



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

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February 14, 2014

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Mrs. Chrisandra A. Richardson, Associate Superintendent  
Department of Special Education and Student Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 220  
Rockville, Maryland 20850

Ms. Gwendolyn J. Mason  
Director of Special Education Services  
Montgomery County Public Schools  
850 Hungerford Drive, Room 225  
Rockville, Maryland 20850

RE: XXXXX  
Reference: #14-045

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 December 16, 2013<sup>1</sup>, the MSDE received a complaint from Mr. XXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their daughter. In that correspondence, the complainants alleged that the Montgomery County Public Schools (MCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

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<sup>1</sup> On November 26, 2013 and December 12, 2013, Ms. Anita Mandis, Chief, Complaint Investigation Section, MSDE spoke with the student’s father, by telephone, to clarify the State complaint investigation process. On December 16, 2013, the MSDE received correspondence from the complaint’s including allegations of violations of the IDEA and an investigation was initiated.

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The MSDE investigated the following allegations:

1. The MCPS did not ensure that the student's Individualized Education Program (IEP) addressed her identified communication, fine motor, and gross motor skills needs, and her identified need for assistive technology and nursing services, consistent with the evaluation data, from December 2012<sup>2</sup> until September 2013, in accordance with 34 CFR §§300.320 and .324.
2. The MCPS did not ensure that the student was provided with the special education and related services in the educational placement required by the IEP from September 4, 2013 until November 25, 2013, in accordance with 34 CFR §§300.101, .320 -.323, and COMAR 13A.05.01.10.

On February 10, 2014, the complainants sent correspondence to the MSDE containing a third (3<sup>rd</sup>) allegation of a violation of the Individuals with Disabilities Education Act (IDEA), as follows:

3. The MCPS did not ensure that the student was provided with nursing services on January 30, 2014, as required by the IEP, in accordance with 34 CFR §300.101 and 323.

#### **INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On November 26, 2013 and December 12, 2013, Ms. Anita Mandis, Section Chief, Complaint Investigation section, MSDE spoke with Mr. XXXXXXXXXX, by telephone, regarding his concerns about the student and provided him with information about the procedure for filing a State complaint to resolve the concerns.
3. On December 16, 2013, the MSDE received correspondence from the complainants alleging violation of the IDEA.
4. On December 17, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Gwendolyn J. Mason, Director of Special Education Services, MCPS; and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.

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<sup>2</sup> The complaint included allegations of violations that occurred more than a year before the date it was received. The complainants were advised, in writing, that this office may only investigate allegations of violations which occurred not more than one year prior to the receipt of the State complaint (34 CFR §300.153). (34 CFR §300.153). Therefore, this office will investigate the time period from December 2012 until September 2013.

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5. On December 19, 2013, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Ms. Mason of the allegations and requested that her office review the alleged violations.
6. On January 10, 2014, Ms. Moyo spoke with Mrs. XXXXXXXXXX, by telephone, regarding the status of the State complaint investigation.
7. On January 14, 2014, the MSDE sent email correspondence to the MCPS requesting documentation from the student's educational record.
8. On January 24 and 29, 2014, the MCPS provided the MSDE with documentation from the student's educational record.
9. On January 26 and 28, 2014, the complainants provided the MSDE additional information and documentation to be considered.
10. On January 29, 2014, Ms. Moyo and Ms. Mandis, conducted a site visit at XXXXXXXXXX XXXXXXXXXX (XXXXXXX) to review the student's educational record, and interviewed the following MCPS staff:
  - a. Ms. XXXXXXXX, Principal, XXXXXXXXXXXXXXX;
  - b. Ms. XXXXXXXXXXXX, Occupational Therapist, XXXXXXXXXXXX;
  - c. Ms. XXXXXX, Speech Language Pathologist, XXXXXXXXXXXX;
  - d. Mr. XXXXXXXX, Physical Therapist, XXXXXXXXXXXX;
  - e. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXX;
  - f. Ms. XXXXXXXX, Paraeducator, XXXXXXXXXXXX
  - g. Ms. XXXXXXXX, Interdisciplinary Augmentative Communication and Technology Team (InterAct), MCPS;
  - h. Ms. Vicky McKamy, InterAct Speech Language Pathologist, MCPS;
  - i. Ms. Marilyn Jacobs, InterAct Team Leader, MCPS;
  - j. Ms. Joanne Hoffman, Supervisor, Placement and Assessment Services Unit, MCPS; and
  - k. Ms. Toni Baron, Elementary Program Specialist, MCPS;

Ms. Ashley VanCleaf, Supervisor, Equity Assurance and Compliance Unit, MCPS, and Ms. Patty Grundy, Paralegal, MCPS, attended the site visit as representatives of the MCPS and to provide information on the MCPS policies and procedures, as needed. At the site visit, the MCPS provided the MSDE with documentation from the student's educational record.

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11. On February 10, 2014, the MSDE received electronic mail correspondence (email) from the complainants including an additional allegation of a violation of the IDEA. On the same day, Ms. Moyo contacted the MCPS and requested documentation related to the alleged violation.
12. On February 11, 2014, the MSDE sent a response via email indicating that this office was in receipt of the email.
13. On February 12, 2014, the MCPS staff provided the MSDE with information and documentation related to the additional allegation.
14. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
  - a. Correspondence and attachments from the complainants to the MSDE, received on December 12, 2013, January 28, 2014, and February 10, 2014;
  - b. XXXXXXXXXXXX Comprehensive Epilepsy Medical Center (XXXX Medical Center) symptom description document, dated August 20, 2010;
  - c. Children's National Medical Center Neurodevelopment consultation reports, dated April 14, 2011;
  - d. Student record card from the 2011 - 2012 school year;
  - e. Private speech/language therapy services update, dated January 16, 2012;
  - f. MCPS Review of a private speech/language assessment, dated March 26, 2012;
  - g. Developmental Profile, dated March 28, 2012;
  - h. MCPS Psychological Assessment, dated April 13, 2012;
  - i. XXXX Medical Center health plan reviewed dated May 10, 2012;
  - j. IEP and related documents, dated June 5, 2012;
  - k. New student information form, dated August 5, 2012;
  - l. Email correspondence between school staff and the complainants September 24, 2012 and October 3 - 5, 2012;
  - m. Email correspondence between school staff, dated October 9, 2012;
  - n. Correspondence from the XXXX Medical Center, dated December 13, 2012;
  - o. IEP and related documents, dated December 19, 2012;
  - p. Authorization to provide prescribed treatment, dated April 25, 2013;
  - q. IEP and related documents, dated May 20, 2013;
  - r. Student's class schedule for the 2012-2013 school year;
  - s. Informal classroom assessments, completed during the 2012-2013 school year;
  - t. Assistive technology records and consultation notes for the 2012 - 2013 school year;
  - u. Reports of progress from the 2012-2013 school year;
  - v. Occupational and physical therapy logs from the 2012-2013 school year;

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- w. Correspondence from the private speech/language pathologist to the MCPS, dated June 18, 2013;
- x. Health Plan, dated July 29, 2013;
- y. Speech/Language therapy observation report, dated September 3, 2013;
- z. Correspondence from the between MCPS staff and the complainants, dated September 3, 2013;
- aa. IEP and related documents, dated September 4, 2013;
- bb. Home instructors log from September 9, 2013 to September 19, 2013;
- cc. Correspondence between the MCPS and nonpublic schools , dated September 10 - 24, 2013 and October 10, 17, and 24, 2013;
- dd. Correspondence from the XXXX Medical Center to the MCPS, dated October 22, 2013;
- ee. Email correspondence between the MCPS and the complainants or their representatives from September 2013 until November 2013;
- ff. Email correspondence between MCPS staff regarding placements from September 2013 until January 2014;
- gg. Attendance from the start of the 2013-2014 school year to January 2, 2014;
- hh. Correspondence from the XXXXXXXXXX to the complainants, dated October 30, 2013;
- ii. Correspondence from the XXXXXXXXXX to the MCPS, dated November 3, 11, and 12, 2013;
- jj. Correspondence from the MCPS to the complainants, dated November 21, 2013; and
- kk. Correspondence from the MCPS to the complainants, dated December 11, 2013.

### **BACKGROUND:**

The student is seven (7) years old and is identified as a student with Multiple Disabilities under the IDEA including Other Health Impairment, Orthopedic Impairment, Traumatic Brain Injury and Speech and Language Impairment. She has an IEP that requires the provision of special education instruction and related services.

During the 2012-2013 school year, the student attended the XXXXXXXXXXXXXXXXXXXX, a public separate special education school.

From the start of the 2013-2014 school year until November 24, 2013, the complainants did not send the student to school due to concerns about the appropriateness of the placement.

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On November 25, 2013, the student began attending the XXXXXXXXXX--The Hearing and Speech Agency of Metropolitan Baltimore (XXXXXX), a separate special education school, in which she was placed by the MCPS. During the time period covered by this investigation, the complainants have been provided with a copy of the procedural safeguards (Docs. a, j, o q, r, t - v, y, aa, bb, gg, hh and ii).

**ALLEGATION #1:**

**IEP THAT ADDRESSES THE STUDENT'S  
COMMUNICATION, FINE AND GROSS MOTOR  
SKILLS, ASSISTIVE TECHNOLOGY, AND  
NURSING SERVICES NEEDS FROM DECEMBER  
2012 TO SEPTEMBER 2013**

**FINDINGS OF FACTS:**

1. The IEP in effect in December 2012 was developed on June 5, 2012, and was revised on December 19, 2012, May 20, 2013, and September 4, 2013. The IEP documents that the student has been receiving services since she was a toddler in order to address physical and neurological difficulties that impact her motor, communication, and academic skills. The IEP reflects that in addition to services provided by the school system, the student receives private therapy services that are obtained by the complainants at their expense. The IEP further reflects that a health plan has been in place to address a seizure disorder (Doc.j).

**Communication and Assistive Technology Needs**

2. The documentation of the IEP team meetings reflects that, based on assessment and classroom performance data, as well as information from the complainants, the IEP has included annual goals and services for the student to improve her communication needs. The services required by the IEP have included special education instruction, related speech/language therapy services, and the use of AT devices (Docs. j, o, q, and aa).
3. The documentation of the IEP team meeting held on December 17 and 19, 2012 reflects that the complainants and the student's private speech/language therapy provider expressed concern that the school system was relying too heavily on assistive technology to facilitate communication, which was not permitting the student to sufficiently develop verbal communication skills. The school staff reported that they believe that the focus needs to be on ensuring that the student be able to communicate effectively in order to access instruction while working on increasing verbal communication skills. The school staff indicated that without the use of assistive technology, the student would be unable to access the special education instruction that is required. They also expressed concern about focusing solely on the development of verbal communication skills without

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ensuring that the student understands language. Based on the information from the school staff, the request to focus more on verbal communication skills was rejected by the team (Docs. h and o).

4. The documentation of the IEP team meeting held on May 20, 2013 reflects that the complainants again expressed concern that the school system was relying too heavily on assistive technology, and reported that the student was using increased verbalization at home, but not at school because of the lack of opportunity to do so. The team considered information from the speech/language therapist that the student was making “significant progress” with improvement of her oral language. In order to address the complainants’ continued concerns, the team decided that a “multi-modal” approach would be taken in addressing the student’s communication needs. The team decided that the student would be prompted to provide a verbal response before using a voice output device (Doc. q).
5. On September 4, 2013, the IEP team convened and discussed that the complainants had not been permitting the student to attend school due to their concerns about the education program being provided. The team considered information from the student’s private speech/language therapy provider that the student requires “intensive speech/language therapy throughout the school day” in order to increase her production of intelligible words, phrases, and sentences to build her vocabulary, grammar, and pragmatic skills. Based on this and information from the student’s other private providers, the team decided that the student requires a program with more intensive services and that the least restrictive environment in which these services can be provided is a nonpublic separate special education school (Docs. w, x, and aa).

### **Fine and Gross Motor Needs**

6. The documentation of the IEP team meetings reflects that, based on assessment and classroom performance data, as well as information from the complainants, the IEP has included annual goals and services, including special education instruction and related occupational and physical therapy services, for the student to improve her fine and gross motor skills needs (Docs. j, o, q, s, v, and aa).
7. Reports of the students’ progress towards achievement of the annual IEP goals, dated January 18, 2013 and March 22, 2013 document that the student was making sufficient progress on the goals to improve her fine and gross motor skills (Doc. u).
8. On September 4, 2013, the IEP team convened and discussed that the complainants had not been permitting the student to attend school due to their concerns about the education program being provided. The team considered information from the student’s private occupational therapy provider that the student requires “intensive rehabilitative

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occupational therapy throughout the school day.” Based on this and information from the student’s other private providers, the team decided that the student requires a program with more intensive services and that the least restrictive environment in which these services can be provided is a nonpublic separate special education school (Docs. w, y, and aa).

### **Nursing Services Needs**

9. The documentation of the IEP team meetings reflects that the student has had a health plan that was developed based on data from her private physician, which requires that school staff be trained to recognize the subtle signs of an oncoming seizure and to respond appropriately by calling for emergency services and contacting the complainants. The health plan also requires that staff be trained in order to administer medication to the student (Docs. b – d, i, n, p, x, and dd ).
10. The documentation of the IEP team meeting held on December 17 and 19, 2012 reflects that the complainants expressed concern that the school have a registered nurse on the grounds at all times who is trained in administering the student’s medication. The documentation of the meeting reflects that the basis of this concern was the belief that emergency personnel who might be called to respond may not be properly trained in the administration of the student’s medication. The school staff reported that they had not observed a seizure to date, but that they were all trained in the administration of the student’s medication. Based on the information provided, the team rejected the complainants’ request, but indicated that they would reconsider the request if the complainants provided medical documentation of the need for a full time registered nurse to administer the medication (Doc. o).
11. On May 20, 2013, the complainants shared with the rest of the IEP team information from the student’s private physician that the student’s medications are constantly being changed, creating a risk of seizures that require the administration of oxygen to address. The student’s private physician also indicated that due to the need for the administration of oxygen, the student requires access to a registered nurse who is trained in the administration of oxygen at all times. Based on that information, the IEP was revised to require that the student be provided with access to nursing services throughout the school day in order to monitor oxygen levels, administer oxygen, and to monitor for seizures. The team also decided that these services could be provided in the student’s current educational placement (Docs. q, p, and n).



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## **DISCUSSION/CONCLUSIONS:**

In order to provide a student with a Free Appropriate Public Education (FAPE), the public agency must ensure that an IEP is developed that provides special education and related services to address all of the needs that arise out of the student's disability that are identified in the evaluation data (34 CFR §300.101). Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of the student (34 CFR §300.39). Related services means transportation and such developmental, corrective, and other supportive services required to assist the student to benefit from special education. These services include school health and school nurse services (34 CFR §300.34).

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 and functional needs of the student. The IEP team is specifically required to consider each student's need for assistive technology devices and services, as well as each student's communication needs. The team must also consider the student's academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode (34 CFR §§300.320, and .324).

The IEP team must review the IEP periodically, but not less than annually, to determine whether the annual IEP goals are being achieved. The IEP team must also revise the IEP to address any lack of expected progress towards achieving the goals, to reflect the results of any reevaluation, to reflect information about the student provided to or by the student's parent, or to address the student's anticipated needs (34 CFR §300.324).

In this case, the complainants assert that the MCPS should have focused the special education and related services on increasing the student's verbalization, and relied too heavily on voice output assistive technology, which did not permit the student to increase her ability to communicate verbally. They also assert that the MCPS should have provided more related services to increase the student's fine and gross motor skills, and that the school system did not ensure that appropriate nursing services were in place to ensure the student's safety while attending school (Docs. a).

Based on the Findings of Facts #1 - #11, the MSDE finds that the IEP team met and considered information from the complainants, private providers, MCPS staff, the student's teachers and data identifying the student's communication, fine and gross motor skills, assistive technology, and nursing services needs. Based on the Findings of Facts #1 - #11, the MSDE finds that the IEP team considered all of the data, developed an IEP based on that data and developed an IEP that included special education instruction, related services, including assistive technology services and devices, and goals to address the student's identified needs, and provided a basis for

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the decision made by the IEP team. Therefore, the MSDE does not find that a violation occurred with regard to this allegation.

This office understands that the complainants have disagreed with the decisions made by the IEP team about the student's program. The OSEP has stated that, when conducting a State complaint investigation into allegations related to the development of the IEP, the State Education Agency (SEA) must determine whether proper procedures were followed and whether the decisions made were consistent with the data. However, the OSEP made it clear that the SEA may not overturn an IEP team's decisions (OSEP Letter #00-21). Therefore, so long as there is data to support the team's decisions, the SEA may not determine that the team should have relied on other data that provided conflicting information when making its decisions.

In this case, there was data to support the team's decisions. Therefore, this office is unable to overturn those decisions by finding that other data was more credible than the data used as a basis for the team's decisions.

**ALLEGATION #2: PROVISION OF SPECIAL EDUCATION INSTRUCTION  
AND RELATED SERVICES IN THE REQUIRED  
PLACEMENT BY THE IEP FROM SEPTEMBER 4, 2013  
UNTIL NOVEMBER 25, 2013**

**FINDINGS OF FACTS:**

12. When the IEP team determined that the student's educational placement was a nonpublic separate special education school on September 4, 2013, it discussed that the MCPS Nonpublic Office would identify the schools for which applications would be made. The team also discussed that the process of obtaining a nonpublic school could take some time, and considered where special education services could be provided until the placement was obtained. The school-based members of the team indicated that the services that were added to the IEP could be provided in the current placement on a temporary basis until a nonpublic placement was obtained. The complainants disagreed. The documentation of the meeting reflects that school-based members of the team expressed concern about the complainants continuing to keep the student at home without the provision of services, and indicated that services would be provided in the home if they were unwilling to send the student to school (Doc. aa).
13. The school staff provided the complainants with an application for Home and Hospital Teaching (HHT) services, which included a form for them to have completed by a physician, psychiatrist or psychologist verifying the student's inability to attend a school-based program due to a medical or emotional condition. While the complainants did not

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provide such verification and did not submit a completed application for the provision of HHT services, staff from the school provided services to the student in her home (Docs. aa, ee, ff, and jj).

14. On September 16, 18, and 24, 2013, respectively, the MCPS was notified by the three (3) nonpublic schools for which applications were made that the applications had been denied (Doc. cc).
15. On September 17 and 19, 2013, the MCPS sent correspondence to the complainants reiterating the offer to provide additional services in the current educational setting (Doc. ee).
16. On October 1, 2013, the MCPS submitted an application for the student to a fourth (4<sup>th</sup>) nonpublic school, which was rejected on October 10, 2013 (Doc. cc).
17. On October 17, 2013, the MCPS submitted an application for the student to a fifth (5<sup>th</sup>) nonpublic school, which was accepted on October 24, 2013. However, due to the complainants' concerns about the age of the building and its impact on the student's mobility problems, the school system agreed not to place the student at that school (Docs. cc and ee).
18. On October 24, 2013, the complainants' educational consultant requested that the MCPS make an application for the student to a sixth (6<sup>th</sup>) school (XXXXXXXXXX), which was done on October 29, 2013 (Doc. ee).
19. On October 30, 2013, the XXXXXX notified the complainants that the student's application would be accepted. However, on November 3, 2013, the XXXX School requested additional information from the MCPS (Docs. hh and ii).
20. On November 11, 2013, the XXXXXXXXXX notified the MCPS that the student's application had been accepted upon receipt of the requested information, but that the school system would need to provide the transportation and nursing services. There is documentation that the school system began taking the steps needed to arrange for those services on the same day (Doc. ii).
21. On November 18, 2013, a nurse was assigned, who met with the complainants on November 20, 2013 to discuss the medical equipment that would be needed (Doc. ee).
22. On November 25, 2013, the student began attending the XXXXXXXXXXXX (Doc. a).

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## **DISCUSSION/CONCLUSIONS:**

### **Steps Taken to Obtain the Educational Placement**

The public agency must ensure that students with disabilities are educated with nondisabled peers to the maximum extent appropriate, and that removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.114). Therefore, the public agency must ensure that a continuum of alternative placements (including instruction in regular classes, special classes, and special schools) is available to implement each student's IEP (34 CFR §300.115).

The longstanding position of the United States Department of Education, Office of Special Education Programs (OSEP) is that the term "educational placement" refers to the point along the continuum of placement options rather than a specific place, such as a specific school. The OSEP has indicated that a public agency may have two or more equally appropriate locations that can meet the student's needs, and that school administrators should have the flexibility to assign the student to a particular school or classroom so long as it is consistent with the IEP team's educational placement decision (*Analysis of Comments and Changes, Federal Register*, Vol. 71, No. 156, p.46588, August 14, 2006).

The United States Court of Appeals, Fourth Circuit, has held that the determination of a specific school could amount to an educational placement decision only if the location of the services "results in a dilution of the quality of a student's education or a departure from the student's least restrictive environment-compliant setting." Therefore, if parents express concern about the programs available at specific schools, this input must be considered in order to ensure that the parents are involved in the decision about the educational placement (*A.K. v. Alexandria*, 484 F.3d 672, April 26, 2007).

In this case, the complainants allege that the IEP team should have determined the specific nonpublic schools to which applications would be made at the time that it determined that a nonpublic separate special education school is the least restrictive environment in which the IEP can be implemented. They assert that discussion of the specific nonpublic schools at that time would have reduced the amount of time that it took to secure the student's placement in an appropriate school (Doc. a and interviews with the complainants).

The complainants also allege that the school system was required to make applications without delay to the specific schools they requested following the rejection of applications made to some of the schools identified by the school system. In addition, the complainants allege that the school system did not ensure timely communication with one of the schools during the application process (Doc. a and interviews with the complainants).

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Based on the Findings of Facts #12 - #22, the MSDE finds that there was no requirement for the IEP team to identify the specific schools to which applications would be made for the student when determining that the least restrictive environment in which the IEP can be implemented is a nonpublic separate special education school.

Based on the Finding of Fact #17, the MSDE further finds that the school system considered the complainants' concerns about the schools that accepted the application that was made by the school system, and the complainants decided not to place the student at that school. Based on the Finding of Fact #18, the MSDE also finds that once the decision was made not to place the student at that school, the school system explored the schools requested by the complainants, and that the student was eventually placed at one of those schools. Based on the Findings of Facts #18 - #22, the MSDE further finds that the documentation does not support the allegation that the school system did not ensure timely communication with the school during the application process.

While the MSDE understands the complainants' concerns about the time involved in identifying and obtaining an appropriate nonpublic school placement for the student, based on the above, this office finds no violation related to the procedures that were followed in obtaining a nonpublic school placement for the student.

### **Provision of Special Education Services While Obtaining the Educational Placement**

As stated above, each public agency must ensure that each student is provided with the special education and related services in the educational placement required by the IEP (34 CFR §§300.101, .103, and .323).

In Maryland, Home and Hospital Teaching (HHT) services may be provided only when there is verification from a licensed physician, a certified school psychologist, a licensed psychologist, or a licensed psychiatrist that the student has a physical or emotional condition that prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.03 and .04). Therefore, without such verification, the IEP team may not determine that a student's educational placement is the home pending placement in a nonpublic separate special education school (COMAR 13A.05.01.10). If the student is able to attend a school-based program, the public agency must ensure that the increased supports necessary to implement the IEP is made available in the public school placement while awaiting the nonpublic school placement (34 CFR §§300.320 and .324).

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The intent of the COMAR is to ensure that no student with a disability under the IDEA receives educational services in the home for extended periods of time, or as a long-term placement. Placement in the home is the most restrictive environment along the continuum of placements because it does not permit the student to receive instruction with other students and denies the student access to the general curriculum.

Prior to the enactment of the COMAR, a significant number of students with disabilities remained in their homes and received a minimum amount of education services solely on the basis of a one-time statement by a school psychologist. Often this occurred for students when the school system was unable or unwilling to identify an appropriate day or residential placement needed for the student to receive a Free Appropriate Public Education (FAPE). Therefore, public agencies are required to make HHT services available to students consistent with both the least restrictive environment requirements of the IDEA and the requirements of the COMAR (34 CFR §§300.114-.116 and COMAR 13A.05.01.10).

In this case, the complainants allege that the school system did not ensure that additional supports were made available in the student's public school placement in order to ensure the implementation of the IEP until the nonpublic placement was obtained. The complainants further allege that the school system inappropriately offered to implement the IEP in the student's home until a nonpublic school placement was obtained (Doc. a and interviews with the complainants).

Based on the Finding of Fact #12, the MSDE finds that the school system made the increased supports determined necessary by the IEP team available in the public school placement pending the placement in a nonpublic separate school. However, based on the Finding of Fact #13, the MSDE finds that the school system provided instructional services to the student in her home without the required verification of need when the complainants would not return her to a school-based program. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Findings of Facts #12 and #15, the MSDE finds that the documentation demonstrates the intent of the school staff to provide services to the student in a school-based program pending placement in a nonpublic school. Therefore, this office does not require corrective action to remediate the violation.

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**ALLEGATION #3:                    PROVISION OF NURSING SERVICE ON JANUARY 30, 2014  
THE FOLLOWING ALLEGATION WAS IDENTIFIED  
DURING THE COURSE OF THE INVESTIGATION**

**SUMMARY OF FINDINGS AND CONCLUSIONS:**

On January 30, 2014, the student was unable to access special education instruction because of the lack of an available substitute for the assigned nurse, who was unable to report for duty that day. While the company hired by the MCPS to provide nursing services has a staffing plan for the provision of substitutes when assigned nurses are unavailable, the MCPS proposes to develop a plan specifically for the student in order to ensure the provision of a substitute when the assigned nurse is unavailable. The MSDE appreciates the MCPS' response and concurs with the proposed corrective action.

**CORRECTIVE ACTIONS/TIMELINES:**

The MSDE requires the MCPS to provide documentation, by April 1, 2014, of the plan developed to ensure that the student is provided with nursing staff coverage as required by the IEP. If the school system reports compliance with the requirements, the MSDE staff will verify compliance with the determinations found in the initial report. Documentation of all corrective actions taken is to be submitted to this office to the attention of the Chief of the Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

**TECHNICAL ASSISTANCE:**

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

Please be advised that both the complainants and the MCPS 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

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Mrs. Chrisandra A. Richardson

Ms. Gwendolyn J. Mason

February 14, 2014

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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 complainants and the school system maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a 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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/Early Intervention Services

MEF:km

cc : Joshua P. Starr  
Julie Hall  
Ashley VanCleeef  
Joanna Hoffman  
XXXXXXXXXX  
XXXXXXX  
Dori Wilson  
Anita Mandis  
Koliwe Moyo