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February 25, 2011

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Dr. Kim Lewis
Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 407B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #11-050

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.

ALLEGATIONS:

On January 5, 2011, MSDE received correspondence from Ms. XXXXXXXXXXXX, the student's mother, hereafter, "the complainant," on behalf of her son. 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 following allegations:

1. BCPS has not developed an Individualized Education Program (IEP) to address all of the student's identified needs since January 2010,¹ as required by 34 CFR §300.324.
2. BCPS has not implemented the student's IEP since January 2010,¹ as required by 34 CFR §§300.101 and .323.

¹ Although the complainant alleges that these violations have occurred since prior to this date, she was informed in writing, on January 20, 2011, that MSDE only has the authority to investigate allegations of violations that occurred not more than a year prior to the date the complaint is received (34 CFR §300.153). Therefore, this office investigated the allegations since January 2010.

INVESTIGATIVE PROCEDURES:

1. On January 5, 2011, a copy of the complaint was provided by facsimile to: Dr. Kim Lewis, Executive Director, Special Education, BCPS; and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS.
2. On January 11, 2011, Ms. Vickie Frazier, Education Program Specialist, MSDE, unsuccessfully attempted to contact the complainant by telephone to conduct an interview regarding the allegations in the complaint.
3. On January 20, 2011, MSDE sent the complainant correspondence confirming the allegations to be investigated. On the same date, MSDE notified Dr. Lewis of the allegations and requested that her office review the alleged violations.
4. On January 28, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, unsuccessfully attempted to contact the complainant by telephone to conduct an interview regarding the allegations in the complaint.
5. On February 14, 2011, Ms. Mandis and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's education record and interview the following school staff:
 - a. Ms. XXXXXXXXXXXX, Special Education Teacher;
 - b. Ms. XXXXXXXXX, IEP Team Chairperson; and
 - c. Ms. XXXXXXX, Special Education Department Head.

Ms. Tiffany Puckett, BCPS Attorney, attended the site visit as a representative of the BCPS Central Office and to provide information regarding BCPS policies and procedures, as needed.

6. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Report of a BCPS psychological assessment completed on January 27, 2006;
 - b. Written invitation to the complainant to attend the February 26, 2009 IEP team meeting;
 - c. IEP, dated February 26, 2009;
 - d. Report of a BCPS classroom-based assessment, conducted on January 7, 2010;
 - e. Report of a BCPS transition planning inventory, conducted on January 8, 2010;
 - f. IEP Progress Report, completed by the student's special education teacher, dated January 8, 2010;
 - g. Written invitation to the complainant to attend the January 21, 2010 IEP team meeting;
 - h. IEP, dated January 21, 2010;

- i. IEP Progress Report, completed by the student's special education teacher, dated March 5, 2010;
- j. Receipt of the student's IEP by his teachers for the 2009-2010 school year;
- k. Reports of the student's progress toward achieving the annual goals, generated on January 22, 2010, April 7, 2010, and June 14, 2010;
- l. Report of a BCPS classroom-based assessment, conducted on November 8, 2010;
- m. Report of a BCPS transition planning inventory, conducted on November 8, 2010;
- n. General Education Progress Report, dated November 11, 2010;
- o. Special Education Progress Report, dated November 11, 2010;
- p. Written invitation to the complainant to attend the November 11, 2010 IEP team meeting;
- q. IEP, dated November 11, 2010;
- r. Receipt of Parental Rights Notice, signed by the complainant on November 11, 2010;
- s. Receipt of the student's IEP by his teachers for the 2010-2011 school year;
- t. Teacher assignments for the Life Skills Program for the 2010-2011 school year;
- u. Student's schedule for the 2010-2011 school year;
- v. Reports of the student's progress toward achieving the annual IEP goals, generated on November 10, 2010 and February 2, 2011;
- w. Written invitation to the complainant to attend an IEP team meeting scheduled for January 18, 2011; and
- x. IEP, dated February 18, 2011.

BACKGROUND:

The student is sixteen (16) years old and is identified as a student with an intellectual disability under IDEA. He attends XXXXXXXXX, where he receives special education instruction in a program designed to address life skills. During the time period covered by this investigation, the complainant was provided with the opportunity to participate in the education decision-making process and with notice of the procedural safeguards, as required (Docs. b, g, p, r, and w).

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S
IDENTIFIED NEEDS SINCE JANUARY 2010

FINDINGS OF FACT:

February 26, 2009 IEP

1. The IEP in effect in January, 2010 was revised on February 26, 2009. Documentation of the February 26, 2009 IEP team meeting indicates that the team considered the following data:
 - a. Information from the student's teacher that, based on a classroom-based assessment (Brigance Comprehensive Inventory of Basic Skills) conducted on February 13, 2009, the student's levels of performance were as follows:

- i. The student was performing at the fourth (4th) grade level in reading comprehension;
 - ii. The student was performing at the first (1st) grade level in math calculation and problem solving; and
 - iii. The student was performing at the third (3rd) grade level in written language; and
 - b. Report of a February 13, 2009 transition planning inventory administered to the student, which indicates that the student wanted to be a chef and live with his parents when he leaves high school (Doc. c).
2. The parent input section of the February 26, 2009 IEP states that the student was “somewhat immature,” had problems maintaining attention, engaged in task avoidance, talked a lot in class, and said “inappropriate things” (Doc. c).
3. The last psychological assessment conducted by BCPS on January 27, 2006, states that the student’s cognitive ability falls within the “extremely low range of intellectual functioning.” The report further states the following:
- [The student] “has a severe deficit in adaptive behavior which is below that expected from his IQ score with several areas that could use more intensive work than that normally available in a classroom.”
- The report indicates that the student was receiving services from a private provider, but recommended additional “services designed to improve social skills and daily living skills within the school environment,” including counseling services, “to address social skills more intensely” (Doc. a).
4. The February 26, 2009 IEP does not indicate the student’s current levels of functional performance in the area of social skills (Doc. c).
5. At the February 26, 2009 meeting, the team revised the IEP to include goals for the student to improve functional reading, math, and writing skills based on his current levels of performance from the classroom-based assessment. These goals included short-term objectives for the student to:
- a. decode words;
 - b. read orally from familiar text;
 - c. discuss reactions to ideas and information gained from reading;
 - d. count and use money;
 - e. identify systems of measurement; and
 - f. write personal information such as address and telephone number.

The team also developed a transition plan with post-secondary goals in the areas of employment, training, education, and independent living based on the student's interests and preferences, and determined the course of study and services needed to assist him in working on those goals upon completion of high school (Doc. c).

6. At the February 26, 2009 meeting, the team decided that the student requires special education instruction in both a general education classroom co-taught by regular and special education teachers and a separate special education classroom designed to provide life skills instruction. The team also decided that the student requires instruction in a small group setting, reduced distractions, verbatim reading of scripted directions, chunking of assignments, visual cues, and modeling in order to assist him in achieving the goals. The team further decided that the student requires transportation by yellow bus due to "limited critical judgment skills and impulsivity." Additionally, the team decided that as a result of the student's significant cognitive disability, he will participate in the Alternative Maryland School Assessment and that he will pursue a Maryland High School Certificate of Program Completion instead of a diploma (Doc. c).
7. At the February 26, 2009 meeting, the team considered the student's need for extended school year (ESY) services. Documentation of the meeting states that the team determined that the IEP includes goals related to critical life skills, that the student was not demonstrating any degree of progress toward mastery of the goals, that there were no emerging skills, no significant interfering behaviors or special circumstances to consider, and that the nature and severity of the disability did not warrant ESY services. Based on this information, the team decided that the student did not require ESY services (Doc. c).

January 21, 2010 IEP

8. On January 21, 2010, the IEP team convened to review the student's program and progress. At the meeting, the team considered the following data:
 - a. Information from the student's teacher that, based on a classroom-based assessment (Brigance Comprehensive Inventory of Basic Skills) conducted on January 7, 2010, the student was performing as follows:
 - i. The student's reading comprehension was at the third (3rd) grade level;
 - ii. The student's decoding skills were at the second (2nd) grade level;
 - iii. The student was performing at the second (2nd) grade level in math calculation and problem solving;
 - iv. The student was performing at the first (1st) grade level in written language; and

- v. The student was performing at the first (1st) grade level in the area of spelling; and
 - b. Report of a January 8, 2010 transition planning inventory, which indicates that the student was interested in becoming an art teacher, and stocking store shelves (Docs. d, e, f, and h).
9. Documentation of the January 21, 2010 meeting states that the complainant expressed concerns about the student's "hygiene," academic progress, and "behavior." While the student's teacher reported that the student does not always come to class prepared, she also reported that despite this behavior, he was making progress. Documentation of the meeting does not indicate that the team addressed the complainant's concerns about the student's self-care skills. At the MSDE site visit, school staff reported that the student has no needs in this area (Doc. h and interviews with school staff).
10. At the January 21, 2010 meeting, the team revised the annual goals based on reports of the student's progress and determined that the services and educational placement remained appropriate. The team also revised the transition plan based on the student's interests and preferences (Doc. h).
11. At the January 21, 2010 meeting, the complainant requested that the student receive ESY services. Documentation of the meeting states that the team again determined that the IEP includes goals related to critical life skills, that the student was not demonstrating any degree of progress toward mastery of the goals, that there were no emerging skills or significant interfering behaviors, and no special circumstances to consider. However, this time the team determined that the nature and severity of the student's disability warranted ESY services, but there is no documentation to explain the basis for the team's decision that the nature and severity of the student's disability had changed since February 26, 2009 (Doc. h).

November 11, 2010 IEP

12. On November 11, 2010, the IEP team met to review the student's progress. At the meeting, the team considered the following:
- a. Information from the student's teacher that, based on a classroom-based assessment (Brigance Comprehensive Inventory of Basic Skills) conducted on November 8, 2010, the student was performing as follows:
 - i. The student's reading comprehension was at the third (3rd) grade level;
 - ii. The student was performing at the second (2nd) grade level in math calculation and the first (1st) grade level in math problem solving; and

- iii. The student was performing at the first (1st) grade level in written language;
 - b. Concerns expressed by the complainant that the student is not learning, does not bring work home, is not being provided with opportunities to develop functional life skills, and has demonstrated inappropriate touching of a sibling;²
 - c. Teacher reports that the student continues to not come prepared for class; and
 - d. Report of a November 8, 2010 transition planning inventory, which indicates that the student wants to go to college and own his own art museum (Docs. l – o and q).
13. At the November 11, 2010 meeting, the team revised the annual goals based on the student's progress and revised the transition plan based on the student's interests and preferences. The team again considered the student's need for ESY services. This time, the team determined that the IEP goals are not related to critical life skills and that the student was making documented progress toward mastery of the annual IEP goals. When asked about the student's recent progress toward mastery of the annual IEP goals at the MSDE site visit, school staff reported that, among other things, the student now waits for scheduled breaks to use the bathroom instead of relieving himself at his desk (Doc. q and interviews with school staff).
14. At the November 11, 2010 meeting, school-based members of the team explained that the student learns more slowly than other students and that he has difficulty learning the same range of skills as a result of "significantly sub-average general intellectual functioning." The team decided that the student's "deficits in adaptive behavior" adversely affect his educational performance, and agreed to reconvene after obtaining technical assistance to determine whether revisions are required to address the student's "daily living skills" and "personal-social skills" needs (Doc. q).
15. The IEP team was scheduled to reconvene on January 18, 2011. Because of snow, the meeting was rescheduled to February 18, 2011. However, as of the writing of this LOF, the team has not yet completed the revision of the IEP (Doc. x).

PRELIMINARY DISCUSSION – COMPLAINT INVESTIGATION PROCEDURES

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under IDEA, the state educational agency must review the procedures used by a school system to reach determinations about the program. Additionally, the state educational agency must also review the evaluative data to determine if decisions made by the

² On January 10, 2011, MSDE made a report to Baltimore City Department of Social Services, Child Protective Services Unit, as a result of receiving this information.

IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and Analysis of Comments and Changes to IDEA, *Federal Register*, Vol. 71, No. 156, p.46601, August 14, 2006).

LEGAL REQUIREMENTS:

The public agency must ensure that each student with a disability is provided with a free appropriate public education (FAPE). This is done through the development of an IEP, which is a written document that includes, among other things, the following information:

- a) the student's present levels of academic achievement and functional performance;
- b) measurable annual goals designed to meet the needs that arise from the disability, which are obtained from information about the student's present levels of performance; and
- c) the special education instruction and related services that will be provided in order to assist the student in achieving the annual goals (34 CFR §§300.101 and .320).

To appropriately identify the needs that arise from the disability, the team must consider the strengths of the student, concerns of the parents, the results of the most recent evaluations, and information about the student's academic and functional performance in the classroom. In the case of a student whose behavior impedes his or her learning or that of others, the team must consider strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §§300.320 and .324).

Additionally, beginning not later than the first IEP that is in effect when a student turns fourteen (14) years old, or younger if appropriate, 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. The IEP must also include the transition services, including course of study needed to assist the student in achieving those goals (34 CFR §300.320).

DISCUSSION/CONCLUSIONS:

Based on Findings of Fact #1, 5, 8, 10, 12, and 13, MSDE finds that the IEP includes measurable post-secondary goals based on the student's interests and preferences, as well as transition services, including the course of study needed to assist the student in achieving those goals. Therefore, MSDE does not find that a violation occurred with regard to this aspect of the allegation.

However, this office finds that the following violations occurred since January 2010:

Social Skills Needs

Based on Findings of Fact #2, 3, 4, 12, and 14, MSDE finds that while both the assessment data and information from the complainant identified deficits in the area of social skills, there is no documentation that the team determined the student's present levels of performance in this area in order to ensure that any needs have been identified and addressed.

Self-care Needs

Based on Findings of Fact #9, 14, and 15, MSDE finds that there is no documentation that the IEP team has considered the complainant's concerns about the student's self-care skills.

Based on Findings of Fact #9 and 13, MSDE finds that school staff report that the student does not have needs in the area of self-care skills. However, this information is inconsistent with other information that they attribute the progress toward mastery of the annual IEP goals, in part, to the student's improvement of such skills.

Based on Findings of Fact #5, 10, and 13, MSDE finds that while information from school staff indicates that the student has received assistance with improving self-care skills, the IEP does not include annual goals that are designed to measure the student's skills development in the area of self-care.

Behavioral Needs

Based on Finding of Fact #9, MSDE finds that in response to concerns raised by the complainant about the student's behavior at the January 21, 2010 meeting, the student's teacher reported that the student's lack of class preparation was not interfering with his ability to make progress. However, based on Finding of Fact #11, MSDE finds that this information was inconsistent with the team's decision that the student was not making progress toward mastery of the IEP goals.

Based on Findings of Fact #9, 12, 14, and 15, MSDE finds that while there has been information that the student does not come prepared for class, there is no documentation that the team determined the student's present levels of performance in the area of behavior in order to ensure that any needs have been identified and addressed.

ESY Needs

Based on Findings of Fact #6, 7, 11, and 14, MSDE finds that there is no documentation of the basis for the team's decision on January 21, 2010 that the nature and severity of the student's disability has changed, nor is the decision consistent with the evaluative data.

Based on Findings of Fact #5, 7, 8, 10, 12, 13, and 14, MSDE finds that there is no documentation of the basis for the November 11, 2010 decision that, while the IEP has included goals in the same areas since February 26, 2009, these goals no longer address critical life skills.

ALLEGATION #2 IEP IMPLEMENTATION SINCE JANUARY 2010

FINDING OF FACT:

16. The following document implementation of the IEP:
- a. Receipt of the student's IEP at the start of the 2009-2010 and 2010-2011 school years by the student's teachers;
 - b. Reports of the student's progress toward achieving the annual goals, generated on January 22, 2010, April 7, 2010, June 14, 2010, November 10, 2010, and February 2, 2011, which indicate that the annual goals are being addressed;
 - c. IEP Progress Reports completed by the student's special education teacher on January 8, 2010, March 5, 2010, and November 11, 2010; and
 - d. General Education Progress Report, dated November 11, 2010 (Docs. i, j, k, n, o, and s – v).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction, related services and accommodations, including transportation services, required by the IEP (34 CFR §300.101). In order to ensure implementation of the IEP, the public agency must make sure that the IEP is accessible to each teacher and service provider responsible for implementation (34 CFR §300.323).

Based on Finding of Fact #16, MSDE finds that there is documentation that the student's teachers were informed of the requirements of the IEP and that the annual goals have been addressed. Therefore, this office does not find that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific:

MSDE requires BCPS to provide documentation by May 30, 2011 that the IEP team has considered information from the complainant and other evaluative data regarding the student's needs in the areas of social skills, self-care, behavior, and ESY services and that it has reviewed and revised the IEP, as appropriate, to ensure that it addresses needs identified for the student in

these areas, consistent with the data. BCPS must also provide documentation that the IEP team has determined the amount and nature of *compensatory services*³ or other remedy necessary to redress the violations found as a result of this investigation.

BCPS must provide the complainant 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 complainant disagrees with the decisions, she maintains the right to request mediation and to file a due process complaint to resolve the dispute consistent with IDEA.

School-Based:

MSDE requires BCPS to provide documentation by the end of the 2010-2011 school year of the steps taken to determine if the procedural violations found in this investigation are unique to this case or if they represent a pattern of noncompliance at XXXXXXXXX. 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 for students participating in the Life Skills Program and must provide documentation of the results of this review to MSDE. If the school system reports compliance with the requirements, MSDE Complaint Investigation and Due Process Branch 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 date the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance.

Verification of the school system's compliance will also be conducted through MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement process consistent with the requirements of OSEP Memorandum #09-02.

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.

³ 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).

XXX
Dr. Kim Lewis
February 25, 2011
Page 12

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 LOF 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 LOF. 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 LOF.

Questions regarding the findings of fact, conclusions or corrective actions contained in this LOF 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 FAPE for the student, including issues subject to a State complaint investigation, in accordance with IDEA. The MSDE recommends that this LOF be included with any request for mediation or the filing of a due process complaint.

Sincerely,

Carol Ann Heath, Ed.D.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

CAH/am

c: Andrés Alonso
Kim Lewis
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XXXXXXXX
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