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May 5, 2011

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RE: XXXXX  
Reference: #11-074

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 March 24, 2011,<sup>1</sup> MSDE received correspondence from Ranya Ghuma, Esq., the student's court-appointed attorney, hereafter "the complainant," filed on behalf of the above-referenced

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<sup>1</sup> Correspondence from the complainant containing allegations of violations of the Individuals with Disabilities Education Act (IDEA) was received by MSDE on March 7, 2011, and the requested remedy, which is required to initiate the complaint investigation, was received on March 24, 2011.

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student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) and Wicomico County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and related State requirements with respect to the above-referenced student. This office investigated the following allegations:

1. BCPS and WCPS did not ensure that proper procedures were followed when the student was disciplinarily removed from the XXXXXXXXXXXX, a nonpublic school, on January 10, 2011, in accordance with 34 CFR §300.530.
2. BCPS and WCPS have not followed proper procedures when providing home and hospital teaching to the student since February 22, 2011, in accordance with COMAR 13A.03.05.03, .04, and 13A.05.01.10.
3. BCPS and WCPS have not ensured that the student has been provided with special education instruction and related services in the educational placement required by the Individualized Educational Program (IEP) since January 10, 2011, in accordance with 34 CFR §§300.101, .323, and Md. Code Ann., Educ. §4-122.

**INVESTIGATIVE PROCEDURES:**

1. On March 7, 2011, MSDE received correspondence from the complainant alleging violations of IDEA.
2. On March 10, 2011, Ms. Dori Wilson, Branch Chief, Complaint Investigation and Due Process Branch, MSDE, and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with Mrs. Bonnie Walston, Director of Special Education, WCPS, and Ms. Lynne Smoak, Supervisor of Special Education, WCPS, regarding the allegations in the correspondence received from the complainant.
3. On March 14, 2011, Ms. Mandis conducted a telephone interview with the complainant to clarify her allegations. During that conversation, it was discussed that a requested remedy was required in order to initiate a complaint investigation into the allegations.
4. On March 22, 2011, MSDE sent the complainant correspondence reminding her of the requirement that she provide a requested remedy in order to initiate a state complaint investigation into the allegations.
5. On March 24, 2011, the complainant provided MSDE with a requested remedy. On the same date, a copy of the complaint was provided by facsimile to Dr. Kim Lewis, Executive Director, Special Education, BCPS; Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPS; and Mrs. Walston.

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6. On March 28, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. The MSDE also notified Dr. Lewis and Mrs. Walston of the allegations to be investigated and requested that their offices review the alleged violations.
7. On March 31, 2011, Ms. Mandis and Dr. Jodi King, Section Chief, Nonpublic Special Education Section, MSDE, conducted a telephone interview with Ms. Walston and Ms. Smoak regarding the allegations in the complaint.
8. On April 12, 2011, Ms. Mandis conducted a telephone interview with Ms. Walston and Ms. Smoak regarding the allegations in the complaint.
9. On April 15, 2011, Ms. Mandis conducted a telephone interview with Ms. Smoak regarding the allegations in the complaint.
10. On April 21, 2011, WCPS sent MSDE copies of documents from the student's education record.
11. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings include:
  - a. IEP, dated December 1, 2010;
  - b. Correspondence from BCPS to WCPS, dated December 14, 2010;
  - c. Correspondence from the XXXXXXXXX to BCPS, dated January 12, 2010;
  - d. Correspondence from Baltimore City Department of Social Services (BCDSS) Legal Services Division to WCPS, dated January 24, 2011, indicating that WCPS forwarded it to BCPS by facsimile on January 25, 2011;
  - e. IEP, dated February 22, 2011;
  - f. Verification of the student's inability to attend school due to an emotional condition, received by WCPS on February 22, 2011;
  - g. Request for home and hospital teaching services for the student from BCPS to WCPS, dated February 28, 2011;
  - h. Enrollment data for the student for the 2010-2011 school year;
  - i. Correspondence from the complainants alleging violations of IDEA, received by MSDE on March 7, 2011;
  - j. Correspondence from the WCPS Home and Hospital Teaching Office to the principal of XXXXXXXXXXXX, dated March 23, 2011; and
  - k. IEP, dated April 13, 2011.

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**BACKGROUND:**

The student is eighteen (18) years old, is identified as a student with an emotional disability under IDEA and receives special education and related services. The student is committed to the Baltimore City Department of Social Services (BCDSS).

During the time period covered by this investigation, the student has resided at XXXXXXXXXX XXXXXXXXX, located in Wicomico County, Maryland, where he was placed by BCDSS. The student has had the following educational placements during this time period:

- From January 10, 2011 to January 12, 2011, the student was disciplinarily removed from the XXXXXXXXX and was not provided with special education instruction and related services;<sup>2</sup>
- On January 12, 2011, the XXXXXXXXX decided that the IEP could not be implemented at the school and that the student would not be permitted to return to the school pending placement in another school;
- From January 12, 2011 until March 7, 2011, the student did not receive special education instruction and related services; and
- Since March 7, 2011, the student has been receiving home and hospital teaching (HHT) services at the XXXXXXXXXXXXXXXXXXXX as a result of verification by a BCPS school psychologist that the student is unable to attend school due to an emotional condition.

The student's parent surrogate has been provided with the opportunity to participate in IEP team meetings during the time period covered by this investigation. The parent surrogate was also provided with notice of the parental rights (Docs. a, c, e – k, and review of on-line IEP documents).

**FINDINGS OF FACT:**

1. The IEP in effect on January 10, 2011 was developed at a team meeting held on December 1, 2010 at XXXXXXXXXXXXXXXXXXXX, the school the student was attending at that time. At the December 1, 2010 meeting, the team decided that the student requires special

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<sup>2</sup> On January 10, 2011, the student was attending the XXXXXXXXX, XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXX school located in Dorchester County, Maryland. He had been placed at the school by BCPS since December 10, 2010 (Doc. b).

education instruction and related social work services to assist him in achieving the annual IEP goals. The team further decided that, even with the provision of supplementary aids and services, the least restrictive environment in which the IEP could be implemented was a nonpublic separate special education school. The basis for the decision was the student's need for a highly structured school environment to address behaviors such as "disruption to class" and the display of "inappropriate sexual gestures" (Doc. a).

2. On December 10, 2010, BCPS placed the student at the XXXXXXXX, XXXXXXXXXXXX XXXXXXXXXXXX located in Dorchester County, Maryland (Docs. b and c).
3. On December 14, 2010, BCPS sent WCPS written notice of BCPS' placement of the student at the XXXXXXXX. The WCPS was informed by BCPS that BCPS would retain "case management" responsibility as well as fiscal responsibility for the student's education. In that correspondence, BCPS requested that WCPS provide the student with transportation between the XXXXXXXX and the XXXXXXXXXXXXXXXX (Doc. b).
4. On January 10, 2011, the student was disciplinarily removed from the XXXXXXXX for "disturbing school activities, disrupting state testing, verbal and physical aggression, and making sexually inappropriate comments to female peers and staff" (Docs. c and d).
5. On January 12, 2011, the XXXXXXXXXXXX notified BCPS that the student would not be permitted to return to the school. In a letter to BCPS, the XXXXXXXXXXXX reported that although they had the December 1, 2010 IEP when they accepted the student, they no longer believed that the school was an appropriate placement based on the student's "recent behaviors" and information they received that the student's private therapist was recommending "a higher level of care and treatment" for the student (Doc. c).
6. On January 24, 2011, BCDSS Legal Services Division staff contacted WCPS staff to inform them that the student was not being permitted to return to the XXXXXXXX (Doc. d).
7. On January 25, 2011, WCPS contacted BCPS and shared the information provided by BCDSS Legal Services Division that the student was not being permitted to return to the XXXXXXXX (Doc. d).
8. BCPS scheduled an IEP team meeting for February 3, 2011 in order to conduct a manifestation determination and review the student's behavioral intervention plan. This meeting had to be rescheduled to February 22, 2011 because the XXXXXXXXXXXX did not ensure participation of all required team members on February 3, 2011 (Doc. e).
9. At the February 22, 2011 meeting, the team discussed that the disciplinary removal was only for three (3) days and that the XXXXXXXX would not permit the student to return to

the school following the disciplinary removal because they decided that the IEP could not be implemented at the school. The team also discussed that the IEP requires the services of a one-to-one aide, which was not being provided to the student at the XXXXXXXXXX. The team further discussed that, because the student had not been disciplinarily removed from school in excess of ten (10) days during the school year, a manifestation determination and review of the behavioral intervention plan were not needed (Doc. e).

10. At the February 22, 2011 meeting, the team also discussed that the student's community-based psychiatrist was providing verification that the student could not attend school due to an emotional condition. The team determined that the student would receive six (6) hours per week of HHT at the group home plus an additional six (6) hours per week of instruction and counseling services at the group home to compensate the student for the loss of services. The team decided that it would reconvene to review the student's progress and plan for the student's return to a school-based program (Doc. e).
11. At the February 22, 2011 meeting, the complainant requested that the student be placed back in a public school. Based on reports by school-based members of the team that the IEP cannot be implemented in that environment even with the provision of supplementary aids and services, the request was rejected. The team discussed that the XXXXXXXXX is the only nonpublic school in the vicinity, and the BCDSS case worker indicated that there is no plan to attempt to obtain a residential placement for the student within traveling distance to another nonpublic school (Doc. e).
12. On February 22, 2011, WCPS received verification from the student's private psychologist that the student was unable to attend school due to an emotional condition, and on February 28, 2011, BCPS requested that WCPS provide HHT services (Docs. f and g).
13. On March 7, 2011, WCPS began providing the student with HHT services at the group home (Docs. h and j).
14. On April 13, 2011, the IEP team reconvened to review the student's progress. At the meeting, the social work provider and group home staff reported that the student has "declined a good deal" emotionally. The team discussed that there is verification of the student's continued inability to attend a school-based program, and decided that it would reconvene with the student's psycho-therapist and psychiatrist to discuss the plan to transition the student to a school-based program. The team discussed that the student could continue to receive HHT services until the end of the school year without exceeding sixty (60) consecutive school days (Doc. k).

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## **DISCUSSION/CONCLUSIONS:**

### **ALLEGATION #1                      DISCIPLINARY REMOVAL PROCEDURES**

IDEA and COMAR provide specific protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year (34 CFR §300.530 and COMAR 13A.08.03.08). Based on Findings of Fact #4 – 9, MSDE finds that, although the student was not placed in another school following the XXXXXXXXX decision that it could not implement the IEP, he has not been disciplinarily removed from school in excess of ten (10) school days during the 2010-2011 school year. Therefore, the disciplinary protections do not apply, and this office does not find that a violation occurred with respect to the allegation.

### **ALLEGATION #2                      HOME AND HOSPITAL TEACHING (HHT)**

Home and hospital teaching (HHT) is to be provided when a school psychologist, licensed physician or psychiatrist provides verification that a student is unable to attend school due to a physical or emotional condition. Upon receipt of the verification for the need for HHT, the IEP team must follow specific steps to ensure that the student receives appropriate services. The IEP team must review and revise the IEP, as appropriate, to determine the instructional services to be provided and to develop a plan for returning the student to a school-based program. HHT services must be initiated within ten (10) school calendar days of receipt of verification that the student is unable to attend school (COMAR 13A.05.01.10).

No student with a disability should receive educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students and denies the student access to the general curriculum. Therefore, continuation of HHT services beyond sixty (60) calendar days requires re-verification of the service need, and educational placement in the home, for a student with an emotional condition, may not exceed sixty (60) consecutive school days (COMAR13A.05.01.10).

Based on Findings of Fact #10 - 13, MSDE finds that the IEP team convened and determined the HHT services to be provided to the student and that those services were initiated within ten (10) days of the receipt of verification that the student is unable to attend school due to an emotional condition. Based on Findings of Fact #10 - 14, MSDE further finds that HHT services have not been provided beyond sixty (60) calendar days of the initiation of services without re-verification or beyond sixty (60) consecutive school days. Therefore, MSDE does not find that a violation occurred with respect to this allegation.

**ALLEGATION #3: PROVISION OF SPECIAL EDUCATION INSTRUCTION AND RELATED SERVICES IN THE EDUCATIONAL PLACEMENT REQUIRED BY THE IEP SINCE JANUARY 10, 2011**

IEP Implementation – General Requirements

The public agency must ensure that each student receives the special education instruction and related services in the educational placement required by the student's IEP (34 CFR §300.101).

Out-of-County Living Arrangements

A child in an out-of-county living arrangement means a child who is placed by a State agency, a licensed child placement 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 (Md. Code Ann., Educ. §4-122).

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 local education agency in the county where the parent or legal guardian in an out-of-county living arrangement resides remains financially responsible for the student's education (Md. Code Ann., Educ. §4-122).

The local education agency in the county in which the student is residentially placed must provide or arrange for the transportation of the student who has an educational placement in another county or State (Md. Code Ann., Educ. §8-410).

Based on Findings of Fact #1 – 3, 12, and 13, MSDE finds the following:

1. The student is a student in an out-of-county living arrangement;
2. BCPS is the school system with financial responsibility for the student's education;
3. BCPS agreed to retain responsibility for the provision of services from January 10, 2011 until February 22, 2011, when verification was received of the student's inability to attend school due to an emotional condition;
4. While the student attended the XXXXXXXX in Dorchester County, Maryland, WCPS was responsible for providing transportation of the student to school; and
5. Since the student began receiving HHT services on March 7, 2011, WCPS has been the service providing school system.



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### **January 10, 2011 to January 12, 2011**

Based on Findings of Fact #4 - 9, MSDE finds that from January 10, 2011 to January 12, 2011, the student was disciplinarily removed from school, and that services were not required to be provided because the student had not been removed in excess of ten (10) days during the school year (See Allegation #1 above). Therefore, MSDE does not find that a violation occurred during that time period.

### **January 12, 2011 to February 22, 2011**

Based on Findings of Fact #5 - 12, MSDE finds that from January 12, 2011 until February 22, 2011, BCPS retained both financial responsibility and responsibility for ensuring the provision of appropriate special education services to the student. Based on those Findings of Fact, MSDE finds that BCPS did not ensure that the student was provided with special education instruction and related services in accordance with the IEP and that a violation occurred. Notwithstanding the violation, based on Finding of Fact #10, MSDE finds that BCPS has provided the student with a remedy for the loss of services. Therefore, no additional corrective action is required.

### **February 22, 2011 to Present**

Based on Findings of Fact #10 and 12, MSDE finds that since February 22, 2011, the IEP has required that the student receive HHT services in the group home. Based on Finding of Fact #12, MSDE finds that since that time, WCPS has been the service providing public agency. Based on Finding of Fact #13, MSDE finds that there is documentation that since March 7, 2011, the student has been receiving HHT services as determined by the IEP team (See Allegation #2 above). Therefore, this office does not find that a violation has occurred during this period of time.

### **ADDITIONAL DISCUSSION:**

#### **XXXXXXXXXXXXX Responsibility**

In the case of a student who is placed by a public agency in a nonpublic school, the nonpublic school is responsible for the actual implementation of a student's IEP. However, the public agency that placed the student in the nonpublic school is ultimately responsible to ensure that the student is provided with a free appropriate public education (FAPE) at the school (34 CFR §300.103 and Memorandum from MSDE to Local Directors of Special Education, dated February 12, 2008).

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As stated above, BCPS was responsible for ensuring FAPE to the student while the school system placed him at the XXXXXXXX, and has provided a remedy for the loss of services to the student. However, this office is sharing the LOF with the MSDE Nonpublic Schools Approval Branch, which monitors nonpublic schools' compliance with IDEA and related State requirements. By copy of this LOF, the MSDE Nonpublic Schools Approval Branch is being asked to take appropriate steps to address concerns raised about the following at the XXX XXXX:

1. Application approval process;
2. Proper participation at IEP team meetings; and
3. Provision of special education instruction and related services required by the IEP.

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 or conclusions. 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.

Questions regarding the findings of fact or conclusions contained in this LOF should be addressed to this office in writing. The school systems and the student's parent 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 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  
Nancy Ruley  
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