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Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD

October 16, 2006

Mr. Duane Scott
Maryland Disability Law Center
1800 North Charles Street, Suite 400
Baltimore, MD 21201

Ms. Judith Glass
Director of Special Education
Baltimore County Public Schools
6901 North Charles Street
Towson, MD 21204

Mrs. Bonnie Walston
Director of Special Education
Wicomico County Board of Education
900 Mt. Hermon Road
P.O. Box 1538
Salisbury, MD 21802

Dr. Diane Matuszak
Director of Community Health and
Administration
Department of Health and Mental Hygiene
201 West Preston Street, Room 320
Baltimore, MD 21201

Ms. Pamela Hardy-Cyran
Coordinator of Special Education
Department of Juvenile Services
One Center Plaza
120 West Fayette Street
Baltimore, MD 21201

Re: [REDACTED]
Reference: #07-008

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.

ALLEGATION:

On August 1, 2006, MSDE received a complaint from Mr. Duane Scott, Maryland Disability Law Center, hereafter the “complainant,” on behalf of the student. In that correspondence, the complainant alleged that the Wicomico County Public Schools (WCPS) and Baltimore County Public Schools (BCPS) 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. MSDE investigated the allegation that WCPS and BCPS did not provide the student with special education services required by his Individualized Education Program (IEP) since his placement at the Rosewood Center (Rosewood) by the Department of Health and

Mental Hygiene (DHMH) and the Department of Juvenile Services (DJS) on August 24, 2005 as required by 34 CFR §300.350.

INVESTIGATIVE PROCEDURES:

1. Ms. Lesley A. Morrissey, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On August 7, 2006, MSDE sent a copy of the complaint, via facsimile, to Ms. Judith Glass, Director of Special Education, BCPS; Dr. Beverly Andress, Coordinator, School Support and Compliance, BCPS; Ms. Sharon Floyd, Supervisor, Program Review and Support Process, BCPS; and Ms. Bonnie Walston, Director of Special Education, WCPS.
3. On August 9, 2006, MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, MSDE notified BCPS, WCPS, DHMH and DJS of the allegation and requested that they review the alleged violation.
4. On August 25, 2006, Ms. Morrissey unsuccessfully attempted to contact Dr. Brian Hepburn, Executive Director, DHMH, regarding the allegation.
5. On August 25, 2006, unsuccessfully attempted to contact Ms. Leslie McMillan, Assistant Director for Programs, Developmental Disabilities Administration, regarding the allegation.
6. On August 29, 2006, Ms. Morrissey spoke with Ms. Walston by telephone to obtain additional information regarding the allegation.
7. On August 29, 2006, Ms. Morrissey spoke with Ms. Cynthia Amirault, Supervisor, Nonpublic Placements, BCPS, to obtain additional information regarding the allegation.
8. On August 29, 2006, Ms. Morrissey unsuccessfully attempted to contact Ms. Betty Pike, Social Worker, Rosewood, regarding the allegation.
9. On August 31, 2006, Ms. Morrissey spoke with Ms. Pike regarding the allegation.
10. On August 31, 2006, Ms. Morrissey unsuccessfully attempted to contact the complainant regarding the allegation.
11. On August 31, 2006, Ms. Morrissey unsuccessfully attempted to contact Mr. Jim Anzalone, Facility Director, Rosewood, regarding the allegation.

12. On August 31, 2006, Ms. Morrissey unsuccessfully attempted to contact Ms. Pamela Hardy-Cyran, Coordinator of Special Education, DJS, regarding the allegation.
13. On September 7, 2006, Ms. Morrissey spoke with Ms. McMillan to obtain additional information regarding the allegation.
14. On September 7, 2006, MSDE received documentation regarding the allegation from WCPS.
15. On September 7, 2006, Ms. Morrissey spoke with Ms. Walston to obtain additional documentation and information regarding the allegation.
16. On September 8, 2006, Ms. Morrissey and Ms. Martha Roulette, Education Program Specialist, MSDE, conducted a site visit at Rosewood. An interview was conducted with Ms. Chika Monu, Director, Social Work Services, and Mr. Anzalone.
17. On September 11, 2006, Ms. Morrissey spoke with Ms. Amirault by telephone to obtain additional information regarding the allegation.
18. On September 20, 2006, Ms. Morrissey and Ms. Roulette conducted a site visit at the BCPS Central Office. Ms. Sharon Floyd, Supervisor, Program Review and Support Process, attended the site visit as a representative of BCPS and to provide information regarding policies and procedures as necessary. Interview were conducted with:
 - a. Ms. Amirault;
 - b. Ms. Kathleen Hynes, Supervisor, Home and Hospital, BCPS;
 - c. Mr. Frank Roth, Pupil Personnel Worker, BCPS; and
 - d. Mr. Dale Rauenzahn, Executive Director, Student Support Services, BCPS.
19. On September 26, 2006, Ms. Morrissey contacted Ms. Floyd via e-mail to request documentation that was to be provided as discussed at the September 20, 2006 site visit. To date, BCPS has provided no documentation to MSDE in response to this request.
20. On September 27, 2006, MSDE forwarded correspondence to the complainant extending the time period for completion of the investigation until on or about October 15, 2006.
21. On October 3, 2006, Ms. Morrissey spoke with Ms. Monu to obtain additional information regarding the allegation.
22. On October 3, 2006, Ms. Morrissey spoke with Ms. Pike to obtain additional information regarding the allegation.

23. Documentation provided by the parties was reviewed. The documents referenced in this Letter of Findings (LOF) include:
- a. July 1, 2004 IEP from The Pines Residential Treatment Center;
 - b. August 16, 2006 Order for Commitment of a Juvenile by the Circuit Court for Wicomico County;
 - c. September 6, 2005 Rosewood Social Work Services Admission Summary;
 - d. September 15, 2005 completed Request to Enroll a Resident Student Placed in Foster Care form;
 - e. October 28, 2005 Fax Transmittal from Rosewood to BCPS forwarding Nonresident Application and supporting documentation;
 - f. November 30, 2005 Fax Transmittal from BCPS to Rosewood forwarding nonresident application to be completed;
 - g. December 1, 2005 Fax Transmittal from Rosewood to BCPS forwarding nonresident application;
 - h. March 2, 2006 letter from Rosewood to BCPS regarding its requirement for birth certificate before enrollment;
 - i. March 2, 2006 Fax Transmittal from Rosewood to BCPS forwarding nonresident application with supporting documentation;
 - j. July 21, 2006 letter from Rosewood to WCPS regarding IEP meeting;
 - k. August 18, 2006 Prior Written Notice;
 - l. August 18, 2006 IEP;
 - m. September 6, 2006 Fax Transmittal from Rosewood to BCPS forwarding nonresident application with supporting documentation;
 - n. August 18, 2006 letter from Secretary S. Anthony McCann, DHMH, to Dr. Nancy Grasmick, State Superintendent of Schools, MSDE.

BACKGROUND:

The student was co-committed to DJS and DHMH on August 16, 2005 by the Circuit Court for Wicomico County, where he had previously resided with his parent. DHMH subsequently placed the student at Rosewood. Despite the Rosewood staff's efforts to enroll the student in BCPS in the fall of 2005, the student was not enrolled in BCPS until September 21, 2006 and did not start attending Owings Mills High School (OMHS) until September 25, 2006. The student is identified as a student with multiple disabilities (mental retardation and emotional disturbance) and receives special education services under IDEA.

FINDINGS OF FACT:

1. On August 24, 2005, the student was placed at Rosewood in Baltimore County by DHMH (Doc. b and interview with Rosewood staff).
2. On or about September 6, 2005, Rosewood staff notified the principal at OMHS that the student was placed at Rosewood. The Rosewood social worker was advised that she must contact the pupil personnel worker (PPW) to obtain a nonresident application in

- order for the student to be enrolled in BCPS (Doc. c and interviews with Rosewood and BCPS staff).
3. On September 15, 2005, the PPW faxed an enrollment application to Rosewood staff. Subsequently, Rosewood staff was informed that the wrong application had been sent, and the PPW forwarded the correct nonresident application for completion to enroll the student in BCPS (Doc. d and interviews with Rosewood and BCPS staff).
 4. On October 28, 2005, Rosewood staff forwarded the completed nonresident application with a copy of the student's immunization record, a copy of the student's most recent IEP from an out of state placement (the "most recent IEP"), and the Court's Order for Commitment of a Juvenile (Docs. a, b and e and interviews with Rosewood and BCPS staff).
 5. On November 30, 2005 the PPW forwarded another nonresident application to Rosewood staff in order to enroll the student in BCPS (Doc. f and interviews with Rosewood and BCPS staff).
 6. On December 1, 2005, Rosewood staff forwarded another completed nonresident application to BCPS, pursuant to the PPW's request. The PPW informed Rosewood staff that without a birth certificate the student could not be enrolled in BCPS. Rosewood staff requested a copy of the student's birth certificate from DHMH, Division of Vital Records ("Vital Records"). Rosewood staff received a copy of the birth certificate from Vital Records in February 2006 (Doc. g and interviews with Rosewood and BCPS staff).
 7. On March 2, 2006, Rosewood staff forwarded to the PPW another nonresident application with the student's immunization record, most recent IEP, the court's Order for Commitment of a Juvenile, and the birth certificate. Rosewood staff was informed that the student could not be enrolled because the student needed to have an IEP from WCPS (his "home county") (Docs. a, b, h, i, j and interviews with Rosewood and BCPS staff).
 8. In response to Rosewood staff's request for an IEP meeting, WCPS attempted to schedule an IEP meeting beginning in May 2006. However, because of the unavailability of the student's mother, the meeting was not conducted until August 18, 2006. At that time, the student's IEP was reviewed and revised, and the IEP team recommended additional assessments be conducted (Docs. k and l and interviews with Rosewood and WCPS staff).
 9. On September 6, 2006, Rosewood staff forwarded to the PPW another nonresident application with the student's immunization record, the newly developed WCPS IEP, the court's Order for Commitment of a Juvenile, and the student's birth certificate. The student was enrolled in BCPS on September 21, 2006 and began attending OMHS on September 25, 2006 (Docs. b, l and m and interviews with Rosewood and BCPS staff).

10. There are other similarly situated students who have lived at Rosewood since the 2005-2006 school year (Doc. n).
11. The similarly situated students received home instruction during 2005-2006, and home instruction was initiated for some students for the 2006-2007 school year on or about September 25, 2006. MSDE was provided with no documentation as to how the decision to provide home instruction to these students was made. Rosewood staff has completed a nonresident application for two (2) of those students and forwarded them to the PPW with the required supporting documentation. At the time of issuance of this Letter of Findings (LOF), Rosewood staff is in the process of obtaining the required documentation and completing the nonresident application for other similarly situated students (Interviews with BCPS and Rosewood staff).

DISCUSSION/CONCLUSIONS:

The IDEA requires public school systems to make a free appropriate public education (FAPE) available to all students with a disability. Each public agency must provide special education services in accordance with each student's IEP, which includes providing services in the placement required by the IEP (20 U.S.C. §1414(3) and 34 CFR 300.350). The State and each local school system shall make FAPE available to each student with a disability (Md. Ann. Code Ed. Art. 8-403).

Although it is residency that creates the duty to ensure that FAPE is made available (20 U.S.C. §1412(a), 34 CFR §300.300 and United States Department of Education/Office of Special Education *Letter to Moody*, 23 IDELR 833), there is also statutory authority requiring a local school system to provide FAPE to a student who is not a legal resident of the local county. One example of this is the child who is placed in an "out-of-county living arrangement" by a State agency in a county other than where the child's parent or legal guardian resides. When this occurs, it is the responsibility of the local education agency where the child is placed to provide educational services to the child (Md. Code Ann., Ed. Art. §4-122).

Additionally, when a child is in the custody of, committed to, or otherwise placed by a placement agency (e.g. DHMH, DJS), that child is referred to as a "child in State-supervised care" (Md. Code Ann., Ed. Art. §8-501). When a child is in State-supervised care, the local education agency where the child is placed must, upon receipt of notice, promptly enroll that child in school (Md. Code Ann., Ed. Art. §§8-501 and 8-503). This statutory requirement reflects the Maryland legislature's intent "to promote the education and well-being of children in State-supervised care by facilitating the prompt enrollment of children in State-supervised care in an appropriate public school" (Md. Code Ann., Ed. Art. §8-502). Further, if there is any dispute regarding the requirements of this subtitle, the child *shall remain enrolled* in school in the county where s/he is placed and appropriate education services including the implementation of the IEP *shall continue* until the dispute is resolved (Md. Code Ann., Ed. Art. §8-505 (emphasis added)).

Baltimore County Public Schools

Provision of Services to the Student

In accordance with Finding of Fact #1, the student was placed in Baltimore County in an out-of-county living arrangement and in State-supervised care during the time period involved in this investigation. Accordingly, BCPS had an obligation to implement the student's IEP and provide the student with FAPE from the time it was provided with notice of his placement at Rosewood. Based on Finding of Fact #2, BCPS was notified or about September 6, 2005 of the student's placement at Rosewood.

However, based on Findings of Fact #2 – 9, BCPS did not enroll the student in BCPS until September 21, 2006, and the provision of services was delayed by more than one (1) year. MSDE finds that BCPS has had an ongoing obligation to provide the student with FAPE, but did not do so during the time period from September 6, 2005 until September 25, 2006. Accordingly, MSDE finds a violation with regard to the allegation against BCPS.

Provision of Services to Similarly Situated Students

Further, as stated in Findings of Fact #10 and 11, there are other similarly situated students living at Rosewood who have not been promptly enrolled in BCPS. Some of those students were provided with educational services in the "home setting" (at Rosewood) during the time period covered by this investigation, but MSDE was provided with no documentation as to how the decision to provide home instruction was made.

Pursuant to COMAR 13A.03.05.01, home and hospital instruction is available only when a student is unable to participate in the school of enrollment and is being maintained at home or is hospitalized because of a physical or emotional condition. The physical or emotional condition must be verified by a physician or psychologist and be accompanied by a statement that the condition "prevents [the student] from participating in [the student's] school of enrollment" (COMAR 13A.03.05.04).

In addition, MSDE wishes to clarify that school personnel do not have the authority under State and federal regulations to remove a student from his/her current placement due to the belief that the student is a danger to self and/or others. If school officials believe that a student with a disability is substantially likely to injure himself or others in the student's regular placement, they must request to an administrative law judge or obtain an appropriate court order to have the student removed to an interim alternative educational setting for a period of not more than forty-five (45) days (34 CFR §300.521).

MSDE finds that, with regard to the similarly situated students living at Rosewood, there is no documentation verifying a physical or emotional condition requiring home teaching, nor is there documentation that BCPS followed proper procedures consistent with the requirements of 34 CFR §300.521. Therefore, MSDE finds a violation with regard to the provision of services to the similarly situated students living at Rosewood.

Wicomico County Public Schools

As stated in Finding of Fact #1, since the student was living in Baltimore County in an out-of-county living arrangement and in State-supervised care during the time period involved in this investigation, the obligation to provide the student with special education and related services did not rest with WCPS. Accordingly, MSDE finds no violation with regard to the allegation against WCPS.

CORRECTIVE ACTION/TIMELINES:

Student-Specific and Similarly Situated Students:

BCPS shall ensure the prompt enrollment of all students residing at Rosewood immediately. Additionally, BCPS shall convene an IEP meeting within thirty (30) days from the date of this LOF to determine what *compensatory services*¹ or other remedy is necessary to redress the violation identified in this LOF. BCPS shall ensure that the students' parents² are provided with written notice of the determinations, including an explanation of the basis for those determinations. If the students' parents² do not agree with the IEP team's determinations regarding the remedy, they maintain the right to request a due process hearing or mediation consistent with IDEA 2004.

School-Based/Systemic:

To ensure the appropriate future provision of services to students with disabilities, BCPS must inform MSDE of the steps the school system will take to clarify, and revise its current policy and practice regarding the enrollment of and provision of services to students in out-of-county living arrangements and in State-supervised care in BCPS. Additionally, BCPS personnel must ensure that appropriate BCPS staff are informed of and implement the regulatory requirements of 34 CFR §300.300. The systemic corrective actions must be completed within sixty (60) days of the date of this Letter of Findings.

Within fifteen (15) days of completing the corrective action, BCPS shall submit documentation of completion of the required action. This documentation 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:

MSDE notes its ongoing concern regarding the placement of school-aged children at Rosewood. To ensure that procedural violations under IDEA and corresponding State law do not recur,

¹ 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 §300.660(b)(1)).

² Under IDEA, the term "parent" includes a person acting in the place of a parent (such as a person who is legally responsible for the student's welfare) (20 U.S.C. §1401(23)).

MSDE will meet with appropriate representatives of DHMH, DJS and the local educational agencies, to make certain that the interagency agreements among MSDE, DHMH and DJS provide appropriate guidance regarding the roles and responsibilities of the local education agencies and each of those agencies for ensuring that students in State-supervised care and out-of-county living arrangements receive FAPE.

Technical assistance is available to the parties by contacting Ms. Martha Roulette, Education Program Specialist, MSDE. She may be reached 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 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 documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings of fact, conclusions, and corrective actions contained in this letter should be addressed to this office in writing. The parent and the school system maintain the right to initiate mediation or a due process hearing in accordance with IDEA 2004. 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:lam

c : Joe Hairston
Ronald Boone
Beverly Andress
Sharon Floyd
Thomas Field
Bonnie Walston
S. Anthony McCann
Sheri Meisel
Nancy Grasmick
Edward Wulkan
Lesley Morrissey