



April 5, 2013

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

RE: XXXXX
Reference: #13-049

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On February 6, 2013, the MSDE received a complaint from Ms. XXXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, 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 student. The MSDE investigated the allegations listed below:

1. The HCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s speech/language needs since February 2012,¹ in accordance with 34 CFR §300.324;
2. The HCPS has not ensured that the student has been provided with the amount of special education instruction required by the IEP since the start of the 2012-2013 school year, in accordance with 34 CFR §§300.101 and .323. Specifically, the complainant alleged that:

¹ The complainant alleged an ongoing violation dating back to the past three (3) school years. However, the complainant was informed, in writing, on February 14, 2013, that this office has authority to investigate allegations of violations that occurred not more than one (1) year from the date the complaint is received (34 CFR §300.153).

- a. There was a delay at the start of the 2012-2013 school year in providing the student with the related transportation services required by the IEP;
 - b. Transportation has not been provided on a consistent basis, as required by the IEP, which has resulted in a loss of special education instruction in the student's general education class; and
 - c. Special education instruction designed to assist the student in achieving the annual IEP goals has not been provided, as required by the IEP; and
3. The HCPS has not followed proper procedures when determining the student's educational placement since February 2012,¹ in accordance with 34 CFR §300.116 and COMAR 13A.05.01.10.

INVESTIGATIVE PROCEDURES:

1. Ms. Christine Hartman, Education Program Specialist, MSDE, was assigned to investigate the complaint.
2. On February 7, 2013, the MSDE sent a copy of the complaint, via facsimile, to Ms. Patty Daley, Executive Director of Special Education & Student Services, HCPS, and Ms. Judith Pattik, Coordinator of Special Education, HCPS.
3. On February 8, 2013, Ms. Hartman conducted a telephone interview with the complainant to clarify the allegations to be investigated, and received additional documentation from the complainant, via electronic mail (email).
4. On February 11, 15, 20 and 27, 2013, and March 7, 12, 13, 14, 15, 18, 22, and 28, 2013, the complainant provided the MSDE with additional information, including documentation and audio recordings of an IEP team meeting held on January 24, 2013 and February 5, 2013.
5. On February 14, 2013, 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 HCPS review the alleged violations.
6. On February 27, 2013 and March 22, 2013, the MSDE requested information and documents from the HCPS, via email.
7. March 5, 7, 22, 27, and 31, 2013, and April 2 and 3, 2013, the HCPS provided the MSDE with information and documentation related to the allegations being investigated.
8. On March 11, 2013, Ms. Hartman and Ms. Anita Mandis, Section Chief, Family Support and Dispute Resolution Branch, MSDE, conducted a site visit at the XXXXXXXXXXXXX

XXX

Ms. Patty Daley

April 5, 2013

Page 3

(XXXXXXX) to review the student's educational record, and interviewed the following HCPS staff:

- a. Ms. Patricia Mackey, Instructional Facilitator, HCPS;
- b. Ms. XXXXXX, Intermediate Instructional Team Leader, XXXXXX, HCPS;
- c. Ms. XXXXXXXXXXXXX, Speech-Language Pathologist, XXXXXX, HCPS;
- d. Mr. XXXXXXXX, Principal, XXXXXX, HCPS;
- e. Ms. XXXXXXXXXXXX, Speech-Language Pathologist, XXXXXXXX HCPS; and
- f. Ms. XXXXXXXXXXXX, Special Education Teacher and IEP Case Manager, XXXXXXXXXXX, HCPS.

Ms. Janet Zimmerman, Instructional Facilitator, HCPS, and Ms. Kelly Russo, Special Education Resource Teacher, HCPS, attended the site visit as representatives of the HCPS and to provide information on the HCPS policies and procedures, as needed.

9. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Correspondence and attachments from the complainant to the MSDE, received on February 6, 2013;
 - b. IEP and IEP Team Meeting Report, dated October 11, 2011;
 - c. IEP and IEP Team Meeting Report, dated May 3, 2012;
 - d. IEP and IEP Team Meeting Report, dated May 31, 2012;
 - e. IEP Team Meeting Report and Reevaluation Report, dated January 24, 2013;
 - f. IEP Team Meeting Report, dated February 5, 2013;
 - g. Compact Disc (CD) recordings of the IEP team meeting conducted on January 24, 2013 and February 5, 2013;
 - h. Recommendation from the student's private speech/language therapist, Ms. XXXXXXXX, dated January 22, 2012;
 - i. Consent for Assessments, dated March 14, 2013;
 - j. Sign out sheets documenting the date shuttling of the student between XXXXXX and XXXXXXXXXXXXX began during the 2012-2013 school year;
 - k. Email correspondence from the HCPS staff to the complainant, dated February 21, 2013;
 - l. Email correspondence from the HCPS staff to the complainant, dated February 7, 2013;
 - m. Student's class schedule for the 2012-2013 school year;
 - n. Reports of the student's progress toward achievement of the annual IEP goals, dated November 1, 2012 and January 18, 2013; and
 - o. Email correspondence from the HCPS staff to the complainant, dated February 19, 2013.

BACKGROUND:

The student is eleven (11) years old and is identified as a student with Autism under the IDEA. He receives special education instruction and related services in a separate special education class at (XXXXXXXXXXXX), and in a general education class at XXXXXXXXXXXXXXXX

(XXXXXXXXXX), which is located on the same grounds as XXXXXXXX. During the period of time addressed by this investigation, the complainant participated in the education decision-making process and was provided with written notice of the procedural safeguards (Docs. a-f, and interviews with the complainant and the HCPS staff).

**ALLEGATION #1: IEP THAT ADDRESSES THE STUDENT'S
SPEECH/LANGUAGE NEEDS SINCE FEBRUARY 2012**

Findings of Facts:

October 11, 2011 IEP Team Meeting

1. The IEP in effect at the start of the time period covered by this investigation was developed on October 11, 2011. At that IEP team meeting, the team reviewed information on the IEP regarding the complainant's report that the student had experienced swelling of the brain after receiving an immunization when he was 18 months old. The team considered assessment data and information from the complainant and the student's teachers that identify needs in the areas of speech articulation and communication. The data reflect that the student demonstrates symptoms of XXXXX of speech,² which is characterized by difficulty putting sounds and syllables together in the correct order to form words (Docs. b-d).
2. The IEP team determined that the student's communication needs continue to impact the development of reading, written language, math, and social interaction skills. Annual goals were developed for the student to improve his speech articulation and communication skills, as well as his reading, written language, math, and social interaction skills. The reading, written language, math, and social interaction goals require the student to use communication to improve skills in these areas (Doc. b).³
3. The IEP team decided that the student requires special education instruction in a separate special education class in all academic areas and special education instruction in the general education setting in "related arts" and lunch. The team also decided that the student requires speech/language therapy as a related service (Doc. b).

May 3, 2012 IEP Team Meeting

4. On May 3, 2012, the IEP team convened to consider the student's need for Extended School Year (ESY) services. At this meeting, the team determined that the student would be provided with ESY services to address annual IEP goals to improve his communication skills (Doc c).

² XXXX of speech can be caused by damage to the parts of the brain that are involved in speaking and also present as a secondary characteristic of other genetic, metabolic, and mitochondrial disorders. The severity of the disorder varies among individuals (See, <http://www.nidcd.nih.gov/health/voice/pages/apraxia.aspx>).

³ For further information regarding the annual goals contained on the IEP, please see the findings of facts related to Allegation #2.

XXX

Ms. Patty Daley

April 5, 2013

Page 5

May 31, 2012 IEP Team Meeting

5. On May 31, 2012, the IEP team convened to conduct the annual review of the IEP. The team considered reports of the student's progress from both his parents and his teachers, and revised the goals and services based on those reports (Doc. d).

January 24, 2013 and February 5, 2013 IEP Team Meeting

6. On January 24, 2013 and February 5, 2013, the IEP team convened to begin the three (3) year reevaluation process. The IEP team considered the complainant's requests for the XXXXXXXX speech/language therapists to communicate with the student's private therapists and for the speech/language therapy to be provided using the Level 2 PROMPT methodology.⁴ The IEP team also considered a letter from the student's private speech/language therapist, indicating the use of this methodology, and recommending the use of the same methodology by the school system. The team also considered information from school staff that the student had made sufficient progress towards achieving the annual IEP goals without the use of the specific methodology requested by the complainant. Based on this information, the team decided that the student does not require the use of a specific methodology when receiving speech/language therapy. However, the IEP team agreed that communication and collaboration between the XXXX XXXX and private speech/language therapists would occur (Docs. e, f and h).
7. The IEP team also discussed that, when the previous psychological assessment was conducted for the student, he was too young for the evaluator to measure his cognitive ability. The team recommended that another psychological assessment be conducted with a cognitive component to obtain additional information regarding the student's cognitive ability/skills. The team also recommended that educational, speech/language, occupational therapy, and adapted physical education assessments be conducted, as well as a classroom observation of the student (Docs. e-g and interviews with the HCPS staff).
8. On March 14, 2013, the complainant refused to provide consent for assessments that "would result with any form of an [intelligence quotient] score or be used in any way to determine or suggest [a] level of [intelligence quotient]" (Docs. e-g and i, and interviews with the HCPS staff).

Discussion/Conclusions:

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

⁴ The PROMPT methodology of speech/language therapy is a multi-dimensional approach to speech disorders that incorporates physical-sensory, cognitive-linguistic, and social-emotional aspects of motor performance (See, <http://promptinstitute.com>).

of the student (34 CFR §300.324). The IEP must contain the special education and related services required to address the student's identified needs. However, the IEP team is not
XXX

Ms. Patty Daley

April 5, 2013

Page 6

required to determine a particular method, strategy, or technique that must be used to implement the IEP unless it is necessary in order for the student to receive a Free Appropriate Public Education (FAPE) (*Analysis of Comments and Changes to IDEA*, Federal Register, Vol. 71, No. 156, p. 46665, August 14, 2006).

Based on the Findings of Facts #1 – #5, the MSDE finds that the IEP team considered the complainant's concerns, the most recent assessment data, and teacher reports of the student's functional performance when developing the IEP in effect during the time-period covered by this investigation. Based on the Findings of Facts #1 – #5, the MSDE finds that the IEP team developed an IEP that addresses the student's speech/language needs identified in the data. Based on the Findings of Facts #7 and #8, the MSDE further finds that the HCPS has continued to take steps to obtain ongoing data in order to ensure that the student's needs are identified and addressed. Therefore, the MSDE does not find that a violation has occurred with regard to this allegation.

ALLEGATION #2a: DELAY IN THE PROVISION OF TRANSPORTATION AT THE START OF THE 2012-2013 SCHOOL YEAR

Findings of Facts:

9. The student attends XXXXXX, which is a separate special education school with an educational program for students ages 3 – 21 with complex needs, including behavior challenges in school and community settings, who require a structured learning environment. Because it is located on the same grounds as XXXXXX, elementary students who require special education instruction in a general education classroom, as well, are transported between the two schools in a shuttle bus in order to access instruction in both settings (Doc. d, interviews with the HCPS staff, and review of the HCPS website).
10. The student's IEP requires that he receive special education instruction in a general education classroom for "related arts" and lunch for ten (10) hours each week. The IEP also requires that the student receive transportation between XXXXXX and XXXXXX to receive this instruction (Doc. d).
11. A log of the transportation of the student by shuttle bus which provides the transportation between his separate special education classroom at XXXXXX and the general education classroom at XXXXXX documents that transportation to XXXXXX for instruction in the general education classroom began on September 10, 2012 (Doc. j).
12. There were ten (10) school days between the first day of school on August 27, 2012 and September 10, 2012 (Review of the HCPS 2012-2013 school calendar).
13. At an IEP team meeting held on January 24, 2013, the complainant's attorney requested that the student be provided with services to compensate for the delay in the provision of instruction in the general education classroom. The IEP team considered information from the student's special education teacher that the student was provided with special education instruction during that period of time in the separate special education

classroom at XXXXXXXX. Documentation of the meeting reflects that the team decided that the delay did not negatively impact the student's ability to benefit from his educational program and that compensatory services⁵ are not required (Docs. e and g).

Discussion/Conclusions:

The public agency is required to ensure that the student is provided with the special education and related services required by the IEP (34 CFR §§300.101 and .323). In this case, the complainant alleges that there was a delay at the start of the 2012-2013 school year in shuttling the student to and from XXXXXXXX in order for him to receive special education instruction in a general education classroom (Doc. a).

Based on the Findings of Facts #9 – #12, the MSDE finds that there was a ten (10) day delay in the provision of transportation for the student to XXXXXX in order for him to receive special education instruction in the general education classroom at the start of the school year. Therefore, the MSDE finds that a violation has occurred with regard to this aspect of the allegation. Notwithstanding the violation, based on the Finding of Fact #13, the MSDE finds that the IEP team has determined that there was no educational impact on the student. Therefore, the MSDE does not require corrective action with respect to the violation.

ALLEGATION #2b: PROVISION OF TRANSPORTATION ON A CONSISTENT BASIS

Findings of Facts:

14. The IEP requires the student to be provided with nineteen (19) hours of special education instruction per week in the separate special education classroom in all academic areas, and ten (10) hours per week of special education instruction in the general education classroom in “related arts” and lunch during the 2012-2013 school year (Doc. d).
15. The HCPS designates four (4) days per school year for parent-teacher conferences in elementary and middle schools. Two of the days are in November and two are in February. On those days, schools operate on a revised schedule and close early in order to convene the conferences (Review of the HCPS 2012-2013 school calendar).
16. On the days when XXXXXX operates on a revised schedule due to early dismissal, the student receives all special education instruction in the separate special education classroom at XXXXXXXX (Doc. k).

Discussion/Conclusions:

Public schools in the State of Maryland are required to be open for pupil attendance for at least 180 actual school days and a minimum of 1,080 school hours during a ten (10) month period in each school year. Each local school system develops a school calendar to ensure that students

⁵ Compensatory services, for the purposes of this letter, mean the determination by the IEP team regarding how to remediate the denial of appropriate services to the student (34 CFR §300.151).

receive the required amount of instruction (Md. Code Ann. Ed. Art. §7-103 and Code of Maryland Regulations 13A.02.01.04).

With regard to each student's IEP, the public agency must ensure that the IEP includes a statement of the anticipated frequency, location, and duration of the special education and related services that are required in order to assist the student in achieving the annual IEP goals, and must ensure that those services are provided in accordance with the IEP (34 CFR §§300.101, .320, and .323).

In this case, the complainant alleges that the HCPS has not ensured that the student has received the amount of special education instruction in the general education classroom that is required by the IEP on weeks when XXXXXXXX has closed early for parent-teacher conferences (Doc. a).

Based on the Finding of Fact #15, the MSDE finds that the HCPS has developed a plan for the days during the school year when schools are not open for a full day of instruction. Based on the Findings of Facts #14 and #16, the MSDE further finds that, when developing this student's IEP, the anticipated amount and frequency of special education instruction to be provided in the general education classroom was determined with an understanding that there are days when schools are not open for a full day of instruction. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

**ALLEGATION #2c: PROVISION OF SPECIAL EDUCATION INSTRUCTION
DESIGNED TO ASSIST THE STUDENT IN ACHIEVING THE
ANNUAL IEP GOALS**

Findings of Facts:

Provision of Instruction to Address the Annual IEP Goals to Improve the Student's Academic Skills

17. The IEP states that the student "has been medically diagnosed with severe XXXXX secondary to XXXX XXXXX." It further states that the student's disability "most closely aligns with the profile of students with autism." It describes his levels of academic achievement and functional performance as follows:
 - a. Reading Comprehension/Phonemic Awareness – The student can comprehend sixty-eight (68) words, answer "who, what, where" questions when provided with pictures and readings of two to four sentences. He is able to identify and substitute letters for oral readings for more than twenty "cvc" words, and can speak and respond using manipulatives such as letter tiles or pencil to indicate a response on paper. He is not yet substituting for blends or medial vowel combinations.
 - b. Math – The student can successfully identify and match time to the hour and half-hour. He can identify coins from a cluster in four out of five trials, but cannot identify their value. He requires gestured and verbal cues to "place items onto a numbered grid to count sets of seven to ten."

- c. Written Language – The student is able to demonstrate a modified tripod grasp on small writing utensils, and is working on maintaining his forearm on the table surface for stability during writing. He is able to imitate vertical and horizontal lines and circles, form a square when provided with four dots to connect, and form an “X” when shown where to begin and end. He is unable to consistently distinguish between the letters “F” and “E.”
 - d. Social Interaction Skills – The student is able to produce more than 20 words or word approximations. He has demonstrated improvement in sustained phonation from being able to produce just the initial sounds of words, to being able to fully pronounce “cv” and “cvc” words, can produce the end sounds of words, and is beginning to produce two-syllable words. He continues to be “unintelligible to unfamiliar listeners without a known context.”
 - e. Social/Emotional/Behavioral Skills – The student is able to respond to verbal instructions to gain attention and stand in line when he is in groups of twelve or smaller, but requires verbal and gestural prompts when he is in groups between twelve and twenty-five.
 - f. Independent Community Living – The student continues to occasionally need cuing to remember to eat using utensils instead of his fingers, to set up for lunch and clean up afterward, and to properly orient his clothing when dressing (Doc. d)
18. The IEP requires the provision of special education instruction and related services to assist the student in improving academic, social/emotional/behavioral, and communication skills, and states that “services will be provided in the classroom, or throughout the building as appropriate to address [the student’s] IEP goals.” The student’s class schedule indicates that, at the start of the 2012-2013 school year, the classes in which the student received special education included swimming and “career skills” (Docs. d and m).
19. Reports of the student’s progress toward achieving the annual IEP goals, dated November 1, 2012 and January 18, 2013, document that the student has made sufficient progress toward achieving the annual goals (Doc. n).
20. Documentation of IEP team meetings reflects that the complainant has expressed disagreement with school-based members of the IEP team about the student’s levels of academic achievement and functional performance, and has expressed concerns that he has not made a sufficient amount of progress (Docs. e, f and h).
21. On January 24, 2013 and February 5, 2013, the IEP team met and determined that additional data is needed about the student’s cognitive ability in order to address the complainant’s concerns. However, the complainant has refused to provide written consent for an assessment “that would give any indication of [intelligence quotient]” (Docs. e, f and h).

XXX

Ms. Patty Daley

April 5, 2013

Page 10

Provision of a Gradual Increase in Special Education Instruction in the General Education Classroom to Address the Annual IEP Goals to Improve the Student's Academic Skills

22. An e-mail correspondence from XXXXXXXX staff to the complainant, dated February 19, 2013, states that as a result of a decision by the IEP team to increase the amount of special education instruction in the general education classroom, the student's schedule was being revised so that he will be receiving special education instruction in math in the general education classroom. The e-mail further indicates that the special education instruction would begin one day per week and gradually increase to each day of the week (Doc. o).

Phasing in of Instruction to Address Different Skills

23. The IEP requires the provision of special education instruction to assist the student in improving academic, social/emotional/behavioral, and communication skills, and states that progress towards achievement of the goals will be measured on a quarterly basis (Doc d).
24. Reports of the student's progress towards achievement of the annual IEP goals, dated November 1, 2012 and January 18, 2013, document that the student made progress toward achieving all of the annual goals (Doc. n).

Impact of Transportation on the Provision of Special Education Instruction

25. The IEP requires the provision of special education instruction and related services to assist the student in improving academic, social/emotional/behavioral, and communication skills, and states that "services will be provided in the classroom, or throughout the building, as appropriate, to address [the student's] IEP goals." It reflects that the student will be provided with nineteen (19) hours of special education instruction per week in the separate special education classroom in all academic areas at XXXXX, and ten (10) hours per week of special education instruction in the general education classroom in "related arts" and lunch at XXXXXXX during the 2012-2013 school year (Doc. d).
26. In response to the complainant's concerns about the amount of time it takes for the student to be shuttled between the two school buildings, school staff timed the process. It was determined that it takes approximately 7 minutes for the student to go from classroom to classroom (Doc. l).

Discussion/Conclusions:

As stated above, 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 and .323).

XXX

Ms. Patty Daley

April 5, 2013

Page 11

Provision of Instruction to Address the Annual IEP Goals to Improve the Student's Academic Skills

In this case, the complainant alleges that the student has not been provided with sufficient special education instruction to assist him with improving his academic skills. Instead, she asserts that the student has been provided with instruction in swimming and "career skills," such as sorting produce, which she does not believe will provide the intensive instruction needed to assist him in working towards earning a Maryland High School Diploma (Doc. a).

Based on the Findings of Facts #18 and #19, the MSDE finds that there is documentation that the annual goals are being addressed through the provision of special education instruction and related services. Based on the Findings of Facts #17, 20, and 21, the MSDE further finds that there is no data to indicate that the student requires the provision of special education instruction that is focused exclusively on academics. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Provision of a Gradual Increase in Special Education Instruction in the General Education Classroom to Address the Annual IEP Goals to Improve the Student's Academic Skills

In this case, the complainant alleges that the HCPS was required to gradually increase the amount of special education instruction provided in the general education classroom, and has not done so (Doc. a).

Based on the Finding of Fact #22, the MSDE finds that there is documentation that school staff are gradually increasing the amount of special education instruction in the general education classroom. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Phasing in of Instruction to Address Different Skills

In this case, the complainant alleges that the HCPS was required to ensure that special education instruction was provided to address all of the annual IEP goals simultaneously at the start of the school year (Doc. a).

Based on the Finding of Fact #23, the MSDE finds that there is no documentation that the IEP requires that the special education instruction provided address all of the annual IEP goals simultaneously. Based on the Finding of Fact #24, the MSDE finds that there is documentation that all of the goals have been addressed and that the student's progress towards achievement of the goals was measured during each quarter of the school year, as required by the IEP. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

Impact of Transportation on the Provision of Special Education Instruction

In this case, the complainant alleges that the student is not provided with the amount of special education instruction and related services required by the IEP as a result of having to travel

between the school buildings in order to receive instruction in the different educational placements (Doc. a).

Based on the Findings of Facts #25 and #26, the MSDE finds that, because the IEP indicates that the annual goals are addressed throughout the school day, the MSDE finds that special education instruction is incorporated throughout the day and can be implemented during periods of time when the student travels from one classroom to another. Therefore, the MSDE does not find that a violation occurred with respect to this aspect of the allegation.

ALLEGATION #3: EDUCATIONAL PLACEMENT SINCE FEBRUARY 2012

Findings of Facts:

27. The IEP in effect since February 2012, documents that the IEP team considered whether the IEP can be implemented in the general education classroom or a separate special education classroom with the provision of supplementary aids and services. The IEP team decided that the Least Restrictive Environment (LRE) in which special education instruction can be provided in all academic areas is a separate special education classroom (Docs. b-d).
28. The documentation indicates that the basis for the decision was that the student requires a structured learning environment with intensive services to address his academic, behavioral, speech/language and physical needs. The team also decided that, with the provision of supplementary aids and supports, the student can receive special education instruction in “related arts” and lunch in the general education setting (Docs. b-d).
29. The IEP further documents that the team considered whether the program can be implemented in the school the student would attend if not disabled, and determined that the student’s school cannot provide the student with the special education instruction and related services in the structured learning environment and with the intensity necessary to address the student’s behavioral, speech/language, and physical needs (Docs. b-d).
30. The IEP team determined that the student will receive special education instruction at both XXXXX and XXXXXX, which are located on the same grounds, enabling the students who requires special education instruction in both settings to be shuttled between the two buildings in order to receive the instruction (Docs. b-d, interviews with the HCPS staff, and review of the HCPS website).
31. The IEP indicates that the IEP team determined that there were no potential harmful effects of the placement decision on the student or the educational services that the student requires (Docs. b-d).
32. There is documentation that, at the IEP team meetings held on January 24, 2013 and February 5, 2013, the complainant requested that the student be placed at a school in which both the general education and separate special education classrooms are located in the same building because she believes that time is being wasted shuttling the student between the two buildings (see, Finding of Fact #24) (Docs. e-g).

XXX

Ms. Patty Daley

April 5, 2013

Page 13

33. The IEP team decided that, since a reevaluation is in the process of being conducted, the complainant's request for a change in the student's educational placement will be considered following its completion (Docs. e-g and interviews with the HCPS staff).

Discussion/Conclusions:

In determining the educational placement of a student with a disability, the public agency must ensure that the placement decision is made in conformity with the least restrictive environment (LRE) provisions, which require that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled. Further, the IDEA requires that 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. In selecting the LRE, the public agency must consider any potential harmful effect on the student or on the quality of services that the student needs (34 CFR §§300.114 - .116 and COMAR 13A.05.01.10).

Unless the IEP of a student requires some other arrangement, the public agency must ensure that the student is educated in the school setting that the student would attend if not disabled. If the IEP requires placement in a school other than the school the student would attend if not disabled, the school must be located as close as possible to the student's home (34 CFR § 300.116 and COMAR 13A.05.01.10(C)(1)).

In this case, the complainant alleges that the student's current placement is not appropriate because he has to be shuttled between two (2) different schools on the campus, even though the school the student would attend if not disabled is not an appropriate placement (Doc. a and interviews with the complainant).

Based on the Findings of Facts #27 and #28, the MSDE finds that the IEP team considered whether the IEP can be implemented in a less restrictive environment with the provision of supplementary aides and services when determining the LRE. Based on the Findings of Facts #29 – #31, the MSDE further finds that the IEP team considered whether the IEP can be implemented in the school the student would attend if not disabled, and whether there was any negative impact of the placement decision. Based on the Findings of Facts #32 and #33, the MSDE further finds that the IEP team is obtaining additional evaluation data in order to consider the complainant's request for a change in educational placement. Therefore, this office does not find that a violation has occurred with respect to the allegation.

Please be advised that both the complainant 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

XXX

Ms. Patty Daley

April 5, 2013

Page 14

conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions.

Questions regarding the findings and conclusions 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 a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.

Assistant State Superintendent

Division of Special Education/

Early Intervention Services

MEF/ch

cc: Renee A. Foose
Judith Pattik
Janet Zimmerman
XXXXXX
Dori Wilson
Anita Mandis
Christine Hartman