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State Superintendent of Schools

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January 31, 2011

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XXX

Dr. Kim Lewis  
Executive Director, Special Education  
Baltimore City Public Schools  
200 East North Avenue, Room 204-B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #11-035

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 December 2, 2010, MSDE received a complaint from Ms. XXXXXX, hereafter, “the complainant,” on behalf of her daughter. 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 ensured that a reevaluation has occurred at least every three (3) years, in accordance with 34 CFR §300.303;
2. BCPS has not ensured that the Individualized Education Program (IEP) team has met to address the lack of expected progress toward achieving the annual IEP goals, since December 2009,<sup>1</sup> in accordance with 34 CFR §300.324;

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<sup>1</sup> The complaint alleged violations dating back to the start of the 2009-2010 school year. However, the complainant was informed, in writing, on December 7, 2010, that this office only has authority to investigate allegations of violations of IDEA that occurred not more than one (1) year prior to the date that the complaint is received, in accordance with 34 CFR §300.153.

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3. BCPS has not ensured that the IEP addresses the student's functional life skills and behavioral needs since December 2009;<sup>1</sup>
4. BCPS has not ensured that the student's assistive technology needs were considered, since December 2009,<sup>1</sup> in accordance with 34 CFR §300.324;
5. BCPS did not ensure that the student's IEP included a transition plan between December 2009<sup>1</sup> and October 2010, in accordance with 34 CFR §300.324;
6. BCPS did not follow proper procedures when determining the student's need for extended school year (ESY) services for the summer of 2010, in accordance with 34 CFR §300.324 and COMAR 13A.05.01.08;
7. BCPS did not ensure that the IEP team convened prior to the student's transfer to a new school, as determined necessary at the October 8, 2010 IEP team meeting, in accordance with 34 CFR §300.101; and
8. BCPS has not ensured that the student has been provided with transportation services as required by the IEP since October 18, 2010, in accordance with 34 CFR §300.101.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 3, 2010, 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 December 6, 2010, Ms. Stump spoke with the complainant and clarified the allegations to be investigated.
4. On December 7, 2010, 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 December 16, 2010, Ms. Stump reviewed the student's education record at the BCPS Central Office. Ms. Ruley was present at the record review.

6. On January 6, 2011, Ms. Stump and Ms. Vickie Frazier, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX (XXXX), a BCPS public charter school, and interviewed the following school staff:
  - a. Mr. XXXXXXXX; Assistant Principal;
  - b. Mr. XXXXXXXX, Principal; and
  - c. Ms. XXXXXXXX, 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 January 18, 2011, BCPS provided MSDE with additional documentation from the student's education record, via electronic mail (e-mail).
8. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
  - a. Correspondence from the complainant to MSDE, received December 2, 2010;
  - b. BCPS *IEP Team Meeting Minutes/Evaluation Report*, dated November 30, 2006;
  - c. IEP team meeting notice for a November 3, 2009 IEP team meeting;
  - d. IEP and meeting sign-in sheet, dated November 3, 2009;
  - e. BCPS *Receipt of Parental Rights Notice* form from November 3, 2009 meeting, unsigned;
  - f. IEP progress reports for the 2009-2010 school year;
  - g. BCPS Transition Coordinator's summary, dated October 7, 2010;
  - h. IEP and meeting sign-in sheet, dated October 8, 2010;
  - i. BCPS *Notice and Consent for Assessment*, signed on October 8, 2010;
  - j. BCPS transportation form, dated October 11, 2010;
  - k. Correspondence from BCPS to the complainant, dated October 12, 2010;
  - l. BCPS *School Bus Incident Report* form, dated October 26, 2010;
  - m. IEP progress report, dated November 5, 2010;
  - n. BCPS *Student Observation* form, dated November 18, 2010;
  - o. Educational assessment report, dated December 1, 2010;
  - p. Psychological assessment report, dated December 21, 2010;
  - q. Information from the student's community-based mental health care providers, provided to school staff on December 21, 2010, via facsimile;
  - r. IEP, dated January 4, 2011; and
  - s. BCPS *Department of Transportation* log dated between November 2010 and January 2011.

**BACKGROUND:**

The student is sixteen (16) years old, is identified as a student with an intellectual disability under IDEA, and receives special education and related services. From the start of the 2009-2010 school year until October 17, 2010, the student attended XXXX. Since the complainant's request for an administrative transfer, the student has attended XXXXXXXX XXXXXXXXXXXX (XXXXXXXXXX) since October 18, 2010 (Docs. a, d, h, k, and r).

**ALLEGATION #1:                    **ENSURING A REEVALUATION HAS OCCURRED AT  
LEAST EVERY THREE (3) YEARS****

**Findings of Fact:**

1.        There is documentation that a reevaluation of the student was conducted on November 30, 2006 (Doc. b).
2.        There is documentation that a reevaluation of the student was conducted on November 3, 2009. The documentation indicates that the complainant was invited to attend the November 3, 2009 IEP team meeting and that she indicated that she would like to participate by telephone conference. The documentation of the November 3, 2009 IEP team meeting provided by BCPS states that the complainant did not participate in the meeting and there is no documentation that school staff provided her with the opportunity to participate by telephone conference as she had requested (Docs. c and d).
3.        There is documentation that the last reevaluation of the student was conducted October 8, 2010 (Docs. h and i).

**Discussion/Conclusions:**

The IDEA requires that the public agency ensure that a reevaluation of each student with a disability is conducted at least once every three (3) years, unless the parent and the public agency agree that a reevaluation is unnecessary (34 CFR §300.303). The public agency is required to take steps to ensure that the parent of a student with a disability is present or is afforded the opportunity to attend and participate in IEP team meetings. These steps include notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place (34 CFR §300.322). To ensure participation, the school system must provide the parent with written notice at least ten (10) days in advance of the meeting (COMAR 13A.05.01.07). If the parent cannot attend the meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls (34 CFR §300.322).

Based on Findings of Fact #1-3, MSDE finds that there is no documentation that the complainant was provided with the opportunity to participate in the November 3, 2009 reevaluation. Therefore,

MSDE finds that a reevaluation in which proper procedures were followed was not conducted at least every three (3) years. As a result, MSDE finds a violation regarding this allegation.

**ALLEGATION #2:                   ENSURING THE IEP TEAM MET TO ADDRESS THE  
LACK OF EXPECTED PROGRESS TOWARD ACHIEVING  
THE ANNUAL IEP GOALS**

**Findings of Fact:**

4. The IEP in effect in December 2009 was developed at the November 3, 2009 IEP team meeting. That IEP indicates that the student participates in the Alternate Maryland School Assessment (Alt-MSA) aligned with the alternate academic achievement standards. The IEP contains goals designed to assist the student with improving her reading vocabulary, math calculation, written language expression, and her behavior related to interpersonal relationships (Doc. d).
5. IEP progress reports, dated January 22, 2010, April 7, 2010, June 16, 2010, and October 8, 2010 indicate that the student was making sufficient progress toward achieving the annual goals (Doc. f).
6. The IEP in since October 8, 2010 contains goals designed to assist the student with improving her reading vocabulary, math calculation, written language expression, and her behavior related to interpersonal relationships. Although these goals address the same areas of need, they are linked to grade level content but based on the student's present levels of academic achievement and functional performance, and have been revised based on the student's progress (Docs. h and r).
7. An IEP progress report was generated on November 5, 2010 that indicates that the student is making sufficient progress toward achieving the annual goals (Doc. m).

**Discussion/Conclusions:**

The IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the disability, enable the student to be involved in and make progress in the general education curriculum, and meet each of the student's other educational needs that result from the disability (34 CFR §300.320). The public agency must ensure that the IEP team reviews each student's IEP periodically, but not less than annually, to determine whether the student is achieving the annual goals. The public agency must ensure that the IEP team revises the IEP, as appropriate, to address any lack of expected progress toward achieving the goals (34 CFR §300.324).

Each public agency must ensure that all students with disabilities are included in all general State and district-wide assessments with appropriate accommodations and alternate assessments, if necessary, as indicated in the IEP (34 CFR §300.160). Each state must develop and implement alternate assessments and guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in regular assessments, even with accommodations, as indicated in the IEP (34 CFR §300.160).

In Maryland, there are two alternate assessment programs – the modified school assessment based on grade-level academic content standards and modified academic achievement standards and the Alt-MSA based on alternate academic achievement standards. “Alternate Academic Achievement Standards” are performance standards which are based on a very limited sample of content that is linked to grade-level content and may include content which is substantially simplified (Maryland Accommodations Manual, 3-6).

In this case, the complainant asserts that the student has not made sufficient progress toward achieving the annual IEP goals because the annual goals have been designed for the student to demonstrate performance at the same grade level each year (Doc. a and interview with the complainant).

Based on Findings of Fact #4-7, MSDE finds that there is documentation that although the goals have not been designed to require the student to perform at grade level, they are linked to grade level content, although the content is substantially simplified. Further, based on those same Findings, MSDE finds that the goals have been reviewed and revised based on the student’s progress and that the student is making sufficient progress toward achieving the goals. Therefore, MSDE finds no violation regarding this allegation.

**ALLEGATION #3:                   ENSURING THE IEP ADDRESSES THE STUDENT’S  
FUNCTIONAL LIFE SKILLS AND BEHAVIORAL NEEDS**

**Findings of Fact:**

Functional life skills needs

8.     The report of the results of the psychological assessment conducted as part of the reevaluation in October 2010 indicates that the student has areas of need related to functional life skills. The report also indicates that these results are consistent with the results of a psychological assessment conducted in 1999 (Doc. p).
9.     The IEP in effect between December 2009 and January 4, 2011 did not include present levels of functional performance related to the student’s life skills needs. There is no documentation that the IEP team considered the student’s needs in this area and, although there is documentation that the student has been receiving instruction in a program

designed to provide life skills training, there are no annual goals for the student to improve these skills (Docs. d and h).

10. The IEP in effect since January 4, 2011 includes present levels of performance in functional life skills and identifies areas of need related to these skills. In order to address those needs, the team developed an annual goal to assist the student with improving skills such as using measurements, identifying proper medicine doses, using money to make purchases, reading a clock, and reading street signs (Doc. r).

#### Behavior needs

11. There is data that indicates that the student has behavioral needs related to difficulty with developing and maintaining appropriate interpersonal relationships with her peers and teachers. The data indicates that, in particular, the student has low frustration tolerance, has difficulty following directions, and becomes easily agitated (Docs. d, f, m, p, and q).
12. The IEP in effect between December 2009 and January 4, 2011 includes present levels of performance related to the student's interpersonal relationships skills. It also includes a goal for the student to improve her interpersonal relationships and requires accommodations such as extended time to complete assignments, multiple or frequent breaks, and reduced distractions to the student. Additionally, the IEP team determined that the student required supplementary aids and services including repetition of directions and modified assignments (Docs. d, h, and r).
13. There is documentation that at the January 4, 2011 meeting, the team considered information that the student is engaging in inappropriate behavior with her peers on the bus. In order to address this aspect of her behavior needs, the team determined that the student requires the support of a bus aide. The team at the January 4, 2011 meeting also revised the student's program to include several additional behavioral supports such as "chunking" assignments, paraphrasing questions and instructions, and using pictures to support reading passages (Docs. l and r).
14. The documentation of the January 4, 2011 meeting indicates that the team determined that a functional behavioral assessment and a behavior intervention plan were required in order to address the student's behavioral needs (Doc. r).

#### **Discussion/Conclusions:**

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. The team also must consider the use of positive behavioral interventions and

supports and other strategies to address behavior that impedes the student's learning or that of others (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 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).

When it is determined that the public agency has not followed proper procedures, the state education agency can require the local public agency to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that the program addresses the needs identified in the data and determine a remedy to the student for loss of appropriate services. However, the state educational agency may not overturn an IEP team's decisions. Parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20).

#### Functional life skills needs

Based on Findings of Fact #8-10, MSDE finds that there is documentation that the student had needs in this area that were not considered by the IEP team or addressed in the student's program until January 4, 2011. Therefore, MSDE finds a violation regarding this aspect of the allegation between December 2009 and January 4, 2011.

#### Behavior needs

Based on Findings of Fact #11 and 12, MSDE finds that there is documentation that the IEP team considered the evaluative data, identified behavior needs, and addressed those needs in the student's program. Additionally, based on Findings of Fact #13 and 14, MSDE finds that when new information regarding the student's behavior came to the attention of the team, the team revised the student's program to address the new behavior. Therefore, MSDE finds no violation regarding this aspect of the allegation.

### **ALLEGATION #4:                    **ENSURING THE STUDENT'S ASSISTIVE TECHNOLOGY NEEDS WERE CONSIDERED****

#### **Findings of Fact:**

15. There is documentation that the IEP team considered whether the student required assistive technology devices and services and determined that she did not require such services at the November 3, 2009, the October 8, 2010, and the January 4, 2011 IEP team meetings (Docs. d, h, and r).



16. There is no documentation in the evaluative data that indicates that the student has needs that require assistive technology devices or services (Docs. d, f, g, and m-r).

**Discussion/Conclusions:**

The public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a student with a disability if required as a part of the student's special education, related services, or supplementary aids and services (34 CFR §300.105). Based on Findings of Fact #15 and 16, MSDE finds that there is documentation that the IEP team considered the student's need for assistive technology. Further, based on those same Findings, MSDE finds that there is no documentation that indicates that the student has needs that require assistive technology. Therefore, MSDE finds no violation regarding this allegation.

**ALLEGATION #5:                   ENSURING THE STUDENT'S IEP INCLUDED A  
TRANSITION PLAN BETWEEN DECEMBER 2009 AND  
OCTOBER 2010**

**Findings of Fact:**

17. The IEP in effect in December 2009 contains a transition plan that is based on a student interview conducted on November 3, 2009. The plan contains post-secondary goals and a course of study, transition services, and transition activities designed to assist the student in achieving the post-secondary goals (Doc. d).
18. On October 7, 2010, the BCPS Transition Coordinator interviewed the student and completed a Transition Planning Inventory. There is documentation that the team at the October 8, 2010 meeting considered the data contained in the report and developed a transition plan. The plan contains post-secondary goals and a course of study, transition services, and transition activities designed to assist the student in achieving the post-secondary goals (Docs. g and h).

**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).

Based on Findings of Fact #17 and 18, MSDE finds that, since December 2009, the student's IEP has included a transition plan that contains all of the required information. Therefore, MSDE finds no violation regarding this allegation.

**ALLEGATION #6:            **ESY DETERMINATION FOR THE SUMMER OF 2010****

**Findings of Fact:**

19. There is documentation that at the November 3, 2009 meeting the IEP team considered whether the student required ESY services. The documentation of the meeting indicates that the team considered whether the student's IEP included annual goals related to critical life skills; whether there was a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time; the student's degree of progress toward mastery of the annual IEP goals related to critical life skills; the presence of emerging skills or breakthrough opportunities; interfering behaviors; the nature and severity of the disability; and any special circumstances (Doc. d).
20. Based upon this review, and consideration of whether the benefits that the student received from her education program would be significantly jeopardized if she was not provided with ESY services, the IEP team determined that the student did not require such services (Doc. d).
21. There is documentation that the complainant was invited to attend the November 3, 2009 IEP team meeting and that she indicated that she would not be in attendance, but would like to participate by telephone conference. The documentation of the November 3, 2009 IEP team meeting provided by BCPS states that the complainant did not participate in the meeting and there is no documentation that school staff provided her with the opportunity to participate by telephone conference as she had requested. Additionally, there is no documentation that the complainant was provided with a copy of the procedural safeguards during the 2009-2010 school year (Docs. c-e and review of education record).

**Discussion/Conclusions:**

**Parent participation**

As stated above, in Allegation #1, the parent of a student with a disability must be given the opportunity to attend or participate in IEP team meetings (34 CFR §300.322). In addition, the public agency must ensure that the parent of a student with a disability is provided a copy of the procedural safeguards at least once per year (34 CFR §300.500 and COMAR 13A.05.01.11).

### ESY determination

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 a free appropriate public education (FAPE) by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

The ESY determination should be made early enough in the school year to allow the parent sufficient time to exercise procedural safeguard rights if the parent disagrees with the proposal made by the public agency. However, the determination should not be made so early in the school year as to not have sufficient information in order to make an informed decision. All procedural safeguards, including the provision of written notice of the IEP team's decision regarding the student's need for ESY services, are applicable to the provision of ESY services (34 CFR §§300.309 and .503, COMAR 13A.05.01.03B(26), COMAR 13A.05.01.08B(2), and MSDE Technical Assistance Bulletin 5, July 2003).

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider the following:

- Whether the student's IEP includes annual goals related to critical life skills;
- Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
- The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
- The presence of emerging skills or breakthrough opportunities;
- Interfering behaviors;
- The nature and severity of the disability; and
- Special circumstances (COMAR 13A.05.01.08B(2)(b)).

After considering the required factors, the IEP team must decide whether the benefits that a student received from the education program during the regular school year will be *significantly jeopardized* (emphasis added) if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4<sup>th</sup> Cir. 2002)).

Based on Findings of Fact #19 and 20, MSDE finds that because the complainant was not provided with the opportunity to attend the meeting, there is no documentation that the team had

sufficient information in order to make an informed decision. Further, based on Finding of Fact #21, MSDE finds that there is no documentation that the complainant was provided with a copy of the procedural safeguards. Therefore, MSDE finds a violation regarding this allegation.

**ALLEGATION #7: IEP TEAM MEETING PRIOR TO TRANSFER TO EDMONSON HS**

**Finding of Fact:**

22. There is no documentation that the IEP team agreed to reconvene prior to the student's transfer from XXXX to XXXXXXXXXXXX (Doc. h).

**Discussion/Conclusions:**

The public agency must ensure that all decisions of the IEP team are implemented. This includes any agreements to reconvene within a specified time or on a specified date (34 CFR §300.101).

In this case, the complainant alleges that at the October 8, 2010 IEP meeting, the team agreed to meet prior to the student's transfer to XXXXXXXXXXXX in order to assist her with the transition between schools (Doc. a and interview with the complainant). Based on Finding of Fact #22, MSDE finds that there is no documentation that the IEP team agreed to meet prior to the student's transfer. Therefore, MSDE finds no violation regarding this allegation.

**ALLEGATION #8: PROVISION OF TRANSPORTATION SERVICES REQUIRED BY THE IEP SINCE OCTOBER 18, 2010**

**Findings of Fact:**

23. There is documentation that at the October 8, 2010 IEP team meeting, the team determined that the student required transportation as a related service. Documentation from the BCPS Transportation Office indicates that the student was to begin receiving these services on October 18, 2010 (Docs. h and j).
24. The documentation also indicates that the school bus would pick up the student at 7:45 a.m. and drop her off at 3:40 p.m. The school day at XXXXXXXXXXXX begins at 8:15 a.m. (Doc. j and interview with XXXXXXXX personnel).
25. The BCPS transportation log indicates that on at least twelve (12) school days between October 18, 2010 and December 23, 2010 the school bus picked the student up *after* the start of the school day, sometimes by as much as one (1) hour or more (Doc. s).

26. Since January 3, 2011, there is documentation that the student's transportation services have been provided by a different transportation company and that since that date, she has been picked up for school routinely prior to 7:45 a.m. (Doc. s).

**Discussion/Conclusions:**

The public agency must ensure that the IEP team considers a student's need for transportation as a related service in order to assist a student with a disability in benefitting from special education (34 CFR §300.34 and COMAR 13A.05.01.08). The public agency is required to ensure that the student is provided with the special education and related services required by the IEP, including transportation (34 CFR §300.101).

Based on Findings of Fact #23-25, MSDE finds that although BCPS has ensured that the student has been provided with transportation services since October 18, 2010, the bus routinely picked the student up after the start of the school day. However, based on Finding of Fact #26, MSDE find that after the student's transportation was changed on January 3, 2011, the provision of the service has become consistent and the student has been picked up each morning in time to arrive at school prior to the start of the school day. Therefore, MSDE finds a violation regarding this allegation between October 18, 2010 and January 3, 2011.

**CORRECTIVE ACTIONS/TIMELINE:**

**Student-specific**

MSDE requires BCPS to ensure that an IEP team convenes as soon as possible, but no later than April 1, 2011. At the IEP team meeting, the team must determine the nature and amount of *compensatory services*<sup>2</sup> necessary to redress the violations identified in the LOF.

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

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<sup>2</sup> 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). This does not address compensable awards under the *Vaughn G.* Consent Decree.

### **School-based**

MSDE requires BCPS to provide documentation by May 15, 2011, of the steps it has taken to determine if the violations related to parental participation in IEP team meetings, the provision of procedural safeguards, and ensuring that each student's IEP addresses the identified needs are unique to this case or if they represent a pattern of noncompliance at XXXXX. 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 initial date that the school system determines non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of OSEP Memorandum #09-02. Additionally, the findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring (QAM) for Continuous Improvement for their consideration during monitoring of BCPS in the future.

### **Systemic**

The violation related to the provision of transportation services is being monitored under a settlement agreement with BCPS. Therefore, no specific corrective action is required to redress the violation related to transportation services. The QAM is monitoring the implementation of the settlement agreement. This LOF is being shared with QAM for its use with this activity.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

### **TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office, 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. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this LOF.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainant and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of 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  
Nancy Ruley  
Erin Leff  
XXXXXXXX  
XXXXXXXXXXXX  
Martha Arthur  
Kathy Stump