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June 10, 2011

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RE: XXXX  
Reference: #11-084

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.

**ALLEGATIONS:**

On April 19, 2011, MSDE received a complaint from Rachel E. Stafford, Esq., hereafter, "the complainant," on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. BCPS has not followed proper procedures when developing the student's Individualized Education Program (IEP) since the start of the 2010-2011 school year, in accordance with 34 CFR §§300.323 and .324. Specifically, the complainant alleged that:
  - a. The IEP does not include accurate present levels of the student's performance in order to properly identify and address all of the needs that arise from his disability, including feeding, toileting, and vision; and
  - b. The IEP in effect since December 13, 2010 does not contain a transition plan with appropriate post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living skills or a statement of transition services that was developed by an IEP team.
2. BCPS has not ensured that the student's IEP has been implemented since the start of the 2010-2011 school year, in accordance with 34 CFR §300.101. Specifically, the complainant alleged that:
  - a. The student has not been provided with the special education instruction required by the IEP;
  - b. The student has not been provided with the supplementary aid and service of the use of an "assistive device for standing and ambulation" required by the IEP; and
  - c. School staff has not been trained to assist the student with feeding as agreed at the IEP team meeting on December 13, 2010.
3. BCPS did not provide the student's mother with prior written notice of the IEP team decision to reject her request for a "one-to-one aide," which she made at the IEP team meeting on December 13, 2010, in accordance with 34 CFR §300.503.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 20, 2011, MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Lewis, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On that same date, Ms. Stump spoke with the complainant by telephone and clarified the allegations to be investigated.

4. On April 22, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Dr. Lewis of the allegations and requested that her office review the alleged violations.
5. On May 4, 2011, Ms. Stump reviewed the student's education record at the BCPS Central Office.
6. On May 13, 2011, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX and interviewed the following school staff:
  - a. Mr. XXXXXXXX, Principal;
  - b. Ms. XXXXXXXXXXXX, Special Education Vision teacher;
  - c. Ms. XXXXXXXX, Occupational Therapist;
  - d. Ms. XXXXXXXXXXXX, Assistant Principal;
  - e. Mr. XXXXXX, IEP Team Chairperson;
  - f. Ms. XXXXXXXXXXXX, IEP Team Chairperson;
  - g. Mr. XXXXXXXX, Social Worker; and
  - h. Mr. XXXXXXXXXXXX, Special Education Teacher.

Ms. Ruley attended the site visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.

7. On May 24, 2011, Ms. Stump conducted a telephone interview with Ms. XXXXXX, Physical Therapist, XXXXXXXXXXXXXXX. Ms. Ruley participated in the telephone conference.
8. On May 26, 2011, BCPS provided MSDE with additional documentation from the student's education record, via electronic mail (e-mail).
9. On May 27, 2011, BCPS provided MSDE with additional documentation from the student's education record, via facsimile.
10. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Correspondence and attachments from the complainant to MSDE, received April 19, 2011;
  - b. IEP, dated January 7, 2010;
  - c. Transition Planning Inventory, dated November 9, 2010;
  - d. Physical Therapy progress report, dated November 17, 2010;

- e. Occupational Therapy progress report, dated November 18, 2010;
- f. Vision Therapy progress report, dated November 19, 2010;
- g. Special Education progress report, dated November 19, 2010;
- h. Receipt of Parental Rights form, dated December 13, 2010;
- i. IEP team meeting sign-in sheet, dated December 13, 2010;
- j. IEP, dated December 13, 2010;
- k. IEP, dated April 8, 2011;
- l. Student's class schedule for the 2010-2011 school year;
- m. IEP progress reports for the 2010-2011 school year;
- n. Physical Therapy service provider logs for the 2010-2011 school year;
- o. Occupational Therapy service provider logs for the 2010-2011 school year;
- p. Related Services Management Plan for use of the adaptive spoon for the 2010-2011 school year;
- q. Related Services Management Plan for the use of the XXXXXXXX for the 2010-2011 school year;
- r. Educational Services Management Plan for vision services for the 2010-2011 school year; and
- s. Classroom Teacher's notes regarding the student's progress for the 2010-2011 school year.

**BACKGROUND:**

The student is fifteen (15) years old, is identified as a student with multiple disabilities under IDEA, related to an intellectual disability, a visual impairment, and an orthopedic impairment, and is eligible to receive special education and related services. The student attends the XXXXXXXXXXXXXXXX, a public separate special education school. During the period of time addressed by this investigation, the student's mother participated in the education decision-making process, and was provided with written notice of the procedural safeguards (Docs. a, b, h, i, j, and k).

**ALLEGATION #1a:**

**DETERMINATION OF THE PRESENT LEVELS OF PERFORMANCE TO IDENTIFY AND ADDRESS NEEDS RELATED TO FEEDING, TOILETING, AND VISION**

**Findings of Fact:**

**Present Levels of Performance**

- 1. The present level of academic achievement and functional performance included in the student's IEP in effect since the start of the 2010-2011 school year contain references to performance levels identified through informal assessments completed in both November 2009 and in November 2010 (Docs. b, j, and k).

2. The summary of the student's current functioning in the classroom reflects that with the use of the supports required by the IEP, the student is able to perform the following tasks, among others:
  - a. Listen to "read aloud" stories;
  - b. Touch a pre-programmed "talking processor" in order to identify story vocabulary words;
  - c. Make "textured" pictures related to stories;
  - d. Recognize numerals one (1) through three (3) by pressing an assistive technology switch;
  - e. Identify which group has "more;"
  - f. Count the sides and corners of shapes;
  - g. Use large-print materials;
  - h. Hold writing implements like a "big crayon;"
  - i. Hold blocks;
  - j. Turn his head toward sound;
  - k. Reach for, grasp, and manipulate "classroom tools;"
  - l. Reach persistently for desired objects;
  - m. Grasp a spoon already loaded with food, bring it to his mouth, and flex his wrist to pour the food into his mouth; and
  - n. Reach and grasp for the handle of his juice cup (Docs. b, j, and k).

#### Feeding, Toileting, and Vision Needs Identified by the Data

3. The IEP identifies that the student requires assistance with feeding and includes an annual goal to improve his self-feeding skills by using an adaptive spoon and juice cup. In order to assist the student with achieving the annual goal, the IEP includes thirty (30) minutes per week of direct occupational therapy (OT) services and thirty (30) minutes per month of consultative OT services, provided to the student's teachers, in order to assist the student in achieving the annual goal (Docs. b, j, and k).
4. The student is not toilet-trained and, because of his weight-bearing issues, which are being addressed through physical therapy, the IEP does not identify toileting skills as a need that can be addressed currently by the student's program (Docs. b, j, and k).
5. There is documentation that in February 2011, after consultation with the student's mother, the physical therapist began to utilize an "adaptive potty chair" with the student. The documentation further indicates that the physical therapist is waiting for authorization from the student's doctor to increase the number of times per week that the student is able to bear weight in order to stand after using the "potty chair" before continuing with this training (Docs. d, m, and q).

6. When the IEP was revised at the December 13, 2010 IEP team meeting, the student's current vision teacher included, in addition to previous assessment data, a report of his current level of functioning in vision (Docs. f, j, and r).
7. The IEP identifies the student's vision as an area of need and includes an annual goal for the student to use his "functional vision" when accessing the school curriculum. In order to assist the student with achieving the annual goal, the IEP includes thirty (30) minutes per week of special education instruction to be provided by the vision teacher in the student's separate special education classroom, and supplementary aids and services, including the use of a "slant board" and the use of high-contrast, enlarged, and brightly colored instructional materials (Docs. b, j, and k).
8. The IEP includes a notation that the student needs to wear eyeglasses. School staff report that the student wears his eyeglasses during the school day and there is documentation that the student wears his glasses when the vision goals are being addressed (Docs. b, j, and k).

**Discussion/Conclusions:**

Each student's IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum (34 CFR §300.320). 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 (34 CFR §300.324).

In this case, the complainant alleged that the student's IEP does not contain accurate present levels of performance because some of the information in the present levels of performance section of the IEP document has remained the same for several years, particularly related to the student's vision needs. In addition, the complainant alleged that the student's feeding and toileting needs have not been addressed (Doc. a and interview with complainant).

Based on Findings of Fact #1 and 2, MSDE finds that the while some of the information included in the present levels of academic achievement and functional performance has remained the same and reflects the student's performance from earlier time periods, there is also current information included. Based on Findings of Fact #3 and 6-8, MSDE finds that the student's program addresses his identified feeding and vision needs. Based on Findings of Fact #4 and 5, MSDE finds that although the IEP does not specifically address the student's toileting skills, the physical therapist is working with the student on his standing skills and is prepared to address the student's toileting skills when his standing skills improve. Therefore, MSDE finds no violation regarding this allegation.

**ALLEGATION #1b:                    TRANSITION PLAN DEVELOPED BY THE IEP TEAM**

**Findings of Fact:**

9.        There is documentation that transition assessments were completed by the student and his mother in November 2010 (Doc. c).
  
10.      The December 13, 2010 IEP team meeting summary states, "Transition services were discussed. [The student] will remain at home with his mother and participate in a medical day care program." Additionally, the IEP developed at the December 13, 2010 IEP team meeting contains a transition plan and the documented basis for the decisions regarding the transition plan states "decisions were based on collaboration between parent, teacher, and OT." There is documentation that the student's service coordinator attended the December 13, 2010 IEP team meeting (Docs. i and j).

**Discussion/Conclusions**

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, the IEP must include appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate. The IEP must also include the transition services, including course of study, needed to assist the student in achieving those goals and, if appropriate, a statement of the responsibilities of and linkages between the public agency and any other agency that is likely to be responsible for providing or paying for transition services (34 CFR §§300.320 and COMAR 13A.05.01.09).

In this case, the complainant acknowledges that a transition assessment was completed by the student's mother prior to the December 13, 2010 IEP team meeting. However, the complainant alleges that neither the assessment nor the transition plan was discussed at the meeting and that the transition plan was developed unilaterally outside of that meeting (Doc. a and interview with complainant). Based on Findings of Fact #9 and 10, MSDE finds that there is documentation that the transition plan was developed at the IEP team meeting. Therefore, MSDE finds no violation regarding this aspect of the allegation.

**ALLEGATION #2:                    IEP IMPLEMENTATION**

**Findings of Fact:**

**Allegation #2a:                    Special Education Instruction**

11.      The IEP in effect for the 2010-2011 school year requires that the student receive special education instruction in all subjects for thirty (30) hours per week in a separate special education classroom (Docs. b, j, and k).

12. The following document that the student is receiving the special education instruction required by the IEP for the 2010-2011 school year:
  - a. The student's classroom schedule, which documents that the student is scheduled to attend all classes in a separate special education classroom;
  - b. The IEP progress reports, which indicate that the annual goals in the IEP are being addressed and that the student is making progress toward achieving the annual goals;
  - c. The classroom teacher's notes, which indicate on what skills the student has worked each week and notes the "trials" that the student engaged in for each annual goal; and
  - d. A review of the student's work samples, which indicate that the student is being provided with the accommodations and supplementary aids and services required by the IEP in order to access the general education curriculum (Docs. g, l, m, and s).

**Allegation #2b: Assistive Device for Standing and Ambulation**

13. The IEP in effect for the 2010-2011 school year requires that the student be provided with "weekly opportunities" to stand during the school day with the support of an "assistive device." This device is used by the physical therapist, when appropriate, for the purpose of "weight bearing," "upright posture," "standing," and "ambulation." It is currently used in physical therapy only (Docs. b, j, and k).
14. The physical therapist's service provider log and the Related Services Management plan regarding the use of the XXXX<sup>1</sup> indicate that the student has received weekly PT services using the XXXXXX as required by the IEP (Docs. d, m, and q).

**Allegation #2c: Staff Training to Assist the Student with Feeding**

15. The IEP team convened on December 13, 2010 to review the student's program and progress. The documentation of the meeting indicates that the team discussed the concern of the student's mother regarding the student's feeding needs and, because she is fearful that he could choke, she comes to school each day to feed him lunch. In response to that concern, the team agreed to train additional staff members to feed the student (Doc. j).

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<sup>1</sup> The XXXXXXXX is the name of the "assistive device" that is used to meet this IEP requirement (Interview with school staff).



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16. On January 4, 2011, the occupational therapist's service provider log indicates that she trained one (1) of the student's classroom teachers to feed the student (Docs. e, n, and p).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student is not being provided with the special education instruction or the use of an "assistive device for standing and ambulation." The complainant further alleges that no additional staff has been trained to assist with the feeding of the student (Doc. a).

**Allegation #2a: Special Education Instruction**

Based on Findings of Fact #11 and 12, MSDE finds that there is documentation that the special education instruction is being provided to the student in accordance with his IEP. Therefore, MSDE finds no violation regarding this aspect of the allegation.

**Allegation #2b: Assistive Device for Standing and Ambulation**

Based on Findings of Fact #13 and 14, MSDE finds that there is documentation that the student was provided with the weekly opportunities to stand with the support of the assistive device as required by the IEP. Therefore, MSDE finds no violation regarding this aspect of the allegation.

**Allegation #2c: Staff Training to Assist the Student with Feeding**

Based on Findings of Fact #15 and 16, MSDE finds that there is documentation that additional staff members have been trained to feed the student, in accordance with the request of the student's mother made at the December 13, 2010 IEP team meeting. Therefore, MSDE finds no violation regarding this aspect of the allegation.

**ALLEGATION #3: PRIOR WRITTEN NOTICE OF THE DECEMBER 13, 2010 IEP TEAM DECISION TO REJECT THE REQUEST OF THE STUDENT'S MOTHER FOR A "ONE-TO-ONE" AIDE**

**Finding of Fact:**

17. The IEP team convened on December 13, 2010 to review the student's program and progress. The documentation of the meeting indicates that the team discussed the concerns of the student's mother, but there is no documentation that she requested that a "one-to-one aide" be provided to the student (Doc. j and review of the student's education record).

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**Discussion/Conclusions:**

The public agency is required to provide parents with written notice before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student (34 CFR §300.503). In this case, the complainant alleges that at the December 13, 2010 IEP team meeting, the student's mother made a request for a "one-to-one aide" be provided to the student but the IEP team rejected the request and did not provide the student's mother with written notice of that decision (Doc. a and interview with complainant).

Based on Finding of Fact #17, MSDE finds that there is no documentation that the student's mother requested a one-to-one aide at the December 13, 2010 IEP team meeting. Therefore, MSDE finds no violation regarding this allegation.

Please be advised that both parties have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of 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.

Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The 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 FAPE 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:ks

cc :   Andrés Alonso           Erin Leff           Martha Arthur  
      Nancy Ruley            XXXXXXX          Kathy Stump