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June 16, 2016

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Ms. Nancy Fitzgerald
Executive Director of Special Education
and Student Services
Howard County Public Schools
10910 Route 108
Ellicott City, Maryland 21042-6198

RE: XXXXX
Reference: #16-102

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 March 31, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her daughter, the above-referenced student. In that correspondence, the complainant alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student.

There is a sixty (60) timeline for completion of the complaint investigation process. However, in order to ensure that information presented by the complainant on May 23, 2016 was considered, it was necessary to extend the timeline for completion of this Letter of Findings, pursuant to 34 CFR §300.152.

The MSDE investigated the following allegations:

1. The HCPS did not ensure that the student was provided with the special education and related services required by the Individualized Education Program (IEP) or comparable

services when she transferred to the HCPS from XXXXXXXXXX, in accordance with 34 CFR §300.323.

2. The HCPS has not ensured that the IEP includes the special education services needed to assist the student in achieving the annual IEP goals since revising the XXXXXXXXX IEP, in accordance with 34 CFR §§300.320 and .324.
3. The HCPS has not ensured that the educational placement for the 2015-2016 school year is as close as possible to the student's home, in accordance with 34 CFR §300.116.
4. The HCPS has not ensured that the student's transportation needs have been addressed during the 2015-2016 school year, in accordance with 34 CFR §300.134 and COMAR 13A.05.01.10.
5. The HCPS did not ensure that documents were provided in the complainant's native language, including those requesting written consent, assessments, and prior written notice of IEP team decisions, in accordance with 34 CFR §§300.9, .300, .304, and .503.

INVESTIGATIVE PROCEDURES:

1. On April 8, 2016, the MSDE sent a copy of the complaint, via facsimile, to Ms. Nancy Fitzgerald, Executive Director of Special Education and Student Services, HCPS, and Ms. Janet Zimmerman, Instructional Facilitator, HCPS.
2. On April 11, 18, and 21, 2016, and May 19, 2016, Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted telephone interviews with the complainant about the allegations using a language interpreter service.
3. On April 13, 2016, 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 HCPS of the allegations and requested that the school system staff review the alleged violations.
4. On April 13 and 14, 2016 and May 18, 2016, the HCPS provided the MSDE with audio recordings of IEP team meetings and documents for consideration.
5. On May 10, 2016, Ms. Mandis and Dr. Nancy Birenbaum, Compliance Specialist, MSDE, conducted a site visit to XXXXXXXXXXXXXXXX School to review the student's educational record, and interviewed the following HCPS staff:
 - a. Ms. XXXXXXXXXX, Preschool Special Educator;
 - b. Ms. XXXXXXXXXX, Program Head of Physical Therapy;
 - c. Ms. XXXXXXXXX, Special Educator, Early Intervention Assessment Team;
 - d. Ms. XXXXXXXXX, Speech/Language Pathologist;
 - e. Ms. XXXXXXXXXX, Resource Teacher; and

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f. Ms. XXXXXXXXXXXX, Assistant Principal.

Ms. Zimmerman and Ms. Jennifer Harwood, Instructional Facilitator – Early Intervention, HCPS, attended the site visit as representatives of the HCPS and to provide information on the school system’s policies and procedures, as needed.

6. On May 10, 15, and 17, 2016, and June 1, 2016, the HCPS provided the MSDE with documents to be considered.
7. On May 23 and 26, 2016, the complainant provided additional information to be considered, which needed to be translated into English.
8. On May 24, 2016, the MSDE informed the parties of the need to extend the timeline for completion of the investigation.
9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Excerpts from a March 17, 2014 report from the Developmental Medicine Center at the XXXXXXXXXXXXXXXX (XXX
 - b. September 4, 2014 report from the Neurology Department at the XXX;
 - c. October 17, 2014, report of a preschool assessment;
 - d. October 24, 2014 letter from the student's private physician (no addressee);
 - e. November 10, 2014 report of a preschool assessment;
 - f. November 11, 2014 letter from the XXX (no addressee);
 - g. Excerpts from a June 9, 2015 report from the XXX;
 - h. October 12, 2015 report of a Functional Behavioral Assessment (FBA);
 - i. October, 2015 report of the student's preschool classroom performance;
 - j. IEP, dated October 19, 2015;
 - k. October 21, 2015 report of an articulation/phonology evaluation;
 - l. Excerpts from a December 9, 2015 report from the XXX;
 - m. December 17, 2015 letter from the XXX (no addressee);
 - n. Request for Records and Release of Records form, and facsimile cover sheet, dated January 12, 2016;
 - o. Written summary of the January 20, 2016 IEP team meeting;
 - p. Physical therapy and speech/language service logs for February and March 2016;
 - q. Written summary of the March 1, 2016 IEP team meeting;
 - r. Electronic mail (email) messages among the school system staff, dated March 3, 4, and 7, 2016;
 - s. Email message from the school staff to the complainant, dated March 9, 2016;
 - t. March 9, 2016 report of a Collaborative Assessment and Evaluation, Early Childhood;
 - u. Written summary of the March 16, 2016 IEP team meeting;
 - v. March 21, 2016 letter from XXX (no addressee);

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- w. Email messages between the complainant and the school system staff, dated March 21 and 22, 2016;
- x. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 31, 2016;
- y. IEP, dated April 7, 2016;
- z. Written summary of the April 7, 2016 IEP team meeting;
- aa. Written summary of the April 18, 2016 IEP team meeting;
- bb. Written summary of the April 27, 2016 IEP team meeting;
- cc. Written summary of the May 12, 2016 IEP team meeting;
- dd. Excerpts from the school system's contact log for December 2015 and January 2016;
- ee. IEP, completed on May 12, 2016;
- ff. Consent for initiation of services, translated into XXXXXX;
- gg. Written summary of the May 12, 2016 IEP team meeting translated into XXXXX;
- hh. Email message from the HCPS to the MSDE, dated May 16, 2016;
- ii. Email message from the HCPS to the MSDE, dated May 19, 2016;
- jj. Email message from the HCPS to the MSDE, dated June 1, 2016, with attached letter from the HCPS to the complainant; and
- kk. Correspondence from the complainant that was received by the MSDE on May 23, 2016.

BACKGROUND:

The student is four (4) years old and is identified as a student with a Developmental Delay under the IDEA and has an IEP that requires the provision of special education and related services. She attends a part-time preschool program at XXXXXXXXXXXXXXXX School (Docs. n, o, and ee - jj).

In January 2016, the student enrolled in the HCPS after her family moved to Maryland from XXXXXXXX. At that time, the student had an IEP that was developed in XXXXXXXX (XXX IEP) (Docs. j, n, and o).

ALLEGATIONS #1 AND #2

IMPLEMENTATION OF THE XXXXXXXXXXXX IEP AND ENSURING THAT THE IEP INCLUDES THE SPECIAL EDUCATION SERVICES NEEDED TO ACHIEVE THE IEP GOALS

FINDINGS OF FACTS:

1. In December, 2015, the complainant provided the school staff with a copy of the XX IEP and indicated her desire to enroll the student in the HCPS (Docs. o and dd).
2. On January 11, 2016, the complainant provided the HCPS with documentation regarding her residency, which was needed in order to enroll the student in the school system, and completed a Request for Records and Release of Records form (Docs. n, o, and dd).

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3. On January 12, 2016, the school staff sent a request to the student's previous school for her educational record (Docs. n and o).
4. On January 15, 2016, staff from the student's previous school in XXXXXXXXXXXX responded to the request for record (Doc. dd).
5. On January 20, 2016, the IEP team convened and considered documents from the student's educational record, including the XX IEP that was dated October 19, 2015. The XX IEP includes the following:
 - a. Annual goals for the student to improve speech/language, gross motor, social/behavioral, pre-academic, and play skills.
 - b. A statement that the school district operates "on a 5-day cycle," and that the student was provided with "5 sessions of 5 hours each per 5-day cycle" of "integrated preschool."
 - c. Information that the student was provided with "1 session of 15 minutes per 5-day cycle" of speech/language services and "1 session of 15 minutes per 5-day cycle" of physical therapy per services inside of the classroom, as well as "2 sessions of 30 minutes each per 5-day cycle" of speech/language services and "1 session of 30 minutes per 5-day cycle" of physical therapy services outside of the classroom (Doc. j).
6. At the January 20, 2016 IEP team meeting, the team considered the following data:
 - a. Excerpts from a March 17, 2014 report from the Developmental Medicine Center at XXXXX Children's Hospital, which was developed when the student was two years old. The report indicates that the student's language development could not be assessed due to "the presence of bilinguality," but states that "it is evident from the history given that language delay is present." It indicates that socialization and engagement, as well as other behavioral factors "ruled out the presence of an autism spectrum disorder." It further indicates that the student was found to have "age appropriate" cognitive abilities and fine motor skills, and that this, along with "the progress seen in her language development to date suggests a good prognosis for ongoing improvements." In addition, the report states that "the prior regression which was reported, although of some concern, was transient and is not expect to recur" (Doc. a).
 - b. The September 4, 2014 report from the Neurology Department at XXXXXXXX XXXXXXXXXXXX that notes that, when last seen on March 10, 2014, the student had "some delays involving her acquisition of gross motor milestones" and "also seemed to have delays with regard to her communication skills." The report states that, since that time, the student had been receiving speech/language

services and had made “significant gains.” It states that the student demonstrated “no focal motor weaknesses” and that her “gait and balance are normal” (Doc. b).

- c. The October 17, 2014 report of a preschool assessment that was conducted by a speech/language therapist, an occupational therapist, and an educator in response to the parents’ concerns about a language delay and lack of play skills.
- The report states that observations were conducted of the student in the school setting and that the child was found to have “adjusted well,” that she was “learning how to follow daily routines and has been transitioning smoothly between activities,” and that she had “begun to show interest in socializing more with peers.”
 - The report states that the student “seems to be very interested in interacting and communicating,” that she has “made great strides in communicating her wants and needs,” and that “this huge growth” was observed “in only a matter of weeks” of being in the preschool environment.
 - The report states that the student’s overall performance in the area of speech articulation was “found to be commensurate with age level peers,” and that her receptive language skills “are within the appropriate age range.” The report further states that the student “is hesitant to initiate and engage in conversations with peers in the classroom,” but that “it is unclear if reduced attempts to communicate are the result of feeling uncomfortable using English and knowledge and exposure of English language” (Doc. c).
- d. An October 24, 2014 letter from the student’s private physician stating that the student “is under medical care for speech delay and developmental communication disorder” (Doc. d).
- e. A report of the results of a preschool assessment that was completed on November 10, 2014, which states that the student demonstrated strengths in receptive and pragmatic language, but had weakness in the areas of expressive language and play skills. It further states that the student “navigates the school setting with expected control over her body for making smooth transitions up and down from the floor, for walking on all surfaces and levels without tripping, falling or bumping, and for standing in line with classmates.” It indicates that, while the student is “cautious” on stairs, she “readily uses them with teacher proximity.” It further indicates that the student has a fear of high equipment, but “after being introduced to the climbing structure and slide with teacher assistance and encouragement, there has been a notable increase in her active participation on the playground.” The assessment found that the student scored “just below average” for overall gross motor development. It recommends continued

participation in a preschool environment so that she can be exposed to a variety of motor experiences with other children, consistent correction of her “W Sitting”¹ in order to facilitate the development of postural control for floor sitting, and “opportunities for outdoor play and movement exploration at home” (Doc. e).

- f. A November 11, 2014 letter from XXXXXXXXXXXXXXXXXXXX indicating that the student is under the medical care of the Neurology Department, that she has needs in the areas of receptive, expressive, and pragmatic language skills, and that “without accommodations put into place, [the student] risks regression or no progress at all” (Doc. f).
- g. Excerpts from a June 9, 2015 report of a XXXXXXXXXXXXXXXXXXXX neurology visit stating that “there is a history in terms of [the student] having developmental delays insofar as acquisition of gross motor milestones” and “also particular concern with regard to communication skills.” It further indicates that the student was seen by the “team at Developmental Medicine,” which “was not convinced that she had autistic spectrum problems” (Doc. g).
- h. An October 12, 2015 report of a Functional Behavior Assessment, which states that the student was referred for the assessment by the parents “due to her behavior on route to and from school.” It states that the student has a “history of gross motor and communication developmental delays” and that her “parents are having her evaluated for Autism Spectrum Disorder.” The report indicates that the parents reported that the student “tantrums” to and from school, and that this occurs more often with the complainant than the student’s father. The report notes that observations were conducted of the student transitioning to and from school and in the classroom, that the student demonstrated appropriate behavior and was able to be redirected when needed, and that no tantrums were observed. The report contains recommendations for “parent training and a behavior plan to support successful transitions to and from school” and during transportation by van “as she has been successful with that in the past.” It also recommends that the student “should be taught alternative behaviors in order to gain her mother’s attention” (Doc. h).
- i. An October 2015 report from the student’s preschool in XXXXXXXXX that indicates that the staff “have not seen any tantrums inside the classroom.” The report states that the student appears fearful when using playground equipment and participating in gross motor activities, but is able to do so successfully when “motivated by peers.” The report states that the student’s language “is developing

¹ The report defines this as a mechanically secure posture that offers structural support and requires minimal postural control for function. It states that, when used exclusively, this posture blocks the development of appropriate postural responses, and is contra-indicated for XXXXXXXX development (Doc. e).

and though there are times when she may not be able to label or be expressive with her English, she has strong receptive language skills.” It further states that the student’s “pre-academic skills are age appropriate” (Doc. i).

- j. A report of an October 21, 2015 articulation/phonology evaluation that states that the student was referred for evaluation “due to parent concerns regarding reduced speech intelligibility.” The results indicated that errors involving sound substitutions and omissions were “developmental in nature and not unexpected for a child of her age.” It explains that “phonological processes are error patterns that children exhibit as they are learning the adult patterns of sound production.” It also notes that the student is bilingual and that the articulation differences between XXXX and English should be considered when interpreting the results of the error patterns found (Doc. k).
 - k. Excerpts from a December 9, 2015 XXXXXXXXXXXXXXXXXXXX neurology visit that indicates that the family was unable to obtain an appointment for an assessment for Autism, but that the reporter’s “impression is that she met DSM-V criteria that would qualify her for being diagnosed with an autistic spectrum disorder, higher functioning.” The report notes that the family is in the process of moving to Maryland, and that it was hoped that the family would be able to obtain a formal assessment (Doc. l).
 - l. A December 17, 2015 letter from the XXXXXXXXXXXXXXXXXXXX Department of Neurology stating that the student “carries the diagnosis of autism spectrum disorder, for which she is currently being treated.” The letter states that the student “requires intensive services at this time” (Doc. m).
 - m. The complainant’s concerns that the educational assessment data from XXXXXXXXX “is inaccurate as it was not completed with an interpreter,” and her belief that the student has needs in the areas of pragmatic language and gross motor skills (Doc. o).
7. At the January 20, 2016 IEP team meeting, the IEP team decided that the student meets the criteria for identification as a student with a Developmental Delay due to a twenty-five percent delay in personal and social development. The IEP team recommended that additional data be obtained on the student’s speech/language and gross motor functioning (Doc. o).
8. At the January 20, 2016 IEP team meeting, the team documented that it was determining services to be provided that would be comparable to the services in the XX IEP until an IDEA evaluation was completed. However, the team documented the following:

At this time, [the student] has not been determined eligible for speech/language or physical therapy services; therefore, until updated assessments are completed in Maryland, she will not receive these services.

The team also documented that it decided not to address the physical therapy goal within the XX IEP, and to address the speech/language and other goals through the provision of six hours of special education instruction per week in a four day per week part-time preschool program (Doc. o).

9. On March 1, 2016, the IEP team reconvened and considered the complainant's concern that the student was not being provided with comparable services to that in the XX IEP, including physical and speech/language therapy.
 - The school staff reported that the decision to not provide speech/language services was made by the HCPS speech/language pathologist based on the review of the data from XXXXXXXXXXXX of the student's performance and progress.
 - The complainant indicated that the decision should not be made outside of the IEP team prior to the completion of the IDEA evaluation. The complainant argued that the providers in XXXXXXXXXXXX reported that, while the student had made progress, she continues to be shy and reluctant to use words, which could affect peer relationships.
 - The school staff reported that they were addressing these needs through the instruction in social and play skills being provided in the part-time preschool program.
 - The complainant expressed concern that the student will not be able to continue to make as much progress as she did in XXXXXXXXXXXX since she is not receiving as much time in a preschool program as she had in that State (Doc. q and review of the audio recording of the March 1, 2016 IEP team meeting).
10. On March 9, 2016, the school staff sent the complainant correspondence indicating that speech/language services would be provided in order to remediate the loss of speech/language services that should have been provided pursuant to the XX IEP. The correspondence informed the complainant that physical therapy services had been initiated on February 1, 2016 in accordance with the XX IEP despite the team's January 20, 2016 decision to not provide the services (Doc. s).
11. On March 16, 2016, the IEP team considered the following data:
 - a. The report of the school staff that all students require time to adjust to a classroom setting, and that the student had done so successfully. The school staff reported that the student has transitioned "very well" to the preschool class, that she plays

with other students, and requires minimal prompting to engage in new activities (Review of the audio recording of the March 16, 2016 IEP team meeting).

- b. Information from a March 9, 2016 Collaborative Assessment and Evaluation Report, Early Childhood, which indicates that the student's receptive language skills are within the "average range" for her age. The information indicates that the student's scores suggest "adequate communication abilities in context within the classroom setting," but identifies the need to improve speech articulation (Doc. t).
 - c. Information from the March 9, 2016 Collaborative Assessment and Evaluation Report, Early Childhood, which indicates that the student demonstrates motor skills that are in the "average range with typical movement patterns," that she is "functionally mobile within the school environment," and is "not in need of physical therapy services to benefit from her special education program" (Doc. t).
 - d. The complainant's concern that the special educator, who conducted the March 9, 2016 Collaborative Assessment and Evaluation Report, Early Childhood, along with a speech/language pathologist and physical therapist, had not had enough time to get to know the student before conducting the assessment. The complainant indicated that the team should rely upon the medical data from XXXXXXXXXX and the IEP when determining the special education and related services that are required. The school-based members of the team indicated that they were considering this data (Doc. u and review of the audio recording of the March 16, 2016 IEP team meeting).
 - e. The complainant's concern that the use of an interpreter invalidated the speech/language scores obtained by the HCPS staff because it gave the student too much time to answer questions. The speech/language pathologist explained that the questions were only posed in XXXXX when the student provided an incorrect answer to a question posed in English. The speech/language pathologist explained that the scores were based on the responses when the test was administered in English, but that they wanted to determine whether the student was understanding each question that was answered incorrectly, which is why it was posed a second time in XXXXX (Doc. u and review of the audio recording of the March 16, 2016 IEP team meeting).
12. At the March 16, 2016 IEP team meeting, the team decided that, based on the data, the student does not have gross motor skills needs requiring the provision of physical therapy services. The team decided that the data demonstrates needs in the areas of personal-social development and speech articulation, and began discussing goals in these areas. However, the team did not have sufficient time to complete the evaluation and the development of the IEP (Doc. u and review of the audio recording of the March 16, 2016 IEP team meeting).

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13. At the March 16, 2016 IEP team meeting, the team discussed that compensatory services were being provided for the loss of speech/language services required by the XX IEP and that the complainant would be provided with documentation of each make up session that is provided (Doc. u and review of the audio recording of the March 16, 2016 IEP team meeting).
14. The speech/language therapy provider's service logs reflect that services to address the XX IEP goals began on February 18, 2016 for thirty minutes. The service logs reflect that thirty minutes of speech/language therapy was provided on February 22, 25, and 26, 2016 as well (Doc. p).
15. At the March 16, 2016 IEP team meeting, the school-based members of the team explained that the physical therapy service provider had not been informed of the January 20, 2016 decision to discontinue those services, and therefore, those services had been provided in accordance with the XX IEP. The complainant disputed the information, and asserted that the physical therapist only met with the student to conduct a physical therapy assessment. The school-based members of the team acknowledged that 105 of the 315 minutes spent with the student was for the purpose of conducting the assessment, but asserted that the remainder of the time was spent providing services in accordance with the XX IEP. The complainant disputed this based on the service logs indicating that observations were conducted each time the service provider met with the student, and the complainant's belief that the physical therapy services do not involve conducting observations of the student. However, the XX IEP goal for which services were to be provided was for the student to "demonstrate improved postural stability for independent gross motor play," upon direction to engage in play activity, "as measured by therapist/teacher observation/data collection [Emphasis added]" (Docs. j, u, and review of the audio recording of the March 16, 2016 IEP team meeting).
16. The XX IEP requires that physical therapy services be provided to assist the student to expand her use of playground equipment without the need for adult hand held support, "hold cross legged" in the classroom, avoiding "W sitting," independently jump down from eighteen inch heights, landing on two feet without the need for hands touching the floor, balance on one leg for eight seconds "with dynamic midline control," and hop forward eight times on each leg. The IEP states that physical therapy services will be provided in the general education classroom for one fifteen minute session per week and outside of the classroom for one thirty minute session per week (Doc. j).
17. The physical therapist's service logs reflect that, at the time of the March 16, 2016 IEP team meeting, the physical therapist had worked with the student on the XX IEP goals, having her hop on each foot for eight feet, jump up high, walk backward on a balance beam, jump forward, turn, catch a ball, and ride a tricycle. The logs reflect that there had been three fifteen minute sessions provided in the classroom, three thirty minute sessions provided in the classroom, one forty-five minute session provided in the classroom, four thirty minute sessions provided outside of the classroom, and one fifteen minute session outside of the classroom (Doc. p).

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18. On April 7, 2016, the IEP team continued its review of the evaluation data. At that meeting, the complainant indicated that she believes that the student has more significant needs than were identified and the school-based members of the team provided information about the basis for the decisions made in each area of performance. The team discussed the complainant's disagreement with the school-based members of the team regarding whether the student's gross motor skills negatively impacted her educational performance. The school-based members of the team explained that, while the data indicated that the student does not demonstrate interest in many gross motor activities, it showed no areas of gross motor skills deficits (Docs. y and z).
19. The April 7, 2016 IEP team meeting was continued on April 18 and 27, 2016. The complainant, again, expressed concern about the receptive vocabulary section of the March 9, 2016 Collaborative Assessment and Evaluation Report, Early Childhood due to the use of an interpreter during testing and the length of time the student was given to take the test. The complainant was specifically concerned that the student was permitted to answer incorrect questions a second time with the interpreter. The school-based members of the team reported that there are no time restrictions on the test and that they followed appropriate protocol, making the test results valid (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).
20. During the April, 2016 meetings, the complainant expressed disagreement with the school-based members of the team about whether the student demonstrates interfering behavior during transitions to and from school and requires the use of a Behavioral Intervention Plan (BIP). Based on the school staff's reports of the student's behavior and the lack of any other data identifying needs in this area, the team decided that the student does not have needs in this area (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).
21. During the April, 2016 IEP team meetings, the team developed goals for the student to do the following: (a) improve effective personal functioning by verbalizing her feelings and needs, engaging in conversation, and choosing appropriate behavior strategies; (b) improve her ability to interact easily by sustaining play experiences with peers; and (c) improve her ability to speak clearly (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).
22. During the April 2016 IEP team meetings, the team considered the complainant's concern that no speech goals were included in the IEP except for the one to improve speech articulation despite the fact that the student had been diagnosed with a communication disorder. The school-based members of the team explained that the data did not identify other needs in the area of speech/language and that the preschool curriculum is designed to assist in the normal development of communication skills that are worked on with all children of the student's age (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).

23. In response to the complainant's concern that the student be redirected from sitting in a "W" position, this was included as a supplementary aid/service on the IEP. Based on the complainant's concerns, the team also included checks for understanding to the supplementary aids and services, as well as encouraging social interactions with peers while providing appropriate language models. The team denied the complainant's request for supplementary aids and services to encourage play on moving equipment and uneven surfaces based on the school staff's report that the student rode a bike that morning and climbed "the scariest part of the playground equipment the other day" (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).
24. The complainant shared a March 21, 2016 letter from XXXXXXXXXXXXXXXX stating that "it is medically necessary that [the student] receive 20-25 hours of ABA programming² per week, with addition of speech therapy." The team rejected the recommendation based on the fact that it was inconsistent with the data regarding the student's needs, which was obtained in the educational setting. Based on the assessment data and the school staff's reports of the student's performance, the team decided that the language goals could be addressed through fifteen minutes per week of speech/language in the general education classroom and fifteen minutes per week outside of the classroom (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).
25. As a result of the April, 2016 IEP team meetings, the team determined that the student would be provided with four hours per week of special education instruction in the general education setting, fifteen minutes per week of speech/language therapy in the general education classroom, and fifteen minutes of speech/language therapy outside of the general education classroom in a five day per week part-time preschool program (Docs. y, z, aa, bb, and review of audio recordings of the IEP team meetings).
26. On May 12, 2016, the IEP team reconvened to determine whether the student requires Extended School Year (ESY) services for the summer of 2016. At the IEP team meeting, the team rejected the complainant's request for a full-time preschool program such as the one in which she was participating in XXXXXXXX. The IEP team denied the request based on reports of the school staff that the student was making sufficient progress on the goals in a part-time preschool program. The team considered the complainant's concern that the student was not being provided with ABA therapy as recommended by her physician in XXXXXXXX. The team rejected the requested based on the school staff's report that there is no data that the student requires discreet trial training in the educational setting. The team reiterated its previous offer to conduct a psychological

² This includes the use of discreet trial training, which involves the acquiring of complex skills and behaviors by first mastering the subcomponents of the targeted skill or behavior, using applied behavioral analysis, which is the process of systematically applying interventions to improve socially significant behaviors (<http://www.centerforautism.com>).

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assessment to include Autism scales, which the complainant previously refused, in order to determine whether she can be identified as a student with Autism under the IDEA. However, the school-based members of the team explained that the student's needs would be addressed through the proposed IEP regardless of whether they are determined to arise out of an identified disability of Autism or a Developmental Delay (Docs. cc, ee, and review of the audio recording of the May 12, 2016 IEP team meeting).

27. At the May 12, 2016 IEP team meeting, the team decided that the student requires Extended School Year (ESY) services for the summer of 2016. At that meeting, the team considered the complainant's request for ESY services to address all of the IEP goals due to the likelihood of regression over the summer and her diagnosis of Autism. The team rejected this request because the data did not indicate that there would likely be regression in skills and because there was no data that the student's educational performance was impacted by Autism. The team also rejected the complainant's request for services to address "significant behaviors exhibited in the community," based on the school staff's report that they have not observed such behaviors. The team determined that services would be provided to address speech/language and social, emotional development, in which the team believed that the student was demonstrating breakthrough skills. The team decided that the student will be provided with two hours per week of special education instruction and thirty minutes per week of speech/language therapy (Docs. cc, ee, and review of the audio recording of the May 12, 2016 IEP team meeting).

DISCUSSION/CONCLUSIONS:

Allegation #1

If a student with a disability who had an IEP that was in effect in a previous public agency in another State transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the student with a Free Appropriate Public Education (FAPE), including services comparable to those described in the student's IEP from the previous public agency, until the new public agency conducts an evaluation, [Emphasis added] if determined necessary, and either adopts the IEP from the previous public agency or revises the IEP (34 CFR §300.323).

"Comparable services" is defined as services that are similar or equivalent to those that are described in the IEP from the previous public agency, as determined by the IEP team in the new public agency [Emphasis added] (Analysis of Comments and Changes to the IDEA, *Federal Register*, Vol. 71, No. 156, p. 46681, August 14, 2006).

In this case, the complainant alleges that the HCPS was required to provide the same amount of services as was being provided in the XX IEP (Doc. x).

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Based on the Findings of Facts #1 - #6 and #25, the MSDE finds that the IEP team decided that a part-time preschool program was comparable to what was being provided in XXXXXXXX in a full day program, and has documented that that the student was able to make sufficient progress on the XX IEP goals with the provision of these services. This office finds that, because the IEP team determined services that were comparable to those in the XX IEP, the HCPS was not required to implement the XX IEP as written.

However, based on the Findings of Facts #5 - #9, the MSDE finds that the school system staff unilaterally decided not to address the physical therapy goal and decided to discontinue the provision of speech/language and physical therapy services in the XX IEP pending the completion of the evaluation of the student's need for such services. Therefore, this office finds that a violation occurred with respect to the allegation.

In this case, the complainant also alleges that, although the school system staff subsequently decided that speech/language services would be provided in order to make up for a delay in the provision of those services in accordance with the XX IEP, no services were provided during the month of February 2016 (Doc. jj and interview with the complainant). Based on the Findings of Facts #5, #10, #13, and #14, the MSDE finds that there is documentation that the speech/language services were being made up in February, 2016.

The complainant further alleges that, although the school-based members of the team reported that the physical therapy services were being provided, the services that were provided were designed to complete an evaluation of the student's needs and did not constitute physical therapy (Interview with the complainant). Based on the Findings of Facts #5, #6, #10, and #15 - #17, the MSDE finds that there is documentation that physical therapy services were provided to address the goals in the XX IEP.

Therefore, based on the Findings of Facts #10 and #13 - #17, the MSDE finds that, notwithstanding the identified violation, the IEP team subsequently determined the services to be provided to remediate the delay in the provision of speech/language and physical therapy services required by the XX IEP. As a result, no student-based corrective action is required to redress the violation.

Allegation #2

The public agency must ensure that a student is not identified as a student with a disability under the IDEA if the determinant factor is limited English proficiency. Assessments must be selected and administered so as best to ensure that the results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, unless those speaking skills are the factors that the test purports to measure (34 CFR §§300.304 and .306).

In order to provide a student with a FAPE, the public agency must ensure that an IEP is developed that addresses all of the needs that arise out of the student's disability that are identified in the evaluation data 34 CFR §300.324).

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In developing each student's IEP, the public agency must ensure that it describes the student's present levels of performance, including how the disability affects the student's progress in the general curriculum. The IEP must also include measurable annual goals designed to meet the needs that arise out of the student's disability, and the special education instruction and related services required to assist the student in achieving the goals (34 CFR §§300.101 and .320).

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).

In this case, the complainant alleges that the IEP team has not ensured that the IEP requires a sufficient amount of special education and related services to enable the student to achieve the annual IEP goals (Doc. x).

Based on the Findings of Facts #5, #6, #9, #11, and #18 - #27, the MSDE finds that the IEP team considered the evaluation results, information from the student's teachers and service providers, including medical service providers, and the complainant's concerns when developing the IEP.

Based on the Findings of Facts #11 and #19, the MSDE finds that the assessment conducted by the HCPS was designed to ensure that accurate information was obtained about the student's expressive and receptive language needs and that her understanding of English did not affect the results.

Based on the Findings of Facts #6, #7, #11, #12, and #18 - #27, the MSDE finds that the needs described by medical providers exceed those identified in the data from the educational settings in

both XXXXXXXX and Maryland. Based on those Findings of Facts, the MSDE finds that the IEP team developed goals and determined the services needed by the student to achieve the goals, consistent with the data regarding the student's performance in the educational setting. Therefore, this office does not find that a violation occurred.

Additional Discussion:

During the course of the complaint investigation, the complainant expressed concern that the service provider logs and progress reports are not accurate. These concerns may be addressed under the IDEA and the Family Educational Rights and Privacy Act (FERPA) by requesting that the HCPS amend the documents that are believed to be inaccurate or misleading. If the HCPS refuses to do so, it must advise the complainant of that decision and provide her with the opportunity to request a hearing to challenge the content of the student's educational record (34 CFR §§300.618 - .621 and 34 CFR §§99.20-.22).

The complainant also maintains the right to request an Independent Educational Evaluation (IEE) if she continues to disagree with the results of testing that were reported in the March 9, 2016 Collaborative Assessment and Evaluation Report, Early Childhood (34 CFR §300.502).

**ALLEGATIONS #3 AND #4 DETERMINATION OF EDUCATIONAL
PLACEMENT AND TRANSPORTATION NEEDS**

FINDINGS OF FACTS:

28. In Maryland, preschool services are not mandated for nondisabled children. In Howard County, programs for three to five year old students with disabilities who can receive instruction in a regular early childhood setting are located in Regional Early Childhood Centers (RECCs). These Centers are placed in specific elementary schools and provide classes for children with disabilities with typically developing peers (<http://www.hcpss.org>).
29. There is not an RECC located in XXXXXXXXXX School, the school the student would attend if not disabled. She is placed in the XXXX located at XXXXXXXXXXXXXXXX School (Docs. o, q, and review of the audio recording of the March 1, 2016 IEP team meeting).
30. At the March 1, 2016 IEP team meeting, the complainant expressed concern that the XXXX located at XXXXXXXXXXXXXXXX School is not the closest XXXX location to her home. The XXXXXXXXXXXXXXXX School is approximately 9 miles away from the student's home, and there is an XXXX located at XXXXXXXXXXXXXXXX School, which is located approximately 4 miles from the student's home. The team documented its discussion that the XXXXXXXXXXXXXXXX School has the XXXX that is located the closest to the school the student would attend if not disabled (Doc. q, review of the audio recording of the March 1, 2016 IEP team meeting, and <https://maps.yahoo.com>).

31. The IEP requires that the student be provided with transportation as a related service. This includes specialized equipment of a car seat and a bus aide in order for the student to board, ride, and exit the bus safely. While the IEP team discussed the distance of the school placement at the March 1, 2016 IEP team meeting, there is no documentation that the team considered the length of the bus ride in relation to the student's age and disability in response to the complainant's concerns about the distance that the placement was from the student's home (Docs. q, y, ee, and review of the audio recording of the March 1, 2016 IEP team meeting).
32. On March 3, 2016, the HCPS Early Intervention Services staff contacted the HCPS Transportation Office and relayed that the complainant expressed concern that the bus ride each way to and from school is an hour in duration. The HCPS Transportation Office staff reported that the XXXXXXXXXXXXXXXX School XXXX was "identified as an overflow school for Pre-K students," and that the student's bus route required the same or shorter length of time than other bus routes between the student's home and the school (Doc. r).
33. On March 4, 2016, the school staff sent the complainant correspondence sharing the information provided by the HCPS Transportation Office and suggesting that she consider transporting the student to reduce the amount of time for transportation³ (Doc. s).
34. On May 12, 2016, the IEP team discussed that, while the XXXXXX at the XXXXXXXX XXXXXXXX School is not the closest XXX placement to the student's home, it is the XXXX location for which students from the family's community were being assigned because programs at other locations did not have the capacity to serve additional students. The team discussed that the student would be placed at the XXXXXXXXXXXXXXXX School for the 2016-2017 school year, but that the transportation time to and from that school is similar to that to and from XXXXXXXXXXXXXXXX School.⁴ The team considered the complainant's concern that the student had nausea on one occasion after coming home on the bus, and that she is tired when she comes home. The team also considered information from the school staff that the bus driver reported observing no problems with the student during transportation. The team documented its consideration of the student's age, time on the bus, and distance between home and school and decided that there is no information that the student has transportation needs that are not already being addressed through the IEP (Doc. cc and review of audio recording of the IEP team meeting).

³ The school staff report that the complainant would be reimbursed for providing transportation if she chose to do so (Interview with the school staff).

⁴ This is consistent with information provided by the HCPS Transportation Office (Doc. r).

DISCUSSION/CONCLUSIONS:

Allegation #3 Determination of Educational Placement

Each public agency must ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled. Special classes, separate schooling, or other removal of children with disabilities from the regular educational 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. This is the requirement to educate students with disabilities in the Least Restrictive Environment (LRE) (34 CFR §§300.114 and .116).

The public agency must ensure that a continuum of placements is available and that the placement decision is in conformity with the LRE requirements and the requirement that the placement be as close as possible to the student's home. If the public agency does not provide preschool services for nondisabled students, it may provide these services through various methods, including locating classes for preschool students with disabilities in regular elementary schools (34 CFR §§300.114 and .116 and COMAR 13A.05.01.10).

In this case, the complainant alleges that there is a program such as the one in which the student is participating, in a school that is located closer in proximity to her home than the one in which she has been placed (Doc. x).

Based on the Findings of Facts #28 - #34, the MSDE finds that the student was placed at the XXXX location with the capacity to serve her that was the closest to her home. Therefore, the MSDE finds that the placement is as close as possible to the student's home and does not find that a violation occurred with respect to this allegation.

Allegation #5 Transportation Needs

If the IEP team determines that a student with a disability cannot be educated in the school or typical early childhood setting the student would attend if not disabled, the IEP shall document the specialized transportation needs of the student, including consideration of the effect transportation may have on the student in relation to the following:

1. The student's age and disability;
2. Specialized equipment needs of the student;
3. Personnel needed to assist the student during transportation;
4. Amount of time involved in transporting the student; and
5. Distance the student will be transported (COMAR 13A.05.01.10).

In this case, the complainant alleges that the student is required to ride one hour each way to and from school and that the IEP team has not considered her concerns about the impact on the student of the length of the bus ride in relation to her age and disability (Doc. x).

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Based on the Findings of Facts #28 - #34, the MSDE finds that the IEP team did not consider the length of the bus ride in relation to the student's age and disability, the amount of time involved in transporting the student, and the distance to be transported when determining the student's transportation needs from March 1, 2016 until May 12, 2016. Therefore, this office finds that a violation occurred.

Notwithstanding the violation, based on the Finding of Fact #34, the MSDE finds that the IEP team subsequently considered these factors at the May 12, 2016 IEP team meeting and determined that the IEP addresses the student's transportation needs, consistent with the data. Therefore, no student-specific corrective action is required.

ALLEGATION #5 PROVISION OF DOCUMENTS IN THE NATIVE LANGUAGE

FINDINGS OF FACTS:

35. On March 21, 2016, the complainant requested that an IEP team meeting that was scheduled for the following day be rescheduled and that she be provided with assessment and evaluation reports, as well as written summaries of IEP team meetings that were translated into XXXXX as soon as possible (Doc. w).
36. On March 22, 2016, the school staff denied the request for documents to be translated into XXXX, but indicated that they would have an interpreter present at the IEP team meeting to assist the complainant in understanding the proceedings (Doc. w).
37. There is no information or documentation that the consent for evaluation or assessment reports have been translated into the complainant's native language of XXXX (Review of the educational record).
38. On May 12, 2016, the complainant was provided with a proposed IEP for her review with a XXXXX translator, and her written consent was requested in order to begin implementation of the IEP. The request for written consent was translated into the complainant's native language, and documentation of the meeting reflects that the complainant was informed that she would be provided with written notice of the meeting translated into her native language of XXXXX (Docs. ee and ff).
39. On May 16, 2016, the written summary of the May 12, 2016 IEP team meeting, which was translated into XXXXX, was sent to the complainant. The written summaries of the previous IEP team meetings have not been translated into Korean (Docs. cc, gg, and hh, interview with the school staff, and review of the audio recording of the May 12, 2016 IEP team meeting).

DISCUSSION/CONCLUSIONS:

The IDEA and COMAR require that each public agency ensure that the following are provided to a parent in his or her native language or other mode of communication, unless it is clearly not feasible to do so:

1. Parent consent for evaluation and initiation of special education services;
2. Parent consent to excuse an IEP team member from an IEP team meeting when the member's area is being modified or discussed;
3. Prior written notice whenever the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE.
4. Notice that fully informed parents of the requirements regarding the confidentiality of personally identifiable information;
5. Notice of the Procedural Safeguards; and
6. Assessment or other evaluations of the student (34 CFR §§300.9, .300, .304, .503, .504, .612, and the MSDE's *Frequently Asked Questions #1 – Native Language*, January 14, 2009).

A bill was passed during the last Maryland Legislative Session, which requires that Maryland school systems translate the IEP document into a parent's native language under certain circumstances. However, the law does not go into effect until July 1, 2016 (H.B. 86).

In this case, the complainant alleges that, while she has been provided with notice of the procedural safeguards in her native language, the HCPS denied her requests for documents, including requests for her consent, assessments, prior written notice of IEP team decisions, and the IEP, to be translated into her native language (Doc. x and interview with the complainant).

As there is no requirement at this time to translate the IEP document into XXXX, no violation is identified with respect to this aspect of the allegation.

Based on the Findings of Facts #35 - #39, the MSDE finds that, with the exception of the consent for initiation of services and the written summary of the May 12, 2016 IEP team meeting, the complainant was not provided with documents that were translated into XXXX, as required, and that a violation occurred with respect to the allegation.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the HCPS to provide documentation by the start of the 2016-2017 school year that the March 9, 2016 Collaborative Assessment and Evaluation Report, Early Childhood, and the written summaries of all IEP team meetings, with the exception of the one for the May 12, 2016 IEP team meeting, have been provided to the complainant in XXXXX.

School-Based/Systemic

The MSDE requires the HCPS to provide documentation by the start of the 2016-2017 school year that steps have been taken to do the following:

- a. Ensure that preschool students transferring into the HCPS with an IEP are provided with the same or comparable services, as determined by the IEP team, pending the completion of an IDEA evaluation and the IEP team's review and revision of the IEP;
- b. Ensure that IEP teams consider each preschool student's age and disability and amount of time involved in transportation when considering their transportation needs; and
- c. Ensure that parents are provided with required documents in their native language.

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. Nancy Birenbaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that the HCPS 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 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 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: Renee A. Foose
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