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October 28, 2011

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

RE: XXXXX  
Reference: #12-012

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 31, 2011, the MSDE received correspondence from Ms. Pat Halle of the Maryland Disability Law Center, hereafter “the complainant,” filed on behalf of the above-referenced student and Ms. XXXXXXX, the student’s mother. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. This office investigated the allegations listed below.

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1. The BCPS did not ensure that the Individual Education Program (IEP) addressed the student's identified social, emotional and behavioral needs during the 2010-2011 school year, in accordance with 34 CFR §§300.320 and .324.
2. The BCPS did not ensure that the IEP team convened to address the lack of expected progress toward achieving the annual IEP goals during the 2010-2011 school year, in accordance with 34 CFR §300.324.
3. The BCPS did not ensure that the student's IEP contained a transition plan based on age appropriate assessments during the 2010-2011 school year, in accordance with 34 CFR §300.320.

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 1, 2011, a copy of the complaint was provided by facsimile to Dr. Kim Lewis, Interim Executive Director, Human Capital, BCPS, Dr. Kim Hoffman, Interim Executive Director, Special Education, BCPS, and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
3. On September 9, 2011, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On September 12, 2011, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to the investigation.
5. On September 22 and 23, 2011, Ms. Hartman corresponded, via electronic mail, with Ms. Ruley and Ms. Tiffany Puckett, Associate Counsel, Office of Legal Counsel, BCPS, regarding the allegations in the complaint. In those correspondences, Ms. Hartman requested that the BCPS provide this office with documents regarding the allegations.
6. On September 28, 2011, Ms. Hartman and Ms. Koliwe Moyo, Education Program Specialist, MSDE, reviewed the student's education record at the BCPS Central Office.
7. On October 4, 2011, Ms. Hartman conducted an interview with Ms. Zondra Johnson, Special Education Coordinator, Juvenile Services Education Program, MSDE.
8. On October 5, 2011, Ms. Hartman and Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, the MSDE, conducted a site visit at the

XXXXXXXXXXXXXXXXXXXX School, a Baltimore City public school, and conducted interviews with the following school staff:

- a. Ms. XXXXXXXX, Principal's Designee;
- b. Ms. XXXXXXXXXXXXX, IEP Chairperson; and
- c. Mr. XXXXXXXX, Special Educator.

Ms. Puckett attended the visit as a representative of the BCPS and to provide information on BCPS policies and procedures, as needed. At this site visit, additional documentation was requested, which the BCPS provided, via facsimile, on October 6, 2011.

9. On October 5, 2011, Ms. Hartman requested that Ms. Johnson provide this office with documentation. This information was provided on October 7, 2011, via facsimile, and on October 12, 2011, via email.
10. On October 18, 2011, Ms. Hartman spoke with the complainant by telephone and requested additional documentation, which was provided the same date via email.
11. On October 24, 2011, Ms. Hartman communicated via email and telephone with both the complainant and Ms. Johnson regarding the student's current educational placement.
12. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated November 23, 2009;
  - b. IEP, dated November 9, 2010;
  - c. IEP, dated June 14, 2011;
  - d. IEP, dated October 20, 2011;
  - e. Court Memorandum, dated September 22, 2011
  - f. Division of Juvenile Services Placement Summary, dated October 7, 2011;
  - g. Functional Behavioral Assessment, dated November 9, 2009;
  - h. Behavior Intervention Plan, dated November 9, 2009;
  - i. Functional Behavioral Assessment, dated November 9, 2010;
  - j. Behavior Intervention Plan, dated November 9, 2010;
  - k. Communication Log, for dates between June 9, 2011 and September 27, 2011;
  - l. Psychological Evaluation Assessment Contract Log, for dates between July 13, 2011 and August 4, 2011; and
  - m. Educational Assessment Report, dated August 3, 2011.

**BACKGROUND:**

The student is fifteen (15) years old, is identified as a student with an emotional disability under the IDEA and receives special education instruction and related services. During the 2010-2011

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school year, the student attended the XXXXXXXXXXXXXXXX School, a Baltimore City public school (Docs. a-c, and interviews with the complainant and BCPS staff).

On August 31, 2011, the student was committed to the Department of Juvenile Services (DJS) by order of the Baltimore City Circuit Court. The student is currently placed by the DJS at the XXXXXXXXXXXXXXXX School. The MSDE Juvenile Services Education Program (MSDE/JSEP), is the agency responsible for providing educational instruction to students placed at the XXXXXXXXXXXXXXXX School (Docs. d-f, and interviews with the complainant, BCPS staff and MSDE/JSEP staff).

The student's mother has participated in educational decision-making process and was provided with notice of the procedural safeguards during the time period covered by this investigation (Docs. a-d).

**ALLEGATIONS #1 and #2: ADDRESSING THE STUDENT'S SOCIAL/EMOTIONAL/  
BEHAVIORAL NEEDS AND LACK OF EXPECTED  
PROGRESS TOWARD ACHIEVING THE IEP GOALS**

**FINDINGS OF FACTS:**

1. The IEP, in effect at the start of the 2010-2011 school year, was developed on November 23, 2009 (Doc. a).
2. The November 23, 2009 IEP documents that the student had a Behavioral Intervention Plan (BIP) in effect since November 9, 2009, based on a Functional Behavioral Assessment conducted on the same date. However, there is no documentation that the November 9, 2009 BIP was developed by the IEP team or that the student's parent agreed to amend the program to include a BIP without convening the IEP team. There is also no documentation that the BIP was considered by the team at the November 23, 2009 meeting (Docs. a, g and h, and review of record).
3. There is documentation that, at the time the November 23, 2009 IEP was developed, the student had social, emotional and behavioral needs related to truancy, elopement from class, attention difficulties, impulsivity, anger management, and peer and adult relations (Docs. a, g and h).
4. The November 23, 2009 IEP contains an annual goal for the student to improve anger management, including specific objectives related to improving peer and adult relations, accepting constructive feedback or support from others, and recognizing and identifying signs of frustration or anger and seeking assistance with managing these feelings. The IEP team determined that the student requires special education instruction and counseling to assist him in achieving the annual goals included in the IEP. However, there is no

documentation that, in developing the IEP, the team considered the student's interfering behavior of truancy (Doc. a).

5. Reports of the student's progress toward achievement of the annual goals, made on January 22, 2010 and April 14, 2010, state that the student did not make sufficient progress to meet the goals on his IEP due to his interfering behaviors and that the IEP team needed to meet to address the student's "insufficient progress." There is no documentation that the IEP team met to review the student's program in response to "insufficient progress" on IEP annual goals (Doc. a and review of record).
6. On November 9, 2010, the IEP team convened to review and revise, as appropriate, the student's program. At that meeting, the parent expressed her concerns regarding the student's lack of school attendance. At the meeting, the team also considered information from school staff that, when the student does attend school, he does not engage in the counseling services that are offered. The team documented that it could not determine the student's present levels of performance due to his lack of school attendance, but there is no documentation that they considered behavioral supports and interventions to address the student's interfering behaviors (Docs. b, i and j).
7. Reports of the student's progress, dated January 21, 2011 and March 30, 2011, state that the IEP team needed to meet to address the student's "insufficient progress," but there is no documentation that the IEP team met to do so (Doc. b and review of record).
8. On June 14, 2011, the IEP team reconvened at the complainant's request. At that meeting, the team considered the student's lack of progress and determined that additional assessments were needed to determine the student's present levels of "academic achievement and current cognitive and emotional functioning." There is no documentation that the IEP team considered behavioral supports and interventions that could be provided while the reevaluation was being conducted (Doc. c and review of record).
9. There is documentation that the BCPSS scheduled the first assessment to be conducted on July 28, 2011, and was only able to complete one assessment before the student was placed in the care of DJS on August 13, 2011. The MSDE/JSEP ensured that the assessments were completed and has reviewed and revised the IEP (Docs. d, f, k, l and m and interviews with the complainant, BCPS staff, and MSDE/JSEP staff).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: Addressing the student's social/emotional/ behavioral needs**

To appropriately identify and address the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the

classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must consider strategies, including positive behavioral interventions and supports, to address that behavior. Revisions of a student's program must be made by the IEP team unless, after the annual IEP team meeting for a school year, the public agency and the parent agree to amend the program without convening an IEP team meeting (34 CFR §§300.320 and .324).

Based on the Findings of Facts #1 and #2, the MSDE finds that the IEP in effect at the start of the 2010-2011 school year was revised by school staff to include a BIP without convening the IEP team or obtaining the agreement of the complainant to do so. Based on the Findings of Facts #4 – #6, the MSDE finds that, when the IEP team convened on November 9, 2010, it did not consider the parent's concerns about the student's truancy and did not consider strategies and interventions to address the student's interfering behaviors.

Based on the Findings of Facts #7 and #8, the MSDE finds that, on June 14, 2011, the IEP team considered the student's interfering behaviors and recommended that assessments be conducted in order to determine his present levels of performance, but did not consider interventions to address the behavior during the reevaluation process. Therefore, this office finds that violations have occurred with respect this allegation.

**Allegation #2: Addressing the lack of expected progress toward achieving the IEP goals**

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate. Additionally, the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address the lack of expected progress toward achievement of the annual goals, information from the parent, or the student's anticipated needs (34 CFR §300.324).

Based on the Findings of Facts #5 – #8, the MSDE finds that the BCPS did not ensure that the IEP team reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress toward achievement of the annual goals throughout the 2010-2011 school year. Therefore, this office finds that a violation has occurred with respect to this allegation.

**ALLEGATION #3: TRANSITION PLANNING BASED ON AGE-APPROPRIATE ASSESSMENTS**

**FINDINGS OF FACTS:**

10. The student turned fourteen (14) years old on May 22, 2010. The IEP in effect on that date was developed on November 23, 2009. The November 23, 2009 IEP documents that the IEP team developed a transition plan based on information from a Transition Planning Inventory and an interview with the student conducted on October 27, 2009 (Doc. a).

11. The IEP developed on November 9, 2010 documents that, at the meeting, the team reviewed and revised the transition plan based an interview with the student and a review of the October 27, 2009 Transition Planning Inventory (Doc. b).
12. On June 14, 2011, the IEP team revised the transition plan. While there is documentation that the IEP team reviewed the previous Transition Planning Inventory, the student did not attend the IEP team meeting and there is no documentation that the team took steps to obtain the student's interests and preferences when revising the transition plan (Doc. c and review of record).

### **DISCUSSION/CONCLUSIONS:**

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, and updated annually, 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 (34 CFR §§300.320 and COMAR 13A.05.01.09). When a student's transition goals are to be reviewed at an IEP team meeting, the public agency must invite the student to attend the meeting or, if the student does not attend, take other steps to ensure that the student's preferences and interests are considered (34 CFR §300.321).

Based on the Findings of Facts #10 and #11, the MSDE finds that the IEP in effect from the start of the 2010-2011 school year until June 14, 2011 contained a transition plan that was based on age-appropriate assessment data and consideration of the student's interests and preferences. However, based on the Finding of Fact #12, the MSDE finds that there is no documentation that steps were taken to obtain the student's preferences and interests when revising the student's transition plan on June 14, 2011. Therefore, the MSDE finds that a violation has occurred with regard to this allegation.

### **CORRECTIVE ACTIONS/TIMELINE:**

#### **Student-Specific**

The MSDE requires the BCPS to determine the amount and nature of *compensatory services*<sup>1</sup> necessary to redress the violations identified in this investigation. This determination must be made in consultation with the student's parent and MSDE/JSEP, or the public agency that is currently responsible for providing educational services to the student. The MSDE requires the BCPS to provide documentation to the MSDE that this corrective action has been completed no later than January 15, 2012.

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<sup>1</sup> Compensatory services, for the purposes of this letter, mean the determination as to how to remediate the denial of appropriate services to the student (34 CFR §300.151).

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The MSDE also requires the BCPS to document that it has provided the parent with written notice of the determination. If the student's parent disagrees with the amount and nature of the *compensatory service*<sup>1</sup> determined by the BCPS, the parent maintains the right to request mediation or to file a due process complaint, in accordance with IDEA.

### **School-Based**

The MSDE requires the BCPS to provide documentation by January 30, 2012 of the steps it has taken to determine if the violations identified in this Letter of Findings are unique to this case or if they represent a pattern at XXXXXXXXXXXXXXXX School. 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 the MSDE. If the school system reports compliance with the requirements, the MSDE 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, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements. Additionally, the findings in this Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration for future monitoring activities.

Documentation of all of the corrective actions taken is to be submitted to the attention of the Chief of the 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 BCPS have the right to submit additional written documentation to this office within fifteen (15) days of the date of this Letter of Findings if they disagree with the findings of facts 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 Letter of Findings. Upon consideration of this additional documentation, this office may leave its findings and



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conclusions intact, amend its findings and conclusions, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of facts, conclusions or corrective actions contained in this Letter of Findings should be addressed to this office in writing. The school system and the student's parent 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, in accordance with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or the filing of a due process complaint.

Sincerely,

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

MEF/ch

cc: XXXXXXXX  
Andrés Alonso  
Tiffany Puckett  
Jay Salkauskas  
XXXXXXXX  
Dori Wilson  
Christine R. Hartman