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Interim State Superintendent of Schools

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October 17, 2011

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

Dr. Kim Lewis  
Interim Executive Director, Human Capital  
Baltimore City Public Schools  
200 East North Avenue  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: #12-011

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 August 19, 2011, the MSDE received a complaint from Mr. XXXXXXXXX, hereafter, “the complainant,” on behalf of his son. 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.

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The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) identifies and addresses the student's written language and behavioral needs since August 2010,<sup>1</sup> in accordance with 34 CFR §§300.303-.311, .320, and .323;
2. The BCPS has not ensured that the student's IEP contains measurable annual goals since August 2010,<sup>1</sup> in accordance with 34 CFR §300.320;
3. The BCPS did not ensure that the student was provided with the accommodations and supplementary aids and services required by the IEP during the 2010-2011 school year, in accordance with 34 CFR § 300.101; and
4. The BCPS has not ensured that assessment reports have been maintained in the student's education record since August 2010,<sup>1</sup> in accordance with COMAR 13A.08.02.28 and the *Maryland Student Records System Manual (Manual)*.

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 22, 2011, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Interim Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On August 24, 2011, Ms. Stump spoke with the complainant by telephone to clarify the allegations to be investigated.
4. On August 25, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffman of the allegations and requested that her office review the alleged violations.
5. On September 8, 2011, Ms. Stump reviewed the student's educational record at the BCPS Central Office. Ms. Ruley was present at the record review.
6. On September 15, 2011, Ms. Stump and Ms. Christine Hartman, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX and interviewed the following school staff:

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<sup>1</sup> The complainant alleged violations earlier than one (1) year before the date the complaint was filed. In response, this office informed him, in writing, on August 25, 2011, that this office has authority to investigate allegations of violations that occurred not more than one (1) year prior to the date the complaint is received, in accordance with 34 CFR §300.153.

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- a. Mr. XXXXXXXXXXXX, Special Education Teacher;
- b. Ms. XXXXXXXXXXXX, Guidance Counselor;
- c. Ms. XXXXXXXXXXXX, Principal's Designee;
- d. Ms. XXXXXXXXXXXX, IEP Team Chairperson; and
- e. Mr. XXXXXXXXXXXX, Biology Teacher.

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

7. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to MSDE, received on August 19, 2011;
  - b. IEP, dated February 1, 2010;
  - c. Teacher reports on the student's progress, dated October 2010;
  - d. School social worker's progress report, dated October 18, 2010;
  - e. IEP, dated October 19, 2010;
  - f. Functional behavioral assessment, dated October 19, 2010;
  - g. Behavior intervention plan, dated October 19, 2010;
  - h. Receipt of parental rights document form, dated November 10, 2010;
  - i. Teacher reports on the student's progress, dated January 2011;
  - j. School social worker's progress report, dated January 13, 2011;
  - k. Special educator progress report, dated February 25, 2011;
  - l. IEP, dated February 28, 2011;
  - m. IEP, dated July 14, 2011;
  - n. Notice and consent for assessment form, dated July 14, 2011;
  - o. Correspondence from the BCPS to the complainant, dated August 11, 2011;
  - p. Electronic mail correspondence between complainant's educational advocate and the BCPS attorney, dated September 2, 2011;
  - q. Invitation to an October 12, 2011 IEP team meeting; and
  - r. IEP progress reports for the 2010-2011 school year.

### **BACKGROUND:**

The student is nineteen (19) years old, is identified as a student with a specific learning disability under the IDEA, and has an IEP that requires the provision of special education instruction and related services. During the 2010-2011 school year, the student attended XXXXXXXXXXXX, a BCPS public charter school. The student is currently attending XXXXXXXXXXXXXXXXXXXX XXXX, a BCPS public school. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a, b, e, h, l, m, and n).

**ALLEGATION #1:**                    **IEP THAT ADDRESSES THE STUDENT’S WRITTEN  
LANGUAGE AND BEHAVIORAL NEEDS SINCE  
AUGUST 2010**

**Findings of Facts:**

1.        The IEP in effect in August 2010 was developed at an IEP team meeting held in February 2010. The team reviewed information that the student’s lack of school attendance impacted his progress. The team also reviewed the results of informal assessments and teacher and service provider reports and, as a result of that review, identified the areas affected by the student’s specific learning disability, including written language expression and behavior, related to school attendance. The IEP includes present levels of academic achievement and functional performance and annual goals in these two areas for the student to improve his ability to compose written documents and to improve his school attendance. In order to assist the student with achieving the annual goals, the IEP includes special education instruction in written language and counseling as a related service. The IEP also includes accommodations including the use of visual and graphic organizers, extended time to complete assignments, frequent breaks, and reduced distractions to the student (Doc. b).
  
2.        On October 19, 2010, the IEP team convened to review the student’s program and progress. The team reviewed teacher and service provider reports on the student’s progress, and information from the student documenting that the student does not complete classroom or homework assignments consistently, has poor work habits, “cuts class,” and is often absent from school. The reports further document that the student feels uncomfortable in classes that require him to write, does not feel that he is “part of the school,” and that he leaves school when he “feels frustrated.” The reports indicate the belief of the school social worker that the student “cuts class” as a way to exercise control (Docs. c-e).
  
3.        The IEP team determined that a Behavior Intervention Plan (BIP) was required to address the student’s interfering behaviors, based on a Functional Behavior Assessment (FBA) conducted by the team. The FBA identifies the interfering behavior as lack of class attendance and the trigger for the behavior as avoiding written language work. The BIP developed by the team requires the student to be provided with behavioral and academic supports, including an adjusted workload, the use of a “word bank” of grade level words, and the use of oral responses on tests (Docs. f and g).
  
4.        At the October 19, 2010 meeting, the IEP team also revised the student’s annual goals. The revised written language goal includes a new short-term objective related to sentence structure and the revised behavior goal includes a short-term objective related to class attendance. The IEP team developed a second annual goal related to behavior, designed

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to assist the student with feeling “connected” to the school. In order to assist the student in achieving the new and revised goals, the team determined that the student required additional accommodations, including books on tape, use of spelling and/or grammar devices, instructional checks to make sure the student understands, paraphrasing of questions and instructions, and repetition of directions. The team determined that the remainder of the student’s program remained appropriate (Doc. e).

5. On February 28, 2011, the IEP team reconvened. The team reviewed teacher and service provider reports regarding the student’s progress, documenting that the student’s attendance and “connection to the school” have improved, that he has demonstrated “marked improvement with [writing] conventions,” and that he has “develop[ed] a voice in his writing that is solid and concise.” The reports further document that the student attends class more regularly, displays adequate self-control, has satisfactory peer relationships, and respects authority. However, the reports also document that the student continues to be inconsistent with his completion of class work and homework assignments and recommend additional supports to assist the student with organization and motivation (Docs. i-l).
6. Based on the IEP team’s review of this information, the team revised the student’s program to include an additional behavior goal designed to assist him with completing homework assignments and additional supports to assist him, such as providing him with a copy of class notes, allowing him to use organizational aids, and providing him with preferential seating. The team determined that the remainder of his program remained appropriate (Doc. l).
7. IEP progress reports for the 2010-2011 school year indicate that the student made sufficient progress to achieve his annual goals (Doc. r).
8. On July 14, 2011, the IEP team convened to consider the complainant’s continuing concerns about the student’s written language skills. After considering these concerns, the IEP team determined that updated assessments were necessary and recommended educational, psychological, cognitive, and assistive technology assessments. The complainant provided consent for the assessments (Docs. m and n).
9. The BCPS personnel report that the assessments recommended on July 14, 2011 currently are being completed and the IEP team will review the results of the assessments within ninety (90) days of the July 14, 2011 IEP team meeting (interview with school staff).

### **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

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of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

In this case, the complainant alleges that the program developed by the IEP team does not meet the student's needs because the complainant believes that the accommodations are not "individualized" and that the team should have chosen different accommodations (Doc. a).

Based on the Findings of Facts #1- #6 , the MSDE finds that the IEP in effect since August 2010 has contained supports and services designed to address the student's identified needs in written language expression and behavior and that the team reviewed the required data in order to identify the needs and the supports. Based on the Findings of Facts #1- #9, the MSDE further finds that during the 2010-2011 school year, the IEP team continued to meet, consider the required data, and revise the student's program to address the student's changing and continuing needs in these areas as additional information became available. Therefore, the MSDE finds no violation regarding this allegation.

**ALLEGATION #2:**                      **IEP THAT CONTAINS MEASURABLE ANNUAL GOALS SINCE AUGUST 2010**

**Findings of Facts:**

10. The IEP in effect in August 2010 contained annual goals in reading comprehension, math calculation, math problem-solving, written language expression, and behavior related to school attendance. Each annual goal contains evaluation methods, target accuracy rates, and short-term objectives to be obtained to meet the goals (Doc. b).
11. At the October 2010 IEP team meeting, the team reviewed the student's progress toward achieving the annual goals and, based on the information, revised the student's annual goals related to reading comprehension, math problem-solving, written language expression, and behavior related to school attendance. These revised goals continue to contain the required information. The team added a second goal related to behavior, designed to assist the student with feeling like he is "part of the school." The new behavior goal includes the required information (Doc. e).
12. At the February 2011 IEP team meeting, the team reviewed the student's progress toward achieving the annual goals and, based on the information, discontinued the annual goal related to assisting the student with feeling "part of the school" because it had been achieved. The team determined that the balance of the goals in the October 2010 IEP remained appropriate. The team also developed an additional goal related to behavior, designed to assist the student with completing homework assignments. The new goal contains the required information (Doc. l).

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13. At the July 2011 IEP team meeting, the team determined that the goals in the February 2011 IEP remained appropriate (Doc. m).

**Discussion/Conclusions:**

Each student's IEP must contain a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to 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 student's disability (34 CFR §300.320).

Based on the Findings of Facts #10- #13, the MSDE finds that the student's IEP has contained measurable annual goals since August 2010, the student's progress was measured, and the goals were revised based on the reports of the student's progress. Therefore, the MSDE finds no violation regarding this allegation.

**ALLEGATION #3:                    PROVISION OF ACCOMMODATIONS AND SUPPLEMENTARY AIDS AND SERVICES DURING THE 2010-2011 SCHOOL YEAR**

**Findings of Facts:**

14. On August 11, 2011, the BCPS sent written correspondence to the complainant documenting the results of an internal investigation into this allegation that had been initiated by the complainant. The written correspondence indicates that the student was not consistently provided with the supplementary aids and services and accommodations required by the IEP during the 2010-2011 school year (Doc. o).
15. The BCPS correspondence states that in order to redress the identified violation, an IEP team meeting must be held within thirty (30) days of the start of the 2011-2012 school year to determine whether the student's ability to receive educational benefit from his program was adversely impacted as a result of the inconsistent provision of accommodations and supplementary aids and services during the 2010-2011 school year and, if so, determine the nature and amount of *compensatory services*<sup>2</sup> or other remedy necessary to redress the violation. In addition, the correspondence indicates that the staff at XXXXXXXXXXXXXXXX will be provided with technical support to ensure that accommodations and supplementary aids and services are consistently provided in the general education classroom (Doc. o).
16. The BCPS has provided documentation that an IEP team meeting was scheduled for September 16, 2011, but has been rescheduled to October 12, 2011, at the request of the complainant's educational advocate (Docs. p, q, and interview with school staff).

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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).

**Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education, related services, accommodations, and supplementary aids and services required by the IEP (34 CFR §300.101). Based on the Findings of Facts #14 - #16, the MSDE finds that the BCPS has acknowledged that the student was not consistently provided with the accommodations and supplementary aids and services during the 2010-2011 school year and concurs with the corrective actions determined by the school system. Therefore, the MSDE will require no further corrective actions to redress this violation.

**ALLEGATION #4:                    MAINTENANCE OF THE EDUCATIONAL RECORD**

**Findings of Facts:**

17. During the 2010-2011 school year, the IEP team reviewed the results of the *Brigance Comprehensive Inventory of Basic Skills – Revised*, and classroom-based assessments. These are assessments used by teachers for screening and instructional planning and to determine how students perform on the information and skills taught in class. Additionally, the team reviewed teacher and service provider reports and observations, work samples, and the results of State-wide standardized tests in identifying the student’s present levels of academic achievement and academic performance and the needs related to his disability (Docs. b, e, l, and m).
18. The student’s educational record contains copies of the teacher and service provider reports, but does not contain copies of the *Brigance Comprehensive Inventory of Basic Skills – Revised*, and other classroom-based assessments used in developing the IEP (review of education record).

**Discussion/Conclusions:**

In order to ensure that students are provided with services in accordance with the requirements of the IDEA, the public agency must accurately record information about each student, as specified in the *Manual* (COMAR 13A.08.02.04 and 13A.08.02.28). The *Manual* requires that the public agency maintain information related to the student’s enrollment, attendance, and promotion. The *Manual* also requires that, for students with disabilities, a copy of the student’s IEP and related documentation of the student’s program, including assessment reports, be maintained in the student’s educational record.

The term “assessment” refers to the process of collecting data during an evaluation to be used by the IEP team to determine a student’s need for special education and related services. The term “evaluation” refers to the process of reviewing information from parents, existing data, and the results of assessment procedures used to determine whether a student has a disability, and the



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nature and extent of the special education and related services that the student needs (COMAR 13A.05.01.03). In order to conduct assessments as part of an evaluation, the public agency is required to obtain parental consent (34 CFR §300.300).

However, parental consent is *not* required before administering a test or other evaluation that is administered to all students (34 CFR §300.300(d)). In addition, parental consent is *not* required prior to the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation (34 CFR §300.302).

In this case, the complainant alleges that copies of the actual *Brigance Comprehensive Inventory of Basic Skills – Revised*, and other classroom-based assessments were not maintained in the student's education record. Based on the Findings of Facts #17 and #18, the MSDE finds that these tests are given to all students for screening and instructional purposes, and do not constitute the type of formal assessments conducted solely for the purpose of completing an evaluation to determine a student's need for special education services, which must be maintained in the educational record. Therefore, the MSDE finds that the BCPS was not required to maintain this data in the student's educational record, and as a result, finds no violation regarding this allegation.

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

The MSDE requires the BCPS to provide documentation no later than November 15, 2011, that the IEP team has convened, as required by the BCPS internal investigation report, and determined whether the student's ability to receive educational benefit from his program was adversely impacted as a result of the inconsistent provision of accommodations and supplementary aids and services during the 2010-2011 school year and, if so, determined the nature and amount of *compensatory services*<sup>2</sup> or other remedy necessary to redress the violation.

The MSDE requires that the BCPS documentation also indicate that the staff at XXXXXX XXXXXX has been provided with technical support, as required by the BCPS internal investigation report, to ensure that accommodations and supplementary aids and services are consistently provided in the general education classroom.

The documentation should 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 complainant and the school system have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date

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of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. 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 Letter of Findings. If additional information is provided, it will be reviewed and the 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 Letter of Findings.

Questions regarding the findings, conclusions, and corrective action 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 a free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:ks

cc : Andrés Alonso  
Nancy Ruley  
Erin Leff  
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Dori Wilson  
Martha J. Arthur  
Kathy Stump