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State Superintendent of Schools

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August 23, 2013

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Ms. Mary R. Sheperd
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Department of Health and Mental Hygiene
55 Wade Avenue, Dix Building
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Ms. Patty Daley
Executive Director of Special Education & Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #13-111

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 June 26, 2013, the MSDE received a complaint from Ms. XXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

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During the initiation of this investigation, the MSDE received information that other public agencies may have had responsibility for the student's program and placement during the time period covered by this investigation. Therefore, the MSDE investigated the following allegations during the 2012-2013 school year related to the Baltimore County Public Schools (BCPS), the Department of Health and Mental Hygiene (DHMH), and the HCPS:

1. That the BCPS, the DHMH, and the HCPS did not ensure that the student was provided with an Individualized Education Program (IEP) that addresses her social, emotional, and behavioral needs, in accordance with 34 CFR §§300.101, .320, .323, .324, Md. Code Ann., Educ., §4-122 (2013), and COMAR 13A.05.02.13;
2. That the BCPS, the DHMH, and the HCPS did not ensure that proper procedures were followed when physical restraint was used with the student while she was placed at the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX – XXXXX, in accordance with COMAR 13A.08.04.05; and
3. That the BCPS, the DHMH, and the HCPS did not ensure that the student was provided with the special education instruction and related services, including transition services, required by the IEP, in accordance with 34 CFR §300.101, COMAR 13A.05.02.13, and Md. Code Ann., Educ., §4-122 (2013).

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On June 26, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Executive Director of Special Education & Student Services, HCPS; and Ms. Judith Pattik, Coordinator of Special Education, HCPS.
3. On June 27, 2013, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, Family Support and Dispute Resolution Branch, MSDE, conducted a telephone interview with the complainant and clarified the allegations to be investigated.
4. On that same date, the complainant provided the MSDE with additional documentation to be considered in the investigation, via electronic mail (e-mail).
5. On July 2, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Debra Y. Brooks, Executive Director of Special Education, BCPS; Ms. Sharon Floyd, Supervisor of Compliance, BCPS; Mr. Stephen Cowles, Associate General Counsel, BCPS; and Ms. Mary R. Sheperd, Deputy Director, Mental Hygiene Administration, DHMH.

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6. On July 3, 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 Ms. Brooks, Ms. Sheperd, and Ms. Daley of the allegations and requested that each public agency review the alleged violations.
7. On July 23, 26, and 31, 2013 and August 1, 2, 6, and 13, 2013 the MSDE requested documentation from the student's educational record from the BCPS, the DHMH, the HCPS, the XXXXXXXXX, school staff from the XXXXXXXXX, and the XXXXXX XXXXXXXXXXXX.
8. On July 25, 2013, Ms. Stump reviewed the student's educational record at the Office of Special Education, HCPS. Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic Services and Special Education Compliance, HCPS; and Ms. Kelly Russo, Resource Teacher, Nonpublic Services and Special Education Compliance, HCPS, were present at the record review.
9. On that same date, the DHMH, school staff from the XXXXXXXXXXX, and school staff from the XXXXXXXXXXXXXXXXXXXX provided the MSDE with documentation from the student's educational record, via e-mail.
10. On August 2, 2013, the XXXXXXXXX provided the MSDE with documentation from the student's educational record, via e-mail.
11. On August 2, 5, 12, 13, and 14, 2013, the HCPS provided the MSDE with additional information and documentation from the student's educational record, via facsimile and e-mail.
12. On August 5 and 15, 2013, school staff from the XXXXXXXXX provided the MSDE with documentation from the student's educational record, via e-mail and United States mail.
13. On August 13, 2013, school staff from the XXXXXXXXXXXXXXXXXXXX provided the MSDE with documentation from the student's educational record, via e-mail.
14. On August 16, 2013, the BCPS provided the MSDE with documentation from the student's educational record, via e-mail.
15. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence from the complainant to the MSDE, received on June 26, 2013;
 - b. Functional Behavioral Assessment and Behavioral Intervention Plan, dated January 31, 2011;
 - c. Correspondence from the HCPS to the BCPS, dated January 4, 2012;

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- d. Order of the Circuit Court for Howard County, dated March 28, 2012;
- e. Correspondence from the BCPS to the XXXXXXXXX, dated April 30, 2012;
- f. *Enrollment Notice* from the XXXXXXXXXX, dated May 4, 2012;
- g. *Clinical Report* from the XXXXXXX, dated June 4, 2012;
- h. *Education Report* from the XXXXXXXXXX, dated June 4, 2012;
- i. IEP and *IEP Team Meeting Report*, dated June 4, 2012;
- j. E-mail correspondence from the student's Howard County Department of Social Services caseworker to the HCPS personnel, dated July 10, 2012;
- k. *IEP Team Meeting Report*, dated July 25, 2012;
- l. *IEP Academic Goal Progress* from the XXXXXXXXXX, dated October 24, 2012;
- m. IEP Team Meeting Notice for the October 29, 2012 IEP team meeting;
- n. IEP Progress Reports, dated November 2, 2012;
- o. IEP and *IEP Team Meeting Report*, dated November 13, 2012;
- p. *Incident Report* from the XXXXXXXXXX, dated November 29, 2012;
- q. *Management of Aggressive Behavior Note* from the XXXXXXXXXX, dated November 29, 2012;
- r. *IEP Team Meeting Report*, dated December 17, 2012;
- s. *Special Education IEP Review* report from the XXXXXXXXXX, undated;
- t. Student's class schedule from the XXXXXXXXXX;
- u. Student's attendance data from the XXXXXXXXXX;
- v. Student's report card from the XXXXXXX;
- w. *Policy and Procedure: Prevention & Management of Aggressive Behavior* from the XXXXXXXXXX, revised October 2009;
- x. *Withdrawal Notice* from XXXXXXXXXX, dated January 2, 2013;
- y. Correspondence from the XXXXXXXXXX to the HCPS personnel, dated January 2, 2013;
- z. *IEP Team Meeting Report*, dated March 8, 2013;
- aa. E-mail correspondence between the XXXXXXXXXXXXX personnel and the HCPS personnel, dated March 14, 2013;
- bb. Correspondence from the HCPS personnel to the complainant, dated March 18, 2013;
- cc. Student's attendance data from the XXXXXXXXXX;
- dd. Student's report card from the XXXXXXXXXX;
- ee. Student's class schedule from the XXXXXXXXXXXXX;
- ff. E-mail correspondence from the HCPS personnel to the complainant, dated April 15, 2013;
- gg. *IEP Team Meeting Notice* and *IEP Team Meeting Report*, dated April 23, 2013;
- hh. Correspondence from the XXXXXXXXXXXXXXXXXXXX to the HCPS personnel, dated April 24, 2013;
- ii. *Career & Transition Program* report from XXXXXXXXXXXXXXXXXXXX, dated May 28, 2013;
- jj. *Progress Report* from the XXXXXXX, dated June 3, 2013;
- kk. IEP and *IEP Team Meeting Report*, dated June 4, 2013;
- ll. *Transition Process: Agency Linkage* form, dated June 4, 2013;

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- mm. IEP progress reports, dated June 17-26, 2013;
- nn. *IEP Team Meeting Report*, dated July 1, 2013;
- oo. *Transition Planning Inventory*, dated July 25, 2013;
- pp. *Academic Progress Report* from the XXXXXXXXXXXXXXXXXXXX, dated August 5, 2013;
- qq. *Clinical Progress Report* from the XXXXXXXXXXXXXXXXXXXX, dated August 5, 2013;
- rr. *IEP Team Meeting Notice and IEP Team Meeting Report*, dated August 5, 2013;
- ss. IEP progress reports, dated August 16, 2013;
- tt. *Exit Document*, undated;
- uu. Student's report card from the XXXXXXXXXXXXXXXXXXXX;
- vv. Student's attendance data from the XXXXXXXXXXXXXXXXXXXX;
- ww. Student's class schedule from the XXXXXXXXXXXXXXXXXXXX; and
- xx. Student's Maryland High School Diploma.

BACKGROUND:

The student is eighteen (18) years old. She is identified as a student with a Specific Learning Disability under the IDEA and has an IEP that requires the provision of special education instruction and related services (Docs. a, i, o, and kk).

The student has had the following residential and educational placements since June 2012:

June 2012 – July 9, 2012

- The student was placed by the Howard County Department of Social Services (Howard County DSS) first in a XXXXX and then in a foster care home, both of which were located in Baltimore County, Maryland.
- During this period, the student was placed by the BCPS at the XXXXXXXXXXXXXXX, a separate special education school, operated by the DHMH (Docs. c-f and t-v).

Since July 10, 2012

- The Howard County DSS returned the student to the complainant's custody and the student has lived in Howard County, Maryland, either with the complainant or independently, after turning eighteen (18) years of age.
- During this period of time, the student attended school as follows:
 - From the start of the 2012-2013 school year until January 2, 2013, the HCPS continued the student's placement at the XXXXXXXXXXXXXXX.

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- Between January 3, 2013 and April 12, 2013, the student was placed by the HCPS at the XXXXXXXXXXXXX of Prince George's County, Maryland, a nonpublic, separate, special education school.
- Between April 13 and 24, 2013, the student was not enrolled in and did not attend school.
- From April 25, 2013 until August 16, 2013, the student was placed by the HCPS at the XXXXXXXXXXXXXXXXXXXX, a twelve (12) month nonpublic, separate, special education school located in Baltimore County, Maryland.
- On August 16, 2013, the student graduated with a Maryland High School Diploma (Docs. j, k, x, y, bb-hh, kk, tt, and uu-xx).

PRELIMINARY ISSUE: JURISDICTIONAL RESPONSIBILITY FOR PROVIDING A FREE APPROPRIATE PUBLIC EDUCATION TO THE STUDENT

Findings of Facts:

1. The correspondence from the HCPS personnel to the BCPS personnel, dated January 4, 2012, documents that the student was living in a XXXX located in Baltimore County, Maryland, as a result of a placement made by the Howard County DSS. The correspondence also documents that the HCPS "will continue to case manage" the student (Doc. c).
2. On March 28, 2012, the student was adjudicated as a Child in Need of Assistance by the Circuit Court for Howard County. The Court committed the student to the custody of the Howard County DSS under an agreement with the complainant (Doc. d).
3. On April 30, 2012, the BCPS placed the student in the educational program at the XXXXXXXXXXXX, a separate, special education school operated by the DHMH. The student began attending on May 4, 2012 (Docs. e and f).
4. On July 10, 2012, the HCPS received information from the Howard County DSS that the student was being returned to the custody of her mother and was once again residing in Howard County (Doc. j).
5. On July 25, 2012, the HCPS convened the IEP team meeting and decided that the student would continue to be placed at the XXXXXXXXXXXX. The student's placement at the XXXXXXXXXXXX ended on January 2, 2013 as a result of the IEP team's decision to place the student into a nonpublic, separate, special education school (Docs. k, r, and x).

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6. Between January 3, 2013 and August 16, 2013, the student was placed by the HCPS in two (2) different nonpublic, separate, special education schools (the XXXXXXXXXXXX and the XXXXXXXXXXXXXXXXXXXX) as a result of the IEP team's decisions (Docs. y, cc, gg, hh, and vv).
7. On August 16, 2013, the student graduated with a Maryland High School Diploma (Docs. rr and xx).

Discussion/Conclusions:

June 2012 – July 9, 2012

Each public agency must ensure that a Free Appropriate Public Education (FAPE) is available to all students with disabilities who reside within the jurisdiction of the local school system (LSS) (34 CFR §300.101 and COMAR 13A.05.01.02). In order to do so, the public agency must ensure that the students are provided with special education and related services through an IEP (34 CFR §§300.101, .103, and .323). The obligation to make a FAPE available to a student with a disability ceases once the student has graduated from high school with a regular high school diploma (34 CFR §300.102).

In Maryland, a "public agency" is defined as a LSS as well as other specified State agencies, including the DHMH (COMAR 13A.05.01.03). The DHMH is required by State law to operate XXXXXXXXXXXX in order to provide residential and day treatment programs for children and adolescents, as well as educational services for students in those programs. Students who attend the day treatment program may be referred to the educational program by the LSS (Md. Code Ann., Health-Gen., §10-406 [2013] and (<http://dhmh.maryland.gov/XX-XX/SitePages/education.aspx>).

When a State agency acting as a child placement agency places a student in a living arrangement that is outside of the county where the student's parent or legal guardian resides, the student is considered to be in an "out-of-county living arrangement" for educational purposes (Md. Code Ann., Educ., §4-122 [2006]). Under an "out-of-county living arrangement," the county where the student's parent resides is the "financially responsible county" and the county where the student is placed is the "service providing local education agency." A student in an out-of-county living arrangement must receive an appropriate education from the "service providing local education agency" (Md. Code Ann., Educ., §4-122 [2006]).

Based on the Findings of Facts #1 and #2, the MSDE finds that between June 2012 and July 9, 2012, the student was placed by a State agency acting as a child placement agency in an out-of-county living arrangement in Baltimore County. Therefore, the MSDE finds that the BCPS had the responsibility for ensuring the provision of a FAPE to the student. However, based on the Finding of Fact #1, the MSDE finds that the HCPS decided to maintain responsibility for "case management" and therefore, the HCPS, and not the BCPS, assumed the responsibility for ensuring the provision of a FAPE.

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Based on the Finding of Fact #3, the MSDE finds that between June 2012 and July 9, 2012, the student was placed at the XXXXXXXXXX, a DHMH school. Based on that same Finding, the MSDE finds that because the DHMH is a public agency responsible for operating the XXXXXXXXXX, the DHMH was also responsible for ensuring the provision of a FAPE while the student was placed there. Therefore, during this time period, the HCPS and the DHMH had the responsibility for ensuring the provision of a FAPE.

July 10, 2012 – January 2, 2013

Each student shall attend a public school in the county where the student is domiciled with the student's parent, guardian, or relative providing informal kinship care (Md. Code Ann., Educ. §7-101 [2008]). If a student's IEP cannot be implemented in a public school program, the LSS in which the student's parent resides shall take steps to ensure that a FAPE is provided to the student (COMAR 13A.05.01.16).

Based on the Finding of Fact #4, the MSDE finds that, during this time period, the student was no longer a student in an out-of-county living arrangement. Based on the Finding of Fact #5, the MSDE finds that the HCPS continued the student's placement at the XXXXXXXXXXXX. Therefore, the MSDE finds that during this time period, the HCPS and the DHMH continued to maintain the responsibility for ensuring the provision of a FAPE to the student.

January 3, 2013 – August 16, 2013

Based on the Finding of Fact #6, the MSDE finds that the HCPS placed the student, who continued to reside in Howard County, into a nonpublic, separate, special education school and that the student's educational program was no longer operated by the DHMH. Based on the Finding of Fact #7, the MSDE finds that the student graduated with a Maryland High School Diploma. Therefore, the MSDE finds that during this time period, the HCPS remained responsible for ensuring the provision of a FAPE to the student until her graduation on August 16, 2013.

ALLEGATION #1:

IEP THAT ADDRESSES THE STUDENT'S SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS

Findings of Facts:

June 2012

8. The IEP in effect at the start of the 2012-2013 school year was developed at an IEP team meeting conducted on June 4, 2012. The documentation of that meeting indicates that the team considered the following data:

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- a. Information that the student had began attending the XXXXXXXXXXXX on May 4, 2012, after being suspended from her previous school and that the previous school indicated that they could no longer meet her behavioral needs;
 - b. The January 2012 reports of the student's progress toward achieving the annual IEP goals related to academics at the previous school, indicating that the student was making sufficient progress to meet the goals;
 - c. Information that, while the student had four (4) disciplinary "referrals" during the 2011-2012 school year at her previous school, she had demonstrated no behavioral issues since her May 4, 2012 placement at the XXXXXXXXXXXX (Docs. f-i).
9. There is no report of the student's progress toward achieving the annual goal related to improving her social interaction skills for the second (2nd) or third (3rd) quarters of the 2011-2012 school year. The fourth (4th) quarter progress report is based solely on the student's performance between May 4, 2012 and June 1, 2012, after she was placed in the XXXXX XXXXXXXXXXXX. The school social worker from the XXXXXXXXXXXX indicated in the service provider report, prepared for the June 4, 2012 IEP team meeting, that there was not "sufficient documentation to assess her behavioral progress and emotional presentation" during the 2011-2012 school year (Docs. f-i).
10. Based on the review of this information, the team at the June 4, 2012 meeting determined that the student's annual goal related to improving her social interaction skills remained appropriate. In order to assist the student with achieving the annual goal, the team increased the amount of counseling to be provided (Doc. i).
11. At the June 4, 2012 meeting, the team determined that the student's Behavioral Intervention Plan (BIP), dated January 31, 2011, remained appropriate. That BIP required that the student be provided with supports including teaching the student problem-solving skills, encouraging her to seek assistance as soon as peer conflict arises, helping her identify strategies to resolve conflicts peacefully, helping her identify her role in problem situations and understanding how her actions are harmful to herself and others, clarifying expectations for classroom routines and behavior, providing her with leadership opportunities in the classroom, and permitting her to engage in a preferred activity after a non-preferred activity has been completed (Docs. b and i).
12. At the June 4, 2012 meeting, the team determined that the Least Restrictive Environment (LRE) in which the student's IEP could be implemented is a separate special education school because she requires a specialized behavioral management program. The team determined that the XXXXXXXX remained the appropriate location for the provision of services (Doc. i).

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13. At the June 4, 2012 meeting, the team agreed to reconvene at the end of the first (1st) quarter of the 2012-2013 school year in order to review the student's program and progress and so that data could be collected related to the student's IEP goal to improve her social interaction skills (Doc. i).

July 2012

14. On July 25, 2012, the IEP team convened and considered the following data:
 - a. Information that the student had been returned to the custody of her mother and was once again living in Howard County;
 - b. Information that the student did not accept the Extended School Year (ESY) services that were offered to her during the summer of 2012;
 - c. The complainant's concerns about whether the IEP addresses the student's reading needs considering her levels of performance in this area, and her concerns about the student's completion of the remaining graduation requirements; and
 - d. Information from school staff that, while it was reported that the student had demonstrated behavioral difficulties in the XXXXX setting, these problems were not observed in the school setting (Docs. j and k).
15. Based on the review of the information, the team at the July 25, 2012 meeting determined that the student's program and placement remained appropriate. The team also agreed to reconvene on October 29, 2012 to review the student's progress; however, the meeting did not occur on that date due to inclement weather (Docs. k and m).

November 2012

16. On November 13, 2012, the IEP team convened and considered the following data:
 - a. The reports of the student's progress toward achieving the annual IEP goals, dated November 2, 2012, indicating that she was not making sufficient progress toward achieving the annual goal related to improving her social interaction skills. The report states that the student had engaged in three (3) instances of aggression toward peers or staff and that she "had a great deal of difficulty processing" the events and "placed most of the blame for their occurrence on the other person." The report also indicates that the student "had difficulty receiving feedback from staff" and a "great deal of difficulty reaching out to staff for help;"

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- b. The reports from the student's teachers and service providers that the student's behaviors were interfering with her learning, that she did not "get along" with her peers and, as a result, she did not attend class regularly. The reports indicate that the student refused to carry her "points sheet," did not "buy into" the behavioral reinforcement system, would not comply with the dress code, and refused to participate in the counseling services offered; and
 - c. Information from the XXXXXXXX staff that the school could no longer meet the student's behavioral needs because she "is a disruption to their program" (Docs. l, n, o, and s).
17. The team at the November 13, 2012 meeting also considered the complainant's request for a reevaluation and a residential school placement due to the severity of the student's interfering behaviors. The team rejected the request for a reevaluation because a reevaluation had been conducted in February 2012 and the school staff believed that there was sufficient data to determine the student's educational needs (Doc. o).
18. Based on the team's review of the data and the complainant's request, the IEP team at the November 13, 2012 meeting determined that the LRE in which the student's IEP could be implemented was a nonpublic, separate, special education school. The team rejected the complainant's request for a residential placement because school staff believed that the student's IEP could be implemented in a less restrictive environment. The team agreed to submit an application to XXXXX School, a nonpublic, separate, special education school (Doc. o).
19. In order to address the lack of expected progress toward achieving the annual goal related to improving her social interaction skills, the team at the November 13, 2012 meeting added a second annual goal for the student to improve her ability to respond appropriately when she becomes angry. However, the team did not determine whether additional supports were needed to assist the student with achieving the new annual goal or to address the student's interfering behaviors or whether program modifications or supports for school personnel were required until a nonpublic school placement was obtained (Doc. o).

December 2012

20. On December 17, 2012, the IEP team convened and considered the following:
- a. Information that the complainant and the student did not attend the "intake interview" at XXXXX School and, as a result, the student's referral was rejected;
 - b. Information that the student had not attended school since November 29, 2012; and

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c. The complainant's request that the student be placed in a residential school in order to address the student's noncompliant behaviors (Doc. r).

21. At the December 17, 2012 meeting, the team rejected the complainant's request for a residential placement because school system personnel believed it had addressed the request at the November 13, 2012 meeting and that the complainant had no new data for the team to consider (Doc. r).
22. The team agreed to refer the student to three (3) additional nonpublic separate special education schools in which the student's IEP could be implemented. However, the team did not determine whether additional supports were needed to assist the student with achieving the new annual goal or to address the student's interfering behaviors until a nonpublic school placement was obtained (Doc. r).

January 2013

23. On January 2, 2013, the student was accepted into the XXXXXXXXXXXXXXXX, a nonpublic separate special education school, and she began attending there on January 3, 2013 (Docs. y and cc).

March and April 2013

24. On March 8, 2013, the IEP team convened and considered information that the student had been absent from school for thirteen (13) days since her enrollment at the XXXXXXXX XXXX. The IEP team agreed to convene on a monthly basis to review the student's progress toward achieving the annual goals and toward fulfilling graduation requirements (Doc. z).
25. On March 14, 2013, the student was disciplinarily removed from school for assaulting school staff (Doc. aa).
26. On April 23, 2013, the IEP team convened and considered information that the student had refused to return to the XXXXXXXXXXXXXXXX since March 14, 2013, and reviewed the student's current grades and remaining graduation requirements (Doc. gg).
27. Based on the team's review of this information, the IEP team determined that the LRE in which the student's IEP could be implemented continued to be a nonpublic separate special education school and agreed to refer the student to the XXXXXXXXXXXXXXXX XXXXX, where the student began attending on April 25, 2013 (Doc. gg).

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June 2013

28. On June 4, 2013, the IEP team convened and considered the following data:
- a. The student's progress toward achieving the annual IEP goals, which indicate that, since her enrollment at the XXXXXXXXXXXXXXXXXXXXXXXX, she was making sufficient progress toward achieving the annual goals;
 - b. Information from the school's social worker that the student responded well to counseling and that the student demonstrated "a desire and willingness to work on her impulse control and poor decision-making;"
 - c. Information from school staff that the student responded well to the school's behavioral management program; and
 - d. Information from the student that, although she felt "threatened" by other students, she was able to ignore the behavior of others (Docs. jj and kk).
29. Based on the review of the data, the team revised the annual goal related to the student's social, emotional, and behavioral functioning, consistent with the data. The IEP team determined that the student continued to require counseling as a related service in order to assist the student with achieving the annual goal, but no longer required the supports in the BIP (Doc. kk).
30. The team determined that the LRE in which the student's IEP could be implemented continued to be a nonpublic, separate, special education school and agreed that the XXXXX XXXXXXXXXXXX continued to be the appropriate location (Doc. kk).

July 2013

31. On July 1, 2013, the IEP team convened and reviewed the following data:
- a. Information from the student that the XXXXXXXXXXXXXXXXXXXX was too stressful due to an ongoing dispute with other students in the program and her request to complete her education at XXXXXXXXXXXX;
 - b. A report from the school social worker that the student continued to attend counseling sessions, that she continued to have "good input" and "good insight," and that she expressed concerns about the peers with which she was having trouble;
 - c. The request of the complainant for the student to complete her education at home with the provision of a tutor; and

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d. Information about the student's remaining graduation requirements (Doc. nn).

32. Based on its review of this information, the team rejected the complainant's request for a placement in the student's home and determined that the student would complete her required courses in a different building on the campus of the XXXXXXXXXXXXXXXXXXXX in order to address the concerns about her interactions with some students (Doc. nn).

August 2013

33. On August 5, 2013, the IEP team convened and considered information that the student had achieved the annual goals and that all of the graduation requirements had been met and that the student would graduate on August 16, 2013 (Docs. pp-rr).

34. Based on this information, the IEP team reviewed a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting her postsecondary goals (Docs. rr and tt).

35. On August 16, 2013, the student graduated from school with a Maryland High School Diploma (Docs. ss and xx).

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).

June 2012 – July 9, 2012

Based on the Findings of Facts #8-#13, the MSDE finds that the when developing the IEP in effect at the start of the 2012-2013 school year, the team considered the data and the complainant's concerns and developed an educational program to address the student's social, emotional, and behavioral needs, consistent with the data. Therefore, the MSDE finds no violation regarding this allegation for this period of time related to the DHMH and the HCPS.

July 10, 2012 – January 2, 2013

Based on the Findings of Facts #14-#19, the MSDE finds that the team revised the student's program to address her lack of expected progress toward achieving the annual goal related to improving her social interaction skills and determined that she required a different placement.

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However, based on the Findings of Facts #19-#22, the MSDE finds that the team did not consider whether additional supports were required in order to address the interfering behaviors or to support school staff until an appropriate placement was obtained. Therefore, the MSDE finds a violation regarding this allegation between November 13, 2012 and January 2, 2013 related to the DHMH and the HCPS.

Notwithstanding the violation, based on the Finding of Fact #33-#35, the MSDE finds that since the student subsequently achieved the annual goals and graduated with a Maryland High School Diploma, there was no negative impact on the student's ability to benefit from her education program. Therefore, no student-specific corrective action will be required.

January 3, 2013 – August 16, 2013

Based on the Findings of Facts #23-#35, the MSDE finds that between January 3, 2013 and August 16, 2013, the IEP team convened on a regular basis, reviewed the student's program and progress, and revised the student's program, consistent with the data considered. Therefore, the MSDE finds no violation regarding the allegation for this period of time related to the HCPS.

ALLEGATION #2: PHYSICAL RESTRAINT USED WITH THE STUDENT AT XXXXXXXXXXXXX IN NOVEMBER 2012

Findings of Facts:

36. Neither the student's IEP nor BIP includes the use of restraint as a behavioral intervention (Docs. b, i, o, and kk).
37. On November 28, 2012, while attending the XXXXXXXXXXXX, the student refused to comply with staff direction, began kicking the door to the classroom and cursing, grabbing objects from staff members, and making stabbing motions at them with a pencil. As a result, the school staff restrained the student for approximately seven (7) minutes (Docs. p and q).
38. The documentation of the November 28, 2012 restraint event states the precipitating event immediately preceding the behavior that prompted the use of restraint, the behavior that prompted the use of restraint, and the names of the school personnel who observed the behavior that prompted the use of restraint. The documentation also states the other less intrusive interventions that failed or were determined to be inappropriate, the names and signatures of the staff members implementing and monitoring the use of restraint, and the length of time in restraint. The documentation also states the name and signature of the administrator informed of the use of restraint (Docs. p and q).
39. There is documentation that the complainant was notified within twenty-four (24) hours of the November 28, 2012 restraint incident (Docs. p and q).

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40. There is documentation that the staff members involved in the November 28, 2012 restraint incident were trained in the use of restraint (Doc. w and review of personnel documents).
41. There is no documentation of the November 28, 2012 restraint event that includes a description of the restraint event, including the type of restraint and the student's behavior and reaction during the restraint (Docs. p and q).
42. The IEP team convened on December 17, 2013, which is thirteen (13) business days after November 28, 2012. There is no documentation that that the team considered the need for conducting a Functional Behavioral Assessment (FBA), develop appropriate behavioral interventions, or review and revise, as appropriate, the student's BIP to ensure that it addresses the student's behavioral needs (Doc. r).

Discussion/Conclusions:

Use of Physical Restraint and Documentation of the Use of Restraint

The use of physical restraint is prohibited in public agencies and nonpublic schools unless there is an emergency situation and physical 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. Physical restraint is also permitted if the student's BIP or IEP describes specific behaviors and circumstances in which physical restraint may be used (COMAR 13A.08.04.05A(1)(a)).

Each time a student is restrained, school personnel must document the other less intrusive interventions that have failed, or been determined inappropriate, the precipitating event immediately preceding the behavior that prompted the use of restraint, the behavior that prompted the use of restraint, the names of the school personnel who observed the behavior that prompted the use of restraint, and the names and signatures of the staff members implementing and monitoring the use of restraint (COMAR 13A.08.04.05A(3)(a)).

The documentation must include a description of the restraint event, including the type of restraint; the length of time in restraint; the student's behavior and reaction during the restraint; and the name and signature of the administrator informed of the use of restraint (COMAR 13A.08.04.05A(3)(b)). Each time restraint is used, the student's parent must be provided oral or written notification within twenty-four (24) hours, unless otherwise provided for in the student's BIP or IEP (COMAR 13A.08.04.05A(5)).

Based on the Finding of Fact #36, the MSDE finds that restraint was not included as a behavior intervention in the student's IEP or BIP. However, based on the Finding of Fact #37, the MSDE finds that the circumstances documented describe an emergency situation in which physical restraint was necessary to protect the student or another person from imminent, serious bodily harm.

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Notwithstanding the finding that an emergency existed, based on the Findings of Facts #38-#41, the MSDE finds that the documentation of the restraint event does not indicate the type of restraint used or the student's behavior and reaction during the restraint. Based on those same Findings, the MSDE further finds that the documentation of the restraint incident does not contain all of the required information. Therefore, the MSDE finds a violation regarding this aspect of the allegation related to the DHMH and the HCPS.

Requirement to meet following the use of restraint

If restraint is used, and the student's IEP or BIP does not include the use of restraint, the IEP team must meet within ten (10) business days of the incident to consider the need for conducting a Functional Behavioral Assessment (FBA), developing appropriate behavioral interventions, and implementing a BIP. If the student already has a BIP, the team, at that meeting, must review and revise it, as appropriate, to ensure that it addresses the student's behavioral needs (COMAR 13A.08.04.05C(2)).

Based on the Finding of Fact #42, the MSDE finds that the IEP team did not meet within the required timeframe and, when the team did convene, it did not consider the required factors. Therefore, the MSDE finds a violation regarding this aspect of the allegation related to the DHMH and the HCPS.

Training of school personnel in the proper use of physical restraint

Each public agency must provide professional development and training to designated school personnel on the appropriate implementation of the policies and procedures related to the use of restraint. The professional development and training must also include "current professionally accepted practices and standards regarding positive behavioral intervention strategies and supports," FBA and behavior intervention planning, exclusion, restraint, and seclusion (COMAR 13A.08.04.06C(1)).

The training in "current professionally accepted practices and standards regarding positive behavior interventions strategies and supports" must include methods for identifying and defusing potentially dangerous behavior, FBA and BIP planning, exclusion, restraint and alternatives to restraint, seclusion, and symptoms of physical distress and positional asphyxia (COMAR 13A.08.04.06C(3)). Professional development shall include a written examination and a physical demonstration of proficiency in the described skills and competencies (COMAR 13A.08.04.06C(4)).

Based on the Finding of Fact #40, the MSDE finds that school staff who implemented the restraint were trained in accordance with the regulations. Therefore, the MSDE finds no violation regarding this aspect of the allegation related to the DHMH and the HCPS.

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ALLEGATION #3: **PROVISION OF SPECIAL EDUCATION INSTRUCTION AND TRANSITION SERVICES**

Findings of Facts:

Special Education Instruction

43. The IEP in effect since the start of the 2012-2013 school year required that the student be provided with special education instruction in order to assist her with achieving the annual IEP goals to improve her reading comprehension skills and her written language skills (Docs. i, o, and kk).
44. The IEP progress reports, dated November 2, 2012, document that the student achieved one of the objectives within the annual goal related to improving her written language skills, but was not making sufficient progress to meet the goal related to improving her reading comprehension skills because the student refused to meet with the special education teacher for most of the first (1st) quarter of the 2012-2013 school year (Doc. n).
45. There are no reports of the student's progress toward achieving the annual IEP goals for the second (2nd) or third (3rd) quarters of the 2012-2013 school year (Review of educational record).
46. The IEP progress reports, dated June 17, 19, and 26, 2013, document that the student was making sufficient progress to meet the annual goals toward meeting the goals related to improving her reading comprehension skills and her written language skills (Doc. mm).
47. The *Academic Progress Report*, dated August 5, 2013, documents that the student achieved the annual IEP goals related to improving her reading comprehension skills and her written language skills (Doc. pp).

Transition Services

48. The IEP in effect between June 2012 and November 12, 2012 required that the student be provided with the following transition services:
 - a. The student will be enrolled in classes which will enable her to earn a high school diploma;
 - b. The student will develop reading strategies and improve her reading skills through participation in Reading/Language Arts class;
 - c. The student will develop anger and frustration management skills required for future employment through participation in individual and group therapies;

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- d. The student will be given service learning information and will be encouraged to complete at least twenty-five (25) hours within the next year in her community;
 - e. The student will participate in career development framework activities offered throughout the school year;
 - f. The student will be encouraged to explore Project Access at the XXXXXXXXX (XXX) for the summer of 2013;
 - g. The student will be referred to the Maryland State Department of Education, Department of Rehabilitation Services (DORS) during her senior year;
 - h. The student will participate in vocational testing through the DORS (Doc. i).
49. The following document the provision of transition services between June 2012 and November 12, 2012:
- a. The student's class schedule from the XXXXXXXXXX;
 - b. The IEP team meeting report, dated July 25, 2012;
 - c. The Special Education: IEP Review document from XXXXXXXXXX; and
 - d. The IEP team meeting report, dated November 13, 2012 (Docs. k, o, s, and t).
50. The IEP in effect between November 13, 2012 and August 16, 2013 required that the student be provided with the following transition services:
- a. The student will be enrolled in and successfully complete classes that will enable her to earn a high school diploma;
 - b. The student will satisfy the High School Assessment (HSA) requirement by earning the remaining 2 points needed for a cumulative score of 1208 or by completing a Bridge project if needed;
 - c. The student will earn the required 75 hours of service learning through efforts at school or in the community (she currently has 28);
 - d. The student will visit the campus of the XXXX and prepare for registration at a community college by practicing the Accuplacer placement test;
 - e. The student will participate in career development activities throughout the school year, including writing a resume and exploring careers of interest;

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- f. The student will participate in mock interviews and related occupational activities;
 - g. The student will identify post-graduation training and education needed for her career goals;
 - h. The student will be referred to the DORS for assessments and possible services post-graduation (Docs. o and kk).
51. The following document the provision of transition services between November 13, 2012 and August 16, 2013:
- a. The IEP team meeting report, dated December 17, 2012;
 - b. The student's class schedules from the XXXXXXXXXXXXX, XXXXXXXX, and the XXXXXXXXXXXXX;
 - c. The IEP team meeting report, dated April 23, 2013;
 - d. Career & Transition Program Report from the XXXXXXXXXXXXXXXXXXXX, dated May 28, 2013;
 - e. The IEP team meeting report, dated June 4, 2013;
 - f. Transition Process: Agency Linkage form, signed by the student on June 4, 2013;
 - g. IEP team meeting notice for the August 5, 2013 meeting;
 - h. Transition Planning Inventory completed by the student on July 25, 2013;
 - i. The Academic Progress Report, dated August 5, 2013;
 - j. The IEP team meeting report, dated August 5, 2013; and
 - k. The student's Maryland High School Diploma (Docs. r, t, ee, gg, ii, ll, oo, pp, rr, ww, and xx).
52. There is documentation that the student was provided with a copy of the Transition Planning Guide on June 4, 2013 (Doc. ll).
53. There is documentation that a representative from the DORS was invited to attend the August 5, 2013 IEP team meeting (Doc. rr).

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Discussion/Conclusions:

Special Education Instruction

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 was not provided with special education instruction because the student did not make “academic and functional progress” and did not “demonstrate mastery” of the annual goals during the 2012-2013 school year (Doc. a and interview with the complainant).

Based on the Findings of Facts #43-#47, the MSDE finds that there is documentation that the student received special education instruction designed to assist her with achieving the annual goals during the first (1st) and fourth (4th) quarters of the 2012-2013 school year. However, there is no documentation that the student received special education instruction designed to assist her with achieving the annual goals during the second (2nd) and third (3rd) quarters of the 2012-2013 school year. Therefore, the MSDE finds a violation regarding this aspect of the allegation between November 2012 and April 2013 related to the DHMH and the HCPS.

Notwithstanding the violation, based on the Finding of Fact #33-#35, the MSDE finds that since the student subsequently achieved the annual goals and graduated with a Maryland High School Diploma, there was no negative impact on the student’s ability to benefit from her education program. Therefore, no student-specific corrective action will be required.

Transition Services

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, and updated annually, the IEP must include post-secondary goals related to training, education, employment, and independent living, as appropriate, the transition services, including course of study needed to assist the student to reach those goals (COMAR 13A.05.01.09).

When the student’s eligibility for a FAPE terminates after graduation with a high school diploma, the public agency must provide a summary of the student’s academic achievement and functional performance, including recommendations on how to assist the student in meeting the postsecondary goals. However, the public agency is not responsible for providing the student with services to assist the student in achieving the goals (*Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 47 IDELR 166 United States Department of Education, Office of Special Education Rehabilitation Services, January 1, 2007).

The DORS administers the vocational rehabilitation program in Maryland, promoting the employment, independence, and self-sufficiency of individuals with significant disabilities as they transition from secondary school to employment, post-secondary education, and vocational

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training. In most instances, the DORS begins to work with transitioning students during the beginning of their next to last year of secondary education. School staff coordinate the referral of students with the assigned DORS transition counselor. The information the school provides with the referral, such as assessment information, the Exit Document, and the IEP, facilitates the determination of the student's eligibility for DORS services (*Transition Planning Guide*, MSDE, January 2010).

Referrals by school staff to the DORS is to occur as follows: During the transition planning that occurs by the IEP team when the student is fourteen (14) years old, the student and parents are provided with the *Transition Planning Guide*, for which they sign a form demonstrating receipt of the document, which is to be maintained in the educational record. At age sixteen (16), consideration must be given to inviting the DORS counselor to the IEP team meeting. The DORS counselor may choose to defer attendance until the fall of the next to last year of secondary education. Once this linkage is made, the student is responsible for working with the DORS transition counselor to determine eligibility for services (*Protocol for Referral of Students to the Division of Rehabilitation Services*, MSDE, September 2009).

In this case, the complainant alleges that, as part of the transition planning process, the HCPS was responsible for ensuring that the student received services to assist her to achieve the post-secondary goals (Doc. a and interview with the complainant). Because there is no legal requirement for the school system to do so, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the student was not provided with the transition services required by the IEP (Doc. a and interview with the complainant). Based on the Findings of Facts #48-#53, the MSDE finds that there is documentation that the student was provided with the transition services required by the IEP during the 2012-2013 school year. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

The complainant further alleges that the HCPS did not make a timely referral to the DORS, as required by the IEP (Doc. a and interview with the complainant). Based on the Findings of Facts #48 and #53, the MSDE finds that there is documentation that a referral was made to the DORS in accordance with the IEP. Therefore, the MSDE finds no violation regarding this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

The MSDE requires the DHMH and the HCPS to provide documentation by December 1, 2013, of the steps it has taken to determine if the violations identified in the Letter of Findings related to the following are unique to this case or if they represent a pattern of noncompliance at the DHMH and the HCPS:

1. Ensuring that the IEP team considers whether additional supports are required for students awaiting a change in placement due to interfering behaviors;

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2. Documenting a student's progress toward achieving the annual IEP goals;
3. Documenting all required elements of a restraint event; and
4. Ensuring that the IEP team convenes within ten (10) business days of a restraint event, when necessary, and that the IEP team considers the required factors at that meeting.

Specifically, the public agencies are 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 public agencies report compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report.

If the public agencies determine that the regulatory requirements are not being implemented, they must identify the actions that will be taken to ensure that the violations do not recur. The public agencies must submit a follow-up report to document correction within ninety (90) days of the initial date that the school systems determine 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 DHMH and the HCPS.

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 complainant and the public agencies 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.

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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 public agencies 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 public agencies 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 FAPE for the student, including issues subject to this 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 : S. Dallas Dance
Stephen Cowles
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