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State Superintendent of Schools

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May 28, 2015

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Mrs. Chrisandra A. Richardson
Associate Superintendent
Montgomery County Public Schools
850 Hungerford Drive, Room 220
Rockville, Maryland 20850

Dr. Gwendolyn J. Mason
Director
Department of Special Education
Montgomery County Public Schools
850 Hungerford Drive, Room 230
Rockville, Maryland 20850

RE: XXXXX
Reference: 15-061

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.

ALLEGATION(S):

On April 1, 2015, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant 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. The MSDE investigated the following allegations:

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1. The MCPS did not ensure that, since April 1, 2014,¹ there has been an offer of an educational placement that addresses the student's needs, in accordance with 34 CFR §§300.114 - .116, .324; and
2. The MCPS did not ensure that the student was provided with a requested break on April 1, 2014, as required by the Individualized Education Program (IEP), in accordance with 34 CFR §§300.101 and .323.

INVESTIGATIVE PROCEDURES:

1. Ms. K. Sabrina Austin, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On April 1, 2015, the MSDE sent a copy of the complaint, via facsimile, to Dr. Gwendolyn J. Mason, Director, Department of Special Education Services, MCPS, and Ms. Julie Hall, Director, Division of Business, Fiscal, and Information Systems, MCPS.
3. On April 6 and 7, 2015, Ms. Austin spoke with the complainant by telephone to clarify the allegations to be investigated.
4. On April 6 - 8 and 21, 2015, and May 7, 2015, the complainant provided the MSDE with documentation to be considered during the investigation.
5. On April 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 the MCPS of the allegations and requested that the MCPS review the alleged violations.
6. On April 21, 2015, Ms. Austin reviewed the student's educational record at the MCPS Central Offices. Ms. Ashley Vancleef, Supervisor, Equity Assurance and Compliance Unit, MCPS, and Ms. Patricia A. Grundy, Paralegal, MCPS, were present at the record review.
7. On April 21 and 27, and May 7, 2015, the MCPS provided documents to the MSDE for consideration in conducting the investigation.

¹ The violation is alleged to have occurred for a longer period of time. However, the complainant was informed, in writing, that only those violations alleged to have occurred within one (1) year of the date that the State complaint is filed may be investigated through the State complaint process (34 CFR §300.153).

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8. On May 7, 2015, Ms. Austin and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXX (XXXXXX) and interviewed the following school system staff:

- a. Ms. Ann Dang, Psychologist, MCPS;
- b. Ms. Diana Koch, Speech Language Pathologist, MCPS;
- c. Ms. XXXXXX, Special Education Teacher, XXXXXX;
- d. Ms. XXXXXXXX, General Education Teacher, XXXXXXXX; and
- e. Mr. XXXXXX, Principal, XXXXXXXX.

Ms. Vancleef and Ms. Grundy attended the site visit as members of the MCPS and to provide information on the school system's policies and procedures, as needed.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:

- a. Behavior Intervention Plan, dated October 22, 2013, and revised February 21, 2014;
- b. Documentation of the IEP team decisions made on December 13, 2013;
- c. Request for an Autism consult, dated February 12, 2014;
- d. Electronic mail (email) messages between the school staff and school system staff, dated February 19, 24 and 25, 2014;
- e. The complainant's report in preparation for an IEP team meeting, dated February 19, 2014;
- f. IEP and Prior Written Notice, dated February 21, 2014;
- g. Description of the MCPS "home school model," Appendix S to the MCPS Superintendent's Recommended FY 2016 Capital Budget;
- h. Chart reflecting the student's work completion for the period of October, 2013 to March, 2014;
- i. The student's report card for 3rd marking period of the 2013- 2014 school year;
- j. The student's daily behavior checklists, dated February 21, 2014 to April 4, 2014; charts tracking the student's choices, dated February 3, 2014 to March 5, 2014; and emails from the school staff reporting observations of the student's behavior, dated February 4, 2014, March 5, 7, 19, 24 and 31, 2014, and April 2 and 4, 2014;
- k. Email messages between the complainant and the school system staff, dated February 24 and 25, 2014;
- l. Email messages among the school system staff, dated February 20, 2014 and March 5, 2014;
- m. Email messages between the school staff and the complainant, dated March 7 and 25, 2014;

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- n. The reports of the students' progress, dated March 27 and 28, 2014;
- o. Email messages between the school staff and the complainant, dated April 2, 2014, and attached notes of the school staff's report of events on April 1, 2014;
- p. Summary of IEP team meeting and parent conference, dated April 10, 2014;
- q. Email messages between the complainant and the school staff, dated April 25, 2014;
- r. Email message from the complainant to the school system staff, dated April 28, 2014;
- s. Letter from the school staff to the complainant, dated April 29, 2014;
- t. Letter from the school system staff to the complainant, dated May 9, 2014;
- u. Report of the private psychological evaluation performed on May 9, 20 and 23, 2014 and June 7, 2014, and the IEP team's consideration of the report, dated August 7, 2014;
- v. Email message between the complainant and the school staff, dated July 18, 2014;
- w. XXXXXXXXXXXXXXX progress report for 4th quarter of the 2013-2104 school year; progress update, dated May 15, 2014; and classroom teacher report, undated;
- x. IEP and Prior Written Notice document, dated August 7, 2014;
- y. Documentation of the IEP team decisions made on September 4, 2014;
- z. The complainant's consent for assessments, dated September 4, 2014;
- aa. Email messages between the complainant and the school system staff, dated September 4 and 5, 2014;
- bb. Report of the psychological evaluation performed on September 29, 2014;
- cc. Letter from the student's psychiatrist, dated November 10, 2014;
- dd. Documentation of the IEP team decisions made on November 25, 2014;
- ee. Draft IEP and Prior Written Notice document, dated December 11, 2014;
- ff. Email messages between the complainant's legal counsel and the school system staff, dated December 15, 2014;
- gg. Description of the MCPS procedures pertaining to placement determinations, the MCPS Special Education Procedures Handbook, 2007;
- hh. Emails between the school system staff, the complainant's counsel and the complainant, dated February 19 and 26, 2015 and March 3, 4, 17 and 26 – 27, 2015;
- ii. Description of the programs for gifted and talented/learning disabled students, MCPS brochure, Twice Exceptional Students at a Glance, undated;
- jj. Correspondence and attachments from the complainant to the MSDE, received on April 1, 2015; and
- kk. Letter inviting the complainant to an IEP team meeting, dated April 21, 2015.

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BACKGROUND:

The student is eleven (11) years old and is identified as a student with an Emotional Disability under the IDEA. Since April 7, 2014, the student has been parentally placed at XXXXX XXXXXXXX, a private school in Montgomery County, Maryland. Prior to that time, the student attended XXXXXXXXXXXXXXXXXXXX where he received special education and related services through an IEP which identified him as a student with Autism. During the period of time addressed by this investigation, the complainant was provided with written notice of the procedural safeguards (Docs. f, p, w and x).

ALLEGATION #1

ENSURING THAT THERE HAS BEEN AN OFFER OF AN EDUCATIONAL PLACEMENT THAT MEETS THE STUDENTS NEEDS, SINCE APRIL 1, 2014

FINDINGS OF FACTS:

1. The IEP that was in effect on April 1, 2014 was developed on February 21, 2014 (Doc. f).
2. There is documentation that prior to the February 21, 2014 IEP team meeting, the school staff requested consultation with an Autism specialist seeking strategies and placement considerations for the student. The request indicates the school staff had concerns that the student was not complying with teacher directions, not participating in instruction, taking off his shoes, calling out for assistance and leaving the classroom (Docs. c, d and k).
3. At the February 21, 2014 IEP team meeting, the complainant requested a change in placement for the student. The complainant expressed her belief that the student “would perform better with more focused attention or a smaller class,” that the student was “not being successful” in his current environment, and that the student “needs more individualized attention” than placement in the general education setting could provide. The complainant requested that the student be placed in the program for gifted and talented learning disabled students (GT/LD program).² The documentation reflects that the IEP team discussed that updated assessments would be required in order to consider the complainant’s request. The complainant refused assessments by the school system, but indicated that she would be obtaining private assessments in May, 2014³ (Docs. e and f).

² Elementary students in the MCPS GT/LD program “spend the majority of their academic day in self-contained classrooms” with an average of 8-12 students. The GT/LD classrooms are staffed with one special education teacher and one special education paraeducator (Doc. ii).

³ There is documentation that, in December 2013, the IEP team recommended additional assessments to determine the student’s special education and related service needs. The complainant declined to provide consent to allow the

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4. The IEP developed on February 21, 2014 reflects that the student has difficulty complying with directions, engaging in non-preferred tasks and completing work. Further, it documents that his interfering behaviors include “whining” and leaving the classroom, and that he becomes upset if he does not receive help immediately. The IEP states that the student’s disability affects his participation in all subjects across the school day; his ability to be flexible in the classroom; his behavior and ability to be available for learning in the classroom; his ability to attend to instruction as well as wait for assistance in the classroom and to participate in group learning activities. The IEP includes a behavioral goal requiring the student to initiate, remain engaged, and participate appropriately in classroom activities. The IEP also indicates that the student requires a Behavior Intervention Plan (BIP) to address his use of the quiet room, time on task due to perception of difficulty, and work completion due to avoidance of tasks (Docs. a and f).
5. The IEP team considered the complainant’s concerns about the decline in the student’s behavior as well as his anxiety and frustration in learning new concepts.⁴ The IEP team reviewed the student’s BIP and made revisions to the strategies and interventions to support the student’s behavior and frustration by adding “fidgets” and a bonus system as an incentive for the student to participate (Docs. a and f).
6. The February 21, 2014 IEP reflects that the IEP team considered placement for the student in general education and in a supported general education setting through the “home school model.”⁵ The IEP team determined that the least restrictive environment for the student is the general education “home school model” at XXXXXXXXX in which instruction is provided in a class that is co-taught by a general education teacher and a special education teacher (Docs. f and g, and interview with the school staff).
7. The student’s behavior contracts and “choice sheets” between February 2014 and April 2014, and email correspondence from the school staff to the complainant between February 4, 2014 and April 4, 2014 summarizing the student’s behavior, reflect times during portions of the school days when the student displayed interfering behaviors, including laying on the floor, playing with toys, making noises, and refusing to participate and follow instructions. The same documentation reflects that, although the student demonstrated these behaviors at times, the behaviors were not reported

school system to perform the assessments at that time as well, stating that she would obtain the assessments privately (Doc. b).

⁴ The IEP team reports that the student has had, historically, a decline in behavior during the month of February, and that the school staff informally consulted with an Autism specialist who provided suggested strategies that were being implemented to assist the student (Interview with the school staff).

⁵ The “home school model” provides additional supports to students in the general education setting in order to keep students with disabilities in their neighborhood schools (Doc. g and interview with the school system staff).

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throughout the entire school day, and that the student was able to participate during much of the classroom instruction (Doc. j and interview with the school staff).

8. There is documentation that the student completed 95% of his work in January 2014, 64% of his work in February 2014, and 77% of his work in March 2014 (Doc. h).
9. The IEP progress report, dated March 27, 2014 reflects that the student was making sufficient progress toward meeting his IEP goals. The student's report card reflects that the student was making progress toward meeting the grade level standards in all areas (Docs. i and n).
10. On April 10, 2014, the IEP team convened a meeting and discussed that the complainant had withdrawn the student from XXXXXXXX and had placed him in a private school.⁶ The documentation reflects that the complainant requested that the school system pay the cost of the student's private school. The IEP team recommended an updated academic and cognitive assessment of the student. The complainant declined to consent because the student was scheduled to undergo private assessments in May 2014, and reported that she expected to have the reports in June 2014. The school staff also offered to place the student in a different classroom with different service providers.⁷ The complainant indicated that the student would continue to attend the private school where he was doing well, and that "she was not interested in having the student return to MCPS" in the same placement (Doc. p).
11. There is documentation that at the IEP team meeting on April 10, 2014, the IEP team discussed the process for an IEP team meeting with the MCPS Central Office staff (CIEP). The school system staff report, and the MCPS Special Education Procedures Handbook reflects, that referrals to the MCPS Central Office for CIEP team meetings are made when IEP teams have determined that "school-based options have been ruled out" and the IEP team is considering a separate public or private special education day school (Docs. p and gg).
12. On April 25 and 28, 2014, the complainant sent correspondence to the school system staff reflecting that she was "rejecting Montgomery County Public School's placement of [the student] in the MCPS school system," and requesting that the school system pay the cost

⁶ There is documentation that the complainant enrolled the student in a private school on April 7, 2014 (Doc. w).

⁷ On April 1, 2014, the student's classroom teacher took a photograph of the student that portrays him on the floor with his shoes off and playing with fidgets. The complainant subsequently sent email correspondence to the school system staff stating that the student experienced emotional distress following the incident, and that he refused to return to XXXXXXXX (Docs. o and r).

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for the student to attend XXXXXXXXXX, his new private school. The complainant indicated her belief that the placement at XXXXXXXX does not meet the student's needs (Docs. q and r).

13. On April 29, 2014, the school staff sent a letter to the complainant stating that, based on the current data, the student's placement at XXXXXXXXXXXXXXXXXXXX as reflected in the IEP developed on February 21, 2014 continues to be appropriate.⁸ The school staff offered to convene an IEP team meeting to discuss the complainant's concerns and to consider whether revisions to the student's IEP would be appropriate (Doc. s).
14. On May 27, 2014 and August 7, 2014, the IEP team convened a meeting to review the student's IEP. The IEP team considered the results of a private psychological evaluation obtained by the complainant which she provided to the school staff on July 18, 2014. The report indicated that while the student's overall level of intellectual functioning is solidly in the average range, he has "marked weaknesses in verbal working memory, organization, task initiation, self monitoring, and flexibility." The results also indicated that the student has significant difficulty with regulating his emotions, has a low frustration threshold, and that he struggles with organization of information and is "easily overloaded when presented with large amounts of visual or verbal information." The report concluded that the student has an anxiety disorder, attention-deficit hyperactivity disorder, weaknesses in expressive and receptive language and fine motor, difficulty with executive functioning, and a written language disorder (Docs. u and x).
15. The report of the private psychological evaluation reflects that the evaluator recommended placement for the student in a highly structured classroom, with individual teacher selection and small group instruction, positive relationships with teachers, instruction appropriate to the student's "average to above average" intellectual ability, supports to sustain attention and task completion, and language and occupational therapy. In addition, the report reflects that the student needs individualized instruction in organization, explicit instruction in flexible thinking and problem solving, social skills training, and a behavior plan to support his ability to participate and benefit from instruction (Docs. u and x).
16. On August 7, 2014, the complainant expressed concern that when the student was at XXXXXXXX, he was unable to participate in classroom instruction and school activities. The IEP team considered information from the complainant and data from the private

⁸ On May 9, 2014, the school system staff sent a similar letter to the complainant also confirming that the school system supports the February 21, 2014 IEP's placement of the student at XXXXXXXX as the appropriate placement in the least restrictive environment (Doc. t).

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school on the student's progress and performance. The data reflect that the student was placed in a small class size of 3-5 students, had breaks throughout the day, easily distracted but can be re-focused with re-direction, does not play with fidgets, lays on the floor or takes off his shoes, and does not leave the classroom without permission. The data state that although the student may verbally protest or "flop around or make noise" when asked to perform non-preferred activities, the student is given choices and will reconnect and participate in the activity when the behavior is ignored (Docs. w).

17. Based on the data, the IEP team made revisions to the student's IEP on August 7, 2014, with participation by the MCPS Central Office staff. The IEP developed reflects the addition of a second behavior goal to address the student's responses when he is anxious or frustrated, and several additional supports to address the student's behavior and access to instruction, including small group instruction, wait time, assistance with organization, checklist for expectations, student notes, a word bank for written assignments and a contract for work completion and on task behavior. The IEP team considered placement options for the student from full time general education setting to more restrictive settings. The documentation reflects that IEP team determined that the least restrictive environment in which the IEP can be implemented is a separate special education class throughout the school day due to the student's anxiety, behavior, attention, executive function, sensory, social skills and cognitive flexibility needs. The IEP team determined that the closest school with this environment is XXXXXXXXXXXXXXXXXXXX (XXXX XXXXXXXX) (Doc. x and interview with the school staff).
18. The IEP team convened next on September 4, 2014. The complainant requested that the student's disability code be changed to reflect his anxiety and attention deficit hyperactive disorder. The IEP team reviewed existing data and determined that additional data was needed to determine whether the student's primary disability continued to be Autism, or whether it is related to difficulty with anxiety and inattention and should perhaps be changed. The complainant provided consent for the school system to perform assessments, but declined to consent for the school system staff to conduct observations of the student in his private school setting (Docs. y and z).
19. On September 4 and 5, 2014, the complainant sent email correspondence to the school system staff indicating that the school staff did not allow her the opportunity to express her new concerns about the student's placement at the IEP team meeting on September 4, 2014. The complainant indicated that the placement at XXXXXXXX was inappropriate based on her belief that the other students are two to three (2-3) grade levels behind the student, and that the student would be included with typical peers for portions of the day which she did not want. In response, the school system staff informed the complainant of her procedural safeguards and the option of requesting an IEP team meeting to discuss her concerns (Doc. aa).

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20. The IEP team convened a meeting on November 25, 2014. The IEP team reviewed the results of assessments completed by the school system and determined, based on the data, that the student's primary disability is an Emotional Disability. The report of the psychological evaluation considered by the IEP team reflects that the evaluator considered a letter from the student's psychiatrist received on November 11, 2014. The letter states that the student "needs a small, relatively calm, predictable school due to his severe hypersensitivity and anxiety." It also states that "the sheer size as well as 'hustle and bustle' of a public elementary school raises [the student's] anxiety level making it much more likely that he will exhibit maladaptive behaviors that interfere with learning" (Doc. dd).
21. The complainant requested that the IEP team make a referral for a CIEP team meeting because she disagreed with the IEP team's recommendation for placement at XXXXXX XX based on her concerns about the class size, level of noise and distractions, and the fact that the student is on-grade level. The IEP team documented that it continued to believe that, based on the data considered by the IEP team, placement at XXXXXXXXX, is appropriate for the student. However, the IEP team did not document the basis for this decision, despite the complainant's concerns and the recommendation of the student's psychiatrist (Doc. dd).
22. The IEP team convened a meeting on December 11, 2014 to review the student's progress. There is documentation that the complainant provided the school staff written parental input prior to the meeting, and that she gave permission for the meeting to proceed without her. The complainant repeated her objection to the XXXXXXXXXXXX placement as not appropriate due to her previously expressed concern that the school building would not provide the student an environment with the necessary "level of reduced distraction." The IEP team determined that the student continues to require a separate special education class throughout the day, and that the IEP can be implemented in a public school, with XXXXXXXXXXXX as the closest school with that setting. The IEP team documented that it considered the complainant's concerns about the student's sensory needs, and decided that placement at XXXXXXXXXXXX would meet the student's needs. The IEP team documented the complainant's disagreement with the placement determination (Doc. ee).
23. There is documentation that between February 19, 2015 and March 27, 2015, the complainant's legal counsel and the school system staff held negotiations outside of the IEP team process that resulted in the referral to a CIEP team to discuss placement options for the student (Doc. hh).

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24. On May 1, 2015, the CIEP team convened. To date, there is no documentation of the IEP team's decisions at this meeting (Doc. kk and interview with the school system staff).

DISCUSSION/CONCLUSIONS:

The public agency must offer each student with a disability a Free Appropriate Public Education (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).

When determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made by the IEP Team. The placement decision must be made in conformity with the least restrictive environment (LRE) provisions, determined at least annually, based on the student's IEP, and as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

Unless the IEP of a student requires some other arrangement, the student is educated in the school setting that the student would attend if not disabled. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs. A student with a disability is not removed from education in an age-appropriate regular classroom setting solely because of needed modifications in the general curriculum (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

In this case, the complainant alleges that the IEP team's April 1, 2014 placement of the student in a general education classroom at XXXXXX was not appropriate to meet his needs. Further, she alleges that the IEP team's subsequent placement of the student in a separate special education classroom at XXXXXXXXXX was not appropriate to meet the student's needs (Doc. jj and interview with the complainant).

Based on the Findings of Facts #3 and #10, the MSDE finds that in February 2014 and April 2014, the complainant requested a change in educational placement for the student to a more restrictive environment. Based on the same Findings of Facts, the MSDE finds that the IEP team recommended additional data, but that the complainant declined to consent to the requested assessments.

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Based on the Findings of Facts #3, #5 - #6, and #10, the MSDE finds that that IEP team considered the complainant's requests for a change in placement, and that the IEP team documented its determination that, based on the existing data, the least restrictive environment for the student is the general education setting "home school model" at XXXXXXXXX, the student's neighborhood school. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation.

Based on the Finding of Fact #14, the MSDE finds that in July 2014, the IEP team received additional data from the complainant about the academic and social/emotional needs of the student. Based on the Findings of Facts #14 - #17, the MSDE finds that the IEP team considered the data in August 2014, and based on the new data, that the IEP team documented its determination that the student required a change to a full-time placement outside of the general education setting, and that the closest school with this environment is XXXXXXXXX. Therefore, this office does not find that a violation occurred with respect to this aspect of the allegation. Based on the Findings of Facts #19 - #21, the MSDE finds that there is documentation that in September and November 2014, the complainant objected to the appropriateness of the IEP team's placement of the student at XXXXXXXXX due to concerns about the size, the noise level, and the grade level instruction that she believed that the XXXXXX placement would provide.

Based on the Findings of Facts #19 - #22, the MSDE finds that while there is documentation that the IEP team considered the complainant's concerns about the size and the noise level of XXX XXXXX, there is no documentation that the IEP team considered the complainant's concern about the level of instruction that the XXXXXXXXXXXX placement would provide. Therefore, this office finds a violation with regard to this aspect of the allegation.

ALLEGATION #2

PROVISION OF BREAKS ON APRIL 1, 2014

FINDINGS OF FACTS:

25. The IEP in effect on April 1, 2014 was developed on February 21, 2014 (Doc. f).
26. The February 21, 2014 IEP includes multiple or frequent breaks as an accommodation to address the student's ability to participate appropriately, problem solve when frustrated. The IEP also requires that the student receive breaks as a supplementary aid, and that they are to be provided on a daily basis. The IEP reflects that one of the student's strengths is "self awareness when [a] break is needed" but it does not provide any clarifying information specifying the manner in which the student's breaks are to be provided such as who determines when breaks are to be taken (Doc. f).

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27. The February 21, 2014 IEP reflects that the student requires a BIP, and that breaks and the use of a quiet room are strategies that the school staff are required to use to assist the student in being available for classroom learning (Docs. a and f).
28. There is documentation that on April 1, 2014, the student left the classroom following an incident when his teacher photographed him, which upset him. The documentation indicates that after discussing the incident with the student, a school administrator directed him to return to class, but he requested to go to the quiet room for a break. The documentation reflects that the administrator refused to allow the student a break, and instead instructed that he needed to return to his classroom and work for thirty (30) minutes before he could have a break. The documentation indicates that the student expressed to the administrator that he could not wait for thirty (30) minutes for a break, and that he made a second request for a break. The documentation reflects that the administrator refused the student's subsequent request for a break, by again stating the requirement that the student first return to the classroom and work for thirty (30) minutes before he could take a break. The student made a third request for a break, but there is no documentation of the response by the administrator (Docs. j and o).
29. There is no documentation that the student was permitted a break on April 1, 2014 (Review of the student's educational record).

DISCUSSION/CONCLUSIONS:

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 order to ensure that the student receives the services required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (Analysis of Comments and Changes, Federal Register, Vol. 64, No. 48, p.12479, March 1999).

Based on the Finding of Fact #26, the MSDE finds that the IEP in effect on April 1, 2014 required that the student be provided breaks, and that the IEP did not specify the manner in which breaks were to be provided or the steps required in order for the student to access breaks. Based on the Findings of Facts #25 - #28, the MSDE finds that the student was not provided a break as required by the IEP, and therefore a violation occurred.

CORRECTIVE ACTIONS/TIMELINES:

Student-Specific

The MSDE requires the MCPS to provide documentation, no later than August 1, 2015, that an IEP team has convened and considered the complainant's concern about the instructional level that is provided at XXXXXXXXXX. If the IEP team revises the student's IEP based on that

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consideration, the MSDE also requires the MCPS to provide documentation that the IEP team determined the compensatory services to compensate the student for the delay in reviewing and revising the IEP. The MCPS shall ensure that the complainant is provided with proper written notice of the basis for the IEP team's decisions.

If the student enrolls with the MCPS within one (1) year of the date of this Letter of Findings, the MSDE requires the MCPS to provide documentation, that the IEP team has convened a meeting within thirty (30) days of the enrollment to review and revise the IEP to ensure that it is written clearly with regard to the manner in which the student's breaks are to be implemented.

The MCSP must provide the complainant with proper written notice of the determinations made at the IEP team meeting including a written explanation of the basis for the determinations, as required by 34 CFR §300.503. If the complainant disagrees with the IEP team's determinations, she maintains the right to request mediation or file a due process complaint, in accordance with IDEA.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Complaint Investigation/Due Process Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties from Dr. Kathy Aux Dispute Resolution Specialist, MSDE at (410) 767-7770.

Please be advised that the complainant and the school system 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 request for reconsideration, the school system must implement any Corrective Actions consistent with the timeline requirements as reported in this Letter of Findings.

XXX

Mrs. Chrisandra A. Richardson

Dr. Gwendolyn J. Mason

May 28, 2015

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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 complainant 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 a 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

c: Larry Bowers
Chrisandra Richardson
Gwendolyn Mason
Julie Hall
Ashley VanCleaf
XXXXXXX
Dori Wilson
Anita Mandis
K. Sabrina Austin
Kathy Aux