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January 25, 2013

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RE: XXXXX  
Reference: #13-021

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.

During the course of the investigation, this office received information from Jennifer Barmon, Esq., hereafter, “the complainant,” that the student was transferred to another jurisdiction. Because the complainant alleged an ongoing violation with the provision of a Free Appropriate Public Education (FAPE) in the new jurisdiction, the MSDE identified an additional allegation of a violation of the Individuals with Disabilities Education Act (IDEA) for investigation in this State complaint.

While there is a sixty (60) day timeline for completion of the complaint investigation, this may be extended due to exceptional circumstances related to a particular complaint. As a result of the additional allegation raised, the MSDE informed the parties, on January 2, 2013, that the timeline for completing the investigation would be extended in order for this office to obtain the information necessary to investigate the additional allegation, pursuant to 34 CFR §300.152.

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**ALLEGATIONS:**

On November 4, 2012, the MSDE received a complaint from the complainant on behalf of the student. In that correspondence, the complainant alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the IDEA with respect to the student. Subsequently, the complainant alleged that the Department of Juvenile Services (DJS) also violated certain provisions of the IDEA with respect to the student.

The MSDE investigated the allegations listed below.

1. The MCPS did not ensure that the student was provided with a FAPE from October 5, 2012 until December 4, 2012, in accordance with 34 CFR §§ 300.101, .111, and .323, and COMAR 13A.05.09.01-.07; and
2. The BCPS has not ensured that the student has been provided with a FAPE since December 4, 2012, in accordance with 34 CFR § § 300.101, .111, and .323 and COMAR 13A.05.09.01-.07.

**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. XXXXXXXXX, Administrator, Residential Services, XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX. 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, 6, and 12, 2012, Ms. Taliesha Whitaker, Case Manager, DJS and Ms. Pam Hardy-Cyran, Lead Coordinator of Correctional Education, DJS provided Ms. Moyo with information 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. XXXXXXXXX, Principal, XXXXXXXXXXXXXXX.
- Ms. Mason, Ms. Richardson, and Ms. Gooding attended the site visit to provide information on the MCPS policies and procedures, as needed.
10. On January 2, 2013, the MSDE sent correspondence to the complainant informing her that the BCPS was being included as a party to the investigation and that the timeline for the investigation would be extended. On the same date, the MSDE provided Dr. Kim Hoffmann, Interim Executive Director, Office of Special Education, BCPS and Ms. Nancy Ruley, Associate Counsel, BCPS, with a copy of the complaint and notified them of the allegation being investigated and requested that their office review the alleged violation.
  11. On January 11, 2013, Ms. Moyo contacted the BCPS staff and requested information and documentation from the student's educational record.
  12. On January 14 and 16, 2013, Ms. Moyo, again, requested documentation and information from the student's DJS case manager.
  13. On January 17, 2012, the BCPS staff provided the MSDE with documentation from the student's educational record. On the same date, the DJS case manager provided

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Ms. Moyo with documentation regarding the student's residential and educational placements.

14. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Individualized Education Program (IEP), dated March 27, 2012;
  - b. BCPS enrollment history, dated July 1, 2012;
  - c. BCPS initiation of services log, dated August 27, 2012 and September 19, 2012;
  - d. Baltimore City Circuit Court Order, dated October 31, 2012;
  - e. BCPS attendance log from November 9, 2012 until January 16, 2013;
  - f. Baltimore City Circuit Court Order, dated November 5, 2012;
  - g. Correspondence and attachments from the complainant to the MSDE, received on November 5, 2012;
  - h. Baltimore City Circuit Court Order, dated December 4, 2012;
  - i. Electronic mail correspondence to the MSDE staff from the DJS staff, dated December 5, 2012;
  - j. DJS Youth History Report from October 2, 2012 to December 10, 2012;
  - k. Reports of progress, dated January 15, 2013;
  - l. Counseling services encounter log, dated January 17, 2013; and
  - m. BCPS class schedule for the 2012-2013 school year.

**BACKGROUND:**

The student is seventeen (17) years old and is identified as a student with an intellectual disability under the IDEA. The student has an Individualized Education Program (IEP) that requires the provision of special education instruction and related services.

On October 5, 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 XXXXXXXXXXXX, a XXXX located in Montgomery County, hereafter "XXXXXXXXXXXXXXXXXXXX," pending the Court's disposition of the case. The student was not enrolled in an education program while placed by the DJS at the XXXXXXXXXXXX.

On December 4, 2012, the student was placed, by Court Order, in the XXXXXXXXXXXXXXX located in Baltimore City. On December 6, 2012, the student returned to XXXXXXXXXXXXXXX XXXXXXXX (XXXXXXXXXXXXXXXXXXXX), the public school in Baltimore City which he attended prior to being placed at the XXXXXXXX XXXX in Montgomery County.

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On December 10, 2012, the student was placed, by Court Order, at the XXXXXXXX XXXXXXXX (XXXX)<sup>1</sup>, group home, located in Baltimore City. He continues to attend XXXXXXXXXXXX (Docs. a - m).

### **FINDINGS OF FACTS:**

#### **MCPS**

1. In September 2012, the XXXXXXXXXXXX XXXX staff notified the MCPS staff of the opening of the XXXX, which has the capacity to serve up to fourteen (14) students for a maximum of sixty (60) days (interviews with the MCPS staff and XXXXXXXXXXXX XXXX staff).
2. The student was placed by the DJS at the XXXXXXXXXXXX XXXX from October 5, 2012 to December 4, 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 special education instruction in a separate special education classroom in a life skills program. It also requires that the student receive counseling, as a related service to be provided by a school social worker in a separate special education classroom (Docs. a – d, f and g).
3. There is no documentation that, while the student was placed at the XXXXXXXXXXXX XXXX, the MCPS contacted his school of enrollment or ensured that the student was enrolled in another education program (Doc. g and interviews with the MCPS staff).

#### **BCPS**

4. On December 4, 2012, the student was placed, by Court Order, at the XXXXXXXXXXXX XXXXX located in Baltimore City. He has been placed at the XXXX<sup>2</sup> group home located in Baltimore City, since December 10, 2012 (Doc. h).
5. On December 6, 2012, the student resumed attendance at the XXXXXXXXXXXXXXXX, the BCPS school in which he was enrolled (Docs. e and j).
6. Service provider logs and reports of the student's progress towards achieving the IEP goals document that the student has been provided with special education instruction and related services required by the IEP since returning to XXXXXXXXXXXXXXXX on December 6, 2012 (Docs. k - m).

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<sup>1</sup> The XXXX group home provides students with assistance and training required to perform and enhance their daily life skills (www.XXXXnet.org).

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## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1: MCPS Provision of a FAPE**

#### **Students in Out-of-County Living Arrangements**

A student 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).

Based on the Findings of Facts #1 and #2, the MSDE finds that the student was in an out-of-county living arrangement in Montgomery County and the MCPS was the education agency responsible for providing educational services. Based on the Finding of Fact #3, the MSDE finds that the MCPS did not ensure that special education services were provided from October 5, 2012 to December 4, 2012. Therefore, the MSDE finds that a violation occurred with regard to this aspect of the allegation.

#### **Local School Systems' Responsibility to Homeless Students**

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).

Further, this requirement extends to highly mobile students and homeless students located within the jurisdiction, as these students are among those 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

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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 education agency serving a homeless student must also 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).

Based on the Findings of Facts #1 - #3, the MSDE 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 Finding of Fact #3, the MSDE finds that the MCPS did not ensure that he was provided with the protections afforded to homeless students. Therefore, the MSDE finds that a violation also occurred with respect to this aspect of the allegation.

**Allegation #2: BCPS Provision of a FAPE**

**Provision of FAPE by a Public Agency**

As stated above, the public agency is required to ensure there is an IEP in effect for each student with a disability within its jurisdiction and that each is provided with the special education and related services required by the IEP (34 CFR §300.101). Based on the Findings of Facts #4 - #6, the MSDE finds that since the student returned to Baltimore City on December 4, 2012, the BCPS has ensured that he has been provided with the special education instruction and related services required by his IEP. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

**Student-Specific**

The MSDE requires the MCPS to coordinate with the BCPS to convene an IEP team meeting to determine the amount and nature of *compensatory services*<sup>2</sup> or other remedy to redress the loss of services to the student from October 5, 2012 until December 4, 2012. The MCPS must also provide documentation by April 1, 2013 that the above action has been completed.

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<sup>2</sup> For the purpose of this letter, these are services, as determined by the IEP team, needed to remediate the denial of appropriate services to the student (34 CFR §300.151).

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The student's parent, as defined by the IDEA, must be provided with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis of the determinations, as required by 34 CFR §300.503. If the parent disagrees with the IEP team's determinations, the parent maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

### **Systemic**

Pursuant to a Letter of Findings issued as a result of a State Complaint investigation conducted regarding another student placed by the DJS at the XXXXXXXXXXXXX in Montgomery County (Complaint #13-018), the MSDE has required the MCPS to ensure that all students placed by the DJS at the XXXX are provided with a FAPE. Therefore, no additional corrective action is required.

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.

Questions regarding the findings, conclusions and corrective actions contained in this letter 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 disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues



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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 : Joshua P. Starr  
Andrés Alonso  
Julie Hall  
Sharon Gooding  
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