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State Superintendent of Schools

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October 28, 2010

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Ms. Kalisha Miller  
Director of Special Education  
Baltimore County Public Schools  
6901 North Charles Street  
Towson, Maryland 21204

RE: XXXXX  
Reference: #11-011

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 August 30, 2010<sup>1</sup>, MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” filed on behalf of her daughter. In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the allegation that BCPS did not ensure that the student’s Individualized Education

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<sup>1</sup> On August 27, 2010, the complainant provided MSDE with correspondence containing allegations of violations of IDEA, which did not contain all of the necessary information to initiate a State complaint investigation. On August 30, 2010, the complainant provided the required information and a complaint investigation was initiated (34 CFR §300.153).

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Program (IEP) addressed the student's need for transportation on an air conditioned bus to and from school during extended school year (ESY) services during the summer of 2010, in accordance with 34 CFR §§300.34, .101 and.324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 27, 2010, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone to clarify the allegation and to inform her that additional information was necessary to initiate a State complaint.
3. On August 30, 2010, the complainant provided MSDE with the additional information required and MSDE initiated the State complaint investigation.
4. On August 30, 2010, MSDE sent a copy of the complaint, via facsimile, to Ms. Patricia Lawton, former Director of Special Education, BCPS, and Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS.
5. On September 9, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified Ms. Kalisha Miller, Director of Special Education, BCPS, of the allegation and requested that her office review the alleged violation.
6. On September 10, 13, and 24, 2010, MSDE requested that BCPS provide documentation from the student's education record to MSDE and on October 6, 2010, BCPS provided MSDE with this information.
7. On October 8, 2010, Ms. Moyo and Ms. Mandis conducted a site visit at XXXXX XXXXXX School (XXXXXXXXXX) and interviewed the following BCPS staff:
  - a. Ms. XXXXXXXXXXX, Assistant Principal, XXXXXXXXXXX; and
  - b. Ms. Debra Somerville, Nurse Coordinator of Health Services, BCPS.

Ms. Sharon E. Floyd, Supervisor of Program Review and Support Process, BCPS, and Ms. Weitz attended the site visit as representatives of BCPS and to provide information on BCPS policies and procedures, as needed.

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8. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Correspondence from the complainant to MSDE, dated August 27 and 30, 2010;
  - b. Neurological consultation report, dated February 17, 2010;
  - c. IEP, dated May 12, 2010;
  - d. IEP team meeting summary, dated May 12, 2010;
  - e. ESY form, dated May 12, 2010;
  - f. IEP team meeting summary, dated June 15, 2010;
  - g. Correspondence from the student's neurologist to school staff, dated July 7, 2010;
  - h. Correspondence from the student's neurologist to school staff, dated July 7, 2010;
  - i. IEP team meeting summary, dated July 16, 2010;
  - j. Health screening examination and evaluation, dated July 16, 2010; and
  - k. BCPS report of internal review, dated September 13, 2010.

**BACKGROUND:**

The student is seven (7) years old and she attends XXXXXXXX. She is identified as a student with autism under IDEA and she receives special education and related services. During the period addressed by this investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parental rights, as required (Docs. a, c-f, i and k).

**FINDINGS OF FACT:**

1. On May 12, 2010 and June 15, 2010, the IEP team convened to review the student's program and progress and to determine whether the student required ESY services. At the meetings, the team reviewed the student's academic and social-emotional goals and determined that although she was making progress towards achieving the goals, she would require ESY services to continue to address those goals (Docs. c-f).
2. The ESY program that the team developed included both a morning component and an afternoon component, which is referred to in the documentation as "ESY extended day." BCPS staff state that the ESY extended day component was an additional activity and not, actually, a part of the student's ESY program. However, the IEP documentation indicates that the ESY program was full-day and that transportation was to be provided both to and from school each day (Docs c-f and interview with BCPS staff).
3. On July 6, 2010, the student began receiving morning and afternoon ESY services, as required (Doc. c).

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4. On July 16, 2010, the IEP team met, at the complainant's request, to address her concerns regarding the student's need for transportation on an air conditioned bus each afternoon, due to the heat. At the meeting the team reviewed the following:
  - a. A Neurologist's Consultation Report dated February 17, 2010, which indicates that the student experienced a seizure in April 2009 which resulted in hospitalization. It further states that, in February 2010, the student experienced another seizure and was, again, taken to the hospital. The report further indicates that the student is prescribed an anticonvulsant medication to control these seizures; and
  - b. Two letters from the student's neurologist, dated July 7, 2010 which state that the student has a history of seizures and is continuing to take medication to control these seizures. The documentation also states that the student should be transported on an air conditioned vehicle because "heat can cause break-through seizures" (Docs. g-j).
5. At the IEP team meeting, the BCPS Nurse Coordinator reported that upon her receipt of these letters from the student's neurologist, she contacted the student's neurologist to discuss his concerns. Based on that telephone conversation, she reported to the team, and documented in her notes, that while the neurologist clarified to her that excessive heat could be a trigger for seizures, he could not state that excessive heat, specifically, is a trigger for this student's seizures or that the student would experience a seizure if exposed to excessive heat (Docs. i, j, and interview with BCPS staff).
6. Based on the data that was reviewed and the nurses input, the team determined that the data did not support the addition of the provision of an air conditioned bus to the student's IEP and determined that the bus that transported the student did not need to be air conditioned (Docs. g-j and interview with BCPS staff).
7. In response to this determination, the complainant permitted the student to continue to ride the bus in the mornings, when the day was still cool. However, due to her concern for the student's safety in the heat of the day, the complainant transported the student home from the ESY program each afternoon (Doc. i and interviews with BCPS staff and the complainant).

#### **DISCUSSION/CONCLUSIONS:**

The public agency is required to ensure that the student is provided with the special education services, including transportation, when it is required by the IEP (34 CFR §§300.34 and 101). The public agency must ensure that each student is provided with an IEP that addresses all of the needs that arise from the student's disability. The team must also consider the concerns of the parents (34 CFR §300.324).

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In this case, school staff indicated that they believe that the ESY extended day services were not a part of the student's program, and that as a result, the school system was not required to provide transportation. However, based on Findings of Fact #1 and 2, MSDE finds that the additional extended day services were a part of the student's ESY program and that the IEP required that transportation be provided.

Based on Findings of Fact #3-7, MSDE further finds that the IEP team's decision not to provide the student with an air conditioned bus for transportation was inconsistent with the documentation provided by student's neurologist. Additionally, based upon these same Findings of Fact, MSDE finds that there was no other documentation from this physician or any other medical personnel, who examined this student, that contradicts the information considered. As a result, MSDE finds that a violation has occurred.

**CORRECTIVE ACTION/TIMELINES:**

MSDE requires BCPS to ensure that an IEP team meeting is convened no later than February 1, 2010 to review its decision regarding the student's transportation needs when the weather is hot. If the IEP team determines that additional data is necessary to make a determination regarding this need, then the team must decide what additional data it needs and gather that data. If the IEP team determines that the student should have been transported home from school on an air conditioned bus during the summer of 2010, then BCPS must reimburse the complainant for the provision of transportation to the student during this period of time.

Additionally, the IEP team must determine whether the violation had a negative impact on the student's ability to benefit from the ESY services that she received during the summer of 2010. If the IEP team determines that there was a negative impact, then the IEP team must determine the nature and amount of *compensatory services*<sup>2</sup> necessary to redress the violation.

BCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. 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 IDEA.

**School-Based/Systemic:**

MSDE requires BCPS to provide documentation of the steps taken to determine if the procedural violation related to determining whether a student requires the provision of air conditioning, while riding the bus, during periods of excessive heat is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXX. This documentation is due no later than January 31, 2011.

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<sup>2</sup> Compensatory services, for the purpose 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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Specifically, the school system is 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 MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

If the school system determines that the regulatory requirement is not being implemented, the school system must identify the actions that will be taken to ensure that the violation does not recur. The school system must submit a follow-up report to document correction within ninety (90) days of the date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

The findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring. Verification of the school system's compliance will also be conducted consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), Memorandum #09-02.

Documentation of all corrective action taken is to be submitted to this office to: Attention: 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 both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this LOF. 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 LOF.

If additional information is provided, it will be reviewed and 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 LOF.

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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 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 free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

Carol Ann Heath, Ed.D.  
Assistant State Superintendent  
Division of Special Education/  
Early Intervention Services

CAH:km

c: Joe A. Hairston  
J. Stephen Cowles  
Sharon Floyd  
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