



Bernard J. Sadusky, Ed.D.  
Interim State Superintendent of Schools

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

November 18, 2011

Pamela S. Foresman, Esq.  
Maryland Disability Law Center  
1800 N. Charles Street  
Suite 400  
Baltimore, Maryland 21201

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

Dr. Kim Hoffman  
Director, Data Monitoring and Compliance  
Baltimore City Public Schools  
200 East North Avenue, Room 204-B  
Baltimore, Maryland 21202

RE: XXXXX  
Reference: # 12-019

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 our investigation.

**ALLEGATIONS:**

On September 20, 2011, the MSDE received correspondence from Pamela S. Foresman, Esq., Maryland Disability Law Center, hereafter the, “the complainant,” on behalf of the above-referenced student. 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 regulations with respect to the above-referenced student. This office investigated the allegations listed below.

1. The BCPS has not ensured that the student’s Individualized Education Program (IEP) addresses his transportation needs since the start of the 2010-2011 school year, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS has not ensured that the student has been provided with the transportation services required by the IEP since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.101 and .323.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Tyra Williams, Education Program Specialist, MSDE, was assigned to conduct the investigation of the allegations in the complaint.
  2. On September 27, 2011, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Lewis, Executive Director, Special Education, BCPS; Dr. Kim Hoffman, Director, Data Monitoring and Compliance, BCPS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
  3. On October 4, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, contacted the complainant by telephone and clarified the allegations to be investigated.
  4. On October 6, 13, 17, and 20, 2011, the MSDE sent a request to the BCPS for documentation regarding transportation.
  5. On October 7, 2011, the MSDE sent correspondence to the complainant, with a copy to the student's mother, that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified the BCPS of the allegations to be investigated and requested that the BCPS review the alleged violations.
  6. On October 19, 2011, Ms. Williams conducted a telephone interview with the student's mother regarding the allegations.
  7. On October 20, 2011, Ms. Williams, Ms. Christine Hartman, Education Program Specialist, MSDE, Ms. Koliwe Moyo-Stephens, Education Program Specialist, MSDE, and Ms. Mandis, conducted a site visit at the BCPS Central Office and interviewed the following individuals:
    - a. Ms. XXXXXXXXXXX, Transportation Coordinator, XXXXXXXXX XXXXXXXXXXXXXXXX School; and
    - b. Mr. XXXXXXXX, IEP Chairperson, XXXXXXXX XXXXXXXXXXXXXXXX School.
- Ms. Tiffany Puckett, Associate Counsel, Office of Legal Counsel, BCPS, and Dr. Hoffman attended the site visit as representatives of the BCPS and to provide information regarding the BCPS policies and procedures, as required.
8. On October 21, 2011, Ms. Williams, Ms. Hartman, Ms. Moyo-Stephens, and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the BCPS Central Office and interviewed the following BCPS staff:
    - a. Mr. Francis Aning, Manager of Routing and Scheduling, BCPS Transportation Department;

- b. Mr. John Land, Deputy Chief Operation Officer, BCPS Transportation Department;
- c. Mr. J. Keith Scroggins, Chief Operating Officer, BCPS Transportation Department; and
- d. XXXXXXXXXXX, Graduate Intern, BCPS Transportation Department.

Ms. Puckett, Dr. Hoffman, and Ms. Nancy Feely, State Superintendent's Designee, MSDE, attended the site visit. Ms. Puckett and Dr. Hoffman were available to provide information regarding the BCPS policies and procedures, as required. On the same date, Ms. Williams reviewed the student's education record and the BCPS staff provided the MSDE staff with documentation regarding the allegations being investigated.

- 9. On October 28, 2011, the BCPS staff provided the MSDE staff with additional documentation.
- 10. On November 2, 2011, Ms. Williams and Ms. Mandis conducted a telephone interview with Ms. XXXXXX and Mr. XXXXX of XXXXXXXXXXXX XXXXXXXXXXXX School, as well as Ms. XXXXXXXXXXXX, Teacher, and Ms. XXXXXXXXXXXX Principal, XXXXXXXXXXXX XXXXXXXXXXXX School. Ms. Puckett participated on the telephone interview as a representative of the BCPS and to provide information regarding the BCPS policies and procedures, as required.
- 11. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated February 7, 2011;
  - b. IEP, dated February 7, 2011 and amended August 22, 2011;
  - c. Class Schedule and Toileting Chart, dated 2011 – 2012 school year;
  - d. Bus Attendance Roster, dated August 29, 2011 – September 30, 2011;
  - e. BCPS Instructional Day Bell Schedule, dated 2011 – 2012 school year;
  - f. Redacted BCPS Bus Report Correspondence, dated 2011 – 2012 school year;
  - g. BCPS Route Report Detail, generated August 25, 2011;
  - h. BCPS Route Report Detail, generated September 2, 2011;
  - i. Responsibilities for School-based Transportation Coordinators; and
  - j. Complaint, dated September 16, 2011.

**BACKGROUND:**

The student is five (5) years old. He is identified as a student with developmental delay under IDEA, and receives special education instruction and related services. The student attends XXXXXXXXXXXXXXXXXXXXXXXXXXXX School, where he participates in the XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

There is documentation that, during the time period covered by this investigation, the student's parent was provided with the opportunity to participate in the education decision-making

process, and was provided with written notice of the IEP team's decisions and notice of the procedural safeguards (Docs. a and b).

### **FINDINGS OF FACTS:**

#### **The BCPS Transportation Procedures**

1. When transportation is determined necessary for a student by the IEP team, the IEP team chairperson provides this information to the BCPS Central Office for approval and input into a computer database (Interview with school staff and with the BCPS Transportation Office staff).
2. The BCPS Transportation Office develops bus routes for those students who have been approved to receive transportation as a related service. The BCPS Transportation Office provides parents with information about the bus route by letter. The school system staff report that when a student is added to a bus route after the route is developed, the BCPS Transportation Office informs parents by telephone of the information instead of by writing so that the parents receive the information as soon as possible (Interview with the BCPS Transportation Office staff).
3. When the BCPS contracts with private bus companies for the provision of transportation services, the BCPS provides bus contractors with information from the computer database about each student's transportation needs (Interview with the BCPS Transportation Office staff).
4. The BCPS Central Office staff report that the provision of transportation services is monitored through comparison of transportation information with information from the Maryland On-Line IEP System. They report that this is currently being done manually, but that the school system is in the process of developing an electronic system of monitoring. The BCPS Central Office staff further report that school staff are required to monitor the arrival and departure of buses, to document when students are tardy due to late arrival of buses, and to inform the BCPS Central Office staff of any problems (Interview with the BCPS Transportation Office staff).

#### **IEP Requirements**

5. The IEP in effect since the start of the 2010 – 2011 school year indicates that the student has needs related to self-management, including toileting skills and placing his belongings in his cubby, and includes an annual goal for the student to improve these "self-help" skills. The IEP also requires that the student be provided with special education instruction to assist him in achieving the annual goals (Docs. a and b).
6. There is documentation that the IEP team decided that the student requires "yellow bus" transportation and use of a car seat, and that he does not require the support of additional personnel on the bus. However, there is no documentation that the IEP team has

considered the effects transportation may have on the student in relation to his age and disability, amount of time involved in transportation and the distance the student will be transported<sup>1</sup>(Docs. a and b).

### **School Schedule**

7. The school day for the student begins at XXXX and ends at XXXXX. (Docs. c, e, and interview with school staff).
8. The student's school schedule reflects that from XXXXX to XXXX., his activities include placing his belongings in his cubby, using the restroom, walking in line with other students, and eating breakfast (Doc. c).

### **Bus Route**

9. The student was assigned to a bus operated by a private bus company that contracts with the BCPS. The bus routing information issued by the BCPS Transportation Office for the student indicates that the student's morning pick-up time from the daycare provider is XXXX and the drop-off time at the daycare provider is XXXXXX which is prior to the end of the school day. There is no documentation that the student's parent was informed of the routing information (Docs. g and h).

### **Maintenance of Records**

10. There is no documentation that the school staff have maintained logs of when the student's bus has arrived at school and when it has departed from the school (Review of the educational record and interview with the school staff).
11. The school staff did not document when the student was tardy due to the late arrival of the bus (Review of the educational record and interview with the school staff).

### **Provision of Transportation Services**

12. The parent reports that, on August 31, 2011, she transported the student to school because she had not received information about the bus route. The student was picked up from the school by the bus at the end of the day, but there is no documentation of the time that he arrived at the home of his daycare provider, where he is to be dropped off each day. School system staff acknowledge that the student was not transported to the home of his daycare provider in a timely manner on August 31, 2011, and that as a result of this incident, the BCPS has contracted with a different bus company to transport the student and other students at the school (Doc. i and interview with school staff).

---

<sup>1</sup> The IEP team considered the student's transportation needs after determining that the student cannot be educated in the school he would attend if he were not disabled, due to his need for the supports provided through the XXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Pamela S. Foresman, Esq.  
Dr. Kim Lewis  
Dr. Kim Hoffman  
November 18, 2011  
Page 6

13. The BCPS provided transportation logs that indicate when the bus picked the student up at his daycare provider's address and dropped the student off at the daycare provider's address during the month of September 2011, but there are no logs of pick-up or drop-off of the student for any other period of time during the school year. The September 2011 logs reflect that the student was picked up for school after the school day began on six (6) days during that month (Doc. d).

### **DISCUSSION/CONCLUSIONS:**

#### **ALLEGATION #1 IEP ADDRESSES TRANSPORTATION**

In order to provide a Free Appropriate Public Education (FAPE) to a student, a public agency must ensure that the IEP team develops an IEP that includes services that address the student's identified special education instruction and related service needs (34 CFR §300.320). Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education instruction (34 CFR §300.34).

To appropriately identify the needs that arise from the disability, the IEP team must consider the strengths of the student, concerns of the parents, and the results of the most recent evaluations. The IEP team must also consider information about the student's academic and functional performance in the classroom (34 CFR §300.324).

The public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. The educational placement must be based on the student's IEP and be as close as possible to the student's home. Unless the IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the IEP team determines that the student cannot be educated in the school the student would attend if not disabled, the IEP team shall document the specialized transportation needs of the student, including consideration of the effect transportation may have on the student in relation to the student's age and disability, specialized equipment and personnel needed, amount of time involved in transporting the student, and the distance the student will be transported (COMAR 13A.05.01.10)

In this case, the complainant alleges that the bus service is inconsistent and that the bus schedule has resulted in a loss of special education instruction for the student. The complainant further alleges that the IEP team has not convened to consider the parent's concerns about the student's transportation needs.

Based on Findings of Facts#5 and #6, there is no documentation that the IEP team has considered the student's specialized transportation needs, including the effect transportation may have in relation to the student's age and disability, the amount of time involved in transporting the student, and the distance the student will be transported. Therefore, this office finds that a violation has occurred with regard to this allegation.

**ALLEGATION #2                      PROVISION OF TRANSPORTATION SERVICES**

The public agency is required to ensure that the student is provided with the special education instruction and related services required by the IEP (34 CFR §§300.101 and .323). As stated above, related services means transportation and other supportive services as are required to assist a student to benefit from special education instruction (34 CFR §300.34).

Based on Findings of Facts #1 - #4, the MSDE finds that the BCPS has procedures for arranging transportation for students who require it as a related service and for identifying and correcting problems with the provision of transportation services. Based on Findings of Facts #7 -#13, the MSDE finds that these procedures have not been followed and that the BCPS has not ensured that the student has been provided with transportation services required by the IEP. Therefore, this office finds that a violation has occurred with respect to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student Specific**

The MSDE requires the BCPS to provide documentation by December 19, 2011 that the school system has taken immediate steps to ensure that the student is transported to school prior to the start of the school day and that he is not transported home from school prior to the end of the school day.

The MSDE requires the BCPS to provide documentation by January 19, 2012 that the IEP team has convened and considered the effect transportation may have in relation to the student's age, disability, and the length of time and distance of the transportation. The MSDE requires the BCPS to also ensure that the team determines *compensatory services*<sup>2</sup> to remediate the violations identified.

The BCPS must provide the parent 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 of the determinations.

**Similarly Situated Students – XXXXXXXXXXXXXXXXXXXXXXXX School**

The MSDE requires the BCPS to provide documentation by February 15, 2012 that the school system has taken immediate steps to identify all students at this school who have been transported to school after the start of the school day or transported home from school prior to the end of the school day and to ensure that they receive appropriate transportation services. The BCPS must also provide documentation that a remedy has been offered for each student who is identified.

---

<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 for the student (34 CFR §300.151).

Pamela S. Foresman, Esq.  
Dr. Kim Lewis  
Dr. Kim Hoffman  
November 18, 2011  
Page 8

The MSDE also requires the BCPS to provide documentation by February 15, 2012 of the steps taken to identify all students at XXXXXXXXXXXXXXXXXXXXXXXX School with an IEP that requires the provision of transportation, but which does not document the consideration of the specialized transportation needs of the student. For each student identified, the BCPS must ensure that the IEP team convenes and documents consideration of the student's specialized transportation needs.

The IEP team must also determine if there has been a negative impact on the student's ability to benefit from the educational program. If there has been a negative impact, the IEP team must also determine *compensatory services*<sup>3</sup> to remediate the violation.

### **School Based/Systemic**

The MSDE requires the BCPS to provide documentation by February 15, 2012 that steps have been taken to determine whether violations identified constitute a pattern within the school or school system. 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 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 IEP teams document consideration of specialized transportation needs, ensure that students receive transportation services in accordance with each student's IEP, and ensure that parents are notified of the transportation services to be provided.

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. Additionally, the findings in the Letter of Findings will be shared with the MSDE Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration for future monitoring activities.

### **TECHNICAL ASSISTANCE:**

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

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this Letter of Findings if they disagree with the findings of fact, conclusions or corrective actions. 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.

---

<sup>3</sup>*Id.*



Pamela S. Foresman, Esq.  
Dr. Kim Lewis  
Dr. Kim Hoffman  
November 18, 2011  
Page 9

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. 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 of fact, conclusions or corrective actions contained in this Letter of Findings should be addressed to this office in writing. The parent 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 FAPE for the student, including issues subject to a State complaint investigation, in accordance with 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/tw

cc:     XXXXXXXXX  
          Andrés Alonso  
          Francis Aning  
          Tiffany Puckett  
          Erin Leff  
          XXXXXXXXXXXXX  
          Dori Wilson  
          Martha J. Arthur  
          Anita Mandis  
          William Fields  
          Tyra Williams