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State Superintendent of Schools

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May 30, 2008

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Ms. Idalyn Hauss  
Deputy Special Education Officer  
Baltimore City Public School System  
200 East North Avenue, Room 204B  
Baltimore, Maryland 21202

RE: XXXXX.  
Reference: #08-054

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 our investigation.

**ALLEGATIONS:**

On April 4, 2008, MSDE received correspondence from Ms. XXXXXXXX, the student's mother, hereafter, "the complainant," filed on behalf of the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public School System (BCPSS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) and the corresponding federal and State regulations with respect to the above-referenced student. This office investigated the following allegations:

1. BCPSS did not develop an Individualized Education Program (IEP) that addresses the student's identified needs for the 2007-2008 school year until April 9, 2008, when the IEP team reconvened to review and revise his program, in accordance with 34 CFR §§300.320 and .324.
2. BCPSS did not follow proper procedures when documenting that restraint was utilized during the 2007-2008 school year, in accordance with COMAR 13A.08.04.05(3).

**INVESTIGATIVE PROCEDURES:**

1. Ms. Kendra Riley, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 7, 2008, a copy of the complaint was provided by facsimile to Ms. Idalyn Hauss, Deputy Special Education Officer, BCPSS, Ms. Everene Johnson-Turner, Director of Student Services, BCPSS, and Ms. Nancy Ruley, Associate Counsel, Office of Legal Counsel, BCPSS.
3. On April 9, 2008, Ms. Dori Wilson, Acting Chief, Complaint Investigation/Due Process Branch, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
4. On April 10, 2008, 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 also notified Ms. Hauss of the allegations to be investigated and requested that her office review the alleged violations.
5. On April 30, 2008, Ms. Riley and Ms. Vickie M. Frazier, Education Program Specialist, MSDE, conducted a site visit at the XXXXX Elementary School (XXXX ES) and interviewed the following staff:
  - a. Ms. XXXXXXXXXXXX, Instructional Team Associate;
  - b. Ms. XXXXXXXXXXXX, Classroom Teacher; and
  - c. Ms. XXXXXXXXXXXX, Social Worker.

Ms. Ruley and Ms. Rosemary Jones, Education Specialist, BCPSS, attended the site visit as representatives of the BCPSS Central Office and to provide information on BCPSS policies and procedures, as needed.

6. On May, 9, 2008, BCPSS staff provided MSDE with a plan to address the identified violations.
7. Documentation provided by the parties was reviewed. The documents referenced in the Letter of Findings (LOF) include:
  - a. Correspondence from complainant to MSDE, received April 4, 2008;
  - b. IEP and Written Summary, dated May 7, 2007;
  - c. IEP and Written Summary, dated April 9, 2008;
  - d. IEP Progress Reports for the 2007-2008 school year;
  - e. Documentation of Student Use of Support Room for the 2007-2008 school year;
  - f. Critical Incident Report Forms for March and April 2008; and
  - g. BCPSS' Plan to Address the Identified Violations, dated May 9, 2008.

**BACKGROUND:**

The student is eight (8) years old. He is identified as a student with an emotional disturbance and receives special education services under IDEA. The student attends XXXXX ES, a BCPSS separate public day school. During the period addressed by the investigation, the student's parents participated in the education decision-making process and were provided with notice of the procedural safeguards and parental rights, as required (Doc. b).

**FINDINGS OF FACT:**

1. The IEP that was developed and in effect at the start of the 2007-2008 school year was based upon the evaluative data, which included the results of assessments, teacher reports, and parental input. The IEP contains goals to address the student's identified academic needs and includes a behavioral intervention plan (BIP) to address his social/emotional needs. The IEP also allows the use of restraint on the student when the student "poses a danger to himself or others" (Doc. b).
2. BCPSS staff report that documentation of the use of restraint from the start of the 2007-2008 school year until March 10, 2008, have not been located. There is documentation that restraint was used on the student ten (10) times since March 10, 2008 (Doc. f and interview with school system staff).
3. A review of the forms completed by school staff, following the use of physical restraint, indicate that on three (3) occasions required information was not provided (Doc. f).
4. There is documentation that the student was making progress with support towards achieving the IEP goals and objectives; however, there is documentation that beginning February 2008, there was an increase in the frequency of behavioral incidents, including verbal disruptions, physical aggression, and destruction of property, by the student (Docs. c, d, and e and interview with school staff).
5. On April 9, 2008, in response to these concerns, the IEP team met to review the student's program and progress. The written summary indicates that the team noted that "[the student's] ability to manage his angry and verbal outbursts have been inconsistent." The summary continues to indicate that, in the past, [the student] has been able to use his calming strategies but recently the number of verbal outburst has increased. Based on the available data, the team determined that the student needed a "temporary support assistant" to maintain appropriate classroom behavior and complete tasks. Additionally, the team recommended that educational, psychological, cognitive, and language assessments be conducted and reported that another team meeting will be convened to review the results of the assessments, and to revise the student's program, as appropriate (Doc. c).

## **DISCUSSION/CONCLUSIONS:**

### **Allegation #1:IEP Development**

IDEA requires that each student with a disability be provided with special education and related services that address the student's identified needs (34 CFR §300.101). The public agency must ensure that the IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, and revises the IEP as appropriate to address any lack of expected progress. During this review, the IEP team must consider the strengths of the student, the concerns of the parent, and the results of the most recent assessments. The team must also consider, in the case of a student whose behavior impedes his learning or that of others, strategies, including positive behavioral interventions and supports, to address that behavior (34 CFR §300.324).

Based on Finding of Fact #1, MSDE finds that there is documentation that the IEP developed on May 7, 2007 to address the student's identified academic and behavioral needs was based upon the evaluative data, which included the results of assessments, teacher reports, and parental input. Additionally, based on Finding of Fact # 4, MSDE finds that although the student was making progress towards achieving the IEP goal and objectives, there is documentation of an increase in the number of behavioral incidents with the student. Furthermore, based of Finding of Fact #4 and 5, MSDE finds that when the team convened on April 9, 2008, the team reviewed the available data and the student's interfering behaviors, including documentation of the student's use of the support room and the critical incident reports completed to document behavioral concerns. Based upon this review, the team recommended new assessments and a temporary support assistant to address the interfering behaviors. Therefore, MSDE finds no violation with regards to the allegation.

### **Allegation #2:Physical Restraint**

Public agencies are prohibited from the use of restraint unless: (a) there is an emergency situation and restraint is necessary to protect a student or another person from imminent, serious physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate; or (b) the student's BIP or IEP describes the specific behaviors and circumstances in which restraint may be used. If the BIP requires the use of restraint, that document must contain information regarding how often the team will meet to review that document (COMAR 13A.08.04.05C).

Based on Finding of Fact #1, MSDE finds that the IEP permitted the use of restraint when the student "poses a danger to himself or others." Additionally, based on Finding of Fact #2, MSDE finds that although there is documentation that restraint has been used with the student since March 10, 2008, BCPSS could not produce documentation of its use of restraint from the start of the 2007-2008 school until this date. Furthermore, based upon Finding of Fact #3, MSDE finds

that there is documentation that staff did not consistently document the information required by the regulations. Therefore, MSDE finds violations with respect to the allegation.

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

#### **Student-Specific**

MSDE requires that by July 15, 2008, unless the parent agrees to a later date, BCPSS convene an IEP team meeting to determine whether the use of restraint during the 2007-2008 school year resulted in a loss of educational services for the student. If the team determines that the student suffered a loss of educational services, then the team needs to determine the nature and amount of *compensatory services*<sup>1</sup> or other remedy necessary to redress the loss of those services to the student.

BCPSS must provide the parents with proper written notice of the team's determinations, including a written explanation of the basis for the determinations. If the parents disagree with the IEP team's determinations, they maintain the right to initiate a due process hearing and/or mediation to resolve the dispute consistent with IDEA 2004.

#### **School-Specific**

The MSDE concurs with BCPSS' proposal to take steps to ensure that the documentation requirements of COMAR 13A.08.04.05A(3) are implemented at XXXXX ES. MSDE requires BCPSS to provide this office with documentation of the completion of this action before the start of the 2008-2009 school year.

Documentation of completion of corrective actions 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 Roulette Arthur, Education Program Specialist, MSDE. Mrs. Arthur may be contacted at (410) 767-0255.

Please be advised that the parties have the right to submit additional written documentation to this office within fifteen (15) days of the date of this LOF if they disagree with the conclusions. The additional written documentation must not have been provided or otherwise been available

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<sup>1</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. This does not address compensable awards under the *Vaughn G.* Consent Decree (34 CFR §300.151).

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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 and conclusions contained in this LOF should be addressed to this office in writing. The student's parent and the school system maintain the right to initiate mediation or a due process hearing consistent with IDEA. The MSDE recommends that this LOF be included with any request for mediation or due process.

Sincerely,

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

CAB/kr

c: Andres Alonso  
Everene Johnson-Turner  
Nancy Ruley  
XXXXXXXXXX  
Jay Salkauskas  
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