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Interim State Superintendent of Schools

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May 22, 2012

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

RE: XXXXX  
Reference: #12-069

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

**ALLEGATIONS:**

On March 30, 2012, the MSDE received a complaint from XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son. 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. The MSDE investigated the following allegations:

1. The BCPS did not provide the complainant with a copy of the completed Individualized Education Program (IEP) at least five (5) business days after the March 2011<sup>1</sup> IEP team meeting, in accordance with Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07.
2. The BCPS has not ensured that the student’s IEP addresses his behavioral needs since the start of the 2011-2012 school year, in accordance with 34 CFR §300.324.

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<sup>1</sup> This allegation was initially identified as involving a May 2011 IEP team meeting. However, during the course of the investigation it was discovered that the IEP team convened in March 2011.

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3. The BCPS has not ensured that the student has been provided with the following services and supports required by his IEP since the start of the 2011-2012 school year, in accordance with 34 CFR §300.101:
  - a. Altered or modified assignments;
  - b. Decreased work load;
  - c. Use and monitoring of a daily agenda book;
  - d. Behavioral supports and interventions; and
  - e. Counseling services.

### **INVESTIGATIVE PROCEDURES:**

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 2, 2012, the MSDE sent a copy of the complaint, via facsimile, to Ms. Kalisha Miller, Director of Special Education, BCPS; Ms. Sharon Floyd, Supervisor of Compliance, BCPS; and Mr. Stephen Cowles, Associate General Counsel, Special Education Compliance, BCPS.
3. On April 5, 2012, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 6, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Miller of the allegations and requested that her office review the alleged violations.
5. On April 20, 2012, Ms. Stump and Ms. Koliwe Moyo, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
  - a. Mr. XXXXXXXXX, School Psychologist;
  - b. Ms. XXXXXXXX, Assistant Principal;
  - c. Mr. XXXXXXXXX, Special Education Teacher and Case Manager;
  - d. Ms. XXXXXXXXX, Principal;
  - e. Ms. XXXXXXXXXXXXX, Special Education Department Chairperson; and
  - f. Ms. XXXXXXX, IEP Team Chairperson.

Ms. Floyd and Ms. Maureen Hartlieb, Compliance Resource Teacher, BCPS, attended the site visit as representatives of the BCPS and to provide information on the BCPS policies and procedures, as needed.

6. On April 26, 2012 and May 3, 2012, the MSDE requested additional documentation from the student's educational record from the BCPS, via electronic mail (e-mail).

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7. On May 9, 2012, the BCPS provided the MSDE with the requested additional documentation via e-mail and facsimile.
8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainant to the MSDE, received on March 30, 2012;
  - b. Functional Behavioral Assessment, dated September 24, 2008;
  - c. Behavioral Intervention Plan, dated September 24, 2008;
  - d. IEP team meeting notice for March 3, 2011 meeting;
  - e. IEP team meeting summary for March 3, 2011 meeting;
  - f. IEP team meeting notice for March 29, 2011 meeting;
  - g. IEP team meeting summary for March 29, 2011 meeting;
  - h. IEP, dated March 29, 2011;
  - i. IEP team meeting notice for January 9, 2012 meeting;
  - j. IEP team meeting summary for January 9, 2012 meeting;
  - k. Psychological Assessment report, dated March 16, 2012;
  - l. IEP team meeting notice for March 29, 2012 meeting;
  - m. IEP team meeting summary for March 29, 2012 meeting;
  - n. Receipt of Procedural Safeguards Parental Rights Document, dated March 29, 2012;
  - o. IEP team meeting notice for April 26, 2012 meeting;
  - p. IEP team meeting summary for April 26, 2012 meeting;
  - q. IEP, dated April 26, 2012;
  - r. Removal from class forms for the 2011-2012 school year;
  - s. School Psychologist's service provider log for the 2011-2012 school year; and
  - t. Work samples from the student's math class for the 2011-2012 school year.

**BACKGROUND:**

The student is thirteen (13) years old and is identified as a student with an emotional disability under the IDEA. He attends XXXXXXXXXXXXXXXXXXXXXXX, where he receives special education instruction and related services. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. a, e, g, h, j, m, n, p, and q).

**ALLEGATION #1:**

**PROVISION OF COMPLETED IEP AFTER THE MARCH 2011 IEP TEAM MEETING**

**Findings of Facts:**

1. During the spring of the 2010-2011 school year, the IEP team convened on March 3, 2011, and March 29, 2011 (Docs. d-h).

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2. At the March 3, 2011 IEP team meeting, the team considered assessment results as part of a reevaluation. Due to time constraints, the team was unable to complete its review and revision of the IEP (Docs. e-g).
3. There is no documentation that school staff provided the complainant with a draft IEP reflecting the decisions made by the team on March 3, 2011, five (5) business days after the meeting (review of education record and interview with school staff).
4. On March 29, 2011, the IEP team reconvened and completed its review and revision of the IEP. The written summary of the meeting states that the IEP was provided to the complainant at the meeting. However, the educational record contains conflicting documentation that indicates that the IEP was provided to the complainant more than five (5) business days after the March 29, 2011 meeting (Docs. g and h).

**Discussion/Conclusions:**

Each public agency must ensure that parents are provided with an accessible copy of the completed IEP not later than five (5) business days after the IEP team meeting. If the IEP has not been completed by the fifth (5<sup>th</sup>) business day after the meeting, the parent must be provided with a draft IEP within that time frame (Md. Code, Ann., Educ. §8-405 (2010) and COMAR 13A.05.01.07).

Based on the Findings of Facts #1-#4, the MSDE finds that the complainant was not provided with a draft or a completed IEP at least five (5) business days after the IEP team meetings held in March 2011. Therefore, the MSDE finds a violation regarding this allegation.

**ALLEGATION #2:**

**IEP THAT ADDRESSES THE STUDENT'S  
BEHAVIORAL NEEDS SINCE THE START OF THE  
2011-2012 SCHOOL YEAR**

**Findings of Facts:**

**March 29, 2011 IEP Team Meeting**

5. The IEP in effect at the start of the 2011-2012 school year was completed at the March 29, 2011 IEP team meeting. The documentation of the meeting indicates that the team reviewed teacher reports of the student's progress, which indicate that the student's motivation, attention, and response to redirections decreased throughout the third (3<sup>rd</sup>) quarter of the 2010-2011 school year. The reports further indicate that the student has demonstrated difficulty with organization, which results in the inability to follow directions, accept or respond to assistance, maintain attention to tasks and complete his work. In addition, the reports state that the student refused to carry a "point sheet" to monitor his behavior despite the provision of a variety of rewards and consequences designed to provide incentives for him to do so. However, teachers reported that the

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student was making sufficient progress toward achieving the annual IEP goals (Docs. g and h).

6. Based on the student's refusal to carry the "point sheet," the team decided that data regarding the student's behavior would be collected on a weekly basis directly from the student's teachers (Docs. g and h).
7. The IEP contains annual goals for the student to improve his compliance with school rules, routines, and expectations and to increase his "on-task" behaviors. The IEP requires that the student be provided with group counseling for thirty (30) minutes weekly as a related service in order to assist him in achieving these goals (Doc. h).
8. The IEP also requires that the student be provided with supports including frequent breaks, reduced distractions, altered or modified assignments, and strategies to initiate and sustain attention. The IEP clarifies that these supports and services are to be provided to the student on a daily basis, in all classes, "as needed" (Doc. h).
9. The IEP clarifies that "altered or modified assignments" includes reducing the number of questions, using a word/answer bank, chunking questions to include not more than 8-10 questions, chunking of math problems with the same skill, and removing distracters in multiple choice questions (Doc. h).
10. The IEP also requires the use and monitoring of the student's agenda book and use of a classroom behavioral checklist, and indicates that these services are to be provided on a daily basis in all classes (Doc. h).
11. While the IEP indicates that a separate Behavior Intervention Plan (BIP) document was developed in September 2008, information from school staff and a review of the IEP and BIP reflect that the goals and supports of the BIP are incorporated into the student's IEP (Doc. h and interview with school staff).

#### January 9, 2012 IEP Team Meeting

12. On January 9, 2012, the IEP team convened to address the complainant's concerns regarding the student's reading skills and behaviors exhibited at home. The complainant indicated that the student is defiant and both physically and verbally aggressive. School staff reported that, while the student is argumentative with peers at school, he does not demonstrate verbally or physically aggressive behaviors. However, in order to address the complainant's concerns, the team recommended that a psychological assessment be conducted. At the meeting, the complainant provided consent for the assessments (Docs. i and j).

March 29, 2012 IEP Team Meeting

13. On March 29, 2012, the IEP team convened to review the results of the psychological assessment that was conducted. The report indicates that the student exhibits a “moderate to high level” of difficulty interacting successfully with peers, adapting to changes, switching tasks, and working under pressure. The report also indicates that the student needs to improve his organizational skills and study habits (Docs. k-m).
14. The team also considered teacher reports that the student’s mood has a significant impact on his school performance and that the student does not consistently use his “agenda book” in class to record assignments (Doc. m).
15. Due to time constraints, the IEP team agreed to reconvene to complete the review and revision of the student’s program on April 26, 2012 (Doc. m).

April 26, 2012 IEP Team Meeting

16. At the April 26, 2012 meeting, the IEP team considered teacher reports that the student continues to have difficulty with compliance and work habits, and difficulty with math. The team also considered reports that, despite these behaviors, the student is making sufficient progress toward achieving the goals (Docs. o-q).
17. Based on information provided about the student’s behavior, the team added an annual goal for the student to utilize management and coping strategies in order to express his feelings appropriately and decided to discontinue the use of an “agenda book” and daily classroom behavior checklist (Doc. q).
18. The IEP team decided that strategies would be used to assist the student, including the provision of increased support at the beginning of tasks, monitoring of work progress, provision of brief movement breaks, and choice in work completion, when possible (Docs. p and q).
19. The IEP team revised the IEP to reflect that the supports will be provided “periodically” instead of “daily” in all classes as needed, and that counseling services will be provided in either a group or an individual setting as determined by the service provider. The IEP was also revised to clarify that the behavioral interventions contained in the BIP are incorporated into the IEP (Doc. q).
20. There is documentation that the student was removed from his math class to another teacher’s classroom on three (3) separate occasions during the 2011-2012 school year in order to complete his classwork without the distraction, caused by sitting with his classmates (Doc. r).

**Discussion/Conclusions:**

In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. In the case of a student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

In Maryland, there are interventions that may be used to address student behaviors only if specific conditions are met. These behavioral interventions include the use of exclusion, which means the removal of a student to a supervised area for a limited period of time during which the student has an opportunity to regain self-control and is not receiving instruction, including special education, related services, or support (COMAR 13A.08.04.02). School personnel may use exclusion to address a student's behavior if that behavior unreasonably interferes with the student's learning or the learning of others (COMAR 13A.08.04.04).

In this case, the complainant alleges that the student's program does not address his behavioral needs because the BIP has not been reviewed and revised since 2008 and because the team has not considered how to address the behavior that results in his being removed from class (Doc. a and interview with the complainant).

Based on the Findings of Facts #5 - #14, and #16-#19, the MSDE finds that the IEP team has considered the strengths of the student, the concerns of the complainant, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student. Based on the Finding of Fact #11, the MSDE finds that there is documentation that the services and supports contained in the BIP, which are included in the IEP, have been reviewed by the team.

Based on the Finding of Fact #20, the MSDE finds that the removal of the student to another class to complete classwork constitutes a behavioral support designed to reduce distractions, which is required by the IEP and does not constitute the use of exclusion that results in the loss of special education instruction to the student. Therefore, the MSDE finds no violation with respect to this allegation.

**ALLEGATION #3:**                      **PROVISION OF SERVICES AND SUPPORTS REQUIRED BY THE IEP**

**Findings of Facts:**

21. The school psychologist's service provider log for the 2011-2012 school year indicates that the student has received thirty (30) minutes of counseling services weekly since the beginning of the school year. However, until April 26, 2011, when the IEP was revised, some sessions were provided individually rather than in a group setting as required by the IEP (Doc. s).

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22. A review of work samples from the student's math class indicates that the student's assignments are modified as required by the IEP. However, there is no documentation that the student has been provided with the accommodations to support his behavioral needs in any of his other classes as required by the IEP. School staff report that the student has not needed these supports in any of his other classes. However, the April 26, 2012 IEP continues to state that the student requires these supports in all classes (Doc. t).

### **Discussion/Conclusions:**

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §300.101). In this case, the complainant alleges that the student is not being provided with the behavioral interventions required by the IEP, including the "behavioral checklist," that the student's assignments are not being modified or the workload reduced, the student's "agenda book" is not being used or monitored as required by the IEP, and the student is not receiving the required counseling services (Doc. a and interviews with the complainant).

Based on the Findings of Facts #5, #6, #10, #14, #17, and #18, the MSDE finds that there is documentation that the behavior checklist and agenda book were made available to the student, but that he would not accept this support so it was discontinued and replaced with other supports. Based on the Finding of Fact #22, the MSDE finds that there is documentation that the student's assignments in math were modified in accordance with the IEP. However, based on the same Finding, the MSDE finds that, while the IEP states that the student requires these supports in all of his classes, there is no documentation that they have been provided in any class except math.

In addition, based on the Finding of Fact #21, the MSDE finds that the counseling services were not provided in the manner required by the IEP from the start of the 2011-2012 school year until April 26, 2012. Therefore, the MSDE finds that violations have occurred with respect to this allegation.

### **ADDITIONAL DISCUSSION:**

In order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (*Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).<sup>2</sup> Therefore, if the student does not need behavioral supports in any class except for math, the BCPS must ensure that the IEP is reviewed and revised to ensure that it is written clearly with respect to the supports to be provided to the student.

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<sup>2</sup> In the 2004 reauthorization of the IDEA, no changes were made to this requirement.



**CORRECTIVE ACTIONS/TIMELINES:**

**Student-specific**

The MSDE requires the BCPS to provide documentation by July 31, 2012, that the IEP team has convened and determined whether the violations related to IEP implementation had a negative impact on the student's ability to benefit from his program, and if so, the nature and amount of *compensatory services*<sup>3</sup> or other remedy necessary to redress the violations.

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

**School-based**

The MSDE requires the BCPS to provide documentation by the start of the 2012-2013 school year of the steps it has taken to determine if the violation related to the provision of a draft or completed IEP within five (5) business days after a scheduled IEP team meeting is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXXXXXXXXXXXX.

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 the MSDE. If the school system reports compliance with the requirements, the MSDE 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 initial date that the school system determines non-compliance.

Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements, consistent with the requirements of the OSEP. Additionally, the findings in the Letter of Findings will be shared with the MSDE's Office of Quality Assurance and Monitoring for Continuous Improvement for its consideration during present or future monitoring of the BCPS.

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.

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<sup>3</sup> 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).

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**TECHNICAL ASSISTANCE:**

Technical assistance is available to the parties through Mrs. Martha J. Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that both parties have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirements as reported in this Letter of Findings.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The 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 a Free Appropriate Public Education for the student, including issues subject to a State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Division of Special Education/Early Intervention Services

MEF:ks

cc : Joe A. Hairston  
Stephen Cowles  
Sharon Floyd  
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XXXXXXX  
Martha J. Arthur  
Kathy Stump