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State Superintendent of Schools

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December 28, 2010

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Dr. Kim Lewis
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Baltimore City Public Schools
200 East North Avenue, Room 407B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #11-027

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 November 3, 2010, MSDE received correspondence from Ms. XXXXXXXX, the student's aunt, who serves as the student's parent under IDEA, hereafter, "the complainant," filed on behalf of the student. In that correspondence, the complainant alleged that the MSDE, Division of Career and College Readiness, Juvenile Services Education (MSDE/JSE), Prince George's County Public Schools, (PGCPS), and Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. This office investigated the following allegations, identified in chronological order:

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1. BCPS did not review and revise the student's Individualized Education Program (IEP), as appropriate, to address the lack of expected progress towards achieving the IEP goals, from November 3, 2009¹ until December 14, 2010, in accordance with 34 CFR §300.324;
2. MSDE/JSE did not ensure that the student was provided with the special education instruction and related services required by the IEP from December 14, 2009 to December 23, 2009, in accordance with 34 CFR §§ 300.101 and.323;
3. PGCPSS did not ensure that the student was provided with special education instruction and related services required by the IEP from December 23, 2009 to March 7, 2010, in accordance with 34 CFR §§ 300.101 and.323;
4. PGCPSS did not ensure that the student was consistently provided with the supplementary aids and services of one-to-one adult assistance and accommodations required by the IEP, from March 7, 2010 to the end of the 2009-2010 school year, in accordance with 34 CFR §§300.101 and .323;
5. BCPS did not ensure that the student was provided with special education instruction and related services as required by the IEP from the start of the 2010-2011 school year to September 27, 2010, in accordance with 34 CFR §§300.101 and.323; and
6. BCPS has not ensured the consistent implementation of the student's IEP since September 27, 2010, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 4, 2010, MSDE provided the complaint, by facsimile to the following:
 - a. Dr. Kim Lewis, Executive Director of Special Education, BCPS;
 - b. Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS;
 - c. Ms. Joan Rothgeb, Interim Director of Special Education, PGCPSS;
 - d. Ms. Gail Viens, Staff Attorney, PGCPSS;
 - e. Ms. Kathleen White, Special Education Coordinator, MSDE/JSE; and
 - f. Ms. Zondra Johnson, Coordinator of Special Education, MSDE/JSE

¹ The complaint included allegations of violations that occurred more than a year before the date it was received. The complainant was advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153).

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3. On November 12, 2010, Ms. Moyo, spoke with the complainant, by telephone, to clarify the allegations against MSDE/JSE, PGCPs, and BCPS to be investigated.
 4. On November 16, 2010, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. MSDE also notified Ms. Lewis; Ms. Ruley; Ms. Rothgeb; Ms. Viens; Ms. White; and Ms. Johnson of the allegations to be investigated and requested that their offices review the alleged violations.
 5. On November 22, 2010, MSDE/JSE staff provided MSDE with documentation from the student's education record.
 6. On December 1, 2010, MSDE determined that an additional allegation would be included in the investigation and notified the parties in writing.
 7. On December 1, 2010, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, to review the student's education record and interview the following school staff:
 - a. Ms. XXXXXXXXXXX, Special Education Teacher;
 - b. Mr. XXXXXXXXXXX, IEP Chair;
 - c. Ms. XXXXXXX, School Psychologist; and
 - d. Ms. XXXXXXXXXXX, IEP Chair.
- Ms. Ruley attended the site visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.
8. On December 3, 2010, Ms. Moyo conducted a review of the student's education record at XXXXXXXXXXX (XXXXXXXX). Ms. XXXXXXXXXXX, Special Education Chair, XXXXXXXXXXX, PGCPs; Ms. Barbara Van Dyke, Assistant Supervisor of Compliance, PGCPs; and Ms. Cheryl Riddick, Compliance Assistant, PGCPs, were present at the record review as representatives of the school system and to provide information about PGCPs policies and procedures, as needed.
 9. On December 6, 2010, BCPS staff provided MSDE with documentation from the student's education record.
 10. On December 10, 2010, staff from the Baltimore City Department of Juvenile Service (BCDJS) provided MSDE with additional information via electronic mail.
 11. On December 13, 2010, Ms. Moyo conducted a telephone interview with the complainant regarding the allegations in the complaint.

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12. On December 14, 2010, MSDE/JSE provided MSDE with additional information and documentation from the student's education record. On that same date, BCPS provided MSDE with additional information and documentation from the student's education record.
13. On December 15, 2010, Ms. Moyo conducted a telephone interview with Mr. Najier Frazer, Case Manager, BCDJS. On the same day, BCDJS provided MSDE with additional documentation via electronic mail.
14. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Correspondence from the complainant to MSDE, received on November 16, 2010¹;
 - b. IEP, dated May 1, 2009;
 - c. Functional Behavior Assessment, dated May 1, 2009;
 - d. Behavioral Intervention Plan (BIP), dated May 1, 2009;
 - e. Receipt of IEP and initiation of services log, dated August 31, 2009 to September 18, 2009;
 - f. Geometry class progress report, dated October 29, 2009;
 - g. English class progress report, dated October 29, 2009;
 - h. Social Studies class progress report, dated October 29, 2009;
 - i. Science class progress report, dated October 29, 2009;
 - j. Psychologist report, dated November 2, 2009;
 - k. Report of progress, dated November 2, 2009;
 - l. IEP, dated November 2, 2009;
 - m. Receipt of IEP and initiation of services log, dated November 3, 2009;
 - n. Consultative services log dated November 2, 2009;
 - o. Consultative services log dated November 23, 2009;
 - p. BCPS attendance log from August 31, 2009 to December 14, 2009;
 - q. BCPS enrollment log, dated December 14, 2009;
 - r. Counseling related service encounter log, dated November 10, 2009 to December 15, 2009;
 - s. BCPS communication log between school staff and the complainant, dated October 30, 2009;
 - t. Circuit Court for Baltimore City Division for Juvenile Causes Court Order, dated December 14, 2009;
 - u. Baltimore City Juvenile Justice Center (BCJJC) education service record, dated December 14, 2009;
 - v. MSDE/JSE communication log between MSDE/JSE and BCPS, dated December 22, 2009;
 - w. BCPS report card for the 2009-2010 school year;
 - x. BCPS transcript for the 2009-2010 school year;
 - y. BCJJC education service record, dated December 14, 2009;

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- z. Correspondence from MSDE/JSE staff to MSDE staff, dated November 22, 2009;
- aa. BCJJC daily resident roster, dated December 15, 2009 to December 23, 2009;
- bb. Request for records from MSDE/JSE to BCPS, dated December 22, 2009;
- cc. Group home admission notice, dated December 24, 2010;
- dd. Facsimile cover sheet from BCPS to MSDE/JSE, dated January 4, 2010;
- ee. BCDJS case manager case note, dated February 24, 2010;
- ff. BCDJS request for records from BCPS, dated March 1, 2010;
- gg. Receipt of facsimile report from BCPS staff to BCDJS staff, dated March 1, 2010;
- hh. PGCPS request for records, dated March 2, 2010;
- ii. PGCPS enrollment packet, dated March 3, 2010;
- jj. BCPS communication log between school staff and the complainant dated March 4, 2010;
- kk. IEP, dated March 8, 2010;
- ll. PGCPS math class progress report, dated March 12, 2010;
- mm. PGCPS government class progress report, dated March 12, 2010;
- nn. PGCPS English class progress report, dated April 19, 2010;
- oo. BCPS communication log between school staff and the complainant, dated April 22, 2010;
- pp. IEP team meeting notes, dated April 22, 2010;
- qq. IEP team meeting sign-in sheet, April 22, 2010;
- rr. PGCPS behavior contract, dated April 22, 2010;
- ss. PGCPS report card for the 2009-2010 school year;
- tt. PGCPS class attendance records from March 3, 2010 to June 14, 2010;
- uu. *MSDE/JSE Special Education Policies and Procedures Manual*, dated July 1, 2010;
- vv. BCPS enrollment log, dated September 2, 2010;
- ww. BCPS communication log between school staff and the complainant, dated September 2, 2010;
- xx. Receipt of IEP and initiation of services log, dated September 2, 2010;
- yy. BCPS communication log between school staff and PGCPS staff, dated September 3, 2010;
- zz. Circuit Court for Baltimore City Division for Juvenile Causes Court Order, dated September 3, 2010;
- aaa. Receipt of IEP and initiation of services log, dated September 3, 2010;
- bbb. Receipt of IEP and initiation of services log, dated September 9, 2010;
- ccc. Receipt of IEP and initiation of services log, dated September 10, 2010;
- ddd. BCPS math class progress report, dated September 12, 2010;
- eee. BCPS government class progress report, dated September 13, 2010;
- fff. BCPS science class progress report, dated September 13, 2010;
- ggg. BCPS English class progress report, dated September 15, 2010;
- hhh. BCPS psychologist report, dated September 15, 2010;
- iii. IEP, dated September 27, 2010;
- jjj. Receipt of IEP and initiation of services log, dated September 27, 2010;

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- kkk. Report of progress, dated November 5, 2010;
- lll. Counseling related service encounter log from September 7, 2010 to November 30, 2010;
- mmm. One-to-one aide sign in log from September 13, 2010 to December 1, 2010;
- nnn. BCPS student attendance report from September 2, 2010 to December 1, 2010;
- ooo. Electronic mail correspondence from BCDJS staff to MSDE staff dated, December 10, 2010;
- ppp. Electronic mail correspondence from BCDJS staff to MSDE staff dated, December 14, 2010;
- qqq. Electronic mail correspondence from PGCPS staff to MSDE staff dated, December 15, 2010; and
- rrr. Electronic mail correspondence from BCDJS staff to MSDE staff dated, December 15, 2010; and
- sss. Student BCPS class schedule since the start of the 2010-2011 school year.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with an emotional disability under IDEA. The student attends XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXX), a BCPS XXXXXXXX, where he receives special education instruction and related services. The complainant participated in the education decision-making process and was provided with notice of the procedural safeguards.

During the period of time addressed in this investigation, the student had the following residential and educational placements:

2009-2010 School Year

From September 2009 until December 14, 2009, the student resided with the complainant in Baltimore City, Maryland. During that time the student attended XXXX and received special education instruction and related services.

On December 14, 2009, the student was Court-ordered into the care and custody of the BCDJS, after a delinquency petition was filed regarding the student in the Circuit Court for Baltimore City Division for Juvenile Causes.

From December 14, 2009 until December 23, 2009, the student was placed at the BCJJC by BCDJS, which has an education program located on the grounds that is operated by MSDE/JSE.

From December 23, 2009 until June 25, 2010, the student was placed by BCDJS at the XXXXX XXXXXXXX, a XXXXXXXXXXXXXXXX located in Prince George's County, Maryland.

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There is no information or documentation that the student was enrolled in school from December 23, 2009 until March 3, 2010.

On March 3, 2010, staff from the group home enrolled the student at XXXXXXXXXXXX in Prince George's County, Maryland. The student remained enrolled in the school until the end of the 2009-2010 school year.

Summer 2010 and 2010-2011 School Year

On June 25, 2010, the student was released from BCDJS custody and returned to the complainant's home in Baltimore City, Maryland, where he currently resides. On September 2, 2010 the student was re-enrolled by the complainant at XXXX in Baltimore City, Maryland where he currently attends school (Docs. a – e, k – m, p, q, t, u, y, aa, ee, hh, pp, qq, ss, tt, vv – zz, aaa, bbb, ccc, iii, jjj, nnn, and sss).

FINDINGS OF FACT:

2009-2010 School Year

Allegation #1

BCPS—Addressing Lack of Expected Progress from November 3, 2009 until December 14, 2009

1. On November 2, 2009, the BCPS IEP team met to review the student's program, school attendance and progress. During the meeting the team considered the following:
 - a. Teacher reports that the student had not been attending class on a regular basis;
 - b. A review of the student's attendance, indicating that the student had only been to school nine (9) days since the start of the school year;
 - c. Reports of the student's progress dated November 2, 2009, indicating that the student was not making sufficient progress towards achieving his IEP goals as a result of his poor class attendance;
 - d. Reports from the student's teachers, indicating that the student is not making progress in his classes as a result of his poor class attendance, but that when he is in class, he does well with the work he is given;
 - e. Reports from the student that he has missed school because he was "locked-up"; and because there was a warrant out for his arrest; and
 - f. Reports from the complainant indicating that the student was detained by BCDJS on two occasions for five (5) days each time (Docs. b, c, e – l, and n).

2. At the November 2, 2009 meeting, the BCPS IEP team made the following decisions:
 - a. The amount of specialized instruction the student would receive would be decreased from fifteen (15) hours per week to ten (10) hours per week;
 - b. The student would no longer receive special education instruction from a special education teacher, but the special education teacher would consult and collaborate with the general educator who would provide the student with instruction;
 - c. The student would continue to receive the services of the one-to-one adult assistant (one-to-one aide) to aid him with engaging in appropriate behaviors and attending classes; and
 - d. The student's BIP, which required the use of strategies to increase the student's attendance in school, would continue to be used without revision (Docs. d and l).
3. Documentation of the BCPS IEP team meeting does not indicate the basis for the team's decision to decrease the amount of special education instruction and to continue the use of the same behavior strategies, when the student was not making sufficient progress toward achieving the annual goals, as a result of his interfering behaviors (Docs. k and l).
4. A review of the student's attendance from November 2, 2009 until December 14, 2009, indicates that the student attended school on fifteen (15) of the twenty-eight (28) days school was in session (Doc. p).

Discussion/Conclusions:

The public agency must ensure that the IEP team reviews each student's IEP, at least annually, to determine whether the annual goals are being achieved. Additionally, the team must review and revise the IEP, as appropriate to, among other things, address any lack of expected progress toward achieving the goals. When reviewing and revising an IEP, as appropriate, the team must consider concerns of the parent, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes his or her learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports, and other strategies, to address the behavior (34 CFR §300.324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

In this case, the complainant alleges that the BCPS IEP team did not revise the student's IEP to address lack of expected progress towards achieving the annual goals from November 3, 2009 until December 14, 2009. Based on Findings of Fact #1 – 4, MSDE finds that the team did review the IEP when the student was not making progress.

However, based on the same Findings of Fact, MSDE finds that there is no documentation of the basis for the team's decision to decrease the amount of special education services that would be provided to the student. Additionally, based on these same facts, there is no documentation of the basis for the decision that the BIP remained appropriate given the student's lack of progress and continuing behavior concerns. Therefore, MSDE finds that a violation occurred with respect to this allegation.

Allegation #2 **MSDE/JSE--Implementation of the IEP from
December 14, 2009 to December 23, 2009**

5. On December 14, 2009, the Circuit Court for Baltimore City, Division for Juvenile Causes ordered the student "committed into the care and custody BCDJS." However, the Court order did not expressly authorize BCDJS to make educational decisions for the student" (Doc. t).
6. On December 14, 2009, BCDJS placed the student at BCJJC, a residential detention facility pursuant to the Court's order that the student be held in detention pending placement in "a residential treatment center," which is located in Baltimore City (Docs. u and uu).
7. MSDE/JSE is responsible for providing education services to the detained students at BCJJC on the grounds of the facility. However, from December 15, 2009 to December 18, 2009, and on December 22, 2009 the student was required by BCDJS to participate in a mandatory orientation program² at BCJJC to ensure his safety and security while residing at the BCJJC, and as a result, the student was not available to receive instruction during this period of time (Docs. y and aa).
8. On December 22, 2009³, MSDE/JSE staff made a written request for the transfer of the student's education record from BCPS (Docs. aa, bb, and dd).
9. On December 23, 2009, the student was available to receive education instruction and attended school on that day. However, MSDE/JSE had not yet received the student

² Upon initial placement at the BCJJC detention center, each detainee is placed in the orientation unit and provided with information about the facility and safety while in detention (Docs. uu and interview with MSDE/JSE staff).

³ MSDE/JSE requested the student's education record from BCPS on December 22, 2010. However, BCPS schools were not in session from December 24th, 2009 until January 4, 2010. On January 4, 2010, BCPS provided the student's records to MSDE/JSE within three (3) school days as required (Doc. tt and www.bcps.org).

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record and as a result, the student did not receive special education services (Docs. y, aa and interview with MSDE/JSE staff).

Discussion/Conclusions:

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).

In order to ensure that all students who transfer to a new public agency receive 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. Additionally, 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 and .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).

In this case, the complainant alleges that school staff did not implement the student's IEP from December 14, 2009 until December 23, 2009. Based on Finding of Fact #5, MSDE finds that the student has been a child in State-supervised care. Based on Findings of Fact #6 – 9, MSDE finds that the student was placed at BCJJC on December 14, 2009 and that the education records were not requested until December 22, 2009. Consequently, based on these same findings, MSDE/JSE was unable to provide the student with the instruction and services required by his IEP on the one day that he received instruction. Therefore, MSDE finds a violation with regard to this allegation.

Allegation #3

PGCPS--Implementation of the IEP from December 23, 2009 until March 7, 2010

10. On December 23, 2009, the student was placed by BCDJS at the XXXXXXXXXXXXXXXX, a XXXXXXXXXXXXXXXX located in Prince George's County, Maryland. Although the student was placed at a **group home** located in Prince George's County, Maryland on December 23, 2009, there is no information or documentation that BCDJS took steps to enroll the student in PGCPS until March 3, 2010 (Docs. cc, ee, ii, and review of the student' education record)
11. There is documentation that immediately upon the student's enrollment, PGCPS made a written request to BCPS for the student's education record. There is documentation that

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on the same day, PGCPS received documentation from the student's record (Docs. hh, ii, and kk).

12. From Wednesday, March 3, 2010 until Friday, March 5, 2010, the student was provided with special education instruction as required by the BCPS IEP. However, there is no documentation that the student was provided with a one-to-one aide on a daily basis during this time period (Docs. ll-nn, review of the student's education record and interview with PGCPS staff).

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 and .323). For a child in an out-of-county living arrangement, the local education agency responsible for providing special education services is the local education agency for the county where a child in an out-of-county living arrangement is placed.

The financially responsible county is the local education agency in the county where the parent or legal guardian resides (Md. Code Ann., Educ. §4-122). The service providing local school system and the financially responsible local school system must participate collaboratively in the education decision-making process for the student to ensure the full implementation of the student's IEP (Memorandum to Local Education Agencies from MSDE, dated April 24, 2001). In this case, the complainant alleges PGCPS did not provide the student with educational services from December 23, 2009 until March 7, 2010.

Based on Finding of Fact #10 and in accordance with the requirements stated in Allegation #2, PGCPS was the local education agency responsible for providing the student with a free appropriate public education (FAPE) once the student was placed by BCDJS in Prince George's County. Based on Findings of Fact #10 and 11, MSDE finds that PGCPS obtained the student's education record immediately once he was enrolled.

Based on Finding of Fact #12, MSDE finds that the student was enrolled in school in PGCPS on March 3, 2010 and was provided with the special education instruction required by his BCPS IEP from March 3, 2010 until March 5, 2010. However, based on Finding of Fact #12, MSDE further finds that he was not provided with a one-to-one aide as required. Therefore, MSDE finds that a violation occurred with regard to this allegation.

ADDITIONAL DISCUSSION:

BCDJS' Responsibility

When a Court "commits" a child to a local department of juvenile services, it transfers custody of the child to that agency (Md. Cts. & Jud. Proc. Code Ann. § 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 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. §3-8A-02). Therefore, when a child is committed to the custody of a local department of 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.

Based on Finding of Fact #10, MSDE finds that although the student was placed by BCDJS at the XXXXXXXXXXXXXXXX, a XXXXXXXXXXXXXXXXXXXXXXXX in Prince George's County, Maryland on December 23, 2009, there is no documentation that BCDJS took steps to enroll the student in PGCPS until March 3, 2010. As a result, the student's enrollment was delayed and he was not provided with special education instruction and related services required by the BCPS IEP from December 23, 2009 until March 3, 2010.

MSDE's Authority

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 subdivision of the State that is responsible for providing education to students with disabilities (34 CFR §300.33).

In Maryland, public agencies responsible for the provision of education to students are defined as local school systems, as well as other State agencies. However, in this case, the Maryland Department of Juvenile Services (DJS), the state agency responsible for local departments of juvenile services, is not included in this definition (COMAR 13A.05.01.03).

Since MSDE does not have authority over BCDJS, this office may not, through this LOF, address this matter or concerns related to the BCDJS case worker and group home coordinator responsible for informing PGCPS that the student was residing in the county and in need of FAPE in accordance with 34 CFR§300.101. However, by copy of this LOF, MSDE is informing BCDJS officials of MSDE's serious concerns about this issue and is asking that their office investigate the matter and take the steps necessary to ensure that this does not recur.

Allegation #4 PGCPS--Consistent Implementation of the Supplementary Aids, Services and Accommodations Required by the IEP from March 8, 2010 until the end of the 2009-2010 School Year

13. Following the student's enrollment in PGCPS on March 3, 2010, an IEP team meeting was convened on March 8, 2010 to review the student's BCPS IEP. At the meeting, the

IEP was revised to include the following supplementary aids, services and accommodations:

- a. The support of a one-to-one aide in every class on a daily basis;
 - b. The provision of “self-selected” breaks with adult supervision provided by the aide or the general or special education teacher throughout the school day;
 - c. The use of behavior sheets in all classes on a daily basis;
 - d. Process charts, modeling, and checking for understanding in all classes on a daily basis;
 - e. Adjusted workload, chunking of assignments, and modified materials in all classes on a daily basis; and
 - f. Consultative services between the special educator and the general educator for one hour per month to ensure that the student is progressing towards achieving the IEP goals (Docs. jj and kk).
14. While there is documentation of the provision of some of the supplementary aids, services, and accommodations required by the BCPS IEP, there is no documentation of provision of the following:
- a. Support of a one-to-one aide in his classes throughout the school day;
 - b. Consultative services between the special educator and the general educator from March 8, 2010 until the end of the 2009-2010 school year;
 - c. Modified class work;
 - d. Completion of behavior sheets; or
 - e. An adjusted work load (Docs. ll, mm, and nn, review of the student’s education record and interview with PGCPS staff).

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 and .323). In this case, the complainant alleges PGCPS did not consistently provide the student with the supplementary aids, services and supports required by the IEP from March 8, 2010 until the end of the 2009-2010 school year.

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As stated above, PGCPS, from March 8, 2010 until the end of the 2009-2010 school year, was the service providing local school system responsible for ensuring that the student was provided with the services required by the IEP. Based on Findings of Fact #13 and 14, MSDE finds that there is no documentation that the student was consistently provided with the supplementary aids, services and accommodations required by his IEP. Therefore, MSDE finds that a violation occurred with regard to this allegation.

2010-2011 School Year

Allegation #5

**BCPS--Implementation of the IEP from
August 30, 2010 until September 27, 2010**

15. On June 25, 2010, the Court ordered that the student be released from BCDJS custody, but that he remain committed to BCDJS, in order for BCDJS to provide continued supervision of the student in the community. On the same day, the student returned to live in Baltimore, with the complainant (Docs. zz, ppp and interview with the complainant).
16. On September 2, 2010, the complainant enrolled the student in BCPS and on the same day, BCPS staff contacted the complainant to schedule an IEP team meeting (Docs. vv and ww).
17. The communication log documents that on September 3, 2010, BCPS staff contacted PGCPS staff by phone to request documents from the student's education record. On the same day, the communication log, documents that PGCPS provided BCPS with the documentation that was requested (Doc. yy).
18. The student's teachers and service providers received the IEP and initiated services, on the following dates:
 - a. September 2, 2010 – One-to-one aide and school psychologist;
 - b. September 3, 2010 – English teacher, Government teacher, and American Sign Language teacher;
 - c. September 9, 2010 – Math teacher; and
 - d. September 10, 2010 – IEP case manager (Docs. xx, and aaa, bbb, and ccc).
19. There is documentation that once the student's teachers and related service providers received the IEP from PGCPS, they began providing the student with the special education instruction, related service, and accommodations required by the IEP. This includes the following:

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- a. A progress summary completed by the Math teacher dated September 13, 2010 which reports that the student was being provided with accommodations such as outlines, extended time, frequent breaks, and process charts;
- b. A progress summary completed by the Chemistry teacher dated September 13, 2010 which reports that the student was being provided with accommodations such as reduced work load and reduced number of test questions;
- c. A review of the one-to one aide's sign in log and a review of the student's attendance log, indicates that there were dates when a one-to-one aide was available at the school to provide the student with services, and the student was absent from school. However, there are also instances when the student was in school, but there was not a one-to-one aide available to provide the student with services;
- d. Notes from the counseling provider service logs indicating that the counselor attempted to provide the student with counseling services on the following dates: September 7 and 8, 2010 but that the student was absent from school on those dates. On September 15, 2010, counseling services were initiated with the student; and
- e. A counseling service provider progress summary report, dated September 15, 2010, which reports that the student works well in one-to-one situations, but that he had only participated in one counseling session due to frequent absences (Docs. ddd-hhh and mmm).

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 and .323). In this case, the complainant alleges BCPS did not provide the student with specialized instruction and related service required by the IEP from August 30, 2010 until September 27, 2010 because they did not have the student's education record until an IEP meeting was convened to revise the IEP on September 27, 2010.

Based on Findings of Fact #15, MSDE finds that that the student was enrolled in BCPS on September 2, 2010. Based on Findings of Fact #15 and 17, MSDE finds that BCPS requested the student's education record within two days of the date of the student's enrollment, as required.

Based on Findings of Fact #18, 19, and 25, MSDE further finds that there is documentation that, upon receipt of the student's IEP, it was implemented in each teacher's class. However, based on Findings of Fact #18 and 19, MSDE finds that the student's teachers did not receive the IEP in a timely manner to ensure that services were provided to the student at the start of the 2010-2011 school year. Therefore, MSDE finds that a violation occurred with regard to this allegation.

Allegation #6 **BCPS-Implementation of the IEP on a Consistent
Basis since September 27, 2010**

20. On September 27, 2010, an IEP team meeting was convened to review the student's program and progress. During the meeting, the team considered the following:
- The complainant's concerns that the student would benefit from make-up work for the work he misses when he is absent from school and her concern that the student was not provided with IEP services while the student was in BCDJS custody;
 - Reports from school staff that they did provide BCDJS with documentation during the 2009-2010 school year, which included the student's IEP;
 - Reports from the student's teachers indicating that the student "does well when he applies himself" and if he is in class and behaving appropriately; however he is often absent or tardy. Additionally, the teachers stated that the student can always obtain make-up work and that he can also attend "coach" classes for additional assistance with his school work;
 - Reports from the student indicating that he is interested in studying engineering, receiving vocational training, or enlisting in the armed forces;
 - Reports from the one-to-one aide that he has attempted to address the student's non-compliant behavior with regard to attending school and class by discussing with the student, the need to set goals for his future; and
 - An offer by school staff to provide the student with transportation on the school bus in order to ensure that the student attends school on a regular basis; however the student stated that he did not need to ride the bus and the team determined that the student would not be provided with transportation (Docs. eee, fff, ggg, and iii).
21. On September 27, 2010, IEP team revised the IEP to require the following:
- Instructional support provided to the student for two (2) hours per day by his teachers and aide in order to ensure that the student is completing his work;
 - Modified grading, as needed; reduced number of answer choices on tests, class work and quizzes; and
 - Preferential seating away from distractions (Doc. iii).

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22. The student's teachers and service providers received the revised IEP and initiated services on the following dates:
 - a. September 28, 2010 – IEP case manager; Math teacher, Social Studies teacher and School Psychologist; and
 - b. September 30, 2010 – Science teacher, English teacher, and American Sign Language teacher (Doc. jjj).
23. Notes from the school psychologist counseling logs indicate that the student has been provided with counseling services once a week as required by the IEP since September 15, 2010 unless the student was absent from school (Doc. III).
24. Additional notes from the counseling related service provider log dated September 28, 2010 and October 5, 2010, indicate that the student reported that when he chose to attend school, he was often tardy. The student further reported that on occasions when he arrived late to school, the one-to-one aide was not always available to assist him (Doc. III).
25. A review of the one-to-one aide sign-in log indicates that since the start of the 2010-2011 school year, the student has been provided with the services of a one-to-one aide on some occasions when he attends school. However, on other days when the student attends school, there has been no one-to-one aide available to work with him (Docs.mmm and nnn).
26. There is no documentation that the student was provided with the supplementary aids, services and accommodations required by the IEP on a daily basis (Review of the student's education record).

Discussion/Conclusions:

As stated above, 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 and .323). In this case, the complainant alleges that since the September 27, 2010 IEP meeting, school staff have not consistently implemented the student's IEP, as required.

Based on Findings of Fact #20 – 26, MSDE finds that the student has not been consistently provided with all the services required by his IEP. Therefore, MSDE finds that a violation occurred with regard to this allegation.

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CORRECTIVE ACTIONS/TIMELINES:

Student-specific

MSDE requires BCPS to immediately ensure that the supplementary aids, services and accommodations are available to the student as required by the IEP. Additionally, MSDE requires BCPS convene an IEP team meeting no later than February 28, 2011, to review and revise, if appropriate, the student's IEP to ensure that it addresses the student's identified behavior needs.

MSDE also requires BCPS and PGCPS to work in collaboration with one another to determine, no later than February 28, 2011, the amount of and nature of *compensatory services*⁴ or other remedy necessary to redress the violations identified in this LOF. Both BCPS and PGCPS must ensure that the compensatory services are made available to the student.

The complainant must be provided with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis of the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

Systemic

MSDE/JSE

In order to ensure the proper implementation of the regulations related to the timely request and transfer of education records by MSDE/JSE, the MSDE has conducted a review through the Monitoring for Continuous Improvement process. This review was completed subsequent to the period of time when MSDE determined, through this complaint investigation, that violations occurred. Therefore, MSDE does not require that MSDE/JSE take any additional actions to address the violation identified in this LOF.

BCPS

The violation related to IEP implementation is the subject of an ongoing corrective action plan for BCPS. In October 2010, MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement issued an Enhanced Monitoring for Continuous Improvement report that documents the status of this corrective action. MSDE will continue to monitor the school system to ensure correction. At this time, MSDE does not require any additional corrective actions.

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. This does not address compensable awards under the *Vaughn G. Consent Decree* (34 CFR §300.151).

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PGCPS

MSDE requires PGCPS to provide documentation of the steps taken to determine if the procedural violations related to providing the services of a one-to-one aide to special education students in high schools as required by the IEP represents a pattern of noncompliance in PGCPS. This documentation is due no later than April 1, 2011.

Specifically, PGCPS is required to conduct a review of student records, data, or other relevant information to determine if the regulatory requirements are being implemented and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch staff will verify compliance with the determinations found in the initial report.

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

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

Documentation of completion of the required actions is to be submitted to this office to:
Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHINICAL 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.

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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 parents and the 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 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/km

c: Andrés Alonso
William R. Hite
Bonita Coleman-Potter
Nancy Ruley
Gail Viens
LaRhonda Owens
Kerry Morrison
Zondra Johnson
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Koliwe Moyo