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March 8, 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: #11-053

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 11, 2011, MSDE received correspondence from Ms. XXXXXXXXXXX, the student's aunt,¹ hereafter, "the complainant," on behalf of 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 following allegations:

1. BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student's social/emotional/behavioral and functional life skills needs since January 2010,² as required by 34 CFR §300.324.
2. BCPS has not ensured that the IEP includes a transition plan with appropriate measurable post-secondary goals based on an age-appropriate transition assessment, and transition services needed to assist the student in achieving those goals, since January 2010,² as required by 34 CFR §300.320.

¹ The complainant is the student's guardian, with whom he lives. Thus, she serves as his parent under IDEA.

² Although the complainant alleges that these violations have been ongoing beyond a year, she was informed in writing, on January 20, 2011, that this office 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.

3. BCPS did not ensure that the student was consistently provided with bus transportation to allow him to arrive at school prior to the start of the school day from the start of the 2010-2011 school year until mid-December 2010, in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. On January 12, 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 26, 2011, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, unsuccessfully attempted to contact the complainant by telephone to clarify the allegations to be investigated. On that date, MSDE sent the complainant correspondence confirming the allegations to be investigated based on her correspondence, notified Dr. Lewis of the allegations, and requested that her office review the alleged violations.
3. On January 28, 2011, Ms. Mandis conducted a telephone interview with the complainant regarding the allegations in the complaint.
4. On February 28, 2011, Ms. Mandis and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX School (XXXXXXXXXX) to review the student's education record and interview Ms. XXXXXXXXXXXXX, IEP Team Chairperson. Ms. Ruley attended the site visit as a representative of the BCPS Central Office and to provide information regarding BCPS policies and procedures, as needed.
5. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
 - a. Excerpt from the school communication log from September 22, 2009 to October 9, 2009;
 - b. IEP, dated October 9, 2009 and written summary of the IEP team meeting;
 - c. Behavioral intervention plan, dated October 9, 2009;
 - d. Written invitation to the complainant to the May 5, 2010 IEP team meeting, dated February 26, 2010;
 - e. IEP, dated May 5, 2010 and written summary of the IEP team meeting;
 - f. Reports of the student's progress toward achieving the IEP goals, generated in April 2010, June 2010, and January 2011;
 - g. Written invitation to the complainant to the June 7, 2010 IEP team meeting, dated May 28, 2010;
 - h. IEP, dated June 7, 2010 and written summary of the IEP team meeting;
 - i. Behavioral intervention plan, dated June 7, 2010;
 - j. Written invitation to the complainant to the December 1, 2010 IEP team meeting;
 - k. IEP, dated December 1, 2010 and written summary of the IEP team meeting;

- l. Functional behavioral assessment report and behavioral intervention plan, dated December 1, 2010;
- m. Correspondence from the complainant alleging violations of IDEA, received by MSDE on January 11, 2011;
- n. Written invitation to the complainant to the February 14, 2011 IEP team meeting;
- o. IEP, dated February 14, 2011 and written summary of the IEP team meeting;
- p. Functional behavioral assessment report and behavioral intervention plan, dated February 14, 2011;
- q. IEP, dated February 23, 2011 and written summary of the IEP team meeting;
- r. Functional behavioral assessment report and behavioral intervention plan, dated February 23, 2011;
- s. Report of disciplinary removals of the student from school for the 2010-2011 school year; and
- t. Report of the student's attendance for the 2010-2011 school year.

BACKGROUND:

The student is seventeen (17) years old and is identified as a student with an intellectual disability IDEA. From the start of the time period covered by this investigation until February 15, 2011, the student attended XXXXXXXXX, where he participated in a Life Skills Program and received special education instruction and related services. On February 15, 2011, the student was assigned to an alternative educational setting at XXXXXXXXXXXXXXX, as a result of a disciplinary removal from school.

There is documentation that during the time period covered by this investigation, the complainant has been provided with the opportunity to participate in the education decision-making process, and were provided with written notice of the IEP team's decisions and notice of the procedural safeguards (Docs. a, b, d, e, g, h, j, k, n, o, and q).

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S SOCIAL/EMOTIONAL/BEHAVIORAL AND FUNCTIONAL LIFE SKILLS NEEDS

FINDINGS OF FACT:

October 9, 2009 IEP Team Meeting

1. The IEP in effect in January 2010 was revised on October 9, 2009. Documentation of the October 9, 2009 meeting indicates that the team considered the following data:
 - a. Information from the student's teacher that, based on classroom-based assessments conducted on September 2 and 3, 2009, the student's levels of performance were as follows:

- i. reading vocabulary and comprehension skills at the first (1st) grade level;
 - ii. math calculation skills at the second (2nd) grade level; and
 - iii. written language skills at the first (1st) grade level.
 - b. Information from the speech/language pathologist that the student was increasing his speech intelligibility by reducing his rate of speech and repeating information when asked; and
 - c. Teacher reports that the student had difficulty using nonaggressive interaction skills, but that his behavior was improving (Doc. b).
2. The October 9, 2009 IEP states that the complainant did not believe that the student was trying to learn to read and requested that he be held back a grade. School-based members of the team discussed that expectations about the student's academic progress must be based on consideration of his cognitive ability and that his progress is limited by his ability (Doc. b).
3. At the October 9, 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 performance. These goals included short-term objectives for the student to:
- a. recognize and read documents such as brochures, magazines, and websites;
 - b. become familiar with organizational structure of informational text to understand what is read;
 - c. identify and use money; and
 - d. identify sources of information on a topic, such as trade books, dictionaries, and maps, and organize information.

The IEP also included goals for the student to increase speech intelligibility and deal with anger without aggression (Doc. b).

4. At the October 9, 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 psychological services, speech/language therapy, and yellow bus transportation as related services, as well as "constant adult supervision," instruction in a small group setting,

verbatim reading of scripted directions, and extended time to complete tasks in order to assist him in achieving the goals (Doc. b).

5. At the October 9, 2009 meeting, the team also developed a behavioral intervention plan to address the student's disrespectful and aggressive behaviors by requiring that he be provided with frequent breaks, preferred seating arrangements, positive reinforcement for positive behavior, and the opportunity to express his frustrations to school staff in order to obtain assistance in expressing his emotional needs in an appropriate manner (Doc. c).

May 5, 2010 IEP Team Meeting

6. On May 5, 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 speech/language therapist that the student had achieved the annual speech/language goal;
 - b. Information from the school psychologist that the student had "increased his knowledge in learning to deal with anger";
 - c. Information from the student's math teacher that the student was not bringing his supplies to school; and
 - d. Information from the complainant that she would make sure the student brought his supplies to school (Doc. e).
7. At the May 5, 2010 meeting, the team did the following:
 - a. revised the speech/language and social/emotional/behavioral goals based on reports of the student's progress;
 - b. increased the amount of speech/language services to be provided but determined that the services could be provided by both a speech/language pathologist and special education classroom teacher;
 - c. reduced the amount of counseling services and discontinued the use of a behavioral intervention plan based on reports of improvement in the student's behavior;
 - d. continued the academic goals, but extended the time period for the student to achieve the goals from October 2010 to May 2011, despite reports made in April 2010 that the student was making sufficient progress to achieve the annual IEP goals by October 2010 (Docs. e and f).

June 7, 2010 IEP Team Meeting

8. On June 7, 2010, the IEP team convened to review the student's program following an "attack" on another student, which resulted in a three (3) day disciplinary removal from school. At the meeting, the team reviewed the behavioral intervention plan that had been discontinued the previous month. The team revised the plan to require use of a behavior sheet to monitor behavior, home-school communication about the student's behavior, reminders of consequences for inappropriate behavior, opportunity for the student to call home during the school day, and teaching the student awareness of his own feelings (Docs. i, s, and t).
9. At the June 7, 2010 IEP team meeting, the team considered the complainant's concerns that the student was not bringing home his homework and was still not taking his book bag to school each day. In order to address these concerns, the team decided that the student would be transported to and from school by cab and that the complainant would meet the cab at home and school staff would meet the cab at school to ensure transfer of the materials with the student (Doc. h).
10. At the June 7, 2010 meeting, the IEP goals were continued, but the time period for the student to achieve the goals was extended again from May 2011 to June 2011, inconsistent with reports made in June 2010 that the student was making sufficient progress to achieve the goals by May 2011 (Docs. f and h).

December 1, 2010 IEP Team Meeting

11. On December 1, 2010, the IEP team met to review the student's program and progress. Documentation of the meeting states that the team considered information from the student's teachers that the student was demonstrating aggressive behavior less frequently, but with the same intensity, and that the behavior can be triggered and escalated by peer confrontation. The team also considered information that "due to his intellectual limitations," the student "lacks the ability to consistently articulate his feelings in an appropriate, nonaggressive manner," but that he is able to acknowledge what he does wrong, and that he is "likeable" and enjoys socializing with others (Doc. k).
12. At the December 1, 2010 meeting, the team revised the behavioral intervention plan to require that the student be provided with redirection, verbal prompts, and cues to take time-outs. The plan was also revised to require that the student be provided with instruction on how to seek adult support, use time-out, develop non-aggressive replacement behaviors to express negative feelings, and identify internal triggers (Doc. l).
13. At the December 1, 2010 meeting, the team also revised the annual goals based on reports of the student's progress and increased the amount of counseling services to be provided to assist him to achieve the goals. Additionally, the team decided that the

student would be provided with a therapeutic temporary support aide to provide him with redirection and supervised breaks when he becomes agitated (Doc. k).

February 14, 2011 IEP Team Meeting

14. The IEP team reconvened on February 14, 2011. At the meeting, the team considered information from school staff that the student's aggressive behavior was occurring during unstructured class time, on the school bus, and away from school grounds. Based on this information, the team revised the behavioral intervention plan to include the ability of the student to earn time with a favorite adult and computer time for instructional games, and to require that he be provided with the opportunity for role play of social situations in order to teach him appropriate behavior (Doc. p).
15. At the February 14, 2011 meeting, the team revised some of the IEP goals based on reports of the student's progress and determined that the remaining goals continued to be appropriate. The IEP was revised to extend the time for the student to achieve all of the goals from November 30, 2011 to February 13, 2012, inconsistent with reports made on January 21, 2011 that the student was making sufficient progress toward achieving the goals that were continued without revision by November 30, 2011 (Docs. f and o).

February 23, 2011 IEP Team Meeting

16. On February 23, 2011, the IEP team convened to review the behavioral intervention plan following a disciplinary removal from school on February 15, 2011 for an "attack" on a school police officer. At the meeting, the team considered information from school staff that, while the student had physical conflicts with peers, he had not previously been physically aggressive to school staff. School staff further reported that the February 15, 2011 incident occurred when the school police officer required the student to leave the school bus³ in order to de-escalate a situation between the student and other students. However, school staff further reported that the student normally follows adult directives and was demonstrating improvement with the provision of the therapeutic temporary support aide. Based on this information, the team decided that the behavioral intervention plan remains appropriate and that the team would reconvene on March 28, 2011 to review the student's progress (Docs. q and r).
17. At the February 23, 2011 meeting, the team continued the IEP goals, but extended the time for the student to achieve them from February 13, 2012 to February 23, 2012 (Docs. f and q).

³ By this time, the student was no longer being transported by cab, but by yellow bus (Docs. h, k, o, and interview with school staff).

DISCUSSION/CONCLUSIONS:

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).

The public agency must ensure that the IEP team reviews the IEP periodically, but not less than annually, to **determine whether the annual goals are being achieved in order to ensure that the IEP remains appropriate**. Additionally, the public agency must ensure that the IEP team reviews and revises the IEP, as appropriate, to address the lack of expected progress toward achievement of the annual goals (34 CFR §300.324).

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 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).

Life Skills Needs

Based on Findings of Fact #1 – 4, 6, and 7, MSDE finds that the IEP team considered information from the complainant and the student's teachers and developed an IEP with goals designed to address the student's identified life skills needs, consistent with the data. However, based on Findings of Fact #7, 10, 15, and 17, MSDE finds that the team extended some of the goals beyond a year inconsistent with data that the student was making sufficient progress to achieve them within a year.

Thus, this office finds that the IEP was not written in a manner in which the student's achievement of some of the goals could be measured within a year of their development. As a result, BCPS could not ensure that those goals would be reviewed and revised, as appropriate, to address any lack of expected progress within a year of their development in order to make sure that the goals remained appropriate. Therefore, MSDE finds that a violation occurred with respect to this aspect of the allegation.

Social/Emotional/Behavioral Needs

Based on Findings of Fact #1, 3, 5, 6, 7, 8, 9, 11 – 14, and 16, MSDE finds that the team has developed a plan to provide the student with interventions needed to address his interfering behaviors, and continues to review and revise the plan based on his progress with the provision of these interventions. Therefore, MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

ALLEGATION #2 TRANSITION PLAN IN EFFECT SINCE JANUARY 2010

FINDINGS OF FACT:

18. At the October 9, 2009 meeting, the team, which included the student, considered information from school staff that the student was not able to complete a transition assessment. The IEP states that the student expressed an interest in "several jobs" when given a picture survey and that the complainant reported that the student does chores, picks out his own clothes, and enjoys movies and fast food (Doc. b).
19. At the October 9, 2009 meeting, the team developed a transition plan with post-secondary goals for the student to be trained and employed in "a career of interest." The transition plan indicates that the team determined the course of study in which the student would receive instruction, but does not indicate that the team identified the functional and skill development activities to be provided through the course of study (Doc. b).
20. At the December 1, 2010 meeting, the team considered information from the student, who attended the meeting, that he is interested in a job working with his hands and would like to live independently from his family. Based on this information, the transition plan was revised to include post-secondary goals for the student to attend a vocational training program, obtain employment through a supported employment program, and to dress, make his bed, and arrange for transportation. The transition plan does not indicate that the team determined the course of study in which the student will receive instruction (Doc. k).
21. The IEP team reconvened on February 14, 2011. At the meeting, the team recommended consultation with BCPS Central Office staff and agreed to reconvene on May 5, 2011 to review the transition plan based on the information obtained through the consultation (Doc. o).

DISCUSSION/CONCLUSIONS:

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).

Based on Findings of Fact #18, 19, and 20, MSDE finds that the transition plan in effect from January 2010 until December 1, 2010 did not include post-secondary goals that were related to the student's interests and preferences. Additionally, based on these Findings of Fact, MSDE finds that the team did not identify the functional and skill development activities to be provided to the student through the student's course of study.

Based on Findings of Fact #20 and 21, MSDE finds that the transition plan in effect since December 1, 2010 does not include the course of study needed for the student to prepare for transition to post-secondary school activities. Therefore, MSDE finds that violations occurred with respect to the allegation since January 2010.

**ALLEGATION #3 CONSISTENT PROVISION OF TRANSPORTATION
SERVICES FROM THE START OF THE 2010-2011
SCHOOL YEAR UNTIL MID-DECEMBER 2010**

FINDINGS OF FACT:

22. Since the start of the 2010-2011 school year, the IEP has required that the student be provided with yellow bus transportation (Docs. h, k, o, and q).
23. School staff staff acknowledge that from the start of the school year until mid-December 2010, the student was not consistently provided with yellow bus transportation to allow him to arrive a school prior to the start of the school day (Interview with BCPS staff).

DISCUSSION/CONCLUSIONS:

The public agency is required to ensure that the student is provided with the special education instruction, related services, including transportation services, required by the IEP (34 CFR §300.101). Based on Findings of Fact #22 and 23, MSDE finds that the student was not consistently provided with transportation services in accordance with the IEP and that a violation occurred with respect to this allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-specific:

MSDE requires BCPS to provide documentation by April 18, 2011 that the IEP team has reviewed and revised, as appropriate, the IEP to ensure that it contains annual IEP goals and an appropriate transition plan. BCPS must also provide documentation that the IEP team has determined the amount and nature of *compensatory services*⁴ 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.

Similarly Situated Students – Transportation Violation

MSDE issued a LOF on January 31, 2011 regarding another student in the Life Skills Program at XXXXXXXXX, who required yellow bus transportation (LOF #11-035). As a result of that investigation, MSDE found that the student's bus did not consistently arrive to the school prior to the start of the school day.

MSDE requires BCPS to provide documentation by the end of the 2010-2011 school year that it has identified all students at XXXXXXXXXX who were not provided with transportation services in accordance with the IEP and offer a remedy for the loss of services for each student identified.

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 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

⁴ 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).

(90) days of the date of the school system's initial determination of non-compliance. Upon receipt of this report, MSDE will re-verify the data to ensure continued compliance.

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 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 Erin Leff
 Nancy Ruley Glenn Johnson
 XXXXXXXXXX Martha J. Arthur