



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

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

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Mark B. Martin, Esq.
One North Charles Street, Suite 1215
Baltimore, Maryland 21201

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

RE: XXXXX
Reference: #15-051

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 February 3, 2015, the MSDE received a complaint from Mark B. Martin, Esq., hereafter, “the complainant,” on behalf of the above-referenced student and his parents, Ms. XXXXXXXXXXXX and Mr. XXXXXXXXXXXX. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. The MSDE investigated the following allegations:

1. The BCPS did not ensure that the Individualized Education Program (IEP) team considered the student’s need for Extended School Year (ESY) services for the summer of 2014, in accordance with 34 CFR §300.106.
2. The BCPS did not ensure that the IEP was in place for the student at the start of the 2014-2015 school year, in accordance with 34 CFR §300.323.

3. The BCPS has not ensured that the IEP addresses the student's needs related to XXXXXXXXXX and a receptive and expressive language disorder and his interfering behaviors since the start of the 2014-2015 school year, in accordance with 34 CFR §300.324.
4. The BCPS has not ensured that the educational placement for the 2014-2015 school year is the least restrictive environment in which the IEP can be implemented, in accordance with 34 CFR §300.114.
5. The BCPS did not ensure that the written notice of the July 30, 2014 IEP team meeting included information that a purpose of the meeting was to conduct a reevaluation and information about all of the school staff members who would be in attendance, in accordance with 34 CFR §300.322.
6. The BCPS did not ensure that the parents were provided with proposed annual IEP goals to address the student's physical therapy needs, which were to be considered at the July 30, 2014 IEP team meeting, at least five (5) business days before the meeting, in accordance with COMAR 13A.05.01.07.
7. The BCPS did not provide the parents with an IEP within five (5) business days of IEP team meetings held on May 27, 2014, July 30, 2014, and September 3, 2014, in accordance with COMAR 13A.05.01.07.
8. The BCPS did not provide proper prior written notice of the IEP team's decisions following the May 27, 2014, July 30, 2014, and September 3, 2014 IEP team meetings, in accordance with 34 CFR §300.503.

INVESTIGATIVE PROCEDURES:

1. On February 5, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Kim Hoffman, Executive Director of Special Education, BCPS; and Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS.
2. On February 9, 2015, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations subject to this investigation. On the same date, the MSDE notified Dr. Hoffman of the allegations and requested that her office review the alleged violations.
3. On March 6 and 25, 2015, the BCPS provided the MSDE with documents to consider.
4. On March 13, 2015, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a telephone interview with the complainant about the allegations.

5. On March 20, 2015, Ms. Mandis and Ms. Memuna Bangura, Monitoring Specialist, MSDE, conducted a site visit to XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX) to review the student's educational record, and interviewed the following BCPS staff:
- a. Ms. Jessica Henkin, coordinator, BCPS Early Learning Program;
 - b. Ms. XXXXXX, classroom teacher, XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXXXXXXXX);
 - c. Ms. Ramsey Mihavetz, educational associate, BCPS Early Learning Program;
 - d. Ms. XXXXXXX, special education teacher, XXXXXXXXXXXXX;
 - e. Ms. XXXXXXXXXXX, director, XXXXXXXXXXXXX; and
 - f. Ms. XXXXXXX, special education teacher, XXXXXXX.

Ms. Henderson attended the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

6. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
- a. IEP, dated September 11, 2013;
 - b. The parents' response to the invitation to an IEP team meeting on May 6, 2014;
 - c. Report of a private speech/language assessment, dated May 20, 2014;
 - d. The speech/language pathologist's progress reports, dated May 25 and 27, 2014;
 - e. Invitation to an IEP team meeting on May 27, 2014;
 - f. Electronic mail (email) correspondence from the complainant to the school system staff, dated May 30, 2014;
 - g. The occupational therapist's progress reports, dated May 30, 2014 and August 1, 2014;
 - h. The special education teacher's progress report, dated June 1, 2014;
 - i. The parents' response to the invitation to an IEP team meeting on June 10, 2014;
 - j. Email correspondence from the student's father to the school staff, dated June 30, 2014;
 - k. Notice of documents provided to parents prior to an IEP team meeting, dated July 16, 2014;
 - l. Report of the classroom observation conducted by the parents' educational consultant, dated July 24, 2014;
 - m. Invitation to an IEP team meeting on July 30, 2014;
 - n. Progress reports from the XXXXXXXXXXX, dated August, 2014;
 - o. Email correspondence from the BCPS legal counsel to the complainant, dated August 3, 2014;
 - p. Invitation to an IEP team meeting on September 3, 2014;

- q. Prior Written Notice document from the IEP review completed on September 3, 2014, dated September 10, 2014;
- r. IEP, dated September 3, 2014;
- s. Email correspondence between the student's parents and the school system staff, dated September 5 through 17, 2014;
- t. Correspondence from the school system staff to the student's parents, dated September 11, 2014;
- u. *Receipt of Hand Delivered Documents*, dated September 10, 2014;
- v. Log of contacts between the student's parents and the school system staff between September 2014 and February 2015;
- w. Correspondence from the complainant containing allegations of violations of the IDEA, received by the MSDE on February 3, 2015;
- x. Invitation to an IEP team meeting on March 23, 2015;
- y. The student's attendance record for the 2014-2015 school year; and
- z. The school system's 2014-2015 school year calendar.

BACKGROUND:

The student is five (5) years old, is identified as a student with a Speech/Language Impairment under the IDEA, and has an IEP that requires the provision of special education instruction and related services. The student attended the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX) until September 18, 2014, when he began attending the XXXXXXXXXXX XXXXXXXXXX (XXXXXXXXXXXX) (Docs. a, r, and y).

**ALLEGATION #1 CONSIDERATION OF THE NEED FOR
EXTENDED SCHOOL YEAR (ESY) SERVICES
FOR THE SUMMER OF 2014**

FINDINGS OF FACTS:

1. The IEP in effect prior to the summer of 2014, developed on September 11, 2013, states that the team determined that the student does not require ESY services. However, documentation of that decision reflects that the team decided that there was insufficient information to determine the existence of all of the factors that must be considered when making the determination (Doc. a).
2. There is no documentation that the IEP team considered all of the factors required to make a determination regarding the student's need for ESY services during the 2013-2014 school year (Doc. j and review of the student's educational record).

3. On June 30, 2014, the student's father sent correspondence to the school staff indicating that he was placing the student at the Gateway School, a nonpublic separate special education school, for the provision of special education services during the summer and requested that the BCPS reimburse him for the expense¹ (Doc. j).
4. On July 30, 2014, the IEP team decided to defer consideration of the student's need for ESY services during the summer of 2014 to a later date at the request of the complainant since it was too late for the student to participate in the program if he was determined to require those services (Review of the audio recording of the July 30, 2014 IEP team discussion).
5. An IEP team meeting was held on March 23, 2015 to consider the student's need for ESY services. There is no documentation of the team's decisions that is available at this time (Doc. x).

DISCUSSION/CONCLUSIONS:

The public agency must ensure that ESY services are provided if a student requires those services in order to receive a Free Appropriate Public Education (FAPE) (34 CFR §300.106). These services are the extension of specific special education and related services that are provided to a student beyond the normal school year (COMAR 13A.05.01.03). The public agency must ensure that IEP team meetings to determine a student's need for ESY services are conducted early enough in the school year to provide the parent with the opportunity to request mediation or file a due process complaint to resolve a dispute regarding the IEP team's decision (COMAR 13A.05.01.07).

In this case, the complainant alleges that the BCPS did not ensure that the IEP team considered the student's need for ESY services in time for those services to be provided during the summer of 2014. The complainant asserts that the student's parents obtained special education services to address the annual IEP goals from a nonpublic special education school during the summer of 2014 in order to ensure that the student received the services he required (Doc. w).

Based on the Findings of Facts #1-#5, the MSDE finds that the BCPS did not ensure that the IEP team considered the student's need for ESY services for the summer of 2014, and that a violation occurred with respect to the allegation.

¹ While progress reports from the XXXXXXXXXX, dated August, 2014, state that the student "required significant adult support and redirection to be successful in the classroom" and that the difficulty he demonstrated with following adult directives "interfered with his availability for learning," they also state that he "made progress on his IEP objectives" (Doc. n).

**ALLEGATION #2 ENSURING THAT AN IEP WAS IN PLACE BY
THE START OF THE 2014-2015 SCHOOL YEAR**

FINDINGS OF FACTS:

6. There was an IEP in effect at the start of the 2013-2014 school year, which was developed on September 11, 2013. The IEP required that the student be provided with one (1) hour per week of speech/language therapy as special education instruction and fifteen (15) minutes per week of occupational therapy as a related service. The IEP stated that the services were to be provided in a regular early childhood program at the Montessori School, a public charter school, where the student's parents chose to enroll the student (Doc. a).
7. The 2014-2015 school year for the BCPS began on August 25, 2014 (Doc. z).
8. A nine (9) hour IEP team meeting was conducted over three (3) days on May 27, 2014, July 30, 2014, and September 3, 2014 to review and revise the September 11, 2013 IEP. Each of these dates had been scheduled to occur earlier, but had to be rescheduled to accommodate the schedules of the complainant and the school system's legal counsel (Docs. a, b, e, f, i, k, m, o, p, and w).
9. At the conclusion of the review and revision of the IEP on September 3, 2014, the IEP team decided that the student requires twenty-five (25) hours of special education classroom instruction and the related services of occupational, physical, and speech/language therapy. The team revised the educational placement and decided that the student would attend XXXXXXXXXX. The IEP team rejected the parents' request to defer the decision regarding the educational placement until they could visit the proposed school, and the parents expressed their disagreement with the placement decision (Docs. q and r).
10. On September 5, 2014, the student's parents contacted the school system staff to set up a visit to the proposed program at XXXXXXXXXX. The school system staff offered for the visit to take place on either September 9 or 10, 2014, but the parents were not available on those dates, and they proposed the morning of September 11, 2014. Because the timeframe proposed by the parents on September 11, 2014 would not allow them to observe the program during instructional time, the visit was scheduled for September 17, 2014 (Doc. s).

11. On September 11, 2014, the BCPS sent the student's parents correspondence indicating that arrangements had been made for the student to begin attending XXXXXXXXX on September 18, 2014, the day after the parents were scheduled to visit the program (Doc. t).
12. On September 15, 2014, the parents sent the school staff correspondence stating their intention to file a due process complaint to dispute the educational placement decision and invoke "stay put," indicating that the student would remain at his previous educational placement at the XXXXXXXXXXXXXXXX (Doc. s).
13. On September 17, 2014, the parents sent the school system staff correspondence stating that they had changed their minds about filing a due process complaint following their visit to XXXXXXXXX and requesting that transportation services to and from the school begin on the following day (Doc. s).
14. On September 18, 2014, the BCPS began transporting the student to and from XXXXXXXXXXXXXXXX (Docs. s and y).

DISCUSSION/CONCLUSIONS:

At the beginning of each school year, the public agency must have in effect an IEP that addresses the student's identified needs. In order to ensure that the IEP continues to address the student's needs, the public agency must make sure that it is reviewed by the IEP team at least annually (34 CFR §§300.320, .323, and .324).

The public agency must also ensure that steps are taken to make sure that the student's parents are present at each IEP team meeting by scheduling each meeting at a mutually agreed on time and place (34 CFR §300.322).

The complainant alleges that the IEP review should have been completed and the student placed at XXXXXXXXX prior to the start of the school year despite the fact that multiple meetings were required to complete the review of the IEP, which involved numerous participants, including legal counsel for the parties (Doc. w).

Based on the Findings of Facts #6-#9, the MSDE finds that there was an IEP in effect at the start of the 2014-2015 school year, and that the BCPS ensured that the IEP was reviewed at least annually. Based on the Findings of Facts #9-#14, the MSDE finds that the delay in the student's placement at XXXXXXXXXXXXXXXX resulted from the fact that the parents did not decide to enroll the student at the school until September 17, 2014. Therefore, this office does not find that a violation occurred with respect to the allegation.

ALLEGATION #3

**IEP THAT ADDRESSES THE STUDENT'S NEEDS
RELATED TO XXXXXXXXXX AND A RECEPTIVE AND
EXPRESSIVE LANGUAGE DISORDER AND HIS
INTERFERING BEHAVIORS SINCE THE START OF THE
2014-2015 SCHOOL YEAR**

FINDINGS OF FACTS:

XXXXXXXXXX and Expressive and Receptive Language

15. When developing the September 3, 2014 IEP, the IEP team considered a May 20, 2014 report of a private speech/language assessment that indicates that the evaluator found "moderate" verbal XXXXXXXXXX, which is characterized by replacements of sounds, omissions of sounds, and disintegration in speech intelligibility with increased length and complexity. The report states that the student has difficulty with "adequate respiratory control for sustained phonation" and with jaw stability that impacts movement of the lips and tongue. The report further states that the student's "motor planning difficulties" have a "significant impact on his expressive language and pragmatic language skills" (Docs. c, q, and r).
16. In the May 20, 2014 report, the private speech/language evaluator recommends increased frequency and intensity of speech/language services with further emphasis on improving motor planning and receptive, expressive, and social language skills. She also recommends that the speech/language therapist work directly with the student's teachers in the classroom in order to facilitate the improvement of the student's "motor planning" and language skills (Doc. c).
17. There is also documentation that the IEP team considered information from the student's speech/language therapist that the student does not demonstrate receptive language difficulty in the classroom (Docs. d, q, and r).
18. The IEP team further considered information from the student's father that the student was demonstrating progress with the tasks that the speech/language therapist works on with him repeatedly, but that he is unable to generalize those skills to other tasks and situations, and in interactions with other people. The IEP team discussed that there may be other factors impacting the student's ability to generalize age appropriate receptive language skills. When the school staff suggested that additional data be obtained, including psychological testing, the parents objected, and the team agreed to include receptive language as an area of need without further data (Docs. q and r).
19. In her May 20, 2014 report, the private speech/language evaluator states that, although the student has been able to develop underlying language skills "incidentally, through his environment," his receptive language skills are below those expected of a child his age. The evaluator indicates that the student has not developed key linguistic concepts needed

to follow directions that increase in complexity and comprehend curriculum-based vocabulary (Doc. c).

20. The IEP team also considered a report from the school-based speech/language pathologist that the student has begun to “consistently respond to a greeting (good morning) even without prompting,” and that he has been “using phrases to make requests on his own initiative.” The speech/language pathologist also reported that the student is “increasing his accuracy and improving voicing,” and that he has been “steadily improving his ability to name categories, sort items into appropriate places, as well as naming function and rapidly naming items with decreased time and better attention” (Docs. d, q, and r).
21. At the conclusion of the IEP review, current speech/language goals were revised and additional goals in the areas of receptive and expressive language were developed. The IEP includes goals for the student to: (a) demonstrate mastery of beginning phonological awareness skills; (b) increase overall speech intelligibility; (c) follow novel one-step complex directions with a variety of linguistic concepts; (d) increase expressive language skills by using correct and meaningful utterances across school settings; (e) label and categorize pictures and objects with appropriate response time; and (f) spontaneously use verbal and nonverbal language skills to comment, request, protest, and ask questions (Docs. q and r).
22. Supplementary aids and services were added to the IEP, including the repetition of concepts to promote the retention of skills, modification of language of instructions to the student's comprehension level, and support for the development of pragmatic language throughout the school day (Docs. q and r).
23. A dispute arose between the parents and the school-based members of the team regarding the amount and nature of the special education instruction and related services required in order to assist the student in achieving the goals. The IEP previously required the provision of two (2) thirty (30) minute sessions of speech/language therapy per week as special education instruction. The IEP team recommended that the IEP be revised to require the provision of twenty-five (25) hours per week of special education classroom instruction and three (3) thirty (30) minute sessions per week of speech/language therapy as a related service, with consultation between the speech/language therapist and the student's teacher. The parents, their educational advocate, and private evaluator recommended increasing the intensity and frequency of the speech/language services due to the severity of the student's impairment and the addition of receptive language goals to the IEP. The team rejected the recommendation based on the reports of school-based members of the team that the student's speech/language needs will be addressed through the addition of special education instruction in a full day program (Docs. q and r).
24. The reports of the student's progress towards achievement of the goals, dated January 16, 2015, reflect that the student is making sufficient progress toward achievement of the goals (Doc. r).

Behaviors

25. When developing the September 3, 2014 IEP, the IEP team considered reports of the school staff that the student's early literacy skills had improved, but that he needs "maximum adult assistance and supervision" and teacher prompts to participate in activities, interact with other students, and remain in designated areas during activities. The school staff reported that the student frequently demonstrates difficulty with eye contact and responding to questions, and that he displays "self-stimulatory behaviors such as hand flapping." The school staff further reported that the student demonstrates difficulty with transitions and requires frequent sensory breaks, and that he displays "emotional responses," including engaging in "tantrums," when presented with unexpected changes or non-preferred activities (Docs. d, g, and h).
26. The documentation of the IEP review reflects that the student was being provided with the assistance of a Temporary Support Assistant (TSA), the use of "fidgets" to calm him, and the use of positive, "concrete reinforcers" of appropriate behavior, which had resulted in improvement in the student's behavior. However, due to the continuation of these behaviors, the team recommended that a psychological assessment be conducted, to include an Autism rating scale. The parents expressed disagreement, and indicated that they need time to consider the recommendation (Docs. q and r).
27. The IEP team also considered whether a Functional Behavioral Assessment (FBA) should be conducted, and discussed that such an assessment should not be conducted while the student is adjusting to a full day of instruction in a new school. Therefore, the IEP team decided to monitor the student's behaviors with the supports provided and reconsider the need for such an assessment in "about 30 days." While the IEP team made this determination on September 3, 2014, it did not reconvene to consider whether such additional data is needed until March 23, 2015, and the team's decisions have not yet been documented (Docs. q and r).
28. The IEP team added supports to the IEP, including the provision of visual boundaries to structure academic tasks, visual supports, reduced distraction, leadership opportunities for the student to build self-esteem, adaptive equipment to focus on table tasks, and daily communication between school and home to support reinforcement of skills at home (Docs. q and r).
29. The daily communication log between the school staff and the parents, between September 2014 and February 2015, documents that the student continues to exhibit interfering behaviors even with the provision of positive behavioral interventions and supports (Doc. v).

DISCUSSION/CONCLUSIONS:

The public agency must offer each student with a disability a FAPE through an IEP that includes special education and related services that address the student's identified needs. 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 child whose behavior impedes his or her learning or that of others, the IEP team must consider positive behavioral interventions and supports, and other strategies, to address that behavior (34 CFR §§300.101, .320 and .324).

The United States Department of Education, Office of Special Education Programs (OSEP), requires that, during the investigation of an allegation that a student has not been provided with an appropriate educational program under the IDEA, the State Educational Agency (SEA) review the procedures that were followed to reach determinations about the program. The SEA must also review the evaluation data to determine if decisions made by the IEP team are consistent with the data (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

When it is determined that the public agency has not followed proper procedures, the SEA can require it to ensure that the IEP team follows proper procedures to review and revise, as appropriate, the program to ensure that it addresses the needs identified in the data. The SEA may not, however, overturn an IEP team's decisions when proper procedures have been followed and there is data to support the team's decisions. The OSEP indicates that parents may challenge an IEP team's decisions by filing a due process complaint or requesting mediation to resolve the dispute (OSEP Letter #00-20, July 17, 2000 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46601, August 14, 2006).

XXXXXXXXX and Expressive and Receptive Language

In this case, the complainant asserts that the amount and nature of special education services required by the IEP will not provide the student with opportunities to infuse spontaneous language throughout the day because he will be not be working with the speech/language therapist in the classroom, as recommended in the private evaluation data. Therefore, the complainant alleges that the services are insufficient to assist the student with achieving the annual IEP goals (Doc. w).

Based on the Findings of Facts #15-#24, the MSDE finds that the BCPS has ensured that the IEP team has considered all of the evaluation data, including the results of private assessments and the parents' concerns, when identifying and addressing the student's needs. Based on those Findings of Facts, this office finds that, while the private assessments and the public agency data are not consistent with each other, the public agency data supports the IEP team's decision. Therefore, the MSDE does not find that a violation has occurred with respect to this aspect of the allegation.

Behaviors

In this case, the complainant asserts that the student continues to demonstrate behaviors that interfere with his learning due to his frustration resulting from his difficulty with communication, which is not being appropriately addressed (Doc. w).

Based on the Findings of Facts #25-#28, the MSDE finds that the IEP team considered the student's academic and functional performance and added positive behavioral interventions to address the student's interfering behavior.

However, based on the Findings of Facts #27 and #29, the MSDE finds that the school system did not ensure that the IEP team convened to determine whether additional data is needed within the timeframe determined necessary by the IEP team on September 3, 2014. Therefore, the MSDE finds that a violation has occurred with respect to this aspect of the allegation.

ALLEGATION #4 EDUCATIONAL PLACEMENT FOR THE 2014-2015 SCHOOL YEAR

FINDINGS OF FACTS:

30. When reviewing the IEP, the team considered the report of the parent's educational consultant, who conducted a classroom observation of the student during the summer of 2014 while he attended the XXXXXXXXXXXX, a nonpublic separate special education school. The report states that the school's program is "designed for students with disabilities related to autism spectrum disorders, developmental delay, hearing loss, speech/language challenges or other conditions that result in significant communication needs." The classroom observation report states that, while the student was in a classroom with three (3) school staff members, (1) student volunteer, and two (2) other students, "he was not an entity of one requiring constant attention from a personal aide but instead was able to sit with, participate in, and be a part of a group" (Docs. l, q, and r).
31. When making the placement decision, the IEP team documented its consideration of an educational placement in the general education classroom with the provision of supplementary aids and services, but rejected this option because of the student's need for a highly structured classroom setting with "intensive" instructional and behavioral supports. The team also documented its consideration of a combination of general and separate special education classrooms, but rejected this option because of the student's difficulty with transitions (Docs. q and r).
32. The documentation reflects that the team decided that the Least Restrictive Environment (LRE) in which the IEP can be implemented is the Early Learning Environment – Autism (ELE-A) Program at XXXXXXXXXXX. The IEP team discussed that there are no more than eleven (11) students in the classroom with supports "for children with Autism or related

communication, social, and behavioral needs." The team further discussed that the program provides "routines and behavioral-based instruction, high levels of visual supports, and sensory opportunities are embedded throughout the day" and will enable the student to participate with nondisabled peers during nonacademic activities, such as lunch (Docs. q and r).

DISCUSSION/CONCLUSIONS:

In this case, the complainant alleges that the placement of the student in a separate special education classroom where he works one-to-one with an adult is an overly restrictive environment because it limits his interaction with other students. The complainant asserts that placement in a classroom with a low adult to student ratio, where all of the adults work with all of the students in a group, as was done at the XXXXXXXXXXXX, would be less restrictive because it gives the student more opportunity to interact with other students. In addition, the complainant asserts that the placement of the student in the ELE-A program at XXXXXXXXXXXX is inappropriate because he has not been identified as a student with Autism (Doc. v and interview with the complainant).

The public agency must ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are nondisabled. The removal of a student with a disability from the regular educational environment may occur only if the nature and severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved. The term "regular educational environment" includes regular classrooms and other settings in schools, such as lunchrooms and playgrounds (34 CFR §300.114 and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46585, August 14, 2006).

Each student's educational placement must be determined on an individual case-by-case basis depending on each student's unique educational needs and circumstances. A student's placement may not be based on the category of the student's disability (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p.46468, August 14, 2006).

Based on the Findings of Facts #30-#32, the MSDE finds that, like the XXXXXXXXXXXX, while the ELE-A Program is designed to address behaviors, such as those demonstrated by students with Autism, the program is not exclusively for students who have been diagnosed with Autism. Based on those Findings of Facts, the MSDE finds that the decision to provide special education instruction through the ELE-A Program was based upon the student's needs and not his identified disability.

Based on the Findings of Facts #30-#32, the MSDE finds that the IEP team considered placements in less restrictive environments with the provision of supplementary aids and services, and determined that the IEP could not be implemented in those settings based on the student's need for a highly structured classroom environment. Based on those Findings of Facts, the MSDE finds that the IEP team found that this placement would allow the student to

participate with nondisabled peers during unstructured activities, such as lunch. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

**ALLEGATION #5 WRITTEN NOTICE OF THE JULY 30, 2014
IEP TEAM MEETING**

FINDINGS OF FACTS:

33. The IEP team meeting to review and revise the IEP, which began on May 27, 2014, was continued on July 30, 2014 when the team was unable to complete the review on May 27, 2014. A written invitation was sent to the parents to reconvene on July 30, 2014 to complete the review and revision of the IEP (Docs. e, k, m, q, and r).
34. The invitation identifies the school personnel who were expected to participate by both name and role in which they were to serve. However, the individuals who served in some of those roles were not the individuals identified on the invitation (Doc. m).
35. On July 30, 2014, the complainant expressed concern that the parents had not been given accurate information about the names of the individuals who would be serving in the roles of the lead agency representative and speech/language pathologists at the meeting. The school system staff offered to reschedule the meeting if the parents believed that they needed more time to prepare for the meeting, and the parents declined the offer (Docs. q and r).
36. On July 30, 2014, a dispute arose between the parents and the school-based members of the team about the student's levels of performance and whether he was making progress. The school-based members of the team recommended that assessments be conducted in order to ensure that all of the student's needs are properly identified and addressed, and the parents indicated that they were not prepared to discuss the issue because reevaluation was not listed on the meeting invitation as a purpose of the meeting (Docs. q and r).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must ensure that all of a student's needs are properly identified and addressed through an IEP that is developed through the IEP team process (34 CFR §§300.101, .320 and .324).

The public agency is also required to take steps to ensure that the student's parents are afforded the opportunity to participate in each IEP team meeting. This includes providing written notice of the date, time, and location of the meeting, as well as the purpose of the meeting and who will participate in the meeting, at least ten (10) days prior to the meeting (34 CFR §300.322 and COMAR 13A.05.01.07). The public agency can satisfy the requirements of notifying parents of who will be in attendance at IEP team meetings by indicating in the notice of the IEP meeting

only the positions, rather than the names, of the individuals from the public agency who will be in attendance (*Letter to Livingston*, 23 IDELR 564, OSEP, July 24, 1995).

In this case, the complainant alleges that the student's parents were not provided with written notice that a purpose of the July 30, 2014 IEP team meeting was to conduct a reevaluation. The complainant also alleges that the BCPS did not ensure that the written notice of the meeting included the names of individuals who would be attending the meeting, specifically who would be serving as the public agency representative and the names of the speech/language pathologists (Doc. w).

Based on the Findings of Facts #33 and #36, the MSDE finds that there is no documentation that the school staff intended to conduct a reevaluation on July 30, 2014, but recommended testing in order to ensure that the student's needs are properly identified and addressed. Therefore, no violation is found with respect to this aspect of the allegation.

Furthermore, based on the Findings of Facts #34 and #35, the MSDE finds that the BCPS provided the parent with the positions of those school system staff who would be attending the IEP team meeting. Therefore, no violation is found with respect to this aspect of the allegation.

**ALLEGATION #6 PROVISION OF PROPOSED PHYSICAL THERAPY
GOALS CONSIDERED ON JULY 30, 2014**

FINDINGS OF FACTS:

37. On May 27, 2014, the IEP team documented that school-based members of the team needed time to review the results of a private physical therapy assessment that was provided by the parents. The IEP team also documented that the parents needed additional time to review proposed physical therapy goals, which had been provided on that date. As a result, the IEP team decided that the meeting would be continued on another day to review proposed goals and to determine the required physical therapy services (Doc. r).
38. The May 27, 2014 IEP team meeting was continued on July 30, 2014. On July 30, 2014, the team discussed the student's present levels of performance, and began reviewing and revising the annual IEP goals, including the physical therapy goal. The team did not have sufficient time to complete the IEP review on July 30, 2014 and decided to reconvene on another date to do so (Docs. q, r, and review of audio recording of the July 30, 2014 IEP team's discussions).
39. The IEP team meeting was continued on September 3, 2014. There is documentation that the IEP team continued reviewing the physical therapy goals on this date (Docs. q and r).

DISCUSSION/CONCLUSIONS:

As stated above, the public agency must take steps to ensure that the student's parents are afforded the opportunity to participate in the IEP team meeting (34 CFR §300.322 and COMAR 13A.05.01.07). This includes ensuring that parents are provided with each assessment, report, data chart, draft IEP, or other document the IEP team plans to discuss at an IEP team meeting at least five (5) business days before the meeting (COMAR 13A.05.01.07).

In this case, the complainant alleges that the team considered goals that were proposed by the school staff to address the student's physical therapy needs, which were not provided to the parents at least five (5) days before the meeting (Doc. w).

Based on the Finding of Fact #37, the MSDE finds that the parents were not provided with proposed physical therapy goals five (5) business days before the IEP team meeting that began on May 27, 2014. However, based on the Findings of Facts #37-#39, the MSDE finds that the proposed goals were provided to the parents on May 27, 2014, and were not considered by the IEP team until July 30, 2014 and September 3, 2014. Thus, this office finds that the proposed goals were provided to the parents within sufficient time for them to be reviewed prior to the IEP team's consideration of those goals on July 30, 2014 and September 3, 2014. Therefore, the MSDE does not find that a violation occurred with respect to the allegation.

ALLEGATIONS #7 AND #8 PROVISION OF AN IEP AND PRIOR WRITTEN NOTICE

FINDINGS OF FACTS:

40. A nine (9) hour IEP team meeting was conducted over three (3) days on May 27, 2014, July 30, 2014, and September 3, 2014 to review and revise the September 11, 2013 IEP (Docs. a, b, e, f, i, k, m, o, p, and w).
41. There is no documentation that decisions were made by the team about evaluation, identification, or the student's program or placement on May 27, 2014 (Docs. q and r).
42. On July 30, 2014, the IEP began discussing the need for additional testing. Because the student's parents would not participate in the discussion, the team addressed the issue again on September 3, 2014. At that time, the parents agreed to consider providing consent for assessments to be conducted (Docs. q, r, and review of audio recording of the IEP team's July 30, 2014 discussions).
43. The IEP revised on September 3, 2014 states that a consent form for additional testing would be provided to the parents along with the written notice of the team's decisions from the IEP review (Doc. r).

44. A written summary of the IEP team's decisions was developed on September 10, 2014. More detailed information about those decisions, including the basis for the decisions and the data and options considered by the team, is included in the IEP (Doc. q).
45. There is documentation that the IEP and the written summary were hand-delivered to the parents on September 10, 2014 (Doc. u and review of the student's educational record).

DISCUSSION/CONCLUSIONS:

Allegation #7 Provision of an IEP

The public agency must ensure that parents are provided with a copy of the IEP within five (5) business days of the date of an IEP team meeting. If the IEP has not been finalized, a draft IEP must be provided. However, a violation of this requirement does not constitute a denial of a FAPE (COMAR 13A.05.01.07 and Md. Code Ann., Educ., §8-405).

The complainant alleges that the school system did not provide the student's parents with a draft IEP after the team convened on May 27, 2014 and July 30, 2014 (Doc. v). Based on the Finding of Fact #40, the MSDE finds that the IEP team did not complete its review and revision of the IEP until September 3, 2014. Thus, there was no draft or finalized IEP to provide to the parent at that time. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the school system did not provide a finalized IEP to the parents within the required timelines following the September 3, 2014 IEP team meeting (Doc. w). Based on the Findings of Facts #40 and #45, the MSDE finds that there is documentation that the parents were provided with an IEP within the required timelines following the team's completion of the review and revision of the IEP. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Allegation #8 Provision of Prior Written Notice of IEP Team Decisions

Written notice must be provided to parents within a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of students or the provision of a FAPE to students. This notice must include information about the decisions made, the basis for the decisions, the data used when making the decisions, and the options considered by the team (34 CFR §300.503). The purpose of providing prior written notice is to ensure that parents have sufficient information in order to determine whether they wish to exercise their right to access the dispute resolution procedures if they disagree with the IEP team's decisions.

The complainant asserts that the school system refused to provide written notice of the decisions made by the IEP team on May 27, 2014 and July 30, 2014 because the IEP review had not been completed. The complainant alleges that the school system has a practice of not providing

written notice of decisions made until the IEP review is complete when the IEP review takes place over the course of more than one (1) day (Doc. w).

Whether written notice is required following each date on which an IEP team convenes in order to conduct an IEP review, or following the completion of the review will depend upon whether the proposed or refused action will take place prior to the completion of the IEP review. Therefore, a general rule cannot be established with respect to every IEP review that occurs over more than one (1) day.

Based on the Finding of Fact #41, the MSDE finds that no decisions were made on May 27, 2014 that involved the identification, evaluation, program, or placement of the student. Based on the Finding of Fact #42, the MSDE finds that on July 30, 2014, the IEP team proposed to take action with respect to evaluation of the student, but that due to the parents' refusal to consider the proposal at that time, the team decided to address the matter on September 3, 2014. Thus, the MSDE does not find that decisions were made that were to be implemented prior to the completion of the IEP review on September 3, 2014, which would require that the parents be provided with prior written notice. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

The complainant also alleges that the student's parents were not provided with proper written notice of the team's decisions following completion of the IEP review on September 3, 2014 because the notice did not include information about the specific reasons for its actions and the data to support the team's decisions, including the decision to obtain additional evaluation data (Doc. w and interview with the complainant).

Based on the Finding of Fact #44, the MSDE finds that the written notice of the team's decisions, along with the IEP that was developed, provides sufficient written notice of the team's decisions, the basis for those decisions, the data used as a basis for those decisions, and the options considered by the team. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the BCPS to provide documentation by the end of the 2014-2015 school year that the IEP team has determined whether an FBA is required, and if so, that it has been conducted and that a BIP has been developed to address the student's needs consistent with the results of the FBA.

If the IEP team determines that a BIP is required, the BCPS must also ensure that the IEP team determines the services needed to remediate the delay in development of the BIP, to be provided to the student within one (1) year of the date of this Letter of Findings.

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The MSDE also requires the BCPS to provide documentation by the end of the 2014-2015 school year that the IEP team has determined whether the student required ESY services, and if so, has taken the steps necessary to ensure that the parents are reimbursed for the services they obtained at the XXXXXXXX during the summer of 2014.

School-Based

The MSDE requires the BCPS to provide documentation by the start of the 2015-2016 school year that steps have been taken to determine whether the violations identified through this investigation are unique to this case or whether they constitute a pattern of violations at the Montessori School. Specifically, a review of student records, data, or other relevant information must be conducted in order to determine if the regulatory requirements are being implemented and documentation of the results of this review must be provided to the MSDE. If compliance with the requirements is reported, the MSDE staff will verify compliance with the determinations found in the initial report.

If the regulatory requirements are not being implemented, actions to be taken in order to ensure that the violation does not recur must be identified, and a follow-up report to document correction must be submitted within ninety (90) days of the initial date of a determination of non-compliance. Upon receipt of this report, the MSDE will re-verify the data to ensure continued compliance with the regulatory requirements.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Kathy Aux, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the BCPS and the complainant have the right to submit additional written documentation to this office within fifteen (15) days of the date of this letter if they disagree with the findings of fact or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings. If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary.

Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions within the timelines reported in this Letter of Findings.

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Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The student's parents 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 due process.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/Early Intervention Services

MEF:am

c: XXXXXXXXXXXX
 XXXXXXXXXXXX
 Gregory E. Thornton
 XXXXXXXXXX
 Darnell L. Henderson
 Dori Wilson
 Paul Dunford
 Anita Mandis
 Nancy Vorobey
 Kathy Aux
 William Reinhard