



January 23, 2013

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

RE: XXXXX  
Reference: #13-028

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), 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 5, 2012, the MSDE received a complaint from Ms. XXXXXXXXXXXX, 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. The MSDE investigated the following allegations:

1. The BCPS has not ensured that the student’s Individualized Education Program (IEP) addresses her identified needs in speech and communication and functional life skills since December 2011,<sup>1</sup> in accordance with 34 CFR §300.324. Specifically:
  - a. The IEP does not include an appropriate Assistive Technology communication device; and

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<sup>1</sup> The complaint included allegations of violations over “the past years.” In response, the complainant was informed, in writing, on December 17, 2012, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received, in accordance with 34 CFR §300.153.

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- b. The IEP does not contain annual goals designed to meet her identified functional life skills needs.
2. The BCPS has not ensured that the student's IEP contains a transition plan based on age-appropriate assessments since December 2011,<sup>1</sup> in accordance with 34 CFR §300.320.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On December 10, 2012, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate General Counsel, BCPS.
3. On that same date, Ms. Stump attempted unsuccessfully to conduct a telephone interview with the complainant in order to clarify the allegations to be investigated.
4. On December 17, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation based on the written complaint. On the same date, the MSDE notified Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On January 3, 2013, Ms. Stump and Ms. Tyra Williams, Education Program Specialists, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Ms. XXXXXXXXXXXXX, IEP Team Chairperson;
  - b. Mr. XXXXXXXXXXXXX, Special Education Teacher;
  - c. Mr. XXXXXXXXX, Special Education Teacher; and
  - d. Ms. XXXXXXXXX, Speech-Language Pathologist.

Mr. Darnell Henderson, Associate General Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
6. On January 4, 2013, Ms. Stump conducted a telephone interview with the complainant.
7. On January 7, 2013, the MSDE requested additional documentation from the student's educational record from the BCPS.

8. 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 December 5, 2012;
  - b. BCPS *Speech/Language Progress* report, dated November 9, 2011;
  - c. IEP, dated December 7, 2011;
  - d. BCPS *Receipt of Parental Rights Document*, dated December 7, 2011;
  - e. BCPS *Assistive Technology* progress report, dated March 23, 2012;
  - f. BCPS *Progress Report* form, dated March 26, 2012;
  - g. BCPS *Speech/Language Progress Report* form, dated April 16, 2012;
  - h. IEP, dated April 16, 2012;
  - i. BCPS *Receipt of Parental Rights Document*, dated April 16, 2012;
  - j. Assistive technology service provider log for the 2011-2012 school year;
  - k. Speech-language pathologist service provider log for the 2011-2012 school year; and
  - l. IEP progress reports for the 2011-2012 school year.

**BACKGROUND:**

The student is twenty-one (21) years old and is identified as a student with an intellectual disability under the IDEA. She attends XXXXXXXXXXXXXXXXXXXX, where she receives special education and related services. 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, c, d, h, and i).

**ALLEGATION #1:**                    **IEP THAT ADDRESSES THE STUDENT’S SPEECH AND COMMUNICATION AND FUNCTIONAL LIFE SKILLS NEEDS**

**Findings of Facts:**

**Speech and Communication Needs**

1. The IEP in effect in December 2011 states that formal testing of the student indicates that she has “severely impaired cognitive functioning,” a “severe neurological impairment,” “significant difficulties with visual motor integration abilities,” and “severe articulation errors related to her [Down Syndrome].” The IEP further clarifies that the student has “difficulty responding verbally in the classroom. Single words are intelligible in context. However, phrases and sentences are difficult to understand” (Doc. c).
2. The IEP includes an annual goal designed to assist the student with improving her expressive language skills in order “to increase functioning in all environments and school situations.” The short-term objectives within the annual goal indicate that the

- student will demonstrate mastery of the annual goal using “multiple modalities (verbalization, voice-output device, picture boards).” The IEP requires that the student be provided with speech-language therapy as a related service in order to assist the student in achieving the annual goal (Doc. c).
3. The IEP also states that the student requires Assistive Technology (AT) devices and services in order to assist her in achieving the annual goal. The IEP clarifies that the student’s AT needs are addressed through supplementary aids, services, program modifications, and supports (Doc. c).
  4. The IEP contains supplementary aids and services, including AT consultative services between the student’s teachers and the speech-language pathologist to provide training and technical support regarding the student’s “access to a speech generating device and low tech topic boards to support her communication in the classroom” (Doc. c).
  5. Teacher and service provider reports document that the student had access to a specific speech-output device but that she refused to use it because she prefers to speak. The service provider report indicates that the student’s ability to engage in conversation is more advanced than the specific speech-output device to which she had access (Docs. b, e-g, and j-l).
  6. There is documentation that the speech-language pathologist responsible for providing the AT consultative services attempted to introduce other speech-output devices to the student but that she was unable to use them due to her intellectual abilities (Doc. j).
  7. On April 16, 2012, the IEP team convened and considered information from the speech-language pathologist that the student had achieved the annual goal to improve communication. The speech-language pathologist stated that the student “has achieved her best potential regarding communication skills. Her communication skills are stable and unlikely to significantly improve.” The team revised the annual goal related to speech and communication to assist the student with maintaining her current level of communication skills (Docs. g and h).
  8. The team also considered the information from the student’s teachers and service providers regarding the student’s refusal to use the speech-output device. While the team revised the IEP to discontinue use of the speech-output device as a means of demonstrating mastery of the annual goal, the IEP continues to require that the student be provided with this device (Doc. h).

### **Functional Life Skills Needs**

9. The IEP in effect since December 2011 includes an annual goal for the student to improve her functional life skills. However, the statement of the student’s present levels

of academic achievement and functional performance related to functional life skills does not identify the specific areas of need for the student (Docs. c and h).

### **Discussion/Conclusions:**

In order to provide a Free Appropriate Public Education (FAPE) to a student with a disability, the public agency must ensure that an IEP team develops an IEP that includes a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop annual measurable goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

The IEP must also include a statement of the special education instruction and related services to be provided to assist the student in achieving the annual goals, a description of how the student's progress toward achieving those goals will be measured and when that progress will be reported to the student's parents. Therefore, in order to ensure that the IEP is designed to provide the student with the special education instruction and related services needed to enable the student to be involved in and make progress in the general education curriculum, the annual IEP goals must be aligned with the student's present levels of performance (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

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 (34 CFR §300.324).

In order to ensure that the student receives the services required by the IEP, it must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes*, Federal Register, Vol. 64, No. 48, p.12479, March 1999).<sup>2</sup>

### **Speech and Communication Needs**

In this case, the complainant alleges that the student's speech and communication needs have not been addressed because the IEP does not include an appropriate AT communication device (Doc. a and interview with the complainant).

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<sup>2</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

Based on the Findings of Facts #1-#8, the MSDE finds that the IEP in effect since December 2011 contains present levels of functional performance in the area of speech and communication that identifies specific skills in which the student demonstrates weaknesses, an annual goal for the student to improve these skills, and services to assist her in achieving the goals, including AT devices and services.

However, based on the Findings of Facts #7 and #8 the MSDE finds that, while the annual goal was revised at the April 2012 IEP team meeting to reflect information that the student will no longer be using a speech-output device to assist her in achieving the annual goal, the IEP continues to state that she will be provided with the use of the device. Therefore, the MSDE finds that the IEP is not written clearly with respect to the student's need for a speech-output device and that a violation has occurred since April 2012.

### **Functional Life Skills Needs**

Based on the Finding of Fact #9, the MSDE finds that the statement of the student's present levels of academic achievement and functional performance related to functional life skills does not identify the skills in which the student demonstrates weakness. As a result, the MSDE finds that there is no documentation that the annual IEP goal is aligned with the statement of the student's present levels of academic achievement and functional performance in order to ensure that the program addresses the student's identified functional life skills needs. Therefore, the MSDE finds a violation with respect to this aspect of the allegation since December 2011.

### **ALLEGATION #2: IEP THAT CONTAINS A TRANSITION PLAN BASED ON AGE-APPROPRIATE ASSESSMENTS**

#### **Finding of Fact:**

10. There is documentation that the IEP in effect since December 2011 includes post-secondary goals in the areas of training, education, employment, and independent living based on information regarding the student's interests and preferences obtained from both the student and the complainant. The IEP also includes the transition services, including course of study, needed to assist the student in achieving those goals (Docs. c 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. When the purpose of an IEP team meeting is to consider the transition plan, the public agency must ensure that the student is invited to the IEP team meeting and, if the student is unable to attend the meeting, that the public agency takes steps to ensure that the student's preferences and interests are considered (34 CFR §300.321 and COMAR 13A.05.01.07).

In this case the complainant alleges that the input attributed to her and to the student that is contained in the IEP is falsified information and that the transition plan was not developed at an IEP team meeting (Doc. a and interview with the complainant).

Based on the Finding of Fact #12, the MSDE finds that the documentation indicates that the IEP contains a transition plan that was developed at an IEP team meeting with the input of both the student and the complainant. Therefore, the MSDE finds no violation regarding this allegation.

However, if the complainant believes that the documentation in the student's educational record, which was used as a basis for this conclusion, is inaccurate or misleading, she may request an amendment of the record (34 CFR §300.618). If the public agency refuses to amend the information in accordance with the request, it must inform the complainant of the refusal. The public agency must also advise the complainant of the right, upon her request, to a hearing conducted by the public agency to challenge the information in the student's educational record to ensure that it is not inaccurate or misleading (34 CFR §300.619).

If, as the result of the hearing, the public agency decides that the information is inaccurate or misleading, it must amend the information and inform the complainant in writing. If, however, the public agency decides that the information is not inaccurate or misleading, it must inform the complainant of her right to place in the record a statement regarding information in the record or to set forth any reasons for disagreeing with the decision of the agency (34 CFR §300.620).

### **CORRECTIVE ACTIONS/TIMELINES:**

#### **Student-Specific**

The MSDE requires the BCPS to provide documentation by April 15, 2013, that an IEP team has reviewed and revised, as appropriate, the student's IEP to ensure the following:

1. The present levels of academic achievement and functional performance contain information about the specific skills in which the student demonstrates weakness related to functional life skills needs that arise out of her disability;
2. The annual goals are designed to address the specific skills identified in the present levels of academic achievement and functional performance as areas of need; and
3. The IEP is clear regarding the need for and provision of a speech-output device.

The IEP team must also determine the amount and nature of *compensatory services*<sup>3</sup> or other remedy necessary to redress the violations identified in the Letter of Findings.

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<sup>3</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).

The BCPS must provide the complainant with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. 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 the IDEA.

### **School-Based**

The MSDE requires the BCPS to provide documentation by May 1, 2013, of the steps it has taken to determine if the violations identified in the Letter of Findings are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX.

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 of the United States Department of Education, Office of Special Education Programs. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

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 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



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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 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 a FAPE for the student, including issues subject to this 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  
Charles Brooks  
XXXXXXXXXXXXXX  
XXXXXX  
Martha J. Arthur  
Dori Wilson  
Anita Mandis  
Tom Barkley  
Kathy Stump