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January 2, 2013

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Mrs. Chrisandra A. Richardson, Associate Superintendent
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Rockville, Maryland 20850

Ms. Gwendolyn J. Mason, Director
Department of Special Education Services
Montgomery County Public Schools
850 Hungerford Drive, Room 225
Rockville, Maryland 20850

RE: XXXXX
Reference: #13-018

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.

ALLEGATION:

On November 4, 2012, the MSDE received a complaint from Jennifer Barmon, Esq., hereafter, “the complainant,” on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Montgomery County Public Schools violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

The MSDE investigated the allegation that the MCPS did not ensure that the above-referenced student was provided with a Free Appropriate Public Education (FAPE) from October 17, 2012 to November 9, 2012, in accordance with 34 CFR §§300.101, .111, and .323 and the Code of Maryland Regulations (COMAR) 13A.05.09.

INVESTIGATIVE PROCEDURES:

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 8, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
3. On November 8, 2012, Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE spoke with the complainant by telephone to clarify the allegation to be investigated.
4. On November 15, 2012, Ms. Moyo conducted a telephone interview, regarding the allegations being investigated, with Ms. XXXXXXXXXX, Administrator, Residential Services, XXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXXX. XXXXXXXXXXXX XXX is the XXXX where the Department of Juvenile Services (DJS) placed the student.
5. On November 16, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Mrs. Chrisandra A. Richardson, Associate Superintendent, Department of Special Education and Student Services, MCPS of the allegation and requested that her office review the alleged violation.
6. On November 16, 2012, Ms. Mandis spoke with Ms. Sharon H. Gooding, Supervisor, Equity Assurance and Compliance Unit, MCPS about the allegation being investigated.
7. On November 30, 2012 and December 13, 2012, Ms. Moyo conducted a telephone interview with the complainant about the allegation being investigated.
8. On December 5, 10, and 13, 2012, Mr. William Kayode-Oshi, Case Manager, DJS and Ms. Pam Hardy-Cyran, Lead Coordinator of Correctional Education, DJS provided Ms. Moyo with information and documentation to be considered during the investigation, via electronic mail.
9. On December 17, 2012, Ms. Moyo, Ms. Mandis, Ms. Christine Hartman, Educational Program Specialist, MSDE, Ms. Tyra Williams, Education Program Specialist, MSDE, and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at the Montgomery County Board of Education offices, and interviewed the following MCPS staff:
 - a. Mr. Steven Neff, Director, Pupil Personnel Services, MCPS;
 - b. Ms. Ursula Hermann, Director, Student Services, MCPS;
 - c. Mrs. Kimberly Johnson, Coordinator, Pupil Personnel Services, MCPS;

- d. Ms. Mary Dempsey, Coordinator, Appeals and Transfer Team, MCPS; and
- e. Ms. XXXXXXXXXXXX, Principal, XXXXXXXXXXXX.

Ms. Mason, Ms. Richardson, and Ms. Gooding attended the site visit to provide information on the MCPS policies and procedures, as needed.

- 10. On December 18, 2012, Ms. Moyo conducted a telephone interview with the student's mother about the allegation being investigated.
- 11. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Individualized Education Program (IEP), dated May 24, 2012;
 - b. Maryland DJS XXXX authorization/placement order, dated October 17, 2012;
 - c. Baltimore City Circuit Court Order, dated October 19, 2012;
 - d. Correspondence and attachments from the complainant to the MSDE, received on November 5, 2012;
 - e. Baltimore City Circuit Court Order, dated November 9, 2012;
 - f. Baltimore City Circuit Court Order, dated December 4, 2012; and
 - g. Written response to the complaint from the MCPS, dated December 17, 2012.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with an emotional disability under the IDEA. The student has an IEP that requires the provision of special education instruction and related services.

On October 17, 2012, the student was placed by a Court Order into the care and custody of the Department of Juvenile Services (DJS). On the same day, the DJS placed the student in the XXXXXXXXXXXXXXX, a XXXX located in Montgomery County, hereafter "the XXXX," pending the Court's disposition of the case. The student was not enrolled in an educational program while placed by the DJS at the XXXX.

On November 9, 2012, the student was returned to the care and custody of his mother in Baltimore City. Since returning to the community, the student has decided not to return to public school and has instead decided to enroll in the XXXXXXXXXXXXXXXXXXXXXXX General Educational Development (GED) Program (Docs. a – g, and interviews with the complainant, XXXX staff, the MCPS staff, and the student's mother).

FINDINGS OF FACTS:

1. The student was placed by the DJS at the XXXX from October 17, 2012 to November 9, 2012. At the time of placement in the XXXX, the student was enrolled in Baltimore City Public Schools (BCPS). The BCPS IEP requires that the student be provided with two (2) hours per day of special education instruction by a general education teacher and thirty (30) minutes per week of counseling, as a related service, provided by a school social worker in a separate special education classroom (Docs. a - c).
2. There is no documentation that the student was provided with special education instruction and related services required by the IEP while placed at the XXXX, nor is there documentation that an IEP team reviewed and revised the IEP, during that time period (Doc. a and interviews with the MCPS staff).
3. In the written response to the complaint, the MCPS reports that, in September 2012, the XXXX staff notified the school system of the opening of the XXXX, which has the capacity to serve up to fourteen (14) students for a maximum of sixty (60) days (Doc. g and interviews with the MCPS staff).
4. The MCPS reports that it is providing web-based reading and math intervention programs and on-line assessments in reading and math on the grounds of the XXXX, and that a social worker is available for students who require social work services. The school system further reports that educational instruction has been provided by a general education teacher certified in language arts since November 26, 2012, and by a special education teacher certified in special education and math since December 5, 2012 (Doc. g and interviews with the MCPS staff).
5. The MCPS further reports that it was not appropriate to enroll the student in a neighborhood school, or to transport him to his school of enrollment since the average length of stay at the XXXX, thus far, has been eleven (11) days (Doc. g and interviews with the MCPS staff).

LEGAL REQUIREMENTS:

Students Residing within the Jurisdiction of the Local School System

Each public agency must have an IEP in effect for each student with a disability within its jurisdiction in order to ensure that the student is provided with a FAPE (34 CFR §§300.101 and .323). The State must ensure that all students with disabilities are identified, located, and evaluated, and must ensure that a practical method is implemented to determine which students are receiving needed services (34 CFR §300.111). The State of Maryland requires each local school system to ensure that all students with disabilities residing within the jurisdiction of the local school system are located, identified, evaluated, and provided with special education services (COMAR 13A.05.02.13).

Students in Out-of-County Living Arrangements

A child in an out-of-county living arrangement means a child who is placed by a State agency, or a court in a county other than where the child's parent or legal guardian resides. A child in an out-of-county living arrangement must be provided with an appropriate education from the service providing local education agency. The service providing local education agency is the local education agency for the county where a child in an out-of-county living arrangement is placed. The financially responsible county is the local education agency in the county where the parent or legal guardian in an out-of-county living arrangement resides (Md. Code Ann., Educ. §4-122).

Students Transferring to Another Jurisdiction

If a student with an IEP in effect in one public agency enrolls in another public agency, the new public agency must implement the IEP from the previous public agency or provide comparable services until the new public agency revises the IEP (34 CFR §300.323).

Transfer of the Educational Record

In order to ensure that a student who transfers to a new public agency receives comparable services until the IEP from the previous public agency is adopted or revised, the new public agency must take reasonable steps to promptly obtain the student's educational records, including the IEP and supporting documents (34 CFR §300.323).

Students in State-Supervised Care

Prior to, or concurrent with the placement of a student in State-supervised care, the placement agency must provide notice to a receiving school of the enrollment or imminent enrollment of the student (COMAR 13A.08.07.03). Within two (2) days notice, the receiving school must request the educational record from the sending school (COMAR 13A.08.07.03).

Immediately, if possible, but no later than two (2) school days of the date of being provided with necessary enrollment documents by the placement agency, the receiving school must enroll the student (COMAR 13A.08.07.03-1). If there is a dispute regarding enrollment of a student, the student must remain in the receiving school during the dispute resolution process (COMAR 13A.08.07.04).

Homeless Students

Highly mobile students, homeless students, and students who are parentally-placed in private schools located within the jurisdiction are among those students who are considered to be "residing within the jurisdiction of the local school system" who must be served by the local school system (COMAR 13A.05.02.13).

The COMAR was recently revised to expand the federal definition of homeless students to those whom the DJS has placed in a temporary, short-term placement of not longer than ninety (90) school days (COMAR 13A.05.09.02).

When a school is notified that a student seeking to enroll is homeless, and the student does not have appropriate enrollment documentation, the school must immediately enroll the student and the school system must provide assistance with obtaining the necessary documentation. If a homeless student enrolls without providing the educational record, the school where the student is seeking to enroll must immediately contact the former school to request that the record be transferred and provide special education and related services as soon as possible (COMAR 13A.05.09.05).

The local educational agency serving a homeless student must have a procedure for continuing the student's education in his or her school of origin for the duration of homelessness as long as doing so is in the best interest of the student and not contrary to the wishes of the student's parent or guardian. When determining the best interest of the student, various factors, such as the distance of commute and the impact on the student's education, must be considered (COMAR 13A.05.09.04).

The public agency must establish an expedited dispute resolution process to address disputes that arise regarding services to homeless students. Upon receipt of a written complaint from the parent, guardian, or an unaccompanied homeless youth, the principal must utilize this process to resolve the complaint within five (5) school days (COMAR 13A.05.09.07). During the pendency of the dispute, the student is to be enrolled in school in which enrollment is sought (COMAR 13A.05.09.07).

Responsibility of Each Public Agency for the Provision of Educational Services

If a public agency other than an educational agency is legally required to provide or pay for special education and related services, but does not fulfill its obligation to do so, the local educational agency must provide or pay for these services in a timely manner. The local educational agency can then seek reimbursement from the non-educational public agency (34 CFR §300.154 (b)).

The IDEA defines "public agency" as the State Education Agency, local education agencies, and any other political subdivisions of the State that are responsible for providing education to children with disabilities (34 CFR §300.33). In Maryland, public agencies responsible for the provision of education to children are defined as local school systems, as well as other State agencies, including the DJS, when the student is attending a school operated by or contracted with that public agency (COMAR 13A.05.01.03). However, the State regulation does not include the DJS as a public agency, for special education purposes, when the DJS places the student in the community and attempts to enroll the student in a local public school.

DISCUSSION/CONCLUSIONS:

In its written response to the complaint, the MCPS asserts that the federal and State regulations do not require the school system to ensure the provision of a Free Appropriate Public Education (FAPE) to students placed by the DJS in the XXXX. The MCPS indicates that the DJS has contracted with the XXXX for the provision of educational services to students, and, therefore, the DJS serves as the public agency for the purpose of providing educational services (Doc. g).

Based on the Findings of Facts #1 - #5, the MSDE finds that there is no documentation that the students placed at the XXXX are attending a school that is operated by or under contract with the DJS to provide education services to the students. Therefore, there is no documentation that the DJS serves as the public agency for educational purposes for these students. However, based on those same Findings of Facts, even if the DJS serves as a public agency for educational purposes, the MSDE finds that the MCPS is required to ensure that a FAPE is provided to the students if the DJS has not fulfilled its obligation to do so.

Based on the Findings of Facts #1, #2, #4, and #5, the MSDE finds that the MCPS has not ensured that the student has been provided with the special education and related services required by the IEP. In addition, based on the Findings of Facts #3 and #4, the MSDE finds that, while the MCPS is beginning to provide educational services to the students placed by the DJS at the XXXX, there is no documentation that students are being provided with the special education and related services required by the IEP. Therefore, the MSDE finds that violations occurred with respect to this aspect of the allegation.

In its written response, the MCPS further asserts that the State regulations related to ensuring appropriate educational services to homeless students contain requirements that are inconsistent with State requirements for ensuring a FAPE to students in State-supervised care. Therefore, the MCPS argues that, even if the school system is determined to be responsible for ensuring a FAPE to students at the XXXX, the MSDE should find that the revised State regulations related to homeless students are not applicable to these students (Doc. g).

Based on the above-described State regulations, the MSDE finds that the provision of additional protections to homeless students in State-supervised care does not result in a violation of the State requirements for ensuring a FAPE to students in State-supervised care who are not homeless. Therefore, the MSDE finds that if a student in State-supervised care meets the State definition of a homeless student, the school system must provide the student with the protections afforded to homeless students, in accordance with the regulations.

Based on the Findings of Facts #1, #3, and #5, the MSDE further finds that this student, who is identified as a student with a disability under the IDEA, also meets the definition of a homeless student, in accordance with the COMAR. Based on the Findings of Facts #2, #4, and #5, the MSDE finds that the MCPS did not ensure that he was provided with the protections afforded to homeless students in State-supervised care. Therefore, the MSDE also finds that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the MCPS to provide documentation by March 1, 2013 that the steps described below have been taken.

- a. Students placed in State-supervised care at the XXXX are provided with a FAPE, in accordance with 34 CFR §§300.101, .111, .323, Md. Code Ann., Educ. §4-122, COMAR 13A.05.02.13 and 13A.08.07.03 and .04.
- b. Students placed in State-supervised care who are homeless are provided with a FAPE, in accordance with 34 CFR §§300.101, .111, .323, Md. Code Ann., Educ. §4-122, COMAR 13A.05.02.13 and 13A.05.09.

Upon receipt of this documentation, 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/OSEP. In addition, 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 and/or future monitoring of the MCPS.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution 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 both parties 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 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.

Jennifer Barmon, Esq.
Mrs. Chrisandra A. Richardson
Ms. Gwendolyn J. Mason
January 2, 2013
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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's mother 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/km

cc : XXXXX
 Joshua P. Starr
 Julie Hall
 Sharon Gooding
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 William Fields
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