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November 18, 2011

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Baltimore City Public Schools
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Baltimore, Maryland 21202

RE: XXXXX
Reference: #12-020

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.

ALLEGATION:

On September 20, 2011, the MSDE received a complaint from Pamela S. Foresman, Esq., Maryland Disability Law Center, hereafter, “the complainant,” filed on behalf of her client, 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) with respect to the above-referenced student. This office investigated the allegation that the BCPS has not ensured that the student has been provided with the transportation services required by the Individualized Education Program (IEP) since the start of the 2011-2012 school year, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On September 27, 2011, MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Director, Data Monitoring & Compliance, BCPS; Dr. Kim Lewis, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, BCPS.
3. On October 4, 2011, Ms. Anita Mandis, Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE, spoke with the complainant by telephone and clarified the allegation to be investigated.
4. On October 7, 2011, the MSDE sent correspondence to the complainant, with a copy to the student's mother, acknowledging receipt of the complaint and identifying the allegation subject to this investigation. On the same date, the MSDE sent a copy of the complaint and the identified allegation, via facsimile, to Dr. Hoffman, Dr. Lewis, and Ms. Ruley.
5. On October 20, 2011 and November 2, 2011, Ms. Moyo conducted telephone interviews with the student's mother about the allegation being investigated.
6. On October 21, 2011, Ms. Moyo, Mrs. Martha J. Arthur, Education Program Specialist, MSDE, Ms. Christine Hartman, Education Program Specialist, MSDE, and Ms. Tyra Williams, Education Program Specialist, MSDE conducted a site visit at the BCPS Central Office and interviewed the following staff:
 - a. Mr. J. Keith Scroggins, Chief Operations Officer, BCPS;
 - b. Mr. John Land, Deputy Chief Operations Officer, BCPS;
 - c. Mr. Francis Aning, Manager of Routing and Scheduling, BCPS;
 - d. Mr. XXXXXXXXXXXX, Principal, XXXXXXXXXXXXXXXX School, BCPS; and
 - e. Mr. XXXXXXXXX, Graduate Intern, BCPS.

Ms. Tiffany Puckett, Associate Legal Counsel, BCPS, 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. Moyo reviewed the student's education record and the BCPS staff provided MSDE staff with documentation regarding the allegation being investigated.

7. On October 28, 2011 and November 7, 2011, the BCPS staff provided the MSDE staff with additional documentation.
8. The MSDE reviewed documentation relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. IEP, dated April 12, 2011;
 - b. Taxicab Transportation Vouchers from August 31, 2011 to September 6, 2011;
 - c. Taxicab Logs from September 14, 2011 to October 7, 2011;
 - d. Correspondence and attachments from the complainant to the MSDE, received September 20, 2011;
 - e. School Bus Attendance Roster from September 26, 2011 to September 30, 2011;
 - f. School Bus Attendance Roster from October 3, 2011 to October 7, 2011;
 - g. Bus Transportation Log for Bus #1387 from October 15, 2011 to November 7, 2011;
 - h. Bus Routing Report for the 2011-2012 school year; and
 - i. Attendance log for the 2011-2012 school year.

BACKGROUND:

The student is thirteen (13) years old and attends the XXXXXXXXXXXX School (XXXXXX) in Baltimore City where he receives instruction in a XXXXXX program. He is identified as a student with an intellectual disability under the IDEA, and receives special education instruction and related services. During the period of time covered by this investigation, the student's parent participated in the educational decision-making process and has been provided with notice of the procedural safeguards (Docs. a, d and i).

FINDINGS OF FACTS:

1. The IEP requires that the student be provided with transportation services to and from school on a daily basis (Doc. a).
2. There is documentation that the school day begins at XXXXX and ends at XXXXX (Doc. d and review of the XXXXXXXXXXX website at <http://www.XXXXXXXXX.org>).
3. A review of the Bus Routing Report indicates that the student was placed on a bus route and that he was scheduled to be picked up at XXXXXX and dropped off at XXXX each day (Doc. h).
4. The BCPS staff report that at the start of the 2011-2012 school year, the bus company with which the BCPS contracted to provide transportation services for the student did not have sufficient personnel to cover the student's bus route. As a result, the BCPS

arranged for the student and other students on the bus route to receive transportation by taxicab until another bus service provider could be obtained (Doc. d and interviews with the BCPS Central Office staff, school staff, and the student's mother).

5. A review of the student's attendance log documents that the student has been attending school on a regular basis since the start of the 2011-2012 school year (Doc. i).
6. A review of school bus attendance rosters, taxicab logs, and taxicab vouchers document that from August 31, 2011, the first day of the 2011-2012 school year, through October 14, 2011, transportation was provided for the student by either taxicab or bus. The documentation further indicates the student was not consistently transported to school in time for the start of the school day (Docs b, c, e, and f.).
7. A bus transportation log maintained by school staff documents that since October 15, 2011 the student has been provided with transportation services by bus and has arrived at school in time for the start of the school day (Doc. g).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure students are provided with the special education instruction, related services and accommodations, including transportation services, required by the IEP (34 CFR §300.101 and .323). In this case, the complainant alleges that the student has not been provided with the transportation services required by the IEP on a consistent basis or in a timely manner.

Based on the Findings of Facts #1-#7, the MSDE finds that the BCPS did not ensure that the student was transported to school in a timely manner, on a consistent basis from August 31, 2011 until October 15, 2011 due to problems with a bus contractor. Therefore, the MSDE finds that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific

The MSDE requires the BCPS to provide documentation by February 1, 2012 that the IEP team considered the student's academic and functional performance and determined the amount and nature of *compensatory services*¹ or other remedy necessary to redress the violation identified in this letter.

¹ *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).

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The BCPS must provide the student's parent with proper written notice of the team's determinations, as required by 34 CFR §300.503, including a written explanation of the basis for the determinations. If the student's parent disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint to resolve the dispute consistent with the IDEA.

Similarly Situated Students

The MSDE requires the BCPS to provide documentation by February 1, 2012 that identifies all students within the school system assigned to a bus operated by the bus company in discussion and determine which of these students was denied special education instruction or related services as a result of the problems experienced with the bus company involved in this investigation. The MSDE requires the BCPS to offer a remedy to each student for the loss.

By copy of this Letter of Findings, the MSDE Office of Quality Assurance and Monitoring is being informed of the violation identified through this investigation for use in its future monitoring for continuous improvement activities. Documentation of completion of the required actions is to be submitted to this office to the attention of 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 of this letter if they disagree with the findings of facts 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 of facts, conclusions, and corrective actions contained in this Letter of Findings should be addressed to this office in writing. The student's parent and the school system maintain the right to request mediation or to file a due process complaint if they

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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/km

cc: XXXXXXXXX
 Andrés Alonso
 Nancy Ruley
 Francis Aning
 Erin Leff
 Glenn Johnson
 XXXXXXXXX
 William Fields
 Dori Wilson
 Anita Mandis
 Martha J. Arthur
 Koliwe Moyo