



Nancy S. Grasmick  
State Superintendent of Schools

200 West Baltimore Street, Baltimore, MD 21201 410-767-0100 410-333-6442 TTY/TDD

June 3, 2011

Seri A. Wilpone, Esq.  
Chief Attorney  
Legal Aid Bureau, Inc.  
Southern Maryland Office  
P.O. Box 249  
Hughesville, Maryland 20637

Ms. Arden Sotomayor  
Acting Director of Special Education  
Charles County Public Schools  
P.O. Box 2770  
La Plata, Maryland 20646

Janet Hartge, Esq.  
Assistant Director of Advocacy for  
Children's Rights  
Legal Aid Bureau, Inc.  
500 East Lexington Street  
Baltimore, Maryland 21202

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

RE: XXXXX  
Reference: #11-085

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 21, 2011, MSDE received correspondence from Seri A. Wilpone, Esq. and Janet F. Hartge, Esq., Legal Aid Bureau, Inc., hereafter "the complainants," filed on behalf of the above-referenced student. In that correspondence, the complainants alleged that the Charles County Public Schools (CCPS) and Baltimore County Public Schools (BCPS) 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:

1. BCPS did not follow proper procedures to ensure that the student has been provided with a free appropriate public education (FAPE) since she was placed by the Charles County Department of Social Services (CCDSS) in a Type III Nonpublic General Educational

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Program on March 14, 2011, in accordance with the Code of Maryland Regulations (COMAR) 13A.05.02.13, 13A.09.10.20, and MSDE's Policies and Procedures for Educating a Student with an Individualized Education Program in a Type I or Type III Nonpublic General Education Program Approved under COMAR 13A.09.10.

2. CCPS has not taken steps to keep the student in the school of origin since being residentially placed by CCDSS in a diagnostic center located in Baltimore County on March 14, 2011, pursuant to COMAR 13A.05.09.04.
3. CCPS did not institute an expedited resolution process to resolve the dispute regarding services to the student since being informed of CCDSS' wishes to keep the student in the school of origin while she is residentially placed in a diagnostic center located in Baltimore County, pursuant to COMAR 13A.05.09.07.

#### **INVESTIGATIVE PROCEDURES:**

1. On April 25, 2011, 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. Kalisha Miller, Director of Special Education, BCPS; Ms. Sharon Floyd, Supervisor of Compliance, BCPS; and Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS.
2. On April 26, 2011, MSDE 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 and Ms. Miller of the allegations to be investigated and requested that their respective offices review the alleged violations.
3. On May 13, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with Ms. Floyd regarding the allegations in the complaint.
4. On May 19, 2011, Ms. Mandis and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, met with Ms. Schulte and Dr. Carol Holland, Nonpublic Coordinator, CCPS, at the Charles County Board of Education to review of the student's education record.
5. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
  - a. Individualized Education Program (IEP), revised on February 1, 2011 and April 20, 2011;

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- b. Correspondence from the complainants containing allegations of violations of IDEA, received by MSDE on April 21, 2011; and
- c. CCPS Procedures for the Education of XXXXXXXXX.

**BACKGROUND:**

The student is sixteen (16) years old, is identified as a student with an emotional disability under IDEA, and receives special education instruction and related services. She is attending XXXXXXXXXXXX (XXXXXXXXXX), a nonpublic separate special education school located in Baltimore County, where she was placed by CCPS.

The student is under the custody and guardianship of CCDSS. She has had the following residential and educational placements during the time period covered by this investigation:

- Prior to March 14, 2011, CCDSS had placed the student in the XXXXXXXXXXXXXXXX XXXX located in Prince George's County. At that time, the student received special education instruction and related services at the XXXXXXXXXXXX of Prince George's County, a nonpublic separate special education school.
- On March 14, 2011, CCDSS placed the student on a short-term diagnostic unit at XXXXXXXXXXXXX, a residential care facility located in Baltimore County. At that time, the CCDSS enrolled the student in XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a Type III nonpublic general education program.
- On April 18, 2011, CCDSS placed the student in a group home operated by XXXXX XXXXXXXX in Baltimore County.
- On April 26, 2011, the student began attending XXXXXXXXXXXXXXXX, which is located on the grounds of The XXXXXXXX Baltimore County campus.

During the time period covered by this investigation, the student's parent surrogate has participated in the education decision-making process. The parent surrogate has also been provided with notice of the procedural safeguards and with prior written notice of IEP team decisions (Docs. a and b).

**FINDINGS OF FACT:**

1. On March 30, 2011, the complainants notified CCPS that, on March 14, 2011, CCDSS placed the student on a short-term diagnostic unit at XXXXXXXXXXXXXXXX in Baltimore County, and enrolled her in XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a Type III nonpublic general education program (Doc. a).

2. On March 31, 2011, CCDSS staff notified CCPS of the student's placement in Baltimore County (Doc. a).
3. There is no information or documentation that XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX, a Type III<sup>1</sup> nonpublic general education program staff contacted CCPS or BCPS to request an IEP team meeting (Review of education record and interviews with CCPS and BCPS staff).
4. There is no information or documentation that BCPS was aware of the student's placement in Baltimore County or that BCPS has a system in place for identifying students with disabilities placed in Type III<sup>1</sup> nonpublic general education programs located in Baltimore County (Review of education record and interviews with CCPS and BCPS staff).
5. On April 20, 2011, CCPS held an IEP team meeting. At the meeting, the team discussed that CCDSS had moved the student from the short-term diagnostic unit at the XXXXX XXXX to a foster care group home in Baltimore County on April 18, 2011. Further, the team discussed that the IEP was not implemented in the Type III<sup>1</sup> nonpublic general education program while the student was placed on the diagnostic unit at XXXXXXXX XXX. The team determined that the IEP can be implemented in the Type I nonpublic special education program at XXXXXXXXXXXX, and that it would be the closest school to the student's current group home since it is located on the grounds of the group home (Doc. a).
6. At the April 20, 2011 IEP team meeting, the team also determined the services to be provided to the student in order to remediate the lack of implementation of the IEP at the XXXXXXXXXXXXXXXXXXXXXXXX Type III<sup>1</sup> nonpublic general education program (Doc. a).
7. On April 26, 2011, the student began attending XXXXXXXXXXXXXXXX (Review of cost sheet).
8. CCPS has procedures to ensure that homeless students receive appropriate educational services. These procedures include steps to be taken to ensure that students can attend the school of origin and an expedited resolution process to resolve disputes regarding services to homeless students (Doc. c).

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<sup>1</sup> Nonpublic schools that have Type III programs provide general education services only, unless the IEP team determines that the Type III program can implement the student's IEP (COMAR 13A.09.10.20).

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9. There is no information or documentation that CCDSS filed a written complaint with CCPS regarding the educational services provided to the student during her placement in XXXXXXXXXXXXXXX in Baltimore County (Review of the education record and interview with CCPS staff).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1 Placement of Students in Type III<sup>1</sup> Educational Programs**

#### **BCPS' Responsibility**

Each local school system must ensure that all students with disabilities residing within the jurisdiction of the local school system are located, identified, evaluated, and provided with special education services. Highly mobile students, homeless students, and students who are parentally-placed in private schools located within the jurisdiction are among those students who are considered to be "residing within the jurisdiction of the local school system" (COMAR 13A.05.02.13).

A homeless student includes a student awaiting foster care placement. A child awaiting foster care placement means, among other things, a student committed to the care and custody of the Department of Social Services, who is placed in a temporary, short-term placement of not longer than ninety (90) days, such as in a diagnostic center (COMAR 13A.05.09.04).

Based on Finding of Fact #1, MSDE finds that the student met the definition of a "XXXXXXXXXX" while she was placed on the short-term diagnostic unit located at XXXXXXXXXXXXXXX in Baltimore County because she was a student awaiting foster care placement at that time. Therefore, from March 14, 2011 until April 18, 2011, the student was residing in the jurisdiction of BCPS, which was responsible to ensure that she received FAPE.

Maryland law permits the implementation of a student's IEP in a Type III<sup>1</sup> 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<sup>1</sup> program staff must contact the local school system in which the educational program is located and must request an IEP team meeting. A written request for the IEP team meeting must be made by the Type III<sup>1</sup> program staff on the eleventh (11<sup>th</sup>) day of the student's enrollment or as soon thereafter as feasible.
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.

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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<sup>1</sup> 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<sup>1</sup> general education program, must be provided by the local school system on the grounds of the Type III<sup>1</sup> 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).

The local school system of the county where the facility is located is the school system responsible for educating all students with special education needs (COMAR 13A.05.02.13 and MSDE's Policies and Procedures for Educating a Student with an Individualized Education Program in a Type I or Type III Nonpublic General Education Program).

Based on Finding of Fact #1, the Type III<sup>1</sup> nonpublic general education program is located in Baltimore County. Therefore, BCPS was the local school system responsible for the student's education when she was enrolled in the program from March 14, 2011 until April 18, 2011.

Based on Findings of Fact #2, 3 and 4, MSDE finds that, while XXXXXXXXXXXXXXXXXXXX XXXXXXXX staff did not contact BCPS to request an IEP team meeting for the student, BCPS maintained responsibility for identifying students with disabilities placed in Type III<sup>1</sup> nonpublic general education programs located in Baltimore County. Based on Finding of Fact #5, MSDE finds that BCPS did not ensure that the student was provided with FAPE while placed at XXXXXXXXXXXXXXXXXXXX. Therefore, although a violation was found, this office finds that a violation occurred with respect to BCPS.

Notwithstanding the violation, based on Finding of Fact #6, MSDE finds that the IEP team has determined the services to be provided to the student to remediate the loss that occurred while she was enrolled in XXXXXXXXXXXXXXXXXXXXXXXXXXXX Type III<sup>1</sup> nonpublic general education program. Therefore, no additional student-specific corrective action is required.

**XXXXXXXXXXXXXXXXXXXXXXXXXXXXX Type III<sup>1</sup> Education Program's Responsibility**

Although local school systems 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.

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While this office does not have authority over XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Type III<sup>1</sup> nonpublic general education program, this LOF is being shared with the Nonpublic  
Branch of MSDE, which is conducting a separate investigation of the school's policies and  
procedures in order to ensure compliance with the requirements.

**Allegation #2                      Continued Placement in the School of Origin**

The local educational agency serving a homeless student must have a procedure for continuing  
the student's education in his or her school of origin for the duration of homelessness as long as  
doing so is in the best interest of the student and not contrary to the wishes of the student's  
parent or guardian. When determining the best interest of the student, various factors such as the  
distance of commute and the impact on the student's education must be considered  
(COMAR 13A.05.09.04).

As stated above, based on Findings of Fact #1, MSDE finds that the student was XXXXXXXXX  
while placed on a short-term diagnostic unit at XXXXXXXXXXXXXXX from  
March 14, 2011 until April 18, 2011. Based on Findings of Fact #2, 5, and 7, MSDE finds that  
when CCPS was notified that the student was placed there, the school system convened an IEP  
team meeting to consider the student's educational placement.

Based on Finding of Fact #5, MSDE finds that by the date of the IEP team meeting on  
April 20, 2011, the student no longer met the definition of a homeless student because she had  
been placed in a group home. Based on that Finding of Fact, MSDE finds that at the meeting,  
the CCPS IEP team identified a nonpublic separate special education school where the IEP can  
be implemented as close as possible to the student's new group home. Therefore, this office  
does not find that a violation occurred with respect to the allegation.

**Allegation #3                      Implementation of an Expedited Resolution Process**

The public agency must establish an expedited dispute resolution process to address disputes that  
arise regarding services to homeless students. Upon receipt of a written complaint from the  
parent, guardian, or an unaccompanied homeless youth, the principal must utilize this process to  
resolve the complaint within five (5) school days (COMAR 13A.05.09.07).

For purposes of this section of COMAR, the term "parent" or "guardian" means, among other  
things, the person or public agency to whom guardianship of a student has been given by a Court  
Order (COMAR 13A.05.09.07). In this case, the student's guardian is the CCDSS since that  
public agency has been awarded guardianship of the student through a Court Order.

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Based on Findings of Fact #8 and 9, MSDE finds that CCPS has procedures for ensuring appropriate educational services to homeless students and that there is no documentation that the student's guardian filed a written complaint regarding the services provided to the student, and thus, no dispute exists for the school system to resolve. Therefore, this office does not find that a violation occurred with respect to the allegation.

### **ADDITIONAL DISCUSSION:**

#### **CCDSS' Responsibility**

When a Court "commits" a child to a local department of social services, it transfers custody of the child to that agency (Md. Cts. & Jud. Proc. Code Ann. §§3-801). "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 is to, among other things, secure for the child custody and care 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, 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 FAPE to students in the State of Maryland (34 CFR §300.149). The IDEA defines "public agency" as the State 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 social services are not included in this definition (COMAR 13A.05.01.03). Therefore, this office does not have authority to take steps to address concerns related to CCDSS not ensuring that school system staff were informed of the student's placement on a diagnostic unit of XXXXXXXXXXXX in a timely manner.

However, CCDSS was responsible for ensuring that the local school system was informed of the student's change in residential placement in a timely manner so that the student could be enrolled in an appropriate education program but 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 CCDSS officials of serious concerns about these matters, and is asking that CCDSS take immediate steps to address them.



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### **CORRECTIVE ACTION/TIMELINE:**

MSDE requires BCPS to provide documentation by the start of the 2011-2012 school year of the steps taken to ensure that there is a system in place to identify students placed in Type III<sup>1</sup> education programs located within Baltimore County, and a description of how the school system will evaluate the effectiveness of the steps taken.

MSDE Office of Quality Assurance and Monitoring for Continuous Improvement is being informed of the findings in this LOF for their use in conducting monitoring of compliance with the requirements. Verification of the school system's compliance will be conducted through this process consistent with the requirements of the United States Department of Education, Office of Special Education Programs.

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. 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 the corrective action consistent with the timeline requirement as reported in this LOF.

Questions regarding the findings of fact, conclusions, or corrective action contained in this LOF should be addressed to this office in writing. The student's parent surrogate 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

c: XXXXXXXXXXXX  
James E. Richmond  
Lynn Schulte  
Carol Holland  
Joe A. Hairston  
Kalisha Miller  
Sharon Floyd  
Pam Weitz  
Dori Wilson  
Martha Arthur  
Jodi King  
Sarah Spross  
Kristine Angelis  
Eleanor Kopchick