995).

In this case, the complainant asserts that the BCPS provides only limited services at Head Start locations, and that these services do not include special education classroom instruction. The complainant alleges that students who require special education services that are not available at Head Start sites are provided with IEPs that are based upon the services offered in the Head Start locations and not on their needs (Doc. d and interview with the complainant).

Based on the Findings of Facts #1 - #5, the MSDE finds that the IEP team for the named student documented that its decision that the student no longer required special education classroom instruction was based on information about the student's progress and not on the lack of availability of those services at the Head Start location. However, based on the Findings of Facts #6 and #7, the MSDE finds that the IEP team for the named student documented that it based its determination of the behavioral supports to be provided to the named student on the school system's service delivery system and not on the data regarding the student's needs. Therefore, this office finds that a violation occurred with respect to the named student.

Based on the Findings of Facts #8 and #9, the MSDE finds that there is documentation that IEP teams are considering whether IEPs can be implemented in Head Start programs with the provision of supplementary aids and services. However, based on the Finding of Fact #10, the MSDE finds that in one (1) case, the IEP team has agreed to provide special education instruction at the Head Start site at the request of the parent despite its determination that the IEP goals may not be able to be achieved with the provision of the services that are available at that location. Therefore, this office finds that a violation has occurred with respect to one (1) similarly-situated student.

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **The Named Student**

The MSDE requires the BCPS to provide documentation by February 1, 2015 that the IEP team has taken the following action:

1. Reviewed and revised the IEP, as appropriate, consistent with the data;
2. Determined the impact of the violation on the student's ability to benefit from the education program, based upon any discrepancy between the student's current levels of academic and functional performance and those that were expected to be achieved by the date of the IEP team meeting; and
3. Determined the services to compensate the student to redress any impact that is found, to be provided within one (1) year of the date of this Letter of Findings.

#### **The Similarly-Situated Student**

The MSDE requires the BCPS to provide documentation by February 1, 2015 that the IEP team has taken the following action:

1. Reviewed and revised the IEP, as appropriate, based on the data regarding whether the annual IEP goals are being achieved with the provision of special education services at the site where the student receives Head Start services;

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2. Determined the impact of the violation on the student, based upon factors including his progress towards achieving the annual IEP goals and any discrepancy between the student's current levels of academic and functional performance and those that were expected to be achieved by the date of the IEP team meeting; and
3. Determined the services to compensate the student to redress any impact that is found, to be provided within one (1) year of the date of this Letter of Findings.

### **School-Based**

The MSDE requires the BCPS to provide documentation by April 1, 2015 of the steps taken to ensure that the IEP teams located at the schools for the named student and the similarly-situated student comply with the IDEA requirements related to developing each student's IEP based on the student's needs.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties by contacting Ms. Bonnie Preis of the Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must 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, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The named student's parents 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 named student,



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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

c : Gregory E. Thornton  
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