



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

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July 3, 2012

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Ms. Patricia A. Daley  
Director of Special Education  
Howard County Public Schools  
10910 Route 108  
Ellicott City, Maryland 21042-6198

RE: XXXXXXXXXXXXX and other Howard County  
Public Schools Students  
Reference: #12-085

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 students. This correspondence is the report of the final results of our investigation.

**ALLEGATION:**

On May 4, 2012, the MSDE received a complaint from Mr. XXXXXXXXXXXXX and Mrs. XXXXXXXXXXXX, hereafter, “the complainants,” on behalf of their son and similarly situated students. In the correspondence, the complainants alleged that the Howard County Public Schools (HCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-named student and other HCPS students.

The MSDE investigated the allegation that the HCPS does not follow proper procedures when determining Extended School Year (ESY) services, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.03B(26) and .08B. Specifically, the complainants allege that the HCPS unilaterally limits the type, amount, and duration of ESY services provided and does not ensure that the Individualized Education Program (IEP) team determines the services needed to provide a Free Appropriate Public Education (FAPE).

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**INVESTIGATIVE PROCEDURES:**

1. Ms. Koliwe Moyo, Education Program Specialist, MSDE, was assigned to investigate the allegation in this complaint.
2. On May 8, 2012, a copy of the complaint was provided, by facsimile, to Ms. Patricia A. Daley, Director of Special Education, HCPS, and Ms. Janet Zimmerman, Instructional Facilitator, Nonpublic, Community and Alternative Programs, HCPS.
3. On May 11, 2012, Ms. Moyo conducted a telephone interview with the student's father and clarified the allegation to be investigated.
4. On May 18, 2012, the MSDE sent correspondence to the complainants that acknowledged receipt of the complaint and identified the allegation subject to this investigation. On the same date, the MSDE notified Ms. Daley of the allegation and requested that her office review the alleged violation.
5. On June 11, 2012, Ms. Moyo and Ms. Dori Wilson, Branch Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with Ms. Zimmerman regarding the allegation being investigated.
6. On June 21, 2012, Ms. Moyo and Ms. Kathy Stump, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX and interviewed the following HCPS personnel:
  - a. Ms. XXXXXXXXXXXX, Assistant Principal, Howard High School;
  - b. Ms. XXXXXXX, Instructional Facilitator; and
  - c. Ms. XXXXXXX, Project Facilitator ESY.

Ms. Zimmerman attended the site visit as a representative of the HCPS and to provide information on the HCPS policies and procedures, as needed. On the same date, the HCPS staff provided the MSDE staff with copies of documents from the named student's educational record.

7. On June 22, 2012, Ms. Moyo conducted a telephone interview with the student's mother regarding the allegation being investigated. On the same day, the HCPS staff provided the MSDE with additional documentation related to the allegation being investigated.
8. On June 26, 2012, Ms. Moyo and Ms. Anita Mandis, Section Chief, Complaint Investigation and Due Process Branch, MSDE, conducted a telephone interview with Ms. Zimmerman. On the same date Ms. Zimmerman provided the MSDE with additional documentation to be considered, via facsimile.

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9. Documentation provided by the parties was reviewed. The documents relevant to the findings and conclusions referenced in this letter include:
  - a. The named student's IEP, dated April 17, 2012;
  - b. Correspondence and attachments from the complainant to the MSDE, received on May 4, 2012;
  - c. HCPS *Extended School Year 2012 Program Options* document;
  - d. Excerpts of HCPS student IEPs developed during the 2011-2012 school year; and
  - e. Electronic mail correspondence between HCPS staff and a parent, dated May 29 and 30, 2012 and June 8 and 19, 2012.

### **BACKGROUND:**

The student is sixteen (16) years old and attends XXXXXXXXXXXXXXXXXXXX. He is identified as a student with multiple disabilities under the IDEA related to Autism and an Other Health Impairment based XXXXX. During the period of time addressed by this investigation, the complainants participated in the education decision-making process for their son, the named student in the investigation, and were provided with written notice of the procedural safeguards (Docs. a and b).

### **FINDINGS OF FACTS:**

1. The HCPS has developed a document titled, *Extended School Year (ESY) 2012 Program Options*<sup>1</sup>. The form states that there are three (3) ESY programs available to high school students, which are scheduled from June 25, 2012 to July 20, 2012. Each program is four (4) weeks in duration, with services provided five (5) days per week, as described below.
  - a. The first program option indicates that students who receive ESY to address academic and social/emotional/behavioral needs will be provided with instruction outside of the general education setting for three (3) hours per day.
  - b. The second program option indicates that students who receive ESY services to address independent work skills will receive work instruction in the general education setting and academic instruction outside of the general education setting for a total of three and one-half hours (3.5) per day.
  - c. The third program option indicates that students receiving ESY to address functional life skills will receive services outside of the general education classroom for three and one-half (3.5) hours per day.

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<sup>1</sup> This document includes the ESY program options for elementary, middle, and high school students (Doc. c).

The document also indicates that in addition to the three (3) options listed above, there is also an “Alternative Service Option,” which is provided to students “based on their IEP.” This option indicates that the amount of services and the setting “will be determined” (Doc. c).

2. The HCPS reports that each student’s IEP documents that the IEP team determined that the ESY goals can be addressed, either through one of the programs described in the *ESY 2012 Program Options* document, or through an alternative service option (Interviews with HCPS staff).
3. High school students receiving ESY services in program option one (1) (*See Finding of Fact #1a. above*) have IEPs requiring fifteen (15) hours of instruction per week. The IEPs further require that the services be provided outside of the general education classroom from June 25, 2012 until July 20, 2012. However, they do not document that the team determined whether the instruction can be provided five (5) days per week for three (3) hours each day, consistent with the description of how the services are provided through this program option (Docs. c, d, and review of the educational record).
4. Documents from high school educational records provided by the HCPS further reflect that ESY services are being provided outside of the general education classroom to address goals for which services are provided inside of the general education classroom during the regular school year. These educational records do not document that the team considered whether the change in educational placement is the least restrictive environment in which the ESY services can be provided and the basis for that decision (Doc. d and review of educational records).
5. There is no documentation that any student who received special education instruction in the general education classroom during the school year will receive his or her ESY services in the general education classroom, nor is there any documentation that the HCPS implements the “Alternative Service Option” included on the *ESY 2012 Program Options* document (Review of the educational records).
6. Documents from the educational record of a high school student who the HCPS reports is receiving ESY services in the general education classroom do not indicate that the IEP team determined that ESY services would be provided in that setting. These documents reflect that the team decided that the services would be provided outside of the general education setting and that the parent rejected the services because they do not “meet [the student’s] needs based on his IEP,” and because the parent “wants a non-segregated program for [the student’s] ESY.”(Docs. d, e, and interviews with HCPS staff, and review of the educational record).

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## **DISCUSSION/CONCLUSIONS:**

### **Provision of Special Education Services in the Least Restrictive Environment (LRE)**

In order to ensure that a student with a disability is provided with a FAPE, the public agency must make sure that the student is provided with special education instruction and related services through an IEP in the least restrictive environment in which the IEP can be successfully implemented. The IEP must include annual goals and the frequency, location, and duration of the services to be provided in order to address the needs that arise from the student's disability (34 CFR §§300.101 and .320). The frequency, location, and duration of services must be based on the needs of the student, taking into consideration such factors as the service being provided and how the student's day and IEP are structured. The team's decisions about the manner in which services are to be provided must be appropriate to the specific service and be clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46667, August 14, 2006).

Students may not be removed from the general education classroom unless the IEP cannot be implemented in that setting, even with the provision of supplementary aids and services. In all cases, placement decisions must be individually determined on the basis of each student's abilities and needs and each student's IEP. Decisions may not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of service delivery system, availability of space, or administrative convenience (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46588, August 14, 2006).

Although the IDEA does not require that each school building be able to provide all of the special education and related services for all types and severities of disabilities, the public agency has an obligation to make available a full continuum of alternative placement options that maximize opportunities for students with disabilities to be educated with their nondisabled peers to the extent appropriate (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46588, August 14, 2006). For example, public agencies that do not operate programs for students without disabilities are not required to initiate those programs solely to satisfy the LRE requirement for students with disabilities. However, public agencies that do not have inclusive settings for such students with disabilities must explore alternative methods to ensure that the LRE requirements are met (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46589, August 14, 2006).

In this case, the complainants allege that the HCPS does not ensure that the IEP team makes an individualized determination of the frequency, location, and duration of the services needed in order to address the ESY goals for each student. They allege that the HCPS only offers ESY services that can be provided through established summer school/enrichment programs without consideration of whether the ESY goals can be addressed in those programs (Doc. b).

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Based on the Findings of Facts #1 - #6, the MSDE finds that there is no documentation that the HCPS has ensured that IEP teams determine the amount, frequency, and duration of the ESY services to be provided and document those decisions in the IEP in a manner that can be understood by those involved in the development and implementation of the IEP. In addition, based on the Findings of Facts #3 - #6, the MSDE finds that there is no documentation that the HCPS has ensured that IEP teams consider the LRE in which the services can be provided when determining the educational placement in which ESY services will be delivered. Therefore, this office finds that a violation has occurred with regard to this allegation.

**CORRECTIVE ACTIONS/TIMELINES:**

The HCPS must review the records of the students who required ESY services during the summer of 2012 and identify the students whose ESY services were not determined based on the consideration of individual student needs or in accordance with the LRE requirements. The school system must make an offer to the parent of each student identified to convene an IEP team meeting to determine whether the violation had a negative impact on the student's ability to benefit from the education program.

If the team finds that there has been a negative impact, the team must determine the services to be provided to remediate the violation. The HCPS must provide the MSDE with documentation of the completion of this corrective action by November 30, 2012. The HCPS must also provide the parent 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.

In addition, the school system must also provide the MSDE with documentation by February 28, 2012 of the steps it has taken to ensure that the violation does not recur, including a description of how the HCPS will evaluate the effectiveness of the steps taken and provide agency monitoring to ensure that the violation does not recur.

**TECHNICAL ASSISTANCE:**

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

Please be advised that both the complainants and the HCPS 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

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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.

Questions regarding the findings, conclusions and corrective actions contained in this letter should be addressed to this office in writing. The complainants and the school system maintain the right to request mediation or to file a due process complaint if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or due process.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/

Early Intervention Services

MEF/km

cc: Renee Foose  
Judith Pattik  
Janet Zimmerman  
Dan Furman  
XXXXXX  
Dori Wilson  
Anita Mandis  
Martha J. Arthur  
Koliwe Moyo