



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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March 11, 2013

Ms. Pat Halle, Paralegal
Maryland Disability Law Center
1500 Union Avenue, Suite 2000
Baltimore, Maryland 21211

Dr. Kim Hoffmann
Interim Executive Director, Special Education
Baltimore City Public Schools
200 East North Avenue, Room 204-B
Baltimore, Maryland 21202

RE: XXX
Reference: #13-038

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 January 11, 2013, the MSDE received a complaint from Ms. Pat Halle, Paralegal, Maryland Disability Law Center, hereafter, “the complainant,” on behalf of the above-referenced student, hereafter, “the student,” and his grandmother.¹ 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 student. The MSDE investigated the following allegations:

1. The BCPS did not ensure that the student’s Individualized Education Program (IEP) addressed his social/emotional/behavioral needs between January 2012² and November 2012, in accordance with 34 CFR §300.324;

¹ The written complaint indicates that the student’s grandmother is the student’s legal guardian and serves as his parent under the IDEA (34 CFR §300.30).

² The complaint included allegations of violations of the IDEA dating to the start of the 2011-2012 school year. The complainant was advised, in writing, on January 25, 2013, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint was received, in accordance with 34 CFR §300.153.

2. The BCPS has not ensured that the student has been provided with special education instruction to assist him in achieving the annual goals or to progress through the general education curriculum since September 2012,³ in accordance with 34 CFR §§300.101, .320, and .323;
3. The BCPS did not ensure that the IEP team considered the concerns of the student's grandmother¹ for enhancing the student's education at the June 2012 IEP team meeting, in accordance with 34 CFR §300.324; and
4. The BCPS has not ensured that proper procedures have been followed when utilizing seclusion as a behavioral intervention with students at XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) since December 2012, in accordance with COMAR 13A.08.04.05.

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On January 16, 2013, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffmann, Interim Executive Director of Special Education, BCPS; and Ms. Nancy Ruley, Associate General Counsel, BCPS.
3. On January 22, 2013, Ms. Stump conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On January 25, 2013, 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 Dr. Hoffmann of the allegations and requested that her office review the alleged violations.
5. On January 31, 2013, the MSDE requested that the BCPS provide documentation from the student's educational record.
6. On February 13, 2013, Ms. Stump, Mrs. Martha J. Arthur, Education Program Specialist, MSDE, and Ms. Janet Jacobs, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXX to review the student's educational record, and interviewed Ms. XXXXXXXXXXXXX, classroom teacher; and Mr. XXXXXXXXXXXXX, Paraeducator. Mr. Darnell Henderson, Associate General Counsel, BCPS, attended the site visit as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.

³ Correspondence from the MSDE to the complainant originally identified this allegation from January 2012. However, during the course of the investigation, this office discovered that the allegation is related to requirements in the student's IEP in effect since September 2012.

7. On February 14, 2012, the BCPS provided the MSDE with information relevant to the investigation, via e-mail.
8. On February 22, 2013, Ms. Stump conducted a telephone interview with Ms. XXXXXXXX, IEP team chairperson, XXXXXXXXXXXXXXXXXXXXXXXX. Mr. Henderson participated in the telephone interview as a representative of the BCPS and to provide information on the BCPS policies and procedures, as needed.
9. On that same date, the MSDE requested that the BCPS provide additional documentation from the student's educational record.
10. On March 4, 2013, the BCPS provided the MSDE with the requested documentation.
11. 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 January 11, 2013;
 - b. IEP, dated February 23, 2012;
 - c. IEP and meeting notice, dated June 7, 2012;
 - d. Prior Written Notice form, dated June 7, 2012;
 - e. Technical Assistance Request form, dated June 2012;
 - f. IEP progress reports for the 2011-2012 school year;
 - g. Student Observation Report, dated July 30, 2012, with undated addendum;
 - h. General Education progress report, dated September 11, 2012;
 - i. IEP and meeting notice, dated September 12, 2012;
 - j. Special Education progress report, dated September 12, 2012;
 - k. Prior Written Notice form, dated September 12, 2012;
 - l. IEP and meeting notice, dated September 26, 2012;
 - m. Receipt of Parental Rights Notice form, dated September 26, 2012;
 - n. General Education progress report, dated September 26, 2012;
 - o. Special Education progress report, dated September 26, 2012;
 - p. Notice and Consent for Assessment form, dated September 26, 2012;
 - q. Prior Written Notice form, dated September 26, 2012;
 - r. Functional Behavioral Assessment, dated October 30, 2012;
 - s. Behavioral Intervention Plan, dated October 30, 2012;
 - t. IEP meeting notice for the November 1, 2012 meeting;
 - u. Receipt of Parental Rights Notice form, dated November 1, 2012;
 - v. IEP meeting notice for the November 15, 2012 meeting;
 - w. Receipt of Parental Rights Notice, dated November 15, 2012;
 - x. General Education progress report, dated November 15, 2012;
 - y. IEP and meeting notice, dated November 28, 2012;
 - z. Prior Written Notice form, dated November 28, 2012;
 - aa. Correspondence from BCPS personnel to the student's grandmother, dated December 18, 2012;

- bb. Electronic mail (e-mail) correspondence from the BCPS to the MSDE, dated February 14, 2013;
- cc. IEP and meeting notice, dated February 15, 2012;
- dd. IEP progress reports for the 2012-2013 school year; and
- ee. XXXXXXXXXXXXX Use of Seclusion forms for the 2012-2013 school year.

BACKGROUND:

The student is seven (7) years old, is identified as a student with an emotional disability under the IDEA, and has an IEP that requires that he be provided with special education and related services. From the start of the 2012-2013 school year until December 11, 2012, the student attended XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX). As the result of a change in educational placement made by the IEP team, the student has attended XXXXXXXXXXXXX, a public separate special education school, since December 12, 2012.⁴

During the period of time addressed by this investigation, the student's grandmother¹ participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-d, i, k-m, p, q, u, w, y, z, and cc).

ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS

Findings of Facts:

2011-2012 school year

1. The BCPS conducted an internal investigation into the appropriateness of the student's program regarding his social, emotional, and behavioral needs during the 2011-2012 school year, as a result of a complaint filed by the student's grandmother with the BCPS Special Education Parent Response Unit. The BCPS issued a written report of the results of the investigation ("investigation report"), on December 18, 2012 (Doc. aa).
2. The investigation report indicates that IEP revisions made on February 23, 2012 were not sufficient to address the student's social, emotional, and behavioral needs (Doc. aa).
3. The investigation report also states that at the June 7, 2012 IEP team meeting, the team identified the student, who was previously identified as a student with developmental delay, as a student with emotional disability based on new evaluation data from the student's private therapist. The BCPS report indicates that, despite this change in disability, the IEP team did not document the student's present levels of academic achievement and functional performance related to his social, emotional, and behavioral needs and did not develop annual IEP goals to address the needs. As a result, the BCPS

⁴ On February 15, 2013, the IEP team determined that the IEP could no longer be implemented at XXXXXXXXXXXX and determined that the least restrictive environment in which the IEP can be implemented is a nonpublic school. The IEP team revised the student's program to include additional supports until he is placed in a nonpublic school (Doc. cc).

found that the revisions made on June 7, 2012 were also not sufficient to address the student's social, emotional, or behavioral needs (Doc. aa).

4. The investigation report also documents that the BCPS proposes to have the IEP team determine whether the student's ability to receive educational benefit from his program was adversely impacted by the violation, and if so, determine the nature and amount of *compensatory services*⁵ or other remedy necessary to redress the violation (Doc. aa).

2012 – 2013 school year

September 12, 2012 IEP team meeting

5. On September 12, 2012, the IEP team convened to review the student's program and progress and to consider positive behavioral interventions to address his interfering behaviors. At the meeting, the IEP team considered a report from the student's classroom teacher, indicating the student says "no" when given directions, runs and flips on the carpet or in the hallway, gets frustrated and walks out of class and goes to the bathroom without permission, refuses to complete class work and walks around the classroom, plays during instruction and leaves his seat without permission (Docs. h-k).
6. Based on this information, the team determined that the student requires additional supports, including frequent feedback, alternative ways to demonstrate understanding, monitoring of his independent work, manipulatives to promote listening and focusing skills, frequent reminders of the rules, use of eye contact and "proximity control," and preferential seating (Doc. i).
7. The IEP team also increased the amount of special education instruction to be delivered to the student in the separate special education classroom. The team also added "indirect psychological services." However, the team did not revise the IEP to include a statement of the student's present levels of academic achievement and functional performance related to his social, emotional, and behavioral needs and did not develop an annual goal to address the needs (Doc. i).
8. The IEP team agreed to reconvene on September 26, 2012 in order to consider conducting a behavioral assessment and developing a plan to address the student's interfering behaviors (Docs. i and k).

September 26, 2012 IEP team meeting

9. On September 26, 2012, the IEP team reconvened and considered a report from the student's teacher that his behaviors had become "quite alarming," and "dangerous." The team also considered the report of an observation, conducted by a district-wide specialist,

⁵ 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). Documentation of this corrective action is to be provided to the MSDE no later than May 15, 2013.

that indicates that during the observation period, the student knocked things off desks, threw a chair, and was aggressive. The team revised the IEP to include a statement of the student's present levels of academic achievement and functional performance related to his social, emotional, and behavioral needs, consistent with the information provided, and developed an annual goal for the student to improve his compliance with school and class rules (Docs. l-o and q).

10. In order to assist the student with achieving the annual goal, the team again increased the amount of special education instruction to be delivered to the student in the separate special education classroom (Doc. l).
11. The team also determined that the student requires additional supports, including on-going communication between home and school, frequent changes in activities or opportunities for movement, an "interim intervention and safety plan," and the services of a "Temporary Support Associate," (TSA) who would be a one-to-one aide for the student (Doc. l).
12. The team also recommended that an educational assessment, a speech/language assessment, a fine motor skills assessment, and a behavioral assessment be conducted. The team agreed to expedite the assessments (Docs. p and q).

November 1, 2012 IEP team meeting

13. On November 1, 2012, the IEP team reconvened and reviewed the results of the educational assessment and the fine motor skills assessment. The team began to review the results of the speech/language assessment, but the student's grandmother requested that the meeting be continued on a different date. The team agreed to reconvene on November 15, 2012 (Doc. r-t and z).

November 15, 2012 IEP team meeting

14. On November 15, 2012, the IEP team reconvened to continue its review of the results of the assessments determined necessary at the September 26, 2012 IEP team meeting. At the meeting, the team concluded its review of the results of the speech/language assessment and began its review of the behavioral assessment. Based upon this review, the team developed an annual goal to improve the student's ability to interact appropriately with his peers and others, consistent with the needs identified in the evaluative data. The team determined that the student required additional supports, including "crisis intervention," allowing the student to have extra time to move between classes, and a "sensory diet," to include reduced auditory and visual distractions and sensory movement breaks such as "chair push-ups" or passing out papers. Due to time constraints, the team did not complete its review of the behavioral assessment or of the student's program and agreed to reconvene on November 26, 2012 (Docs. v-x and z).

November 28, 2012 IEP team meeting

15. On November 28, 2012, the IEP team reconvened and concluded its review of the results of the behavior assessment, indicating that the student throws objects and supplies at others when he is angry, hits and kicks the TSA, refuses to complete assignments, and attempts to elope from the classroom. The behavioral assessment indicates that the student's behaviors are triggered when "there is a mismatch between task difficulty and his abilities" and when the setting is over-stimulating for the student (Docs. r and z).
16. Based on the review of the information, the team revised the goals and developed a plan to address the targeted behaviors, which includes strategies such as using a reward system, encouraging the student verbally and nonverbally, giving short, simple descriptions about how the student can meet expectations, giving the student choices about how to perform the tasks required of him and that are within his ability so that he can comply with directives, and giving the student periodic, supervised breaks (Docs. s and y).
17. The team also determined that the student requires a highly structured, therapeutic learning environment with access to a school-wide behavior plan and crisis intervention. The team determined that the IEP could not be implemented at XXXXXXXXXXXX and determined that the least restrictive environment in which the IEP can be implemented is a public separate special education school (Docs. y and z).
18. As a result of the IEP team's determination, the student was placed at and began attending XXXXXXXXXXXX, a public separate special education school, on December 12, 2012 (Docs. y and z).

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).

The IEP must include a statement of the student's present levels of academic achievement and functional performance. This includes information about how the student's disability affects the student's involvement and progress in the general curriculum. Based on that information, the team must develop annual measurable goals designed to meet the needs that result from the disability to enable the student to be involved in and make progress in the general education curriculum and to meet any other educational needs that result from the student's disability (34 CFR §§300.320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

Based on the Findings of Facts #1-#8, the MSDE finds that the IEP in effect between January 2012 and September 26, 2012, was not designed to address the student's social, emotional, and behavioral needs. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

Based on the Findings of Facts #9-#18, the MSDE finds that since September 26, 2012, the IEP team has monitored the student's progress and revised the IEP to address ongoing concerns about his behavior. Therefore, the MSDE finds no violation regarding this allegation since that date.

ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION SINCE SEPTEMBER 2012

Findings of Facts:

XXXXXXXXXXXX

19. The September 12, 2012 IEP contains statements of the student's present levels of academic achievement and functional performance in academic areas based on the results of the *Brigance Comprehensive Inventory of Basic Skills*, which was administered to the student on September 7, 2012. The results indicate that in all academic areas, the student is performing at or below the "Pre-K grade equivalent." The IEP identifies reading, written language, and mathematics as academic areas impacted by the student's disability (Doc. i).
20. The IEP includes annual goals in each of the areas of identified academic weakness. Each goal and its short-term objectives are adapted from the Maryland State Voluntary Curriculum at the kindergarten level (Doc. i and review of Maryland State Voluntary Curriculum).
21. The IEP progress reports, dated September 25, 2012, October 26, 2012, and November 28, 2012, document that the annual goals were being addressed and indicate that the student was making sufficient progress to achieve the annual goals in all academic areas (Doc. dd).

XXXXXXXXXXXX

22. An on-site review of work samples from the student's portfolio indicates that the student is being provided with special education instruction to assist him in improving the skills addressed by the annual goals and short-term objectives in all academic areas (review of work samples).
23. IEP progress reports, dated January 25, 2013, indicate that the student is no longer making sufficient progress toward achieving the annual goals in all academic areas because of his "oppositional-defiant behavior" (Doc. dd).

24. On February 15, 2013, the IEP team reviewed the student's lack of progress due to his behaviors and addressed the concerns of the student's grandmother, who expressed her belief that the student's work is too difficult for him, which causes him to act out. The team explained to the student's grandmother that school staff do not believe the student's work is too difficult for him. The team explained that the student is being exposed to the kindergarten-level curriculum, but that the work is modified to his instructional level. The team also explained that annual IEP goals are written at the kindergarten level, but that the short-term objectives are "scaffolded in order to close the academic gap and to assist him with academic success" (Doc. cc).
25. Based on this review, the team determined that the grade-level goals remained appropriate but revised some of the short-term objectives included in the annual IEP goals (Doc. cc).

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 special education instruction that is designed to assist him in achieving the annual goals or to advance in the general education curriculum (Doc. a and interview with complainant).

XXXXXXXXXXXX

The complainant alleges that while the student attended XXXXXXXXXXXXX, he was placed in a mixed-age and multi-grade separate special education classroom and, as a result, the special education instruction he received was not designed to assist him in achieving the annual goals or to advance in the general education curriculum (Doc. a and interview with the complainant).

Based on the Findings of Facts #19 and #20, the MSDE finds that the annual goals are designed to address the student's identified areas of weakness and are written at the student's grade-level. Based on the Finding of Fact #21, the MSDE finds that the IEP progress reports indicate that the student was making sufficient progress toward achieving the annual goals. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

XXXXXXXXXXXX

The complainant alleges that since the student has been at XXXXXXXXXXXXXXX, he has been receiving special education instruction that is above the academic level at which the student is performing. The complainant alleges that because the work is above the student's level, the special education instruction is not designed to assist him in achieving the annual goals or to advance in the general education curriculum (Doc. a and interview with the complainant).

Based on the Findings of Facts #22-#25, the MSDE finds that the student is being given work designed to assist him with achieving the annual goals and to advance in the general education

curriculum in all academic areas. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

ALLEGATION #3: CONSIDERING THE CONCERNS OF THE STUDENT'S GRANDMOTHER¹ AT THE JUNE 2012 IEP TEAM MEETING

Findings of Facts:

26. On June 7, 2012, the IEP team convened to review the student's program and progress and revise the student's program, as appropriate. The documentation of the meeting indicates that the student's grandmother expressed her concerns regarding the student's progress and placement. The documentation further indicates that the student's grandmother also expressed her belief that the student requires additional supports, a small classroom setting, and one-to-one assistance. The student's grandmother also expressed her belief that the student's needs could not be met at XXXXXX XXXX ES (Docs. c and d).
27. In response to the concerns of the student's grandmother and based on other information reviewed, the IEP team increased the amount of special education instruction to be provided to the student in a separate special education classroom and agreed to request "technical assistance" from district-wide specialists to determine if the student requires a more restrictive placement or a one-to-one aide (Docs. c and d).
28. There is documentation that "technical assistance" was provided and that the recommendations of the district-wide specialist were reviewed at the September 12, 2012 meeting, where additional supports were included in the student's program and a behavioral assessment was recommended (Docs. e and g).

Discussion/Conclusions:

As stated above, in developing each student's IEP, the public agency must ensure that the IEP team considers the concerns of the parents for enhancing the education of the student (34 CFR §300.324). In this case, the complainant alleges that at the June 7, 2012 IEP team meeting, the student's grandmother requested that the student be provided with a one-to-one aide but that the team did not consider the request or provide the one-to-one aide until after the student's grandmother obtained legal counsel in late September 2012 (Doc. a and interview with the complainant).

Based on the Findings of Facts #26-#28, the MSDE finds that there is documentation that the IEP team considered the concerns of the student's grandmother at the June 7, 2012 IEP team meeting and additional data was obtained in order to address those concerns. Therefore, the MSDE finds no violation regarding this allegation.

ALLEGATION #4: USE OF SECLUSION SINCE DECEMBER 2012

Findings of Facts:

29. The IEP in effect when the student transferred to XXXXXXXXXXXX in December 2012, required “crisis intervention” services. The IEP clarifies that when the student is acting aggressively or threatening to harm someone, he requires a quiet atmosphere to minimize environmental stimulation. This support is to be utilized “as needed” and “implemented by trained staff” (Doc. y).

30. In the student’s classroom, there is a separate room that school staff report is used as a “seclusion room.” The MSDE staff conducted an on-site tour of this room and found that one of the walls was not a full-sized wall that reached from floor to ceiling; rather, it was a “half-wall” that reached approximately five (5) feet from the floor. The top of this “half-wall” contained a ledge on which several objects had been placed. The inside walls of this room had peeling drywall. The door to this room had a slide-bolt lock⁶ and a small window (Interview with XXXXXXXXXXXX school staff and on-site tour).

31. There is documentation that the student has been placed in the “seclusion room” on several occasions since December 2012. XXXXXXXXXXXXXXXXXXXX *Use of Seclusion* forms, which document the use of the “seclusion room,” indicate that the student was placed in the “seclusion room” for behaviors such as attempting to bite or hit his TSA, kicking the TSA, threatening to hit his classroom teacher, confronting his teachers by lifting his feet off the floor as if to kick them, and standing “in a karate stance with arms and hands up to hit” (Doc. ee).

Discussion/Conclusions:

In this case, the complainant alleged that the student was placed in seclusion for reasons other than those permitted by State law. The complainant also alleges that configuration of the room used for seclusion is inappropriate because the door has a deadbolt lock.

Use of Seclusion

Seclusion is the confinement of a student alone in a room from which the student is physically prevented from leaving (COMAR 13A.08.04.02). The use of seclusion is prohibited in public agencies unless:

- There is an emergency situation and seclusion is necessary to protect a student or another person after other less intrusive interventions have failed or been determined to be inappropriate; or

⁶ On the same day of the site visit to XXXXXXXXXXXXX, the MSDE reported the existence of the lock on the door to the appropriate BCPS officials. In response, the BCPS immediately conducted an investigation. On February 14, 2013, the BCPS provided the MSDE with documentation that the slide-bolt lock was removed from the door (Doc. []).

- The student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used (COMAR 13A.08.04.05).

Based on the Finding of Fact #29, the MSDE finds that the student's IEP documents the specific behaviors and circumstances in which seclusion may be used, including acting aggressively or threatening to harm someone. Based on the Finding of Fact #31, the MSDE finds that the reports of the use of seclusion indicate that the behavioral intervention is used as described in the student's IEP. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

The Seclusion Room

The room used for seclusion must be free of objects and fixtures with which a student could self-inflict bodily harm. The room used for seclusion must provide school personnel with an adequate view of the student from an adjacent area and it must also provide adequate lighting and ventilation (COMAR 13A.08.04.05).

Based on the Finding of Fact #30, the MSDE finds that, even with the removal of the lock, the room used for seclusion does not meet the regulatory requirements. Therefore, the MSDE finds a violation regarding this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by May 15, 2013 school year that the IEP team has convened and determined the nature and amount of *compensatory services*⁵ or other remedy necessary to redress all of the violations identified in this Letter of Findings. The BCPS must provide the student's grandmother 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 student's grandmother disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with the IDEA.

School-Based

XXXXXXXXXXXXXX

The MSDE requires the BCPS to provide documentation by the end of the 2012-2013 school year, of the steps it has taken to determine if the violation related to IEP development identified in the Letter of Findings is unique to this case or if it represents a pattern of noncompliance at XXXXXXXXXX.

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 United States Department of Education, Office of Special Education Programs. 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.

XXXXXXXXXXXXXX

The MSDE requires the BCPS to provide documentation by April 1, 2013 that the room used for seclusion within the kindergarten classroom is free of objects and fixtures with which a student could self-inflict bodily harm, consistent with the requirements.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution 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 student's grandmother and the school system 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 Facts 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

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Dr. Kim Hoffmann
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identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) 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 : XXXXXX
 Andrés Alonso
 Charles Brooks
 Darnell Henderson
 XXXXXX
 XXXXXX
 Martha J. Arthur
 Janet Jacobs
 Dori Wilson
 Anita Mandis
 Kathy Stump