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State Superintendent of Schools

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February 25, 2011

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Ms. Kalisha Miller  
Director of Special Education  
Baltimore County Public Schools  
6901 North Charles Street  
Towson, Maryland 21204

RE: XXXXX  
Reference: #11-049

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 a complaint from Ms. XXXXXXXXXXXXXXX, hereafter, "the complainant," filed on behalf of her niece.<sup>1</sup> In that correspondence, the complainant alleged that the Baltimore County Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. MSDE investigated the following allegations:

1. BCPS did not ensure that the student was provided with special education services to enable her to continue to participate in the general curriculum, and to progress toward achieving the annual Individual Education Program (IEP) goals during a disciplinary removal from school from November 17, 2010 to January 26, 2011,<sup>2</sup> in accordance with 34 CFR §300.530(d) and COMAR 13A.08.03.03 and .05; and

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<sup>1</sup> The complainant, a relative with whom the student lives, serves as the student's parent under IDEA (34 CFR §300.30).

<sup>2</sup> The time period of the allegation was identified as "since November 17, 2010." During the course of the investigation, the disciplinary removal ended and the student returned to school. Therefore, the time period is being revised to reflect the period of the disciplinary removal.

2. BCPS has not reviewed and revised, as appropriate, the student's IEP to address the lack of expected progress towards achieving the annual goals, since January 5, 2010<sup>3</sup>, in accordance with 34 CFR §300.324.

**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 7, 2011, MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS, and Ms. Pam Weitz, Compliance Support, Office of Special Education, BCPS
3. On January 12, 2011, Ms. Moyo conducted a telephone interview with the complainant in order to clarify the allegations to be investigated.
4. On January 21, 2011, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, MSDE notified Ms. Miller of the allegations and requested that her office review the alleged violations.
5. On January 31, 2011, Ms. Moyo conducted a second telephone interview with the complainant regarding the allegations to be investigated.
6. On February 4, 2011, BCPS provided MSDE with copies of documents from the student's education record.
7. On February 16, 2011, Ms. Moyo and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Complaint Investigation and Due Process Branch, MSDE conducted a site visit at XXXXXXXXXXXXXXXX (XXXXXX) to review the student's education record and to interview the following school system staff:
  - a. Ms. XXXXXXXXXXXXX, Behavior Interventionist, BCPS;
  - b. Ms. XXXXXXXXXXX, Special Education Department Chairperson, XXXXXXXXXXX;
  - c. Ms. XXXXXXXXXXX, School Psychologist, BCPS; and
  - d. Ms. XXXXXXXXXXX, IEP Team Chairperson, XXXXXXXXXXX.

Mr. J. Stephen Cowles, Legal Counsel, BCPS, attended the site visit as a representative of BCPS and to provide information on BCPS policies and procedures, as needed.

8. On February 18, 2011, Ms. Moyo conducted a telephone interview with the complainant about the allegations in the complaint.

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<sup>3</sup> While the complainant alleged that the violation has been ongoing for more than a year, she was informed in writing, on January 21, 2011, that MSDE may only investigate allegations of violations which occurred not more than one year prior to the date the complaint was received (34 CFR §300.153).

9. MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings (LOF), which includes:
- a. Reports of the student's progress toward achieving the annual IEP goals for the 2009-2010 school year noted on the IEP;
  - b. Written summary of the January 21, 2010 IEP team meeting;
  - c. Written summary of the May 28, 2010 IEP team meeting;
  - d. Student's report card for the 2009-2010 school year;
  - e. Report of the student's attendance at XXXXXXXXXXXXXXXX (XXXXXXXXXX) from September 3, 2010 through December 2, 2010;
  - f. Written summary of the October 19, 2010 IEP team meeting;
  - g. Report of a BCPS educational assessment, dated November 10, 2010;
  - h. Notice of Suspension to the Board, dated November 18, 2010;
  - i. Student's Interim Report Card for the first (1<sup>st</sup>) quarter of the 2010-2011 school year;
  - j. Written summary of the November 22, 2010 IEP team meeting;
  - k. Student's class schedule for the 2010-2011 school year;
  - l. Reports of the student's progress toward achieving the annual IEP goals for the first (1<sup>st</sup>) quarter of the 2010-2011 school year noted on the IEP;
  - m. Correspondence from the complainant containing allegations of violations of IDEA, received by MSDE on January 5, 2011;
  - n. IEP and written summary of the team meeting, dated January 6, 2011;
  - o. Functional behavioral assessment, dated January 6, 2011; and
  - p. Written summary of the February 9, 2011 IEP team meeting.

**BACKGROUND:**

The student is fifteen (15) years old, is identified as a student with a specific learning disability under IDEA, and receives special education instruction. During the period addressed by this investigation, the complainant participated in the education decision-making process and was provided with information regarding procedural safeguards and parental rights, as required.

The student received special education instruction as follows:

- a. During the 2009-2010 school year, the student attended XXXXXXXXXXXXXXXX;
- b. From the start of the 2010-2011 school year through November 17, 2010, the student attended XXXXXXXXXXXXXXXX;
- c. The student was disciplinarily removed from school on November 18, 2010. From that date until December 7, 2010, the student did not receive special education instruction;
- d. From December 7, 2010 to January 26, 2011, the student received special education instruction at XXXXXXXXXXXXXXXX as an alternative educational setting during the remainder of the period of disciplinary removal from school; and

- e. Since the end of the disciplinary removal on January 26, 2011, the student has been attending XXXXXXXX (Docs. a – f, h, k, m, and interview with the complainant).

**ALLEGATION #1                      PROVISION OF SPECIAL EDUCATION INSTRUCTION  
FROM NOVEMBER 17, 2010 UNTIL JANUARY 26, 2011**

**FINDINGS OF FACT:**

1. The student was disciplinarily removed from school from November 17, 2010 until January 26, 2011 (Docs. e, h, and interview with the complainant).
2. BCPS staff acknowledge that the student was not provided with special education instruction that would enable her to continue to make progress in the general education curriculum during the period of disciplinary removal, consistent with the requirements. BCPS staff report that training has been provided to school staff to ensure that the violation does not recur. BCPS staff propose that the school system offer the complainant *compensatory services*<sup>4</sup> to remediate the loss of instruction (Interview of BCPS staff).

**DISCUSSION/CONCLUSIONS:**

IDEA and COMAR provide protections to students with disabilities who are removed from school in excess of ten (10) school days in a school year. These protections include the provision of educational services by the eleventh (11<sup>th</sup>) day of removal. These services must be determined by the IEP team and must be designed to enable the student to progress in the general curriculum and advance toward achieving the IEP goals, although those services may be provided in an alternative setting (34 CFR §300.530 and COMAR 13A.08.03.08).

Based on Findings of Fact #1 and 2, MSDE concurs with the determination by BCPS that the student was not provided with appropriate services following the tenth (10<sup>th</sup>) day of disciplinary removal. Therefore, this office finds that a violation occurred.

**ALLEGATION #2                      REVIEW/REVISION OF THE IEP TO ADDRESS LACK OF  
EXPECTED PROGRESS SINCE JANUARY 2010**

**FINDINGS OF FACT:**

**Student Progress**

**Math Goals**

3. On January 28, 2010, a report was generated stating that the student was making sufficient progress toward achieving two (2) out of the three (3) math goals (Doc. a).

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<sup>4</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).

4. On April 16, 2010 and June 18, 2010, reports were generated stating that the student was making sufficient progress toward achieving all three (3) of the math goals (Doc. a).
5. On November 10, 2010 and December 23, 2010, reports were generated stating that the math goals were not addressed because the student was not scheduled to take a math class until the third (3<sup>rd</sup>) quarter of the 2010-2011 school year (Docs. k and l).

### **Reading Goals**

6. On February 8, 2010, a report was generated stating that the student was making sufficient progress toward achieving two (2) out of the five (5) reading goals (Doc. a).
7. On April 14, 2010, a report was generated stating that the student was making sufficient progress toward achieving four (4) of the five (5) reading goals. The report indicates that the student continues to struggle with reading comprehension and recommends the provision of extended school year (ESY) services (Doc. a).
8. On May 28, 2010, the IEP team convened and determined that the student would be provided with ESY services (Doc. c).
9. On June 18, 2010, a report was generated stating that the student was making sufficient progress toward achieving all five (5) of the reading goals (Doc. a).
10. On November 10, 2010, a report was generated stating that the student had achieved two (2) of the reading goals and that she was making sufficient progress toward achieving two (2) of the remaining three (3) reading goals (Doc. l).

### **Written Language Goals**

11. On February 8, 2010, a report was generated stating that the student was making sufficient progress toward achieving one (1) of the two (2) written language goals (Doc. a).
12. On April 30, 2010 and June 18, 2010, reports were generated stating that the student was making sufficient progress toward achieving both of the written language goals (Doc. a).
13. On November 10, 2010, a report was generated stating that the student had achieved one (1) of the written language goals, but was not making sufficient progress toward achieving the other written language goal (Doc. l).

### **Behavioral Goal**

14. On February 8, 2010, April 30, 2010, and June 18, 2010, reports were generated stating that the student was making sufficient progress toward the one (1) behavior goal included in the IEP (Doc. a).

15. On November 9, 2010, a report was generated stating that the student was not making sufficient progress toward achieving the behavioral goal because she was not complying with all directions given by adults and was not refraining from making teasing comments toward peers (Doc. l).

#### IEP Team Meetings to Review Student Progress

16. The student's report card indicates that she passed all of her classes during the 2009-2010 school year. It indicates that by the end of the first (1<sup>st</sup>) quarter of the 2010-2011 school year, when the student was disciplinarily removed from school, she was passing all of her classes (Docs. d and i).
17. On October 19, 2010, the IEP team convened to conduct a three (3) year re-evaluation. At the meeting, the team considered information from the student's teachers that the student was "successful in her classes." The team recommended that an updated educational assessment and classroom observation be conducted (Doc. f).
18. On November 22, 2010, the IEP team convened to conduct a manifestation determination as a result of a disciplinary removal on November 18, 2010. At the meeting, the team considered teacher reports the student was passing all of her classes, was sometimes distracted, but was easily able to focus on her work when redirected (Doc. j).
19. On January 6, 2011, the IEP team convened and reviewed the results of the educational assessment and reports that the student was making progress toward achieving the annual IEP goals. Based on the student's progress, the team revised the annual IEP goals and increased the amount of special education instruction to be provided to assist the student in achieving the goals. At the complainant's request, the team agreed that a functional behavioral assessment be conducted. There is no documentation that a functional behavioral assessment was conducted or a behavioral intervention plan reviewed at the time of the student's disciplinary removal in November 2010 (Docs. f and m).
20. On February 9, 2011, the IEP team convened. At the meeting, the team discussed that since the student's return to school on January 26, 2011 from a disciplinary removal, the student "is off to a good start." At the meeting, the team considered results of the functional behavioral assessment, which indicates that the student engages in attention-seeking behavior, including name calling of peers, but is easily redirected. It further indicates that this behavior is more likely to be exhibited when there is less adult supervision. The team discussed that the student has adjusted well overall to the transition to high school and that because she is provided with the support of additional adult supervision, a behavioral intervention plan is not needed in order to address her behavioral needs (Docs. n and o).

## **DISCUSSION/CONCLUSIONS:**

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. 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).

### **Math Goals**

Based on Findings of Fact #3, 4, and 5, MSDE finds that while the student did not make sufficient progress toward achieving one (1) of the three (3) math goals during the second (2<sup>nd</sup>) quarter of the 2009-2010 school year, the student was making sufficient progress on all of the math goals by the following quarter. Therefore, MSDE finds that an IEP team meeting to review and revise the program was not needed in order to address the lack of expected progress.

Based on Findings of Fact #16 – 20, MSDE finds that there is no documentation of the lack of expected progress during the 2010-2011 school year, and that the team has considered the progress being made by the student and reviewed and revised the annual IEP goals based on that progress. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

### **Reading Goals**

Based on Findings of Fact #6, 7, and 8, MSDE finds that when the student was found to not be making sufficient progress toward achieving the goals in the third (3<sup>rd</sup>) quarter of the 2009-2010 school year, the team reviewed the program and determined that ESY services would be provided to assist the student.

Based on Findings of Fact #9, 10, and 16 – 20, MSDE finds that subsequently, the team has met and reviewed and revised the student's program based on her progress. Therefore, MSDE does not find that a violation occurred with regard to this aspect of the allegation.

Based on Findings of Fact #11 and 16 - 20, MSDE finds that although the student was reported to not be making sufficient progress toward achieving the goals in the first (1<sup>st</sup>) quarter of the 2010-2011 school year, the team has considered the progress being made by the student and reviewed and revised the annual IEP goals based on that progress. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

### **Written Language Goals**

Based on Findings of Fact #11 and 12, MSDE finds that while the student did not make sufficient progress toward achieving one (1) of the two (2) written language goals during the second (2<sup>nd</sup>) quarter of the 2009-2010 school year, the student was making sufficient progress on all of the written language goals by the following quarter. Therefore, MSDE finds that an IEP team meeting to review and revise the program was not needed in order to address the lack of expected progress.

Based on Findings of Fact #13 and 16 - 20, MSDE finds that although the student was reported to not be making sufficient progress toward achieving one (1) of the two (2) goals in the first (1<sup>st</sup>) quarter of the 2010-2011 school year, the team has considered the progress being made by the student and reviewed the program to ensure that it addresses the student's needs. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

### **Behavioral Goal**

Based on Finding of Fact #14, MSDE finds that there is no documentation of lack of expected progress from January 2010 through the end of the 2009-2010 school year. Thus, there was no requirement for the team to meet to review the program.

Based on Findings of Fact #15 – 20, MSDE finds that although the student was not making sufficient progress toward achieving the behavior goal in the first (1<sup>st</sup>) quarter of the 2010-2011 school year, the IEP team has convened and reviewed the program to ensure that it addresses the student's behavioral needs. Therefore, this office does not find that a violation occurred with regard to this aspect of the allegation.

### **ADDITIONAL ISSUE:**

Within ten (10) school days of the date in which the decision is made to change the placement of a student because of a violation of a code of student conduct, the IEP team must convene to determine whether the student's behavior was a manifestation of the student's disability. If the behavior is determined not to be a manifestation of the student's disability, the public agency must ensure that the student receives, as appropriate, a functional behavioral assessment and behavior intervention services that are designed to address the behavior that resulted in the removal so that it does not recur (34 CFR §300.530 and COMAR 13A.08.03.08).

Based on Findings of Fact #1 and 19, MSDE finds that BCPS did not ensure that the team considered the student's need for behavioral intervention services following the student's disciplinary removal from school on November 17, 2010, as required, and that a violation occurred. Notwithstanding the violation, based on Finding of Fact #20, MSDE finds that the IEP team subsequently conducted a functional behavioral assessment and determined that a behavioral intervention plan was not required. Therefore, MSDE finds that the violation did not negatively impact on the student's ability to benefit from her education program and no student-specific corrective action is required.

### **CORRECTIVE ACTION/TIMELINES:**

MSDE requires BCPS to provide documentation by May 1, 2011 that the complainant has been offered *compensatory services*<sup>4</sup> for the loss of services during the student's disciplinary removal from school. If the complainant disagrees with the amount or nature of the services offered, she maintains the right to request mediation or to file a due process complaint to resolve the dispute.



MSDE requires BCPS to provide documentation by May 1, 2011 of the training conducted with staff at XXXXXXXXXXXX to ensure compliance with the requirements related to providing educational services to students who are disciplinarily removed from school.

Additionally, BCPS must provide documentation by the end of the 2010-2011 school year of the steps taken to determine if the procedural violation related to conducting the functional behavioral assessment in a timely manner is unique to this case or if it represents a pattern of noncompliance XXXXXXXXXXXX. 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 requirement is not being implemented, the school system must identify the actions that will be taken to ensure that the violation does 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 with the regulatory requirements.

The findings in the LOF will be shared with MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for their consideration during future monitoring. Verification of the school system's compliance will also be conducted consistent with the requirements of the United States Department of Education, Office of Special Education Programs (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.

Please be advised that both parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this LOF. 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 LOF.

If additional information is provided, it will be reviewed and MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional

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Ms. Kalisha Miller  
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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 LOF.

Questions regarding the findings, conclusions and corrective actions contained in this letter 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 free appropriate public education for the student, including issues subject to a State complaint investigation, consistent with IDEA. MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

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

CAH:km

c: Joe A. Hairston  
J. Stephen Cowles  
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