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November 5, 2010

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RE: XXXXX
Reference: #11-015

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. There is a sixty (60) day timeline for completion of the complaint investigation process. During the course of the investigation, this office determined that due to the number of public agencies involved, 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. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On September 2, 2010, MSDE received correspondence from Seri A. Wilpone, Esq., Maryland Legal Aid; Janet F. Hartge, Esq., Maryland Legal Aid; and Leslie Seid Margolis, Esq., Maryland Disability Law Center, hereafter "the complainants," filed on behalf of the above-referenced

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student. In that correspondence, the complainants alleged that the Charles County Public Schools (CCPS), Montgomery County Public Schools (MCPS), and Garrett County Public Schools (GCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. This office investigated the following allegations:

MCPS and CCPS

1. MCPS and CCPS did not ensure that the student's education record was transferred to MCPS when the student was placed by the Charles County Department of Juvenile Services in a group home located in Montgomery County, Maryland in September 2009, in accordance with Md. Code Ann., Educ. §8-504.
2. MCPS and CCPS did not ensure that a parent of the student's was provided with the opportunity to participate in the September 24, 2009 IEP team meeting, in accordance with 34 CFR §§300.30, .322, .519, COMAR 13A.05.01.07, and Md. Code Ann. Educ. §8-412.
3. MCPS and CCPS did not ensure that the student's social/emotional/behavioral needs were identified and addressed through the Individualized Education Program (IEP) from September 2009 until December 15, 2009, in accordance with 34 CFR §§300.320 and .324.

GCPS and CCPS

4. GCPS and CCPS have not ensured that the student's social/emotional/behavioral needs have been identified and addressed through the IEP since December 15, 2009, in accordance with 34 CFR §§300.320 and .324.
5. GCPS and CCPS have not ensured that the student has been provided with the amount of special education instruction and related services in the educational placement required by the IEP since December 15, 2009, in accordance with 34 CFR §§300.101 and .323.
6. GCPS and CCPS did not ensure that the student's need for extended school year services was determined during the 2009-2010 school year, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.

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7. GCPS and CCPS did not ensure that proper procedures were followed when physical restraint was used with the student from January 25, 2010 through May 14, 2010, in accordance with COMAR 13A.08.04.

GCPS

8. GCPS does not follow proper procedures for determining whether individualized education programs can be implemented in Type III educational programs, in accordance with COMAR 13A.09.10.20.

INVESTIGATIVE PROCEDURES:

1. On September 13, 2010, Ms. Dori Wilson, Branch Chief, Complaint Investigation and Due Process Branch, MSDE; and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with Ms. Wilpone to clarify the allegations to be investigated.
2. On September 14, 2010, a copy of the complaint was provided by facsimile to Ms. Arden Sotomayor, Acting Director of Special Education, CCPS; Ms. Lynn Schulte, Director of Compliance, CCPS; Ms. Judith Pattik, Director of Special Education Operations, MCPS; Ms. Gwendolyn J. Mason, Director of Special Education Services, MCPS; and Ms. Jennifer Kotulak, Supervisor of Special Education, GCPS.
3. On September 14, 2010, MSDE also sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Ms. Sotomayor, Ms. Pattik, and Ms. Kotulak of the allegations to be investigated and requested that their respective offices review the alleged violations.
4. On September 14, 2010, Ms. Mandis conducted a telephone interview with Ms. Schulte and Ms. Marsha Diaz, Compliance Specialist, CCPS, about the allegations in the complaint.
5. On September 21, 2010, Ms. Mandis and Ms. Wilson conducted a telephone interview with Ms. Kotulak and Ms. Carol Beard, Office of Pupil Services, GCPS, regarding the allegations in the complaint.
6. On October 18, 2010, MCPS provided MSDE with a written response to the complaint and with copies of documents from the student's education record.

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7. On October 19, 2010, MCPS provided MSDE with information regarding the allegations in the complaint, via electronic mail (e-mail).
8. On October 21, 2010, Ms. Mandis and Mrs. Martha Arthur, Education Program Specialist, MSDE, conducted a review of the student's education record at XXXXXXXXXX and interviewed Mr. XXXXXXXXXX, Executive Director, and Ms. XXXXXXXXXX, Education Director, XXXXXXXXXX. Ms. Kotulak and Ms. Jeri Jones, Pupil Personnel Worker, GCPS, attended the visit as representatives of the school system and to provide information about GCPS policies and procedures, as needed.
9. On November 3, 2010, GCPS provided MSDE with information related to school closings during the 2009-2010 school year, via electronic mail (e-mail).
10. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
 - a. CCPS IEP, dated June 3, 2008;
 - b. Correspondence from CCDJS to XXXXXXXXXXXXXXXXXXXX, dated June 29, 2009;
 - c. MCPS enrollment forms, dated August 25, 2009;
 - d. MCPS request for student records, dated August 28, 2009;
 - e. MCPS school calendar for the 2009-2010 school year;
 - f. MCPS Intake meeting form, dated August 31, 2009;
 - g. Student's MCPS schedule for the 2009-2010 school year;
 - h. MCPS intake conference summary, dated September 14, 2009;
 - i. Written invitation to the September 24, 2009 IEP team meeting held by MCPS, dated September 14, 2009;
 - j. MCPS IEP and Reevaluation Report, dated September 24, 2009;
 - k. MCPS Behavior Intervention Plan, dated November 18, 2009;
 - l. Correspondence from CCDJS to the Circuit Court for Charles County, dated December 7, 2009;
 - m. MCPS brochure containing a description of its program designed for students with emotional needs;
 - n. Requests from XXXXXXXXXX staff to MCPS for the student's education record, dated December 15, 2009, December 17, 2009, December 18, 2009, January 6, 2010, and January 26, 2010;
 - o. Education and behavior plan developed by XXXXXXXXXX staff, dated December 15, 2009;
 - p. Correspondence to GCPS from XXXXXXXXXXXXXXXX, dated December 16, 2009;

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- q. Service provider logs for counseling services provided at XXXXXXXXX from December 18, 2009 through September 30, 2010;
- r. Agreement between GCPS and XXXXXXXXX dated December 21, 2009;
- s. Report of student interview conducted at XXXXXXXXX, dated January 13, 2010;
- t. Reports of incidents of physical restraint at XXXXXXXXX, dated January 25, 2010, March 26, 2010, May 12, 2010, and May 14, 2010;
- u. Behavior assessment report developed by XXXX School, dated February 9, 2010;
- v. Reports on the student's progress toward achieving the annual IEP goals made by XXXXXXXXX staff, dated February 24, 2010, April 30, 2010, June 21, 2010, and September 9, 2010;
- w. Orders of the Circuit Court for Charles County, dated March 26, 2010, April 15, 2010, and August 5, 2020;
- x. Correspondence to XXXXXXXXX from MSDE Nonpublic School Branch, dated April 7, 2010;
- y. Record of MSDE Nonpublic School Branch on-site monitoring activities, dated April 8, 2010;
- z. Correspondence to XXXXXXXXX from MSDE Nonpublic School Branch, dated May 6, 2010;
- aa. XXX School telephone log;
- bb. XXXXXXXXXXXXXXXX, XXXX. Policies and Procedures Manual;
- cc. Student's XXXXX School class schedules and GCPS school calendar for the 2009-2010 and 2010-2011 school years;
- dd. Agreement between XXXXXXXXXXXXXXXXXXXXXXXX, XXX. and GCPS for the 2010-2011 school year, dated September 20, 2010;
- ee. Electronic mail messages between CCPS and XXXXXXXXX staff, dated August 16, 2010 through September 24, 2010;
- ff. Correspondence from the complainants alleging violations of IDEA, received by MSDE on September 2, 2010;
- gg. Written invitations to IEP team meetings to be held at XXXXXXXXX on September 10, 2010 and September 21, 2010; and
- hh. Written response to the complaint from MCPS, received by MSDE on October 13, 2010;
- ii. E-mail correspondence from MCPS to MSDE, dated October 19, 2010; and
- jj. E-mail correspondence from GCPS to MSDE, dated November 3, 2010.

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BACKGROUND:

The student is sixteen (16) years old, is identified as a student with an emotional disability under IDEA, and receives special education and related services. On June 2, 2009, the student was committed to the custody of the Charles County Department of Juvenile Services (CCDJS). On August 5, 2010, the student was co-committed to the custody of CCDJS and the Charles County Department of Social Services (CCDSS) (Docs. j, l, q, v, w – z, and ee).

From September 2009 until December 16, 2009, the student was placed by CCDJS at XXXXXXXXXXXX, a group home located in XXXXX County, Maryland. During this time period, the student attended XXXXXXXXXXXX, a MCPS school (Docs. b, c, g, f, and ee).

Since December 15, 2009, the student has been placed by CCDJS at XXXXXXXXXXXXXXXX XXXXXXXXXXXXX, XXX., a group home located in XXXXXXX County, Maryland. Since that time, he has attended XXXXXXXXXXX, a Type III transitional school¹ operated by XXXXXXXXXXX XXXXXXX, XXX (Docs. n, v, and p).

FINDINGS OF FACT:

Allegation#1 Transfer of the Student’s Education Record from CCPS to MCPS in September 2009 and

Allegation #2 Parental Participation in the September 24, 2010 IEP Team Meeting

1. On June 29, 2009, the CCDJS placed the student at XXXXXXXXXXXXXXXX, located in Montgomery County, Maryland (Doc. b).
2. On August 25, 2009, the student was enrolled by XXXXXXXXXXXXXXXX staff in MCPS XXXXXXXXXXXXXXXX School. The enrollment form states that the student’s grandfather serves as the student’s parent and provides contact information for the grandfather (Docs. c and f).
3. On August 28, 2009, MCPS requested the student’s education record from CCPS. While there is documentation that indicates that MCPS received the student’s education record from CCPS, MCPS did not maintain documentation of when the record was received.

¹ Nonpublic schools that have Type I programs can provide general education services, special education services, or both. Nonpublic schools that have Type II programs provide special education services on the grounds of a public school. Nonpublic schools that have Type III programs provide general education services only (COMAR 13A.09.10).

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The education record included an IEP developed by CCPS on June 3, 2008, which states that the student's mother serves as the student's parent and provides contact information for the mother (Docs. a, d, and hh).

4. August 31, 2009 was the first day of the 2009-2010 school year for MCPS. On that date, the student began receiving instruction at XXXXXXXXXXXXX in a separate special education classroom designed for students with emotional needs (Docs. e - i and m).
5. Documentation of an August 31, 2009 intake meeting between school and group home staff states that group home staff instructed school staff not to contact the student's parent directly, but to contact the group home staff instead (Doc. f).
6. On September 24, 2009, MCPS convened an IEP team meeting in order to review the IEP. There is a written invitation to the meeting in the student's education record, addressed to the student's mother. MCPS staff report that they believe the invitation was sent to the group home, but there is no documentation of where the invitation was sent. There is also no documentation of attempts to contact the student's mother or grandfather about the meeting, and no one served as the student's parent at the meeting (Docs. i, j, and gg).
7. Although MCPS did not obtain a copy of the Court Order committing the student to the CCDJS by the date of the September 24, 2009 meeting, the IEP developed on September 24, 2009 states that a parent surrogate was not required. There is no documentation that a parent participated in the meeting or was provided with the opportunity to participate (Doc. j).
8. The education record includes a Memorandum from CCDJS staff to the Circuit Court for Charles County, which indicates that on December 2, 2009, CCDJS was granted limited guardianship of the student for, among other things, educational purposes. However, there is no documentation that MCPS appointed a parent surrogate for the student (Doc. l).

**Allegation #3 Addressing the Student's Social/Emotional/Behavioral Needs
From September 2009 to December 15, 2009**

9. At the September 24, 2009 meeting, the MCPS IEP team reviewed a June 3, 2008 IEP developed by CCPS, which indicates that the last reevaluation was conducted on December 12, 2006, that the student was identified with an emotional disability that impacts his reading fluency, written language expression, self management and social

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interaction. The IEP also states that the student requires special education instruction in a separate special education classroom designed for students with emotional needs taught by special or general education teachers, and weekly psychological services, and it permits the use of physical restraint. The student's parent was not provided with the opportunity to participate in the meeting (Docs. a and j).

10. At the September 24, 2009 meeting, the team conducted a reevaluation and decided that the student continued to meet the criteria for identification as a student with a disability under IDEA. The team also decided that a functional behavioral assessment would be conducted in order to determine appropriate behavioral interventions, and that a behavioral intervention plan would be developed. The team also decided that consideration would be given to conducting another IEP team meeting with MCPS Central Office staff in order to determine whether the student requires "a higher level of service." At the September 24, 2009 meeting, the team revised the IEP to discontinue the use of physical restraint and weekly psychological services and to add "six (6) counseling sessions with a school social worker twice a year" (Doc. j).
11. The education record includes a behavioral intervention plan dated November 18, 2009, but the record does not include a functional behavioral assessment or documentation that an IEP team meeting was held in order to develop the behavioral intervention plan or consider whether the student requires additional behavioral supports (Doc. k).

**Allegation #4 Addressing the Student's Social/Emotional/Behavioral Needs
Since December 15, 2009**

12. On December 15, 2009, CCDJS placed the student at XXXXXXXXXXXXXXXXXXXX
XXX, XXX XXXXX in XXXXXXXX County, Maryland, and enrolled him in the Type III
educational program at XXXXXXXX, located on the grounds of the group home
(Doc. p).
13. XXXXXXXXXXXX houses both Type I and Type III educational programs in the same
building. The school employs five (5) teachers who are certified in required content
areas and teach both Type I and Type III students. One (1) of the teachers is also a
certified special education teacher, and the remaining four (4) teachers have obtained
credits toward certification as special education teachers. The school is open for student
attendance 180 days per school year, for a total of 1170 hours. Type I and Type III
programs at XXXXXXXX operate on the same calendar and hours of instruction (Docs. r,
y, z, bb, and review of personnel records of XXXXXXXX staff).

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14. On December 16, 2009, XXXXXXXX staff notified GCPS of the student's placement and requested that an IEP team meeting be held (Doc. p).
15. On December 16, 2009, December 17, 2009, January 7, 2010, January 21, 2010, and January 26, 2010, XXXXXXXX staff requested the student's education record from MCPS. MCPS did not send the record until January 27, 2010 and XXXXXXXX did not receive the record until February 3, 2010 (Docs. n and aa).
16. On December 21, 2009, XXXXXXXX and GCPS staff determined that the student's educational needs could be implemented at XXXXXXXX without convening an IEP team meeting and without having access to the IEP (Docs. n, r, and aa).

Allegation #5 Implementation of the IEP since December 15, 2010

17. On January 7, 2010, XXXXXXXX staff obtained a copy of the June 3, 2008 IEP from CCPS, which they sought because they were unable to obtain the education record from MCPS (Docs. n and r).
18. There is documentation that the student has been provided with special education instruction from both general and special education teachers in a small group setting with intensive behavioral supports, as well as counseling services from a school social worker: These documents indicate that services were provided:
 - a. in accordance with a plan developed by XXXXXXXX staff, in consultation with the student, from December 15, 2009 until January 7, 2010, when XXXXXXXX received the June 3, 2008 IEP developed by CCPS;
 - b. in accordance with the June 3, 2008 IEP developed by CCPS from January 7, 2010 to February 3, 2010; and
 - c. in accordance with the September 24, 2009 IEP developed by MCPS since February 3, 2010 (Docs. o, q, s, u, v, y, bb, cc, and review of personnel records of XXXXXXXX staff).
19. On April 15, 2010, the Circuit Court for Charles County ordered that CCDJS and CCDSS be granted limited guardianship of the student for educational purposes. The Court Order states that the student's mother "wants her parental rights terminated," and that the student's father has not responded to attempts to contact him by CCDSS. The Court

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Order was continued on August 5, 2010, and a review hearing in the Circuit Court for Charles County is scheduled for January 6, 2011 (Doc. w).

20. On September 24, 2010, a parent surrogate was appointed for the student (Doc. dd).
21. An IEP team meeting is scheduled for November 8, 2010 to review the student's program and progress (Docs. dd and ff).

**Allegation #6 Determination of the Need for ESY Services for the
2009-2010 School Year**

22. A determination of the student's need for extended school year services was not made for the 2009-2010 school year (Doc. j).

**Allegation #7 Use of Physical Restraint from January 25, 2010 through
May 14, 2010**

23. There is documentation that on January 25, 2010, the student eloped from the school into a pasture that was covered with deep snow. School staff attempted to escort the student back and encouraged the student to make positive choices. The student "struggled violently" and was held in a standing hold by staff for eighteen (18) minutes until he calmed down and agreed to return. The student had to have his clothes changed and a heater brought in because he was "shivering hard" due to being cold and wet. The documentation contains the names of the staff members involved and the name and signature of the administrator informed of the incident. There is no documentation that a parent of the student's was identified at that time, and thus, the student's parent was not notified of the incident (Doc. t).
24. There is documentation that on March 25, 2010, the student refused to follow instructions in the classroom and then refused to go to the counseling room when directed to do so by school staff. After school staff gave the student several prompts to go to the counseling room, they attempted to escort him, but the student became "extremely aggressive" and attempted to attack school staff. As a result, the student was placed in a supine restraint for fifteen (15) minutes until he discontinued attempts to attack staff. The documentation contains the names of the staff members involved and the name and signature of the administrator informed of the incident. There is no documentation that a parent of the student's was identified at that time, and thus, the student's parent was not notified of the incident (Doc. t).

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25. There is documentation that on May 12, 2010, the student was sent to the counseling room for support when he refused to complete work in English class. The student yelled at and kicked staff, slammed cabinet doors, and threw papers around in the counseling room. School staff encouraged the student to calm down and make appropriate choices. When the student moved toward staff in a threatening manner after being warned to move away, he was placed in a standing hold. Because the student began kicking, biting and scratching staff, he was placed in a supine hold. The length of time in restraint is documented as twenty-five (25) minutes. The documentation contains the names of the staff members involved and the name and signature of the administrator informed of the incident. There is no documentation that a parent of the student's was identified at that time, and thus, the student's parent was not notified of the incident. There is no documentation that the IEP team met following the incident in order to consider the behavioral interventions being utilized (Doc. t).
26. There is documentation that on May 14, 2010, the student was sent to the counseling room for support when he refused to go on a walk with his class. The student yelled at staff, and was encouraged to calm down and make appropriate choices. When the student threatened to attack staff and moved toward staff in a threatening manner after being warned to move away, he was placed in a standing hold. Documentation of the incident states that because the student began "struggling violently," he was placed in a supine hold. The length of time in restraint is documented as twenty-seven (27) minutes. The documentation contains the names of the staff members involved and the name and signature of the administrator informed of the incident. There is no documentation that a parent of the student's was identified at that time, and thus, the student's parent was not notified of the incident. There is no documentation that the IEP team met following the incident in order to consider the behavioral interventions being utilized (Doc. t).
27. XXXXXXXXX staff report that the complainants requested copies of the reports of incidents of restraint. In response to that request, XXXXXXXXX staff forwarded portions of the narrative of the reports electronically to the complainants, but did not provide them with copies of the original documents, which contain the names of staff involved and the signatures of the administrator informed of the incidents (Report of XXXXXXXXX staff).

Allegation #8 Placement of Students in Type III Educational Programs

28. An agreement between the XXXXXXXXXXXXXXXXXXXXX, XXX and GCPS, dated September 20, 2010, states that when a GCPS student is placed at the group home, XXX XXXX staff and the GCPS principal or designee will meet to discuss whether there is an appropriate GCPS placement and that an IEP team meeting will be held to determine the

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appropriate educational placement. If the student is placed at the group home from another Maryland jurisdiction, an IEP team meeting will be held at XXXXXXXX and a GCPS staff member will serve as the IEP team chairperson. If the team determines that the IEP cannot be implemented in a GCPS school, the student will be provided with an appropriate program at XXXXXXXX “determined and arranged through an agreement made directly between XXXXXXXX and the sending county” (Doc. r).

DISCUSSION/CONCLUSIONS:

Allegation#1 Transfer of the Student’s Education Record from CCPS to MCPS in September 2009

In order to ensure that a student who transfers to a new public agency receives comparable services until the IEP from the previous public agency is adopted or revised, the new public agency must take reasonable steps to promptly obtain the student’s education records, including the IEP and supporting documents (34 CFR §300.323).

In the case of a student who is in State-supervised care, the new public agency must, among other things, request, in writing, the education record from the previous public agency within two (2) days of receiving notice that the student is enrolling. Within three (3) days of receiving such a request, the sending school must provide the receiving school with the student’s education record (Md. Code Ann., Educ. §8-504).

A child in State-supervised care is defined as a child who is in the custody of, committed to, or otherwise placed by a placement agency. A placement agency includes local departments of social services and juvenile services (Md. Code Ann., Educ. §8-501).

MCPS

Based on Findings of Fact #1 and 12, MSDE finds that during the time period covered by this investigation, the student was a child in State-supervised care. Based on Findings of Fact #3 and 4, MSDE finds that MCPS took appropriate steps to obtain the student’s education record in a timely manner when he was placed in a group home in Montgomery County, Maryland. Therefore, MSDE does not find that a violation occurred with respect to MCPS.

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CCPS

Based on Findings of Fact #2 and 3, MSDE finds that CCPS provided that the student's education record to MCPS when the student was placed in a group home in Montgomery County, Maryland. Therefore, MSDE does not find that a violation occurred respect to CCPS.

Additional Issues

Transfer of the Record from MCPS to GCPS/XXXXXXXX

Based on Findings of Fact #15, 17, and 18, MSDE finds that MCPS did not ensure that the student's education record was transferred in a timely manner when it was notified that the student was placed at XXXXXXXX and a request was made for the record. Therefore, MSDE finds that a violation occurred.

Maintenance of Records

In order to ensure that students are provided appropriate special education instruction and related services, each public agency must maintain accurate records, including documentation of the transfer of student education records, as specified in the Maryland Student Records System Manual (COMAR 13A.08.02.04).

Based on Finding of Fact #3, MSDE finds that MCPS did not maintain documentation of when the student's education record was transferred by CCPS. Additionally, based on Findings of Fact #10 and 11, MSDE finds that MCPS did not maintain copies of a functional behavioral assessment used to develop a behavioral intervention plan or documentation of how the student's social/emotional needs were identified. As a result, MSDE finds that a violation occurred.

Allegation #2 Parental Participation in the September 24, 2010 IEP Team Meeting

A child in an out-of-county living arrangement means a child who is placed by a State agency, a licensed child placement agency, or a court in a county other than where the child's parent or legal guardian resides. A child in an out-of-county living arrangement must be provided with an appropriate education from the service providing local education agency (Md. Code Ann., Educ. §4-122).

The service providing local education agency is the local education agency for the county where a child in an out-of-county living arrangement is placed. The local education agency in the county where the parent or legal guardian in an out-of-county living arrangement resides remains financially responsible for the student's education (Md. Code Ann., Educ. §4-122).

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To ensure that the rights of a student are protected, the student's parent must be provided with the opportunity to participate in IEP team meetings (34 CFR §300.322). Under Maryland law, this is defined as providing the parent with written notice at least ten (10) days in advance of the meeting, which includes information such as the purpose, time, date, and location of the meeting (COMAR 13A.05.01.07).

A "parent" under IDEA includes a biological or adoptive parent of the student and a parent surrogate who has been appointed in accordance with IDEA (34 CFR §300.30). Under Maryland law, a parent surrogate must be appointed under certain circumstances, including when no parent of the student can be identified or located or when the student is a ward of the State under the laws of the State. Under Maryland law, a student is a ward of the State if the student has been committed by a court of competent jurisdiction to the legal custody of a State or county agency or official *with the express authorization that the State or county agency or official make educational decisions for the student* (34 CFR §300.519 and Md. Code Ann., Educ. §8-412 (2007)) (emphasis added).

CCPS

Based on Findings of Fact #1 and 2, MSDE finds that MCPS was the local education agency responsible for providing special education services to the student while he was placed by CCDJS in Montgomery County, and that CCPS maintained financial responsibility for the student's education. Thus, CCPS was not the local school system responsible for ensuring that the student's parent was provided with the opportunity to participate in the September 24, 2009 IEP team meeting. Therefore, MSDE does not find that a violation occurred with respect to CCPS.

MCPS

Based on Findings of Fact #1 and 2, MSDE finds that as the public agency responsible for providing special education services to the student while he was placed by CCDJS in Montgomery County, MCPS was required to ensure that the student's parent was provided with the opportunity to participate in IEP team meetings.

Based on Findings of Fact #2, 3, and 5 - 8, MSDE finds that MCPS did not take appropriate steps to determine whether the student is a ward of the State who required appointment of a parent surrogate or to identify and locate the student's parent. Therefore, MSDE finds that MCPS did not ensure that an individual with education decision-making authority was provided with the

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opportunity to participate in the September 24, 2009 IEP team meeting and that a violation occurred with respect to MCPS.

**Allegation #3 Addressing the Student's Social/Emotional/Behavioral Needs
From September 2009 to December 15, 2009**

In order to ensure the provision of a free appropriate public education (FAPE) to a student with a disability under IDEA, the public agency must provide services that address the student's identified special education instruction and related services needs. To appropriately identify the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.320 and .324).

CCPS

As stated above, CCPS was not the local school system responsible for the provision of special education services to the student while he was placed in Montgomery County. Therefore, this office does not find that a violation occurred with respect to CCPS.

MCPS

As stated above, MCPS was the local education agency responsible for providing the student with FAPE. Based on Findings of Fact #9 - 11, MSDE finds that MCPS did not ensure that steps were taken to address the student's interfering behaviors as determined necessary by the IEP team on September 24, 2009. Therefore, this office finds that a violation occurred with respect to MCPS.

**Allegation #4 Addressing the Student's Social/Emotional/Behavioral Needs
Since December 15, 2009**

As stated above, in order to ensure the provision of FAPE to a student with a disability under IDEA, the public agency must provide services that address the student's identified special education instruction and related services needs (34 CFR §§300.320 and .324).

CCPS

Based on Findings of Fact #12 and 14, MSDE finds that GCPS was the local education agency responsible for providing special education services to the student while he was placed by

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CCDJS in Garrett County, and that CCPS maintained financial responsibility for the student's education. Therefore, MSDE does not find that a violation occurred with respect to CCPS.

MCPS

Based on Findings of Fact #1, 3 – 5, 9 – 11, and 15, MSDE finds that MCPS was responsible for the delay in addressing the student's emotional needs consistent with the decisions made by the team on September 24, 2009 until MCPS transferred the record to XXXXXXXXX staff on February 3, 2010. Therefore, MSDE finds that a violation occurred with respect to MCPS.

GCPS

Based on Finding of Fact #12, MSDE finds that GCPS has had responsibility to provide FAPE since the student has been placed in Garrett County. Based on Findings of Fact #9 – 11, 16, 20, and 21, MSDE finds that GCPS has not ensured that steps have been taken to address the student's interfering behaviors as determined necessary by the IEP team on September 24, 2009. Therefore, this office finds that a violation occurred with respect to GCPS since receipt of the student's education record from MCPS on February 3, 2010.

Allegation #5 Implementation of the IEP since December 15, 2010

When a student with a disability who had an IEP that was in effect in a previous public agency in a state transfers to a new public agency in the same state, the new public agency must provide FAPE to the student, including services comparable to those described in the student's IEP from the previous public agency (34 CFR §300.323). The determination of comparable services must be made by the IEP team at the new public agency (*Analysis of Comments and Changes*, Federal Register, Vol. 71, No. 156, August 2006, p. 46681). These comparable services must be provided until the new public agency either:

- a. Adopts the student's IEP from the previous public agency; or
- b. Develops, adopts, and implements a new IEP (34 CFR §300.323).

However, if the new public agency believes that the student's IEP from the previous public agency is inappropriate, the new public agency must develop a new IEP through the appropriate procedures within a short time after the student enrolls in the new public agency, usually within one week (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, March 1999, p. 12476²).

² In the 2004 reauthorization of the IDEA, no changes were made to this requirement (Federal Register, Vol. 71, No. 156, August 2006, p. 46547).

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CCPS

As stated above, CCPS was not the local school system responsible for the provision of special education services to the student since his placement in Garrett County. Therefore, this office does not find that a violation occurred with respect to CCPS.

MCPS

Based on Findings of Fact #9 and 10, MSDE finds that the IEP developed by MCPS on September 24, 2009 required the same special education instruction and related services in the same educational placement as did the IEP previously developed by CCPS on June 3, 2008. As stated above, based on Findings of Fact #15, 17, and 18, MSDE finds that MCPS did not ensure that the student's education record was transferred in a timely manner. As a result, there was a delay in implementing the student's IEP for eight (8) school days from December 15, 2009 until January 7, 2010,³ when CCPS provided XXXXXXXX with the June 3, 2008 IEP. Therefore, MSDE finds that a violation occurred with respect to MCPS from December 15, 2009 until January 7, 2010.

GCPS

As stated above, GCPS has been the local education agency responsible for providing the student with FAPE since the student was placed in Garrett County. Based on Finding of Fact #15, MSDE finds that timely efforts were made to obtain the student's education record from MCPS in order to ensure that the student has received the special education instruction and related services in the educational placement required by the IEP.

Based on Findings of Fact #13, 15, 17, and 18, MSDE finds that GCPS has ensured that the student has been provided with the amount of special education instruction and related services in the educational placement required by the IEP since receipt of the IEP on January 7, 2010. Therefore, MSDE does not find that a violation occurred with respect to GCPS.

³ The calculation of school days takes into consideration scheduled holidays and school closures due to snow (Docs. cc and jj).

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**Allegation #6 Determination of the Need for ESY Services for the
2009-2010 School Year**

ESY services are an individualized extension of specific services beyond the regular school year that are designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b) and COMAR 13A.05.01.08(B)).

CCPS

As stated above, CCPS was not the local school system responsible for the provision of special education services to the student since his placement in Garrett County. Therefore, this office does not find that a violation occurred with respect to CCPS.

GCPS

As stated above, GCPS has been the local education agency responsible for providing the student with FAPE since the student was placed in Garrett County. Based on Finding of Fact #22, MSDE finds that GCPS did not ensure that a determination was made regarding the student's need for ESY services following the 2009-2010 school year. Therefore, MSDE finds that a violation occurred with respect to GCPS.

**Allegation #7 Use of Physical Restraint from January 25, 2010 through
May 14, 2010**

Physical restraint means the use of physical force, without the use of any device or material, that restricts the free movement of all or a portion of a student's body. Physical restraint does not include holding a student's hand or arm to escort the student safely from one area to another or intervening in a fight (COMAR 13A.08.04.02B(11)).

For a student who has been identified as a student with a disability, the use of physical restraint is prohibited in public agencies unless:

1. there is an emergency situation and physical restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or have been deemed inappropriate; or

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2. the student's BIP or IEP describes the specific behaviors and circumstances in which physical restraint may be used (COMAR 13A.08.04.05A).

Each time a student is restrained, school personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the use of restraint;
3. The behavior that prompted the use of restraint;
4. The names of the school personnel who observed the behavior that prompted the use of restraint; and
5. The names and signatures of the staff members implementing and monitoring the use of restraint (COMAR 13A.08.04.05A(3)(a)).

Additionally, this documentation must include a description of the restraint event, including:

1. The type of restraint utilized;
2. The length of time in restraint;
3. The student's behavior and reaction during the restraint; and
4. The name and signature of the administrator informed of the use of restraint (COMAR 13A.08.04.05A(3)(b)).

Each time restraint is used, parents must be provided oral or written notification within twenty-four (24) hours of the use of restraint, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A(5)).

If restraint is used and the IEP or BIP does not include the use of this intervention, the IEP team must meet within ten (10) business days of the incident to consider the following:

1. The need for a functional behavioral assessment (FBA);
2. Developing appropriate behavioral interventions; and
3. Implementing a BIP (COMAR 13A.08.04.05(C)(3)).

CCPS

As stated above, CCPS was not the local school system responsible for the provision of special education services to the student since his placement in Garrett County. Therefore, this office does not find that a violation occurred with respect to CCPS.

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GCPS

As stated above, GCPS has been the local education agency responsible for providing the student with FAPE since the student was placed in Garrett County. Based on Findings of Fact #23 - 27, MSDE finds that GCPS did not ensure that a parent of the student's was notified of each incident of physical restraint.

Based on Findings of Fact #24 and 26, MSDE also finds that GCPS did not ensure that the IEP team convened after each incident of restraint once the IEP developed by MCPS was obtained, which discontinued the use of physical restraint. Therefore, MSDE finds that violations occurred with respect to GCPS.

Allegation #8 Placement of Students in Type III Educational Programs

Maryland Law permits the implementation of a student's IEP in a Type III general education program for residents of a facility licensed by a unit of State government to provide treatment or care of students under certain circumstances (COMAR 13A.09.10.20). The student's IEP may be implemented through a transitional instructional program not to exceed an average of sixty (60) school days and the following procedures must be followed:

1. The Type III program staff must contact the local school system in which the educational program is located and must request an IEP team meeting.
2. Pending the convening of the IEP team, the student may be enrolled in the general education program on an interim basis implementing the IEP to the extent feasible within the resources of the facility.
3. At the IEP team meeting, the IEP team must review the IEP and the ability of the school to implement the IEP. Based on that data, the team must determine whether:
 - a. The nonpublic Type III general education program can implement the IEP;
 - b. Special education instruction and related services, in addition to those general education services provided by the Type III general education program must be provided by the local school system on the grounds of the Type III general education facility; or
 - c. The IEP will be implemented in a public school special education program or an approved nonpublic school special education program (COMAR 13A.09.10.20).

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CCPS

As stated above, CCPS was not the local school system responsible for the provision of special education services to the student since his placement in Garrett County. Therefore, this office does not find that a violation occurred with respect to CCPS.

GCPS

As stated above, GCPS has been the local education agency responsible for providing the student with FAPE since the student was placed in Garrett County. Based on Findings of Fact #16 and 28, MSDE finds that GCPS has not ensured that proper procedures are followed when students are placed in the Type III educational program at XXXXXXXXXX because:

- a. GCPS has not ensured that IEP team meetings are held to determine whether the IEP for students placed at XXXXXX can be implemented in a public school; and
- b. GCPS has not ensured that decisions regarding appropriate services for students at XXX XXXX are made by an IEP team.

Therefore, MSDE finds that violations have occurred with respect to GCPS.

ADDITIONAL DISCUSSION:

CCDJS' Responsibility

When a Court "commits" a child to a local department of social services or juvenile services, it transfers custody of the child to that agency (Md. Cts. & Jud. Proc. Code Ann. §§3-801 and 3-8A-01). "Custody" is defined as both a right and an obligation to provide ordinary care for a child and to determine a residential placement for the child. The purpose of a commitment to the local department of social services or juvenile services is to, among other things, secure for the child custody, care, and discipline as nearly as possible equivalent to that which the child's parents should have given (Md. Cts. & Jud. Proc. Code Ann. §3-802). Therefore, when a child is committed to the custody of a local department of social services or juvenile services, that agency has the responsibility to ensure that the child is enrolled in school, just as the child's parents would be responsible for doing if the child remained in the parents' custody.

As a State Education Agency, MSDE is required to ensure that public agencies carry out their responsibilities for the provision of a free appropriate public education (FAPE) to students in the State of Maryland (34 CFR §300.149). The IDEA defines "public agency" as the State

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Education Agency, local education agencies, and any other political subdivisions of the State that are responsible for providing education to children with disabilities (34 CFR §300.33).

In Maryland, public agencies responsible for the provision of education to children are defined as local school systems, as well as other State agencies, including a local department of juvenile services when the student is attending a school operated by or contracted with that public agency. However, local departments of juvenile services are not included in this definition when a student who is placed in the community enrolls in a local public school system (COMAR 13A.05.01.03).

In this case, CCDJS did not serve as a public agency responsible for the provision of education services during the time period addressed in this allegation. Therefore, this office does not have authority to take steps to address concerns related to CCDJS delaying enrollment of the student in MCPS and inappropriately advising MCPS staff not to contact the student's parent.

However, CCDJS was responsible for ensuring that the student was enrolled in school in a timely manner and that accurate information about the student's parent was provided to school staff. Because CCDJS delegated this responsibility to XXXXXXXXXXXXXXXXXXXX staff, and because the group home staff did not ensure timely enrollment and the provision of accurate information to school staff, CCDJS did not meet its responsibility to the student, in accordance with Md. Cts. & Jud. Proc. Code Ann. §3-802. Therefore, by copy of this LOF, MSDE is informing CCDJS officials of serious concerns about these matters, and is asking that CCDJS take immediate steps to address them.

XXXXXXXXXX Responsibility

While the local public agencies involved have responsibility for ensuring the provision of FAPE to students placed in nonpublic schools by public agencies, the nonpublic schools also have responsibility to ensure that they maintain and implement appropriate policies and procedures. While this office does not have authority over the XXXXXXXXX, this LOF is being shared with the Nonpublic Branch of MSDE, which is conducting a separate investigation of the policies and procedures of XXXXXXXXX in order to ensure compliance with the requirements.

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CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

GCPS

MSDE requires GCPS to provide documentation by December 1, 2010 that an IEP team meeting has been held to ensure that the student's emotional needs are properly identified and addressed and that a decision is made regarding the appropriate educational placement for the student. GCPS must ensure that the student's parent under IDEA is provided with the opportunity to participate in the IEP team meeting. GCPS must also ensure that the parent is provided with notice of the procedural safeguards and with proper written notice of the IEP team's determinations.

GCPS and MCPS

MSDE requires that MCPS and GCPS provide documentation by February 1, 2011 that the student has been offered *compensatory services*⁴ or other remedy necessary to redress the violations identified in this LOF. If the student's parent disagrees with the IEP team's decisions or the services offered to remediate the violations, the parent maintains the right to request mediation or to file a due process hearing to resolve the dispute.

Similarly-Situated Students

GCPS

MSDE requires GCPS to provide documentation by February 1, 2011 that an IEP team meeting has been held for each Maryland student placed at XXXXXXXXX in order to determine an appropriate educational placement for each student.

School-Based/Systemic

MCPS

MSDE requires MCPS to provide documentation of the steps taken to determine if the procedural violations identified are unique to this case or if it represents a pattern of

⁴ 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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noncompliance at XXXXXXXXXXXXXXXXXXXX or the school system. This documentation is due no later than February 1, 2011.

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 requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do 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.

GCPS

MSDE requires GCPS to provide documentation of the steps taken to ensure that proper procedures are followed when Maryland students are placed in the Type III education program at XXXXXXXXXXXX. This documentation is due no later than February 1, 2011.

MSDE requires GCPS to provide documentation of the steps taken to determine if the remaining procedural violations identified are unique to this case or if it represents a pattern of noncompliance within the school system. This documentation is due no later than February 1, 2011.

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 requirements are not being implemented, the school system must identify the actions that will be taken to ensure that the violations do 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.

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In addition, MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement is scheduled to conduct a comprehensive monitoring of MCPS in January 2011. In addition, MSDE is currently in the process of conducting a State-wide monitoring of compliance with the behavioral intervention requirements. Verification of the school systems' compliance will also be conducted through these processes, consistent with the requirements of the United States Department of Education, Office of Special Education Programs (OSEP), and 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 the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the findings of fact or conclusions. The additional written documentation must not have been provided or otherwise been available to this office during the complaint investigation and must be related to the issues identified and addressed in the LOF. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of fact, conclusions, and corrective actions contained in this LOF should be addressed to this office in writing. The student's parent and the local 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 FAPE for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE

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recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

CAH/am

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