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May 8, 2012

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Mr. Glenn Hammerbacher
Supervisor of Special Education
Worcester County Public Schools
6270 Worcester Highway
Newark, Maryland 21841

RE: XXXXX
Reference: #12-060

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 12, 2012, the MSDE received a complaint from Ms. XXXXXXXXX, hereafter, “the complainant,” on behalf of her son. In that correspondence, the complainant alleged that the Worcester County Public Schools (WCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the above-referenced student. On March 29, 2012, the MSDE received additional correspondence from the complainant, alleging additional IDEA violations.

Based on these correspondences, the MSDE investigated the following allegations:

1. The WCPS has not developed an Individualized Education Program (IEP) that addresses the student’s identified reading and behavioral needs since September 7, 2011,¹ in accordance with 34 CFR §§300.101 and .324;

¹ This office initially identified the time period to be investigated as beginning in July 2011. However, during the course of the investigation this office discovered that the allegations were addressed, through September 6, 2011, in a due process hearing decision.

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2. The WCPS has not ensured that the IEP contains an accurate statement of the reading services to be provided to the student since September 7, 2011,¹ in accordance with 34 CFR §300.320;
3. The WCPS did not obtain written consent for a Functional Behavioral Assessment (FBA) that was conducted since July 2011, in accordance with 34 CFR §300.300;
4. The WCPS has not ensured that the IEP team considered the results of Independent Educational Evaluations that the complainant provided to school staff at the start of the 2011-2012 school year, in accordance with 34 CFR §300.502;
5. The WCPS has not ensured that the student's IEP contains a transition plan based on age appropriate assessments since he turned fourteen (14) in January 2012, in accordance with 34 CFR §300.320 and COMAR 13A.05.01.09;
6. The WCPS has not ensured that the instructional and testing accommodations have been provided to the student since the start of the 2011-2012 school year, in accordance with 34 CFR §300.101.
7. The WCPS has not generated or provided the complainant with periodic reports of the student's progress toward achieving the annual IEP goals since July 2011, in accordance with 34 CFR §300.320;
8. The WCPS did not follow proper procedures to ensure that Home and Hospital Teaching (HHT) services were provided to the student when school staff received verification from the student's physician that he was unable to attend school during the 2011-2012 school year, in accordance with COMAR 13A.05.01.10; and
9. The WCPS did not follow proper procedures when considering the student's need for Extended School Year services since July 2011, in accordance with 34 CFR §300.106, COMAR 13A.05.01.07B(2) and COMAR 13A.05.01.08B(2).

INVESTIGATIVE PROCEDURES:

1. Ms. Kathy Stump, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On March 13, 2012, the MSDE sent a copy of the complaint, via facsimile, to Mr. Glenn Hammerbacher, Supervisor of Special Education, WCPS.
3. On March 16, 2012, Ms. Stump spoke with the complainant by telephone to clarify the allegations contained in the complaint.

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4. On March 19, 2012, the MSDE sent correspondence to the complainant that acknowledged receipt of the complaint and identified the allegations to be investigated. On the same date, the MSDE notified Mr. Hammerbacher of the allegations and requested that his office review the alleged violations.
5. On March 22, 2012, the MSDE received information from the WCPS that some of the allegations identified for investigation had been resolved previously through a due process hearing decision.
6. On March 27, 2012, the complainant provided the MSDE with documentation regarding the allegations, via electronic mail (e-mail).
7. On March 29, 2012, the MSDE received written correspondence, via e-mail, from the complainant containing additional allegations of violations of the IDEA by the WCPS.
8. On March 30, 2012, the MSDE sent correspondence to the complainant amending the allegations subject to this investigation based on the correspondence received from both the complainant and the WCPS. On the same date, the MSDE notified Mr. Hammerbacher of the amended allegations, requested that his office review the alleged violations, and requested documentation from the student's educational record.
9. On April 13, 2012, Ms. Stump and Mrs. Martha J. Arthur, Education Program Specialist, MSDE, conducted a site visit at XXXXXXXXXXXXXXXXXXXXXXXX to review the student's educational record, and interviewed the following school staff:
 - a. Ms. XXXXXXXXXXXX, Assistant Principal, XXXXXXXX;
 - b. Ms. Stephanie Caceres, Assistive Technology Specialist, WCPS;
 - c. Ms. XXXXXXXXXXXX, Special Education Teacher, XXXXXXXX;
 - d. Ms. Lynda Keohler, Behavior Intervention Specialist, WCPS;
 - e. Mr. XXXXXX, Principal, XXXXXXXX; and
 - f. Ms. Kathy Simon, Learning Disability Facilitator, WCPS.

Mr. Hammerbacher attended the site visit as a representative of the WCPS and to provide information on the WCPS policies and procedures, as needed, and the documents requested by the MSDE. Mr. P. Tyson Bennett, Attorney, WCPS, also attended the site visit.
10. On April 16, 2012, the MSDE requested additional documentation from the student's educational record from the WCPS. On that same date, Ms. Stump conducted telephone interviews with Ms. XXXXXXXXXXXX, the student's former parent surrogate, and Mr. XXXXXXXX, the student's grandfather.
11. On April 20 and 25, 2012, the MSDE again requested documentation from the student's educational record from the WCPS.

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12. On April 18, 2012, Ms. Stump conducted a telephone interview with the complainant. On that same date, the complainant provided the MSDE with additional information and documentation, via e-mail.
13. On April 25, 2012, Ms. Stump conducted telephone interviews with the complainant; XXXXX XXXX, Foster Care Case Manager, Worcester County Department of Social Services; and the student's former parent surrogate, respectively. On that same date, the MSDE received documentation, relevant to the allegations in the complaint, from the student's former parent surrogate, via e-mail.
14. On April 26, 2012, the student's former parent surrogate provided the MSDE with additional documentation relevant to the allegations in the complaint, via e-mail and facsimile.
15. On April 27 and 30, 2012, the complainant provided additional documentation regarding the allegations, via facsimile.
16. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on March 12, 2012;
 - b. Psychological Assessment Report, dated June 24, 2010;
 - c. Educational Assessment Report, dated June 24, 2010;
 - d. Functional Behavior Assessment, dated March 30, 2011;
 - e. Behavioral Intervention Plan, dated March 30, 2011;
 - f. Correspondence from XXXXXXXXXXXXXXXX enclosing the report of an Auditory Processing Evaluation, dated April 18, 2011;
 - g. IEP, dated May 31, 2011;
 - h. Due Process Hearing Decision, dated June 30, 2011;
 - i. IEP, dated September 7, 2011, provided by the WCPS;
 - j. IEP, dated September 7, 2011, including first (1st) quarter progress reports, provided by the complainant;
 - k. Correspondence from the student's psychiatrist to the WCPS personnel, dated October 5, 2011;
 - l. Correspondence from the WCPS personnel to the student's psychiatrist, dated October 12, 2011;
 - m. Correspondence from the student's psychiatrist to WCPS personnel, dated November 22, 2011;
 - n. Circuit Court for Worcester County *Report and Recommendation of the Master for Juvenile Causes*, dated November 22, 2011;
 - o. Correspondence from the WCPS personnel to the student's former parent surrogate, dated November 28, 2011;

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- p. Meeting invitation, addressed to the student, for the January 19, 2012 IEP team meeting;
- q. Meeting invitation, addressed to the student's parents, for the January 19, 2012 IEP team meeting;
- r. IEP amendment, dated January 19, 2012;
- s. Circuit Court for Worcester County *Order of Disposition and for Protective Supervision*, dated February 24, 2012;
- t. E-mail correspondence between the complainant and school staff, dated throughout the 2011-2012 school year;
- u. E-mail correspondence between the student's former parent surrogate and school staff dated between December 2011 and March 2012;
- v. Assistive Technology Specialist's service provider log for the 2011-2012 school year;
- w. Student's attendance data for the 2011-2012 school year;
- x. Student's class schedule for the 2011-2012 school year;
- y. Class roster for the student's third (3rd) period class for the 2011-2012 school year;
- z. Accommodations chart for testing accommodations for the 2011-2012 school year;
- aa. Behavioral Data tracking chart for the 2011-2012 school year;
- bb. Student's report card for the 2011-2012 school year;
- cc. Student's case manager contact log for the 2011-2012 school year; and
- dd. IEP and BIP progress reports for the 2011-2012 school year.

BACKGROUND:

The student is fourteen (14) years old, is identified as a student with a specific learning disability under the IDEA, and receives special education instruction and related services. He attends XXXXXXXXXXXXXXXXXXXXXXX (XXXXXXX).

From November 17, 2011 to February 24, 2012, the student was placed by the Circuit Court for Worcester County under an Order of Shelter Care granting custody with limited guardianship to make educational decisions for the student, to the Worcester County Department of Social Services.

On February 24, 2012, the student was adjudicated a Child in Need of Assistance by the Circuit Court for Worcester County. The Court granted custody, with limited guardianship to make educational decisions for the student, to the student's paternal grandparents with whom he is placed (Docs. a, g-j, n, o, r, and s).

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ALLEGATIONS #1 - #5: IEP DEVELOPMENT

Findings of Facts:

1. The IEP in effect at the start of the 2011-2012 school year was developed at an IEP team meeting on May 31, 2011. The IEP identifies academic needs in reading, written language, and math. Specifically, the IEP states that the student has difficulty with, among other things, working memory, including “mental manipulation and sequencing of auditory information,” processing speed, including the ability to “encode and retrieve information quickly,” and sight word recognition (Docs. b-e and g).
2. The IEP also identifies several interfering behaviors, including the refusal to use adult assistance, attempt tasks, use technology, and follow directions. This information was gathered through an FBA, conducted on March 30, 2011. The FBA also indicates that the student engages in disrespectful comments and gestures toward adults, inappropriate “doodling,” and other inattentive behaviors. In addition, the FBA identifies attendance and tardiness as the primary behaviors that interfere with the student’s learning. The team determined that the other targeted behaviors “cannot be addressed unless [the student] is available for instruction” and determined that the BIP should target attendance and tardiness first. The team determined that the student’s attendance issues were related to the complainant’s “negative attitude and actions towards the school, school personnel, and the school system.” In response, the team offered parent counseling to the complainant to assist her in understanding the student’s needs (Docs. d and g).
3. There is no documentation that an FBA has been recommended or conducted since March 30, 2011 (Docs. i, p-r, t, u, and review of the student’s education record).
4. Based on the information in the FBA, the team on March 30, 2011 developed a behavioral intervention plan (BIP). The BIP contains goals based on the behaviors identified in the FBA. The BIP includes behavioral supports to assist the student in achieving the goals, including teaching the student specific skills, such as developing a morning routine at home, a behavior checklist, and a reward system (Docs. e and g).
5. The IEP includes annual goals in each of the academic areas of identified need and requires that the student be provided with special education instruction in reading, writing, and math, in the general education classroom to assist him with achieving the annual goals. The IEP requires that the student be provided with instructional and testing accommodations, including verbatim reading of assessments, use of a scribe, monitoring of test responses, use of calculation devices, provision of extended time, and reduced distractions to the student (Doc. g).
6. The IEP also requires that the student be provided with supplementary aids and services, including the use of organizational aids, use of a word processor with word prediction, spell checker, thesaurus, voice-to-text, and text-to-voice capabilities, providing the

student with a copy of teacher notes, restructuring of assignments, redirection to task, provision of small group or individualized instruction, preferential seating, altered or modified assignments, chunking of texts and assignments, use of a modified grading system, and an assistive technology (AT) consult (Doc. g).

7. On June 30, 2011, as a result of a due process hearing, an administrative law judge (ALJ) determined that the May 31, 2011 IEP was appropriate. The ALJ also found that the student's "remedial" reading class is a county-wide general education requirement for students who have not achieved a specific score on the Maryland State Assessment in reading. The student's class schedule indicates that he is once again enrolled in the general education "remedial" reading class for the 2011-2012 school year (Docs. h, x, and y).
8. The IEP team convened on September 7, 2011, in order to review the student's program and progress. The documentation of that meeting indicates that the team considered the results of the Auditory Processing Evaluation, which was obtained by the complainant at private expense. The results indicate that the student displays weaknesses in "temporal patterning and sequencing,"² also called "prosodic disorder," consistent with the student's previously identified difficulties with reading sight words and with letter/number sequencing (Docs. f, i, and j).
9. There is no documentation that the complainant provided the team with any other assessment data, including data that indicates the student suffers from "school phobia" or an emotional disability (Docs. b-d, f, and t).
10. At the September 7, 2011 meeting the team also considered reports from the student's teachers that the student has been attending school and participating in classes for the first few days of school. The complainant requested that the IEP require the use of the Kurzweil text-to-speech technology on all standardized assessments and that the team's decisions be documented using a specific "prior written form" that she found was being used by schools in Virginia. The team determined that a specific "prior written notice form" is not required and determined that the student does not have enough familiarity with the Kurzweil to use it in a testing situation (Doc. i).
11. The team revised the annual goals consistent with teacher reports of the student's progress and determined that the remainder of the student's program, including the BIP, remained appropriate. The team agreed to reconvene prior to the student's fourteenth (14th) birthday in order to revise the IEP to include a transition plan (Doc. i).

² The report states that students with weaknesses in this area may have difficulty recognizing the acoustic contours of speech and extracting and utilizing the "prosodic" aspects of speech such as rhythm, stress, and intonation. Students may have difficulty extracting key words from spoken messages, discriminating subtle differences in meaning conveyed by changes in stress and intonation, or sequencing (Doc. f).

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12. During the first (1st) quarter of the 2011-2012 school year, while the student was residing with the complainant, the student was absent thirty-two (32) school days out of forty-four (44) possible school days. The IEP and BIP progress report for the first (1st) quarter indicates that progress could not be measured due to the student's absences (Docs. w and dd).
13. On November 17, 2011, the student was removed from the complainant's care by the Worcester County Department of Social Services based in part, on the student's truancy (Doc. n).
14. On January 19, 2012, prior to the student's fourteenth (14th) birthday, the IEP team convened to develop the transition plan. The documentation of the meeting indicates that the student was interviewed on January 4, 2012 to determine his interests and preferences. The documentation also indicates that the student attended the IEP team meeting and that post-secondary goals related to employment and training were developed consistent with the student's interests and preferences. The team also determined the transition services, including a course of study, needed to assist the student in achieving the post-secondary goals. The documentation indicates that the team did not refer the student to or invite representatives from other State agencies because he is not eligible for a referral based on his age (Docs. p-r).
15. On April 16, 2012, the complainant sent WCPS personnel an "Attention Deficit/Hyperactivity Disorder (ADHD) Recommendation" from the Children's National Medical Center, via e-mail. The e-mail, from a psychologist who reports that a private neuropsychological and diagnostic evaluation of the student was conducted, states that "our report will be completed over the next few weeks" and indicates that the report will reflect that the student has been diagnosed with ADHD. There is no documentation that the assessment report has been provided to school staff (Doc. t).
16. Since the student has been in foster care, he has been absent for a total of thirteen (13) school days during the second (2nd) and third (3rd) quarters. The IEP and BIP progress reports for the second (2nd) and third (3rd) quarters indicate that the student is making sufficient progress to achieve the annual IEP goals (Docs. w and dd).

Discussion/Conclusions:

Allegation #1: IEP That Addresses the Student's Reading and Behavioral 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 student whose behavior impedes the student's learning or that of others, the team must consider the use of positive behavioral interventions and supports and other strategies, to address that behavior (34 CFR §300.324).

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Reading needs

Based on the Findings of Facts #1-#7, the MSDE finds that the IEP in effect at the start of the 2011-2012 school year, dated May 31, 2011, was determined by an ALJ to provide a Free Appropriate Public Education (FAPE). Therefore, because the MSDE is bound by that determination, this office does not find that a violation occurred with respect to this time period.

Based on the Findings of Facts #8, #10, #11, and #16, the MSDE finds that the IEP in effect since the ALJ's decision was developed based on the team's consideration of information from the student's teachers about his progress and assessment data provided by the complainant. Based on the same Findings of Facts, the MSDE further finds that the IEP was revised consistent with the data. Therefore, the MSDE finds no violation regarding this time period.

Behavioral needs

In this case, the complainant alleges that the student's program does not address his behavioral needs because the IEP team has not identified the student with an emotional disability, "school phobia," and ADHD. The complainant also alleges that the IEP team has not addressed the student's chronic absenteeism with positive behavioral supports (Doc. a and interviews with the complainant).

As stated above, based on the Findings of Facts #1-#7, the MSDE finds that the IEP in effect at the start of the 2011-2012 school year, dated May 31, 2011, was determined by an ALJ to provide FAPE. Based on the Findings of Facts #8, #10, #11, and #16, the MSDE finds that since the IEP program included a BIP based on an FBA conducted on March 30, 2011, the behavioral interventions were also determined appropriate. Therefore, because the MSDE is bound by that determination, this office does not find that a violation occurred with respect to this time period.

Based on the Findings of Facts #9 and #15, the MSDE finds that since the ALJ's decision, there is no data identifying needs related to an emotional disability, "school phobia," or ADHD. Therefore, the MSDE finds no violation regarding this time period.

Allegation #2: IEP That Contains an Accurate Statement of Reading Services

The public agency must ensure that each IEP contains a statement of the special education and related services and supplementary aids and services to be provided to the student and a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum (34 CFR §300.320).

In this case, the complainant alleges that the student's IEP does not properly reflect the time that the student is "pulled" from general education to participate in a "remedial" reading class, which she believes constitutes special education instruction (Doc. a and interviews with the complainant).

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Based on the Finding of Fact #7, the MSDE finds that the ALJ has determined that this class is a general education requirement and not a special education service. Based on that same Finding, the MSDE finds that since the ALJ's decision, the student continues to participate in the same "remedial" reading class. Therefore, the MSDE finds that the class is not required to be documented on the IEP and does not find that a violation occurred with respect to this allegation.

Allegation #3: Written Consent to Conduct an FBA

A public agency must obtain written parental consent before conducting an assessment (COMAR 13A.05.01.13). Based on the Finding of Fact #3, the MSDE finds that there has not been an FBA conducted since the due process hearing decision was issued on June 30, 2011 finding the IEP to be appropriate. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #4: Consideration of an Independent Educational Evaluation (IEE)

If a parent of a student with a disability obtains an IEE at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of a FAPE to the student (34 CFR § 300.502).

In this case, the complainant alleges that she provided an Auditory Processing Evaluation report and an Assistive Technology Evaluation report to school staff, but that these assessments were never considered by the IEP team (Doc. a and interviews with the complainant).

Based on the Finding of Fact #8, the MSDE finds that there is documentation that at the September 7, 2011 IEP team meeting, the team considered the results of an auditory processing evaluation that was provided by the complainant and made decisions consistent with the data. Based on the Findings of Facts #9 and #15, the MSDE finds that there is no documentation that additional IEEs have been provided by the complainant. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #5: Transition Plan

Beginning not later than the first IEP to be in effect when a student turns fourteen (14) years old, the IEP must include appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living, as appropriate. The IEP must also include the transition services, including course of study, needed to assist the student in achieving those goals and, if appropriate, a statement of the responsibilities of and linkages between the public agency and any other agency that is likely to be responsible for providing or paying for transition services (34 CFR §§300.320 and COMAR 13A.05.01.09).

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The MSDE issued a Memorandum, dated October 12, 2006, which provides guidance regarding transition planning. In that guidance, the MSDE states that a transition assessment can be informal and can include a meeting with the student (Memorandum, *Individuals with Disabilities Act (IDEA) 2004 Requirements for Transition Planning Documentation*, MSDE, October 12, 2006).

In this case, the complainant alleges that the transition plan is not based on an age-appropriate transition assessment and that no linkages have been made to other State agencies that may have responsibility for assisting the student in achieving the post-secondary goals (Doc. a and interviews with the complainant).

Based on the Finding of Fact #14, the MSDE finds that a transition plan was developed prior to the student's fourteenth (14th) birthday. Based on that same Finding, the MSDE finds that the transition plan is based on a student interview, which is an acceptable "age-appropriate transition assessment" and that the transition plan includes all of the required elements. Based on the same Finding, the MSDE further finds that the team considered the student's needs for linkages between the WCPS and other agencies. Therefore, the MSDE finds no violation regarding this allegation.

ALLEGATIONS #6 & #7: IEP IMPLEMENTATION AND PROGRESS REPORTING

Findings of Facts:

17. The IEP in effect between the start of the 2011-2012 school year and September 7, 2011 includes annual goals related to reading comprehension, writing, math computation, and behavior related to school attendance, following directions, and interacting appropriately with adults. The IEP states that the student's parent will be notified of the student's progress toward achieving the annual goals by "written reports" at the end of each marking period (Doc. g).
18. The IEP in effect since September 7, 2011 includes revised annual goals related to reading fluency, reading comprehension, writing, and math processing. The IEP team determined that the behavior goals related to school attendance, following directions, and interacting appropriately with adults remained appropriate. The IEP states that the student's parent will be notified of the student's progress toward achieving the annual goals by "written reports" at the end of each marking period (Docs. i, j, and r).
19. The IEP also requires that the student be provided with instructional and testing accommodations, including verbatim reading of assessments, use of a scribe, monitoring of test responses, use of calculation devices, extended time to complete assignments and assessments, and reduced distractions to the student (Docs. i, j, and r).
20. The second (2nd) and third (3rd) quarter progress reports, comments from the student's teachers attached to his report card for the third (3rd) quarter, the Assistive Technology

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Specialist's service provider log for the 2011-2012 school year, and the accommodations chart for testing accommodations for the 2011-2012 school year document that the required instructional and testing accommodations are available to the student, but that he sometimes chooses not to access them (Docs. v, z, aa, bb, and dd).

21. The IEP progress report for the first (1st) quarter of the 2011-2012 school year was sent home to the complainant on November 11, 2011. The progress report indicates that the annual goals had not been introduced because the student had attended school for only twelve (12) school days during the first (1st) marking period (Docs. j, w, cc, and dd).
22. The IEP progress reports for the second (2nd) and third (3rd) quarters of the 2011-2012 school year were generated in February 2012 and April 2012, respectively and were sent, via e-mail, to the parent surrogate. The complainant has acknowledged that she has also received copies of these progress reports, which indicate that the student is making sufficient progress toward achieving the annual goals (Docs. j, cc, dd, and interview with the complainant).

Discussion/Conclusions:

Allegation #6: IEP implementation

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 this case, the complainant alleges that the student is not provided with the accommodations required by the IEP. In particular, the complainant alleges that the student is not provided with access to Kurzweil text-to-speech technology (Doc. a and interviews with the complainant).

Based on the Finding of Fact #19, the MSDE finds that the IEP does not require the use of Kurzweil. Further, based on the Finding of Fact #20, the MSDE further finds that there is documentation that the instructional and testing accommodations that are required are made available to the student. Therefore, the MSDE finds no violation regarding this allegation.

Allegation #7: Progress reporting

The IEP must include, among other things, a description of how the student's progress toward achieving the annual goals will be measured and when reports will be made of the student's progress to the parent (34 CFR §300.320).

In this case, the complainant alleges that the student's progress toward achieving the annual IEP goals is not being monitored because the goals have remained the same for several years and all of the IEP progress reports since 2010, including the second (2nd) and third (3rd) quarters of the 2011-2012 school year, indicate that the goals have not been introduced due to the student's lack of attendance (Doc. a and interview with the complainant).

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Based on the Findings of Facts #17, #18, and #20-#22, the MSDE finds that the documentation does not support the complainant's assertion that the goals have remained unchanged for several years or that the progress reports continue to reflect that the student is not making progress due to lack of school attendance. Therefore, the MSDE finds no violation regarding the allegation.

ALLEGATION #8: **HOME AND HOSPITAL TEACHING (HHT) SERVICES**

Findings of Facts:

23. On October 5, 2011, the student's private psychiatrist sent correspondence to school staff indicating that the student would "benefit" if he received HHT services (Doc. k).
24. On October 12, 2011, WCPS personnel responded, in writing, to the student's private psychiatrist explaining that the October 5, 2011 correspondence did not meet the requirements to be considered a verification for HHT services because it did not indicate that the student could not attend school due to a physical or emotional condition (Doc. l).
25. On November 22, 2011, the student's private psychiatrist withdrew his request for HHT services (Doc. m).

Discussion/Conclusions:

Each local school system must make HHT services available to students who are unable to attend school due to a medical or emotional condition (COMAR 13A.03.05.03). The need for services is determined by verification of the physical condition by a licensed physician or verification of the emotional condition by a certified school, or licensed psychologist, or licensed psychiatrist and a statement by the physician or psychologist verifying that the current physical or emotional condition prevents the student from participating in the student's school of enrollment (COMAR 13A.03.05.04).

Based on the Findings of Facts #23-#25, the MSDE finds that there is no documentation that verification was provided that the student had a medical or emotional condition that made him unable to attend school. Therefore, the MSDE finds that the HHT requirements do not apply and that no violation occurred.

ALLEGATION #9: **EXTENDED SCHOOL YEAR (ESY) SERVICES**

Findings of Fact:

26. The IEP team met on January 19, 2012 to consider whether the student requires ESY services. The documentation indicates that the team considered the required factors and determined that the student was demonstrating emerging skills and that the nature and severity of the student's disability contribute to his eligibility for ESY services. The team

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determined that none of the other factors were present, including the existence of critical life skills (Docs. p-r).

27. After considering those factors, the team then determined that the student will not be prevented from receiving some benefit from his educational program during the regular school year if ESY is not provided (Doc. r).

Discussion/Conclusions:

ESY services are an individualized extension of specific services beyond the regular school year designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a Free Appropriate Public Education (FAPE) by virtue of the normal break in the regular school year (COMAR 13A.05.01.08).

When determining whether ESY services are required for the provision of a FAPE, the IEP team must consider whether the student's IEP includes annual goals related to critical life skills, whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time, the student's degree of progress toward mastery of the annual IEP goals related to critical life skills, the presence of emerging skills or breakthrough opportunities, interfering behaviors, the nature and severity of the disability, and special circumstances (COMAR 13A.05.01.08B(2)(b)). After considering these required factors, the IEP team must decide whether the benefits that a student received from the education program during the regular school year will be *significantly jeopardized* (emphasis added) if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002)).

In this case, the complainant alleges that the student's reading needs should be considered a "critical life skill." The complainant additionally alleges that the IEP team did not consider all of the required factors when making the determination (Doc. a and interviews with complainant).

Based on the Findings of Facts #26 and #27, the MSDE finds that the IEP team documented its consideration of all the required factors for the determination that the student does not require ESY services and used the proper criteria for making the determination. Therefore, the MSDE finds no violation regarding this allegation.

Please be advised that both parties 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 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

XXX

Mr. Glenn Hammerbacher

May 9, 2012

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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.

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

MEF:ks

cc : Jon Andes

XXXXXX

Martha J. Arthur

Kathy Stump